

Fish and Game Commission

Meeting Binder



October 11-12, 2017

Commission Meeting

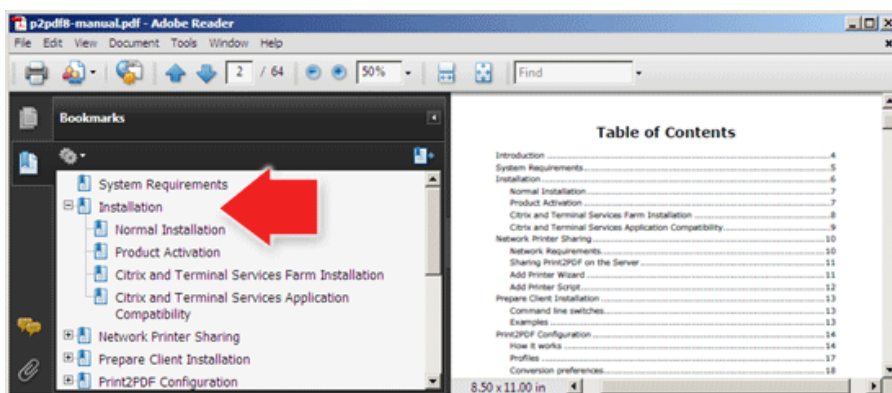
Atascadero

EASY GUIDE TO USING THE BINDER

1. Download and open the binder document using your Adobe Acrobat program/app.
2. If a bookmark panel does not automatically appear on either the top or left side of the screen, click/tap on the “bookmark symbol” located near the top left-hand corner.



3. To make adjustments to the view, use the Page Display option in the View tab. You should see something like:



4. We suggest leaving open the bookmark panel to help you move efficiently among the staff summaries and numerous supporting documents in the binder. It's helpful to think of these bookmarks as a table of contents that allows you to go to specific points in the binder without having to scroll through hundreds of pages.
5. You can resize the two panels by placing your cursor in the dark, vertical line located between the panels and using a long click /tap to move in either direction. ⌘↔
6. You may also adjust the sizing of the documents by adjusting the sizing preferences located on the Page Display icons found in the top toolbar or in the View tab.
7. Upon locating a staff summary for an agenda item, notice that you can obtain more information by clicking/tapping on any item underlined in blue.
8. Return to the staff summary by simply clicking/tapping on the item in the bookmark panel.
9. Do not hesitate to contact staff if you have any questions or would like assistance.

OVERVIEW OF FISH AND GAME COMMISSION BUSINESS MEETINGS

- This is the 147th year of continuous operation of the California Fish and Game Commission in partnership with the California Department of Fish and Wildlife. Our goal is the preservation of our heritage and conservation of our natural resources through informed decision making. These meetings are vital in achieving that goal. In that spirit, we provide the following information to be as effective and efficient toward that end. Welcome and please let us know if you have any questions.
- We are operating under Bagley-Keene Open Meeting Act and these proceedings are being recorded and broadcast via Cal-Span.
- In the unlikely event of an emergency, please note the location of the nearest emergency exits. Additionally, the restrooms are located _____.
- Items may be heard in any order pursuant to the determination of the Commission President.
- The amount of time for each agenda item may be adjusted based on time available and the number of speakers.
- Speaker cards need to be filled out legibly and turned in to the staff before we start the agenda item. Please make sure to list the agenda items you wish to speak to on the speaker card.
- We will be calling the names of several speakers at a time so please line up behind the speakers' podium when your name is called. If you are not in the room when your name is called you may forfeit your opportunity to speak on the item.
- When you speak, please state your name and any affiliation. Please be respectful. Disruptions from the audience will not be tolerated. Time is precious so please be concise.
- To receive meeting agendas and regulatory notices about those subjects of interest to you, please visit the Commission's website, www.fgc.ca.gov, and sign up for our electronic mailing lists.
- All petitions for regulation change must be submitted in writing on the authorized petition form, FGC 1, Petition to the California Fish and Game Commission for Regulation Change, available at <http://www.fgc.ca.gov/public/information/petitionforregulatorychange.aspx>.
- **Reminder!** Please silence your mobile devices and computers to avoid interruptions.
- **Warning!** The use of a laser pointer by someone other than a speaker doing a presentation may result in arrest.

INTRODUCTIONS FOR FISH AND GAME COMMISSION MEETINGS

Fish and Game Commission

Eric Sklar	President (Saint Helena)
Jacque Hostler-Carmesin	Vice-President (McKinleyville)
Anthony Williams	Member (Huntington Beach)
Russell Burns	Member (Napa)
Peter Silva	Member (El Cajon)

Commission Staff

Valerie Termini	Executive Director
Melissa Miller-Henson	Deputy Executive Director
Mike Yaun	Legal Counsel
Susan Ashcraft	Marine Advisor
Erin Chappell	Wildlife Advisor
Sherrie Fonbuena	Analyst
Rick Pimentel	Analyst

California Department of Fish and Wildlife

Chuck Bonham	Director
Wendy Bogdan	General Counsel
David Bess	Deputy Director and Chief, Law Enforcement Division
Stafford Lehr	Deputy Director, Wildlife and Fisheries Division
Jordan Traverso	Deputy Director, Communications, Education and Outreach
Kari Lewis	Wildlife Branch Chief
Kevin Shaffer	Fisheries Branch Chief
Craig Shuman	Marine Region Manager

I would also like to acknowledge special guests who are present:
(i.e., elected officials, tribal chairpersons, other special guests)

Commissioners
Eric Sklar, President
Saint Helena
Jacque Hostler-Carmesin, Vice President
McKinleyville
Anthony C. Williams, Member
Huntington Beach
Russell E. Burns, Member
Napa
Peter S. Silva, Member
El Cajon

STATE OF CALIFORNIA
Edmund G. Brown Jr., Governor

Valerie Termini, Executive Director
1416 Ninth Street, Room 1320
Sacramento, CA 95814
(916) 653-4899
www.fgc.ca.gov

Fish and Game Commission



*Wildlife Heritage and Conservation
Since 1870*

MEETING AGENDA October 11-12, 2017

**SpringHill Suites by Marriott
900 El Camino Real, Atascadero, CA 93422**

The meeting will be live streamed at www.cal-span.org

NOTE: See important meeting deadlines and procedures at the end of the agenda. Unless otherwise indicated, the California Department of Fish and Wildlife is identified as Department.

Invitation: The Commission invites interested stakeholders to join a discussion on October 11 at 3:00 p.m. (or following completion of Day 1 of the Commission meeting agenda) at SpringHill Suites to explore what may contribute to resiliency and long-term prosperity of fishing communities in California. The discussion is part of an ongoing dialogue to help clarify common concerns through the state and help inform future Commission action.

DAY 1 – OCTOBER 11, 2017, 8:30 A.M.

Call to order/roll call to establish quorum

1. Approve agenda and order of items
2. Public forum for items not on agenda
The Commission **may not** discuss or take action on any matter raised during this item, except to decide whether to place the matter on the agenda of a future meeting. (Sections 11125, 11125.7(a), Government Code)
3. Tribal Committee
 - (A) October 2017 meeting summary
 - I. Receive and adopt recommendations
 - (B) Work plan development
 - I. Update on work plan and draft timeline
 - II. Discuss and approve new topics

4. Wildlife Resources Committee
 - (A) September 2017 meeting summary
 - I. Receive and adopt recommendations
 - (B) Work plan development
 - I. Update on work plan and draft timeline
 - II. Discuss and approve new topics
5. Authorize publication of notice of intent to adopt regulations concerning the incidental take of tricolored blackbird during candidacy period
(Section 749.9, Title 14, CCR)
6. Discuss proposed changes to sport fishing regulations
(Sections 1.05, 1.11, 1.18, 1.61, 1.74, 2.10, 2.25, 5.35, 5.41, 5.88, 7.00, 7.50 and 8.00; repeal Section 1.60; and add Section 2.05, Title 14, CCR)
7. Discuss proposed changes to regulations for the use of GPS-equipped dog collars and treeing switches for dogs used to pursue/take mammals or for dog training
(Section 265, Title 14, CCR)
8. Discuss and adopt proposed regulations for the commercial use and possession of native rattlesnakes for biomedical and therapeutic purposes
(Sections 43, 651 and 703; add Section 42; Title 14, CCR)
9. Consider the petition, Department's evaluation report, and comments received to determine whether listing Cascades frog (*Rana cascadae*) as endangered or threatened under the California Endangered Species Act may be warranted
(Pursuant to Section 2074.2, Fish and Game Code)
Note: If the Commission determines listing may be warranted, a one-year status review will commence before the final decision on listing is made.
10. Discuss staff proposal for stakeholder engagement on American bullfrog and non-native turtle statutes and regulations
11. Department update on Ballona Wetlands Ecological Reserve
 - (A) County parking leases
 - (B) Draft environmental impact report/environmental impact report
12. Non-marine items of interest from previous meetings
13. Non-marine petitions for regulation change from previous meetings
 - (A) Action on petitions for regulation change – none scheduled at this time
 - (B) Action on pending regulation petitions referred to staff and the Department for review
 - I. Petition #2015-009 to raise commercial trapping license fees
 - II. Petition #2016-028 to clarify fire service members authorized to validate deer and elk tags

14. Non-marine, non-regulatory requests from previous meetings
15. Department informational items (non-marine)
 - (A) Director's report
 - (B) Wildlife and Fisheries Division, and Ecosystem Conservation Division
 - (C) Law Enforcement Division
 - (D) Other
16. Announce results from Executive Session

Recess

DAY 2 – OCTOBER 12, 2017, 8:30 A.M.

Call to order/roll call to establish quorum

17. Public forum for items not on agenda
The Commission **may not** discuss or take action on any matter raised during this item, except to decide whether to place the matter on the agenda of a future meeting. (Sections 11125, 11125.7(a), Government Code)

CONSENT ITEM

18. Receive and approve request to transfer California Halibut Bottom Trawl Vessel Permit No. BT0002 from Bruce A. Bramel to Michael A. Peery

19. Marine Resources Committee
 - (A) Work plan development
 - I. Update on work plan and draft timeline
 - II. Discuss and approve new topics
20. Adopt proposed changes to commercial nearshore and deeper nearshore fishing permit and appeal regulations
(Sections 150, 150.02, 150.03, and 705, Title 14, CCR)
21. Adopt proposed commercial take of sea cucumber regulations
(Add Section 128, Title 14, CCR)
22. Discuss proposed changes to recreational abalone regulations
(Section 29.15, Title 14, CCR)
23. Discuss proposed changes to commercial sea urchin regulations
(Sections 120.7 and 705, Title 14, CCR)
24. Discuss and adopt proposed commercial fisheries landing requirements regulations
(Add Section 197, Title 14, CCR)

25. Discuss and adopt a resolution on the National Marine Fisheries Service rejection of hard caps for the swordfish drift gillnet fishery
26. Marine items of interest from previous meetings
 - (A) Discuss the Commission's role related to desalination plants and living marine resources
 - (B) Staff report regarding razor clam domoic acid levels
27. Marine petitions for regulation change from previous meetings
 - (A) Action on petitions for regulation change
 - I. Petition #2017-004 to authorize commercial access fishing opportunity for market squid in northern California
 - II. Petition #2017-006 to add European green crab to list of restricted species
 - (B) Action on pending regulation petitions referred to staff and the Department for review
28. Marine non-regulatory requests from previous meetings
 - (A) Action on non-regulatory requests
 - (B) Action on non-regulatory requests referred to staff and the Department for review
29. Department informational items (marine)
 - (A) Director's report
 - (B) Marine Region
30. Other informational items
 - (A) Staff report
 - (B) Legislative update and possible action
 - (C) Federal agencies report
 - (D) Other
31. Discuss and act on Commission administrative items
 - (A) Next meetings
 - (B) Rulemaking calendar updates
 - (C) New business
 - (D) Other

Adjourn

EXECUTIVE SESSION

(Not Open to Public)

Pursuant to the authority of Government Code Section 11126(a)(1), (c)(3), and (e)(1), and Section 309 of the Fish and Game Code, the Commission will meet in closed Executive Session. The purpose of this Executive Session is to consider:

(A) Pending litigation to which the Commission is a Party

- I. California Fish and Game Commission v. Central Coast Forest Assoc. and Big Creek Lumber Company (Coho listing, south of San Francisco)
- II. Tri-State Crab Producers Assoc v. California Department of Fish and Wildlife; California Fish and Game Commission (Dungeness Crab “Fair Start” provision in section 8279.1 of the Fish and Game Code).
- III. Dennis Sturgell v. California Fish and Game Commission, California Department of Fish and Wildlife, and Office of Administrative Hearings (revocation of Dungeness crab vessel permit No. CT0544-T1)
- IV. Kele Young v. California Fish and Game Commission, et al. (restricted species inspection fee waiver)
- V. Public Interest Coalition v. California Fish and Game Commission (California Environmental Quality Act)
- VI. California Cattlemen’s Association and California Farm Bureau Federation v. California Fish and Game Commission (gray wolf listing)
- VII. Center for Biological Diversity and Project Coyote/Earth Island Institute v. California Fish and Game Commission and California Department of Fish and Wildlife (trapping fees)

(B) Possible litigation involving the Commission

(C) Staffing

(D) Deliberation and action on license and permit items

- I. Take action on the appeal by John M. Becker regarding Sea Urchin Diving Permit No. LO3032
- II. Take action on the appeal by the Estate of Kevin L. Clifton regarding Salmon Vessel Permit No. SA0633

**CALIFORNIA FISH AND GAME COMMISSION
2017 AND 2018 MEETING SCHEDULE**

Note: As meeting dates and locations can change, please visit www.fgc.ca.gov for the most current list of meeting dates and locations.

Meeting Date	Commission Meetings	Committee Meetings	Other Meetings
October 11			Coastal Fishing Communities Public Meeting SpringHill Suites by Marriott 900 El Camino Real Atascadero, CA 93422
October 18			Coastal Fishing Communities Public Meeting E.P. Foster Library 651 East Main Street Ventura, CA 93001
November 8			Coastal Fishing Communities Public Meeting Middlebury Institute of International Studies at Monterey 460 Pierce Street Monterey, CA 93940
November 9		Marine Resources Marina Branch Public Library 190 Seaside Circle Marina, CA 93933	
December 5			Coastal Fishing Communities Public Meeting Handlery Hotel 950 Hotel Circle North San Diego, CA 92108
December 6-7	Handlery Hotel 950 Hotel Circle North San Diego, CA 92108		
2018			
January 11		Wildlife Resources Santa Rosa or Sacramento	
February 6		Tribal Resources Building Auditorium, First Floor 1416 Ninth Street Sacramento, CA 95814	

Meeting Date	Commission Meetings	Committee Meetings	Other Meetings
February 7-8	Resources Building Auditorium, First Floor 1416 Ninth Street Sacramento, CA 95814		
March 6		Marine Resources Petaluma	
March 15	Teleconference — Arcata, Napa, Sacramento, Los Alamitos, and San Diego		
April 12	Teleconference — Arcata, Napa, Sacramento, Los Alamitos and San Diego		
April 18-19	Ventura		
May 17		Wildlife Resources Los Alamitos	
June 19		Tribal Resources Building Auditorium, First Floor 1416 Ninth Street Sacramento, CA 95814	
June 20-21	Resources Building Auditorium, First Floor 1416 Ninth Street Sacramento, CA 95814		
July 17		Marine Resources San Clemente	
August 22-23	North Coast		
September 20		Wildlife Resources Resources Building Auditorium, First Floor 1416 Ninth Street Sacramento, CA 95814	
October 16		Tribal San Joaquin Valley	
October 17-18	San Joaquin Valley		
November 14		Marine Resources Resources Building Auditorium, First Floor 1416 Ninth Street Sacramento, CA 95814	
December 12-13	Los Angeles or San Diego		

OTHER MEETINGS OF INTEREST

Association of Fish and Wildlife Agencies

- September 9-12, 2018, Tampa, FL

Pacific Fishery Management Council

- November 14-20, 2017, Costa Mesa, CA
- March 7-14, 2018, Rohnert Park, CA
- April 4-11, 2018, Portland, OR
- June 6-14, 2018, Spokane, WA
- September 5-12, 2018, Seattle, WA
- November 1-8, 2018, San Diego, CA

Pacific Flyway Council

- March 2018
- August 2018

Western Association of Fish and Wildlife Agencies

- January 3-8, 2018, San Diego, CA
- July 12-17, 2018, Eugene, OR

Wildlife Conservation Board

- November 30, 2017, Sacramento, CA
- February 2018, Sacramento, CA
- May 2018, Sacramento, CA
- August 2018, Sacramento, CA
- November 2018, Sacramento, CA

IMPORTANT COMMISSION MEETING PROCEDURES INFORMATION

WELCOME TO A MEETING OF THE CALIFORNIA FISH AND GAME COMMISSION

This is the 147th year of operation of the Commission in partnership with the California Department of Fish and Wildlife. Our goal is the preservation of our heritage and conservation of our natural resources through informed decision making; Commission meetings are vital in achieving that goal. In that spirit, we provide the following information to be as effective and efficient toward that end. Welcome and please let us know if you have any questions.

PERSONS WITH DISABILITIES

Persons with disabilities needing reasonable accommodation to participate in public meetings or other Commission activities are invited to contact the Reasonable Accommodation Coordinator at (916) 651-1214. Requests for facility and/or meeting accessibility should be received at least 10 working days prior to the meeting to ensure the request can be accommodated.

STAY INFORMED

To receive meeting agendas and regulatory notices about those subjects of interest to you, please visit the Commission's website, www.fgc.ca.gov, and sign up on our electronic mailing lists.

SUBMITTING WRITTEN COMMENTS

The public is encouraged to comment on any agenda item. Submit written comments by one of the following methods: **E-mail** to fgc@fgc.ca.gov; **delivery** to Fish and Game Commission, 1416 Ninth Street, Room 1320, Sacramento, CA 95814; or **hand-deliver to a Commission meeting**. Materials provided to the Commission may be made available to the general public.

COMMENT DEADLINES

The **Written Comment Deadline** for this meeting is **5:00 p.m. on September 28, 2017**. Written comments received at the Commission office by this deadline will be made available to Commissioners prior to the meeting.

The **Late Comment Deadline** for this meeting is **noon on October 6, 2017**. Comments received by this deadline will be marked "late" and made available to Commissioners at the meeting.

After these deadlines, written comments may be delivered in person to the meeting – Please bring ten (10) copies of written comments to the meeting.

NON-REGULATORY REQUESTS

All non-regulatory requests will follow a two-meeting cycle to ensure proper review and thorough consideration of each item. All requests submitted by the **Late Comment Deadline** (or heard during public forum at the meeting) will be scheduled for receipt at this meeting, and scheduled for consideration at the next business meeting.

PETITIONS FOR REGULATION CHANGE

Any person requesting that the Commission adopt, amend, or repeal a regulation must complete and submit form FGC 1, titled, "Petition to the California Fish and Game Commission for Regulation Change" (as required by Section 662, Title 14, CCR). The form is available at <http://www.fgc.ca.gov/public/information/petitionforregulatorychange.aspx>. To be received by the Commission at this meeting, petition forms must have been delivered by the **Late Comment Deadline** (or delivered during public forum at the meeting) and will be scheduled for consideration at the next business meeting, unless the petition is rejected under staff review pursuant to subsection 662(b), Title 14, CCR.

VISUAL PRESENTATIONS/MATERIALS

All electronic presentations must be submitted by the **Late Comment Deadline** and approved by the Commission executive director before the meeting.

1. Electronic presentations must be provided by email to fgc@fgc.ca.gov.
2. All electronic formats must be Windows PC compatible.
3. It is recommended that a print copy of any electronic presentation be submitted in case of technical difficulties.
4. A data projector, laptop and presentation mouse will be available for use at the meeting.

CONSENT CALENDAR

A summary of all items will be available for review at the meeting. Items on the consent calendar are generally non-controversial items for which no opposition has been received and will be voted upon under single action without discussion. Any item may be removed from the consent calendar by the Commission upon request of a Commissioner, the Department, or member of the public who wishes to speak to that item, to allow for discussion and separate action.

LASER POINTERS may only be used by a speaker during a presentation; use at any other time may result in arrest.

SPEAKING AT THE MEETING

To speak on an agenda item, please complete a "Speaker Card" and give it to the designated staff member before the agenda item is announced. Cards will be available near the entrance of the meeting room. Only one speaker card is necessary for speaking to multiple items.

1. Speakers will be called in groups; please line up when your name is called.
2. When addressing the Commission, give your name and the name of any organization you represent, and provide your comments on the item under consideration.
3. If there are several speakers with the same concerns, please appoint a spokesperson and avoid repetitive testimony.
4. The presiding commissioner will allot between one and three minutes per speaker per agenda item, subject to the following exceptions:
 - a. The presiding commissioner may allow up to five minutes to an individual speaker if a minimum of three individuals who are present when the agenda item is called have ceded their time to the designated spokesperson, and the individuals ceding time forfeit their right to speak to the agenda item.

- b. Individuals may receive advance approval for additional time to speak if requests for additional time to speak are received by email or delivery to the Commission office by the **Late Comment Deadline**. The president or designee will approve or deny the request no later than 5:00 p.m. two days prior to the meeting.
 - c. An individual requiring an interpreter is entitled to at least twice the allotted time pursuant to Government Code Section 11125.7(c).
 - d. An individual may receive additional time to speak to an agenda item at the request of any commissioner.
5. If you are presenting handouts/written material to the Commission at the meeting, please provide ten (10) copies to the designated staff member just prior to speaking.

STAFF SUMMARY FOR OCTOBER 11-12, 2017

2. PUBLIC FORUM (DAY 1)**Today's Item****Information** ☒**Action** ☐

Receipt of public comments, petitions for regulation change, and requests for non-regulatory actions.

Summary of Previous/Future Actions

- **Today's receipt of requests and comments** **Oct 11-12; Atascadero**
- Direction to grant, deny or refer **Dec 6-7; San Diego**

Background

This agenda item is primarily to provide the public an opportunity to address FGC on topics not on the agenda. Staff also includes written materials and comments received prior to the meeting as exhibits in the meeting binder (if received by written comment deadline), or as late comments at the meeting (if received by late comment deadline), for official FGC "receipt."

Public comments are generally categorized into three types under public forum: (1) petitions for regulation change; (2) requests for non-regulatory action; and (3) informational-only comments. Under the Bagley-Keene Open Meeting Act, FGC cannot discuss any matter not included on the agenda, other than to schedule issues raised by the public for consideration at future meetings. Thus, petitions for regulation change and non-regulatory requests generally follow a two-meeting cycle (receipt and direction); FGC will determine the outcome of the petitions for regulation change and non-regulatory requests received at today's meeting at the next in-person FGC meeting following staff evaluation.

As required by the Administrative Procedure Act, petitions for regulation change will be either denied or granted and notice made of that determination. Action on petitions received at previous meetings is scheduled under a separate agenda item titled "Petitions for regulation change from previous meetings." Action on non-regulatory requests received at previous meetings is scheduled under a separate agenda item titled "Non-regulatory requests from previous meetings."

Significant Public Comments

1. Petitions for regulation change are summarized in Exhibit 1, and the original petitions are provided in exhibits 3-4.
2. Non-regulatory requests are summarized in Exhibit 2, and the original requests are provided in exhibits 5-7.
3. Informational comments are provided in exhibits 8-12.
4. FGC also received a request to reconsider Petition #2017-002, related to the parking use exemption for the County of Los Angeles leases at the Ballona Wetlands Ecological Reserve, based on the lack of factual substance in the staff recommendation for denial (Exhibit 13).

STAFF SUMMARY FOR OCTOBER 11-12, 2017

Recommendation

Consider whether any new future agenda items are needed to address issues that are raised during public comment and are within FGC's authority.

Exhibits

1. Summary table of new petitions for regulation change received by Sep 28 at 5:00 p.m.
2. Summary table of new non-regulatory requests received by Sep 28 at 5:00 p.m.
3. Petition 2017-008: Ban the use of any neonicotinoid pesticides
4. Petition 2017-009: Parking exemption at Ballona Wetlands Ecological Reserve
5. Email from Peter Flournoy regarding experimental fishing permit for octopus, received Aug 24, 2017
6. Email from Steve McCormick regarding waterfowl hunting, received Sep 18, 2017
7. Email from Ron Ellis regarding experimental fishing permit for box crab, received Sep 28, 2017
8. Email from John Kovach regarding Roosevelt elk, received Aug 19, 2017
9. Email from Fred Seaman regarding new falconry regulations, received Aug 31, 2017
10. Email from Raymond Levy regarding P.E.T.A. purchasing hunting licenses and deer tags, received Sep 18, 2017
11. Email from Bill Corkery regarding effect of restriction on buying licenses, received Sep 20, 2017
12. Letter from Phoebe Lenhart regarding Roosevelt elk, received Sep 21, 2017
13. Letter from the Law Offices of Brian Acree on behalf of the Ballona Wetlands Land Trust, dated Aug 28, 2017

Motion/Direction (N/A)

STAFF SUMMARY FOR OCTOBER 11-12, 2017

3. TRIBAL COMMITTEE**Today's Item**Information ☐Action ☒

Receive summary from the Oct 10, 2017 TC meeting and adopt TC recommendations.
Receive update on TC work plan and draft timeline. Discuss and approve new topics for TC review.

Summary of Previous/Future Actions

- | | |
|---|---------------------------------|
| • Most recent TC meeting | Oct 10, 2017; Atascadero |
| • Today approve TC recommendations | Oct 11, 2017; Atascadero |
| • Next TC meeting | Feb 6, 2018; Sacramento |

Background

TC works under FGC direction to set and accomplish its current work plan (Exhibit 1).

The agenda for the Oct 10, TC meeting (Exhibit 2) included the following substantive items:

1. Staff updates, including formalizing TC in statute, planning annual FGC-Tribal planning meeting per FGC's tribal consultation policy, and other FGC committee updates
2. DFW updates, including commercial kelp and algae harvest management, elk management plan, deer and antelope management plans, and Marine Life Management Act master plan for fisheries amendment
3. Co-management vision development
4. Commission regulatory calendar review and guidance
5. New agenda topics and work plan review

A verbal report on discussion of the Oct 10 agenda items and any resulting recommendations will be provided during this agenda item.

Significant Public Comments (N/A)**Recommendation**

FGC staff: Consider approving TC recommendations.

Exhibits

1. TC work plan, revised Oct 2017
2. TC meeting agenda for Oct 10, 2017

Motion/Direction

Moved by _____ and seconded by _____ that the Commission approves the _____ recommendations from the October 10, 2017 Tribal Committee meeting.

STAFF SUMMARY FOR OCTOBER 11-12, 2017

4. WILDLIFE RESOURCES COMMITTEE**Today's Item****Information** ☐**Action** ☒

Receive summary from the Sep 13, 2017 Wildlife Resources Committee (WRC) meeting and adopt WRC recommendations. Receive update on WRC work plan and draft timeline. Discuss and approve new topics for WRC review.

Summary of Previous/Future Actions

- | | |
|--|------------------------------------|
| • Most recent WRC meeting | Sep 13, 2017; WRC, Riverside |
| • Today approve WRC recommendations | Oct 11-12, 2017; Atascadero |
| • Next WRC meeting | Jan 11, 2018; WRC, Santa Rosa |

Background

Meeting Summary: FGC directs the work of WRC. WRC met on Sep 13; a written summary of the meeting is provided in Exhibit 1.

At its Sep 13 meeting, WRC covered the following topics:

- Annual regulations for:
 - Upland game bird hunting
 - Mammal hunting
 - Waterfowl hunting
 - Central Valley Chinook Salmon sport fishing
 - Klamath River sport fishing
- Falconry regulations
- Wild pig management
- Predator Policy Workgroup
- Delta Fisheries Forum

WRC Recommendations: Based on the meeting discussions, WRC has four recommendations for FGC consideration.

1. Authorize publication of a notice of intent to amend regulations for mammal hunting, waterfowl hunting, Central Valley Chinook Salmon sport fishing, and Klamath River sport fishing for the 2018-19 seasons, consistent with changes discussed during the Sep 13 WRC meeting.
2. Forward the proposal on wild pig management with Option 2 to Assembly Member Bigelow for consideration (Exhibit 2).
3. Adopt the Delta Fisheries Forum recommendations as presented in the staff report (Exhibit 3).
4. In the WRC work plan, approve adding Predator Policy Workgroup and changing the "Russian River sport fishing" agenda topic to "coastal streams low-flow regulations" for January 2018 (Exhibit 4).

STAFF SUMMARY FOR OCTOBER 11-12, 2017

New Agenda Topics: Current topics already referred to WRC are shown in Exhibit 4. No new agenda topics are recommended at this time.

Significant Public Comments

Three letters were received from sportsmen's organizations regarding the wild pig management proposal, opposing any removal of the game mammal status for wild pigs and providing comments on various provisions within the proposal (exhibits 5-7).

Recommendation

FGC staff: Approve WRC recommendations.

Exhibits

1. Sep 13, 2017 WRC meeting summary
2. *Staff Proposal on Wild Pig Management Options*, dated August 2017
3. *Staff Report on the Delta Fisheries Forum*, dated August 2017
4. WRC work plan, updated Aug 2017
5. Email from Safari Club International, California Coalition, regarding wild pig management, received Sep 28, 2017
6. Email from Outdoor Sportmen's Coalition of California regarding wild pig management, received Sep 28, 2017
7. Email from California Sportman's Lobby regarding wild pig management, received Sep 28, 2017

Motion/Direction

Moved by _____ and seconded by _____ that the Commission approves the recommendations from the September 2017 Wildlife Resources Committee meeting.

STAFF SUMMARY FOR OCTOBER 11-12, 2017

5. TRICOLORED BLACKBIRD**Today's Item****Information** ☐**Action** ☒

Authorization to publish notice of intent to add Section 749.9 for the incidental take of tricolored blackbird during the candidacy period.

Summary of Previous/Future Actions

- | | |
|---------------------------------|------------------------------------|
| • Today's notice hearing | Oct 11-12, 2017; Atascadero |
| • Discussion hearing | Dec 6-7, 2017; San Diego |
| • Adoption hearing | February 7-8, 2018; Sacramento |

Background

FGC is the decision-making body that implements the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.). CESA authorizes FGC to establish lists of threatened and endangered species, and to add or remove species from those lists if it finds, upon receipt of sufficient scientific information, that the action is warranted. Pursuant to Section 2084, Fish and Game Code, FGC may authorize, subject to the terms and conditions it prescribes, the taking of any candidate species while DFW and FGC evaluate whether the species should be listed as threatened or endangered under CESA.

On Jan 8, 2016 tricolored blackbird was listed as a candidate species, initiating the development of a status review report by DFW to inform the listing decision. On Dec 8, 2016, FGC approved DFW's request for a six-month extension to complete its report on the status of tricolored blackbird. The six-month extension will further delay final resolution of the tricolored blackbird final listing decision, which cannot occur until after the FGC receives DFW's completed status review report pursuant to Fish and Game Code Sections 2074.6 and 2075.

At its Feb 16, 2017 meeting, FGC adopted an emergency regulation to authorize incidental take of tricolored blackbird as Section 749.9; the emergency regulation expired on September 6, 2017.

Without this regulation, prospective permittees, many of whom already have the necessary entitlements to proceed with their approved projects, would be subject to CESA's take prohibition without, by any reasonable measure, an ability to obtain the necessary state authorization for incidental take during the candidacy period. As a practical matter, activities that result in the take of tricolored blackbird would be prohibited and could not be implemented pending final action by FGC on the listing petition, an action whereby tricolored blackbird may or may not be listed as endangered or threatened under CESA. As a result, many projects that are planned or underway that provide great economic and other benefits to the permittees, their employees, their local communities, and the state of California would be postponed during the candidacy period or canceled entirely.

The proposed regulation authorizes incidental take of tricolored blackbird during candidacy for three categories of activities, which are detailed in the initial statement of reasons (ISOR; Exhibit 2):

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- Actions to protect, restore, conserve or enhance habitat.
- Actions to monitor tricolored blackbird breeding colonies.
- Harvest of grain crops under a harvest management program to protect colonies.

Significant Public Comments

The California Farm Bureau Federation supports the proposed regulations (Exhibit 3). The Center for Biological Diversity opposes the proposed regulations as currently written and suggests that FGC consider performance of the emergency regulation in the previous season and whether changes are warranted (Exhibit 4).

Recommendation

FGC staff: Authorize publication of notice as recommended by DFW.

DFW: Authorize publication of notice as detailed in the ISOR (exhibits 1 and 2).

Exhibits

1. DFW memo, received Sep 18, 2017
2. ISOR
3. Email from Noelle Cremers, California Farm Bureau Federation, received Sep 28, 2017
4. Email from Lisa Belenky, Center for Biological Diversity, received Sep 28, 2017

Motion/Direction

Moved by _____ and seconded by _____ that the Commission authorizes publication of a notice of its intent to add Section 749.9, related to the incidental take of tricolored blackbird during the candidacy period.

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6. SPORT FISHING**Today's Item****Information** ☒**Action** ☐

Discuss proposed changes to inland sport fishing regulations.

Summary of Previous/Future Actions

- Notice hearing Aug 16, 2017; Sacramento
- **Today's discussion hearing** **Oct 11-12, 2017; Atascadero**
- Adoption hearing Dec 6-7, 2017; San Diego

Background

DFW suggests to combine both DFW proposals and public requests (FGC petitions #2016-003, #2016-006 and #2016-023) for proposed changes to the 2018 inland sport fishing regulations. The draft initial statement of reasons (ISOR; Exhibit 1) identifies a number of proposed changes to current regulations, which are summarized in the staff summary for Agenda Item 7 from the Aug 2017 FGC meeting (Exhibit 2).

California Environmental Quality Act

It is determined that there is no substantial evidence the sport fish project that is the subject of this proposed rulemaking could have a significant effect on the environment. A draft negative declaration was not received in time for the binder, but will be presented to FGC by DFW at the meeting in Atascadero.

Significant Public Comments

Comments were received from a few individuals:

1. Petition #2016-006 (fresh water spearfishing) is not consistent with opportunities afforded other fishers and hunters in the state (Exhibit 3)
2. Opposition to the leader length proposal because it will affect fly fishing (three included as Exhibit 4).
3. Opposition to the ban on scents for lures (Exhibit 5).
4. Opposition to closing the Nimbus Basin to fishing on the American River (Exhibit 6).

In response to the public comments, DFW staff provided this summary of information from the ISOR:

1. The proposal does not exclude, or make unlawful, the addition of weight to artificial flies but, rather, clarifies and defines non-buoyant artificial flies as weight for the purpose of this regulation. The proposed regulation further exempts integrated and sinking fly lines from being considered as weight. Fly anglers will be able to use weighted flies and long leaders; however, it would be unlawful if the distance from any weight (as defined) is longer than 6 feet.
2. The definition of an artificial lure applies only to those waters that are designated in various sections of Title 14 as "artificial lure only" waters. Scent can be used on artificial lures in all other waterbodies in the state. Artificial lure regulations are primarily used for

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salmonid fisheries where the risk of injury and effects from hooking mortality are of concern.

3. The closure of the Nimbus Basin is necessary to protect Chinook salmon and steelhead runs for the future. With the placement of the fish ladder being moved to the south side base of Nimbus Dam, it is critical that fish are protected and provided the opportunity to enter the hatchery or spawn in the recently replaced gravel habitat.

Recommendation (N/A)**Exhibits**

1. ISOR
2. Staff summary for Agenda Item 7 (sport fishing) from the Aug 2017 FGC meeting
3. Email from Dennis Hossler, received Sep 11, 2017
4. Emails from Ken Leiterman, Christopher Loomis, and Vince O'Malley, received Sep 18-20, 2017
5. Email from J C McHatton, received Sep 24, 2017
6. Email from Bob Hoppy, received Sep 26, 2017

Motion/Direction (N/A)

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7. USE OF GPS-EQUIPPED DOG COLLARS AND TREEING SWITCHES FOR PURSUIT/TAKE OF MAMMALS**Today's Item****Information** ☒**Action** ☐

Discuss proposed changes to regulations for the use of GPS-equipped dog collars and treeing switches for dogs used to pursue/take mammals or for dog training.

Summary of Previous/Future Actions

- Notice hearing April 26-27, 2017; Van Nuys
- **Discussion hearing** **Oct 11-12, 2017; Atascadero**
- Adoption hearing Dec 6-7, 2017; San Diego

Background

In Apr 2016, FGC adopted changes to Section 265, to delete language restricting the use of global positioning system (GPS) collars and treeing switches for dogs aiding a hunter; this amendment effectively authorized the use of those devices as an aid in hunting. Subsequently a lawsuit was filed challenging the adoption alleging California Environmental Quality Act (CEQA) process deficiencies; FGC determined that further rulemaking may be necessary to resolve that lawsuit.

In Dec 2016, FGC directed staff to prepare a notice of intent to amend Section 265 to reinstate the prohibition on the use of GPS collars and treeing switches to be considered by FGC immediately after and at the same meeting as any adoption of the regulation that was then under consideration (to allow the use of GPS and treeing switches on dog collars). Also, FGC requested that DFW staff develop an analysis of the impacts of both allowing GPS collars and treeing switches and prohibiting the use of that gear; DFW provided that analysis at the Apr 13, 2017 teleconference. The analysis did not identify any significant environmental effects associated with the use of GPS collars or treeing switches.

At its Apr 26, 2017 meeting, FGC determined that the project was exempt from the California Environmental Quality Act pursuant to the guidelines in Public Resources Code Section 15061(b)(3), and adopted changes to Section 265 prohibiting the use of GPS and treeing switches on dog collars for dogs used in the pursuit/take of mammals, with an effective date of April 26, 2018. Also at the meeting, FGC authorized publication of a notice of its intent to amend Section 265 to delete the prohibitions related to GPS and treeing switches for dog collars.

The discussion today is on the proposed changes to Section 265 as described in the initial statement of reasons (ISOR; Exhibit 1), to allow GPS and treeing switches on dog collars for dogs used in the pursuit/take of mammals.

Significant Public Comments

- Opposition to the proposed use of GPS/treeing switch collars based on issues of fair chase and ethical hunting, and a request to increase fines for violations (see Exhibit 2).

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- Concerns raised about the ISOR being inadequate and that a draft environmental document be developed which includes specific areas of discussion and analysis (Exhibit 3).
- Several letters of support for the proposed return of the use of GPS/treeing switch collars with the statement that their use is humane and consistent with good wildlife management practices, and that prohibiting them is unnecessary since dogs are no longer used for hunting bear and bobcat (which climb trees) (Exhibit 4).

Recommendation (N/A)**Exhibits**

1. ISOR
2. Email from Protecting Earth & Animals with Compassion & Education (P.E.A.C.E.), received Sep 27, 2017
3. Email from Sierra Club Placer Group and the Public Interest Coalition, received Sep 28, 2017
4. Emails from California Sportman's Lobby, Outdoor Sportsmen's Coalition of California, and Safari Club International California Coalition, received Sep 22, 2017

Motion/Direction (N/A)

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8. COMMERCIAL USE AND POSSESSION OF NATIVE RATTLESNAKES**Today's Item**Information ☐Action ☒

Adopt proposed changes to commercial use and possession of native rattlesnakes.

Summary of Previous/Future Actions

- Notice hearing Jun 21-22, 2017; Smith River
- **Today's discussion/adoption hearing Oct 11-12, 2017; Atascadero**

Background

FGC received a petition in 2015 to amend existing regulations or adopt new regulations that would allow for the commercial use of native rattlesnakes to develop antivenom, vaccines, and other therapeutic agents. FGC approved the petition request at its Feb 11, 2016 meeting in Sacramento and forwarded it to DFW for evaluation.

DFW staff met with the petitioners during 2016 to gather additional information (Exhibit 1). The petitioners initially proposed using "nuisance" snakes collected by rattlesnake removal businesses for this purpose, as well as raising the possession limit on native rattlesnakes for aversion trainers. However, those proposals would have required additional public outreach and scoping of affected businesses that would have greatly delayed development of the new regulations.

With the petitioners' consent, DFW narrowed the scope of the regulatory proposal to address only commercialized use of native rattlesnakes for venom extraction in conjunction with research and development of biomedical and therapeutic agents. In addition, DFW added propagation of native rattlesnakes at the request of the petitioners. The proposed regulations would authorize limited commercial use of native rattlesnakes for the purposes of developing biomedical and therapeutic products that will benefit humans and domestic animals.

The proposed Section 42 regulation will allow California businesses to develop and sell regionally-specific antivenom, vaccines, and therapeutic agents derived from native rattlesnake venom that would benefit human, pet, and livestock health. The new permit is structured to allow for businesses that seek to maintain live native rattlesnake species for venom extraction to develop and sell therapeutic products from the native rattlesnake venom, or businesses that only intend to develop and sell therapeutic products from the native rattlesnake venom. Exhibit 3 identifies a study supporting the proposed regulation.

In addition, it is necessary to make amendments to Sections 43, 651, and 703 to provide consistency and clarity with the proposed Section 42 (see Exhibit 2).

Significant Public Comments (N/A)**Recommendation**

FGC staff: Adopt the regulations as proposed.

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Exhibits

1. DFW memo, received May 26, 2017
2. Initial statement of reasons
3. Cates et al., American Journal of Veterinary Research, 2015, Mar: 76(3):272-79, document relied upon

Motion/Direction

Moved by _____ and seconded by _____ that the Commission adopts the proposed regulations to add Section 42, and amend sections 43, 651 and 703, related to commercial use of rattlesnakes for biomedical and therapeutic purposes.

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9. CASCADES FROG**Today's Item****Information** ☐**Action** ☒

Determine whether listing Cascades frog *Rana cascadae*) as threatened or endangered under the California Endangered Species Act (CESA) may be warranted pursuant to Section 2074.2 of the Fish and Game Code.

Summary of Previous/Future Actions

- | | |
|--|------------------------------------|
| • Received petition | Mar 1, 2017 |
| • FGC transmitted petition to DFW | Mar 6, 2017 |
| • Published notice of receipt of petition | Mar 31, 2017 |
| • Public receipt of petition | Apr 26-27, 2017; Van Nuys |
| • Approved 30-day extension for evaluation | Jun 21-22, 2017; Smith River |
| • Received DFW evaluation of petition | Aug 16, 2017; Sacramento |
| • Today determine if petitioned action may be warranted | Oct 11-12, 2017; Atascadero |

Background

A petition to list Cascades frog as a threatened or endangered species under CESA was submitted by the Center for Biological Diversity on Mar 1, 2017. On Mar 6, 2017, FGC transmitted the petition to DFW for review. A Notice of Receipt of Petition was published in the California Regulatory Notice Register on Mar 31, 2017.

California Fish and Game Code Section 2073.5 requires that DFW evaluate the petition and submit to FGC a written evaluation with a recommendation (Exhibit 3).

Based upon the information contained in the petition and other relevant information, DFW has determined that there is sufficient scientific information available at this time to indicate that the petitioned action may be warranted. DFW recommends that the petition be accepted and considered (Exhibit 2).

Significant Public Comments (N/A)**Recommendation**

FGC staff: Accept DFW's recommendation to accept and consider the petition for further evaluation.

DFW: Accept and consider the petition for further evaluation.

Exhibits

1. Petition, dated Mar 1, 2017
2. DFW memo, dated Jul 21, 2017
3. DFW 90-day evaluation, dated Jul 2017

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Motion/Direction

Moved by _____ and seconded by _____ that the Commission, pursuant to Section 2074.2 of the Fish and Game Code, finds that the petitioned action to list Cascades frog as a threatened or endangered species **may be** warranted based on the information in the record before the Commission, and therefore designates Cascades frog as a candidate for threatened or endangered species status.

OR

Moved by _____ and seconded by _____ that the Commission, pursuant to Section 2074.2 of the Fish and Game Code, finds that the petition to designate Cascades frog as a threatened or endangered species and other information in the record before the Commission **does not** provide sufficient information to indicate that the petitioned action may be warranted.

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10. AMERICAN BULLFROGS AND NON-NATIVE TURTLES**Today's Item****Information** ☒**Action** ☐

Discuss staff proposal for stakeholder engagement on American bullfrog and non-native turtles statutes and regulations.

Summary of Previous/Future Actions

- FGC discussion Feb 8-9, 2017; Rohnert Park
- FGC discussion Apr 26-27, 2017; Van Nuys
- **Today's discussion Oct 11-12, 2017; Atascadero**

Background

Annually there are approximately two million non-native American bullfrogs and 300,000 non-native turtles (mostly red-eared sliders and softshell turtles) imported into California for food and the pet trade. Even though these species are not imported into California with the intention of being released, they have established wild populations that threaten native amphibians, fish, and wildlife by direct predation, competition for resources and habitat, and disease.

In Feb 2015, DFW provided a report regarding the implications of American bullfrog importation and notified FGC of its decision to stop issuing long-term importation permits and to only issue short-term individual event permits, consistent with Section 236(c)(6)(I) of Title 14. At its Feb 2015 meeting, FGC directed staff to work with DFW to identify a list of potential actions FGC could take to further address the issues identified in the DFW report.

In Feb 2017, FGC staff presented four possible regulatory options to address impacts on California's native wildlife resulting from the importation of American bullfrogs and non-native turtles, and provided additional information in a joint memorandum prepared by FGC and DFW staff (Exhibit 1). At the meeting, FGC directed staff to add this topic to the Apr 2017 agenda for further discussion with more information on two of the four options. In Apr 2017, FGC directed FGC and DFW staff to develop a proposal for stakeholder engagement to further evaluate possible solutions to address the impacts of American bullfrogs and non-native turtles on native wildlife. Today, staff will present the stakeholder engagement proposal for FGC consideration.

Significant Public Comments (N/A)**Recommendations**

FGC staff: Provide input on the staff proposal and direction on next steps.

Exhibits

1. FGC and DFW joint memorandum, dated Jan 26, 2017
2. Staff proposal on stakeholder engagement, dated Sep 15, 2017

Motion/Direction (N/A)

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11. BALLONA WETLANDS ECOLOGICAL RESERVE**Today's Item****Information** ☒**Action** ☐

Department update on Ballona Wetlands Ecological Reserve:

- (A) County of Los Angeles parking leases
- (B) Draft environmental impact statement / environmental impact report

Summary of Previous/Future Actions

- Topic added to Oct meeting agenda Aug 16, 2017; Sacramento
- **Today's discussion** **Oct 11-12, 2017; Atascadero**

Background

The Ballona Wetlands were once an approximately 2,000-acre expanse of marshes, mud flats, salt pans and sand dunes that stretched from Playa del Rey to Venice and inland to the Baldwin Hills. Today, approximately 600 acres of severely degraded habitat remains and is owned and managed by DFW as an ecological reserve.

The proposed Ballona Wetlands Restoration Project is large-scale project to enhance and establish native coastal aquatic and upland habitats, improve flood and storm water management, and provide for public use and enjoyment within the Ballona Wetlands Ecological Reserve. As the lead agencies, DFW and the United States Army Corps of Engineers released a joint draft environmental impact statement/environmental impact report (DEIS/EIR) for the project on Sep 25, 2017. The release of the DEIS/EIR opened a 60-day public comment period that is scheduled to end on Nov. 24, 2017. A public meeting is scheduled for Nov 8 in Marina del Rey.

There are three alternatives presented in the DEIS/EIR for evaluation and a fourth "no change" alternative. To varying extents, each of the three alternatives create and enhance wetland and upland habitats to support native species, improve flood and stormwater management, and provide public access and visitor amenities. The first alternative has the greatest amount of habitat restoration and would include work in 483 acres of the ecological reserve. It would realign a portion of the Ballona Creek channel, allowing tidal waters to flow in and out in a less restrictive pattern. The plan would also add new trails, bike and pedestrian bridges, a new bike path, and a parking structure.

The second alternative is similar to the first, but with slightly less wetland restoration, affecting approximately 426 acres of the ecological reserve. The amenities for pedestrians and parking structure would be the same as those proposed in the first alternative.

The third alternative would leave the existing levee system in place and focus on restoration efforts north of the channel in an approximately 163-acre area of the ecological reserve. The bike paths, trails, bridges, and new parking structure would also be included in this version of the project.

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In Apr 2017, FGC received a petition for regulation change (#2017-002) requesting that the parking lease exceptions for the County of Los Angeles at the ecological reserve be eliminated. A second petition for regulation change (#2017-003) by a different petitioner making the same request was received by FGC at the Jun 2017 meeting. During discussions about the petitions at the Jun 2017 and Aug 2017 meetings, respectively, concerns were raised by members of the public regarding both the parking leases and the scope of the DEIS/EIR. In Aug, FGC added the Ballona Wetlands topic to this Oct 2017 agenda to receive a report from DFW regarding the parking leases and to provide DFW an opportunity to address questions regarding the DEIS/EIR and the overall scope.

In addition, a request to reconsider Petition #2017-002 and a new petition (#2017-009) to amend Section 630 have been submitted. Following FGC meeting procedures, the request for reconsideration is scheduled for receipt by FGC at this meeting (see Agenda Item #2) and scheduled for FGC action at the Dec 2017 meeting. Likewise, the new petition (#2017-009) is scheduled for receipt by FGC at this meeting (see Exhibit 2.1 under Agenda Item #2) and FGC action at the Dec 2017 meeting.

Significant Public Comments (N/A)

In addition to previous comments submitted on the petitions, both for and against, FGC has received six additional comments supporting continued use of the parking lot (see examples in exhibits A1-A3). FGC has also received two comments with background information on the Ballona Wetlands Restoration Project, and voicing concern that Ballona Wetlands is being mischaracterized as a saltmarsh (exhibits A4-A5).

Recommendation (N/A)**Exhibits**

- A1. Letter from Marina del Rey Convention and Visitors Bureau, dated Sep 27, 2017
- A2. Letter from Marina del Rey Lessees Association, dated Sep 26, 2017
- A3. Email from Marina del Rey Sportfishing, received Sep 12, 2017
- A4. Email from Grassroots Coalition, received Sep 20, 2017
- A5. Email from Grassroots Coalition, received Sep 21, 2017
- B1. [Ballona Wetlands Restoration Project DEIS/EIR](#), dated Sep 2017

Motion/Direction (N/A)

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12. ITEMS OF INTEREST FROM PREVIOUS MEETINGS (NON-MARINE)**Today's Item****Information** ☒**Action** ☐

This is a standing agenda item to provide FGC with updates on non-marine items of interest from previous meetings.

Summary of Previous/Future Actions (N/A)**Background**

This item is an opportunity for FGC staff and DFW to provide any follow-up information on non-marine topics previously before FGC. FGC staff has not identified any items for discussion today.

Significant Public Comments (N/A)**Recommendation (N/A)****Exhibits (N/A)****Motion/Direction (N/A)**

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13. NON-MARINE PETITIONS 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 non-marine in nature. For this meeting:

- (A) Action on petitions for regulation change received at the Aug 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 Aug 16, 2017; Sacramento
- **Today's action on petitions** **Oct 11-12, 2017; Atascadero**

(B)

- **Today's update and possible action on referrals** **Oct 11-12, 2017; Atascadero**

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 an FGC 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 Aug 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 evaluation prior to action.

- (A) ***Petitions for regulation change.*** No non-marine regulation petitions are scheduled for action at this meeting.
- (B) ***Pending regulation petitions.*** This item is an opportunity for staff to provide a recommendation on non-marine petitions previously referred by FGC to staff or DFW for review. FGC may act on any staff recommendations made today. Two updates on pending non-marine petitions referred to FGC staff or DFW are scheduled for action at this meeting:
 - I. ***Petition #2015-009 (raise commercial trapping license fees):*** FGC staff recommends that FGC deny the request as it requires a legislative change. Fish and Game Code does not define a commercial trapping license. Fish and Game Code Section 4006(a) only differentiates between resident, non-resident, and junior licenses. In addition, FGC is lacking evidence that all reasonable administrative and implementation costs of DFW and FGC are not currently being fully recovered; an assessment is necessary to make that determination

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and has been identified as a need for future action. The petition is provided in Exhibit B1.

- II. *Petition #2016-028 (clarify fire service members authorized to validate deer and elk tags)*: DFW Law Enforcement Division (LED) recommends that FGC grant the request for further consideration (see petition and DFW memo in exhibits B2 and B3, respectively).

Significant Public Comments

- (B) Petition #2015-009: An online petition initiated by Project Coyote requesting FGC raise trapping license fees or eliminate the fur-trapping program entirely has received over 5500 signatures since it was initiated in Jan 2017 (Exhibit B4). Since the Apr 2017 FGC discussion, FGC has also received two requests from individuals regarding commercial trapping (exhibits B5-B6).

Recommendation

- (B) Adopt FGC staff recommendation for regulation petition #2015-009 and DFW LED recommendation for regulation petition #2016-028.

Exhibits

- B1. Petition #2015-009: Raise commercial trapping license fees
- B2. Petition #2016-028: Clarify fire service members authorized to validate deer and elk tags
- B3. DFW LED memo regarding Petition #2016-028, received Sep 26, 2017
- B4. Project Coyote online petition concerning Petition #2015-009, received beginning Jan 26, 2017
- B5. Email from Genevieve DeGuzman regarding commercial fur trapping, received Jun 26, 2017
- B6. Email from Louis Gauci regarding trapping license fees, received Sep 19, 2017

Motion/Direction

- (B) Moved by _____ and seconded by _____ that the Commission adopts the staff and Department Law Enforcement Division recommendations for petitions #2015-009 and #2016-028.

OR

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

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14. NON-MARINE NON-REGULATORY REQUESTS**Today's Item****Information** ☐**Action** ☒

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

- (A) Action on non-regulatory requests received at the Aug 2017 meeting.
- (B) Update on pending non-regulatory requests referred to FGC staff or DFW for review.

Summary of Previous/Future Actions

(A)

- FGC receipt of requests Aug 16, 2017; Sacramento
- **Today's action on requests** Oct 11-12, 2017; Atascadero

(B)

- **Today's update and possible action on referrals** Oct 11-12, 2017; Atascadero

Background

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

- (A) **Non-regulatory requests.** No non-marine non-regulatory requests are scheduled for action today.
- (B) **Pending non-regulatory requests.** This item is an opportunity for staff to provide a recommendation on non-regulatory requests that were scheduled for action at a previous meeting and referred by FGC to staff or DFW for further review. FGC may act on any staff recommendations made today.

Today, one request referred to staff for review is ready for action:

- *Request for FGC to send a letter to the Pacific Fishery Management Council (PFMC) and the Secretary of Commerce requesting completion of a Klamath spring Chinook management plan:* Staff recommends the request be denied; PFMC manages stocks identified by the National Marine Fisheries Service (NMFS). NMFS has not identified Klamath spring Chinook as a distinct stock; therefore, the requested action is outside of PFMC's mandate. In order to have PFMC take separate management action for Klamath spring Chinook, NMFS would need to determine that Klamath spring Chinook Salmon is a distinct stock, likely including a finding that spring Chinook are genetically distinct from Klamath fall Chinook Salmon. The current genetic data does not support separating Klamath spring Chinook Salmon as a distinct stock from Klamath fall Chinook Salmon.

Significant Public Comments (N/A)

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Recommendation

- (B) Adopt staff recommendation for Klamath spring Chinook Salmon non-regulatory request.

Exhibits (N/A)

Motion/Direction

- (B) Moved by _____ and seconded by _____ that the Commission adopts the staff recommendation for the Klamath spring Chinook Salmon non-regulatory request.

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15. DEPARTMENT INFORMATIONAL ITEMS

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

Standing agenda item to receive and discuss informational updates from DFW:

- (A) Director's Report
- (B) Wildlife and Fisheries Division, and Ecosystem Conservation Division
- (C) Law Enforcement Division
- (D) Other

Summary of Previous/Future Actions (N/A)**Background**

Verbal reports are expected at the meeting for items (A) through (D).

- (C) DFW's Law Enforcement Division has moved from a monthly report to a quarterly report; the Apr through Jun report is included as Exhibit C1.

Four suspects were recently arrested on charges of harvesting abalone with a recreational fishing license and then selling it on the black market for a profit, at a time when the abalone population is facing significant threats due to unprecedented environmental and biological stressors (Exhibit C2). The threats to abalone are described in more detail in Agenda Item 22 for this meeting.

Significant Public Comments (N/A)**Recommendation (N/A)****Exhibits**

- C1. DFW LED second quarter report (Apr-Jun 2017), received Sep 11, 2017
- C2. DFW news release: *CDFW Arrests Four Suspects for Commercial Sale of Sport Harvested Abalone*, dated Sep 21, 2017

Motion/Direction (N/A)

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16. EXECUTIVE SESSION**Today's Item****Information** ☐**Action** ☒

Announce results from Executive Session, which will include the following topics:

- (A) Pending litigation to which FGC is a party
- (B) Possible litigation involving FGC.
- (C) Staffing
- (D) Deliberation on license and permit items

Summary of Previous/Future Actions (N/A)**Background**

Pursuant to the authority of Government Code Section 11126(a)(1), (c)(3), and (e)(1), and Section 309 of the Fish and Game Code, FGC meets in closed executive session at each meeting. The purpose of executive session is to consider topics A-D as reflected on the meeting agenda.

- (A) See agenda for a complete list of pending civil litigation to which FGC is a party.
- (B) None to report at the time the meeting binder was prepared.
- (C) Three positions are currently open (staff services manager, legal/regulatory clerk, and administrative assistant).
- (D) Deliberation and action on license and permit items.
 - I. Take action on the appeal by John M. Becker regarding Sea Urchin Diving Permit No. LO3032: Mr. Becker requested appeal of a DFW denial of a renewal request. DFW and Mr. Becker entered into a settlement agreement; in the agreement, DFW does not oppose the granting of his requested renewal on the condition that past-due fees are paid. FGC staff drafted an order consistent with the settlement agreement.
 - II. Take action on the appeal by the Estate of Kevin L. Clifton regarding Salmon Vessel Permit No. SA0633: The Estate of Kevin L. Clifton (the Estate) requested appeal of a DFW denial of a permit transfer. DFW and the Estate entered into a settlement agreement; in the agreement, DFW does not oppose the granting of the request. FGC staff drafted an order consistent with the settlement agreement.

Recommendation

- (D) **FGC staff:** Formally adopt a decision in the appeal by John M. Becker and formally adopt a decision in the appeal by the Estate of Kevin L. Clifton.

Exhibits

- D1. Settlement agreement between DFW and John M. Becker
- D2. [Unsigned] Decision in the matter of the appeal by John M. Becker

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D3. Settlement agreement between DFW and the Estate of Kevin L. Clifton

D4. [Unsigned] Decision in the matter of the appeal by the Estate of Kevin L. Clifton

Motion/Direction

Moved by _____ and seconded by _____ that the Commission adopts the draft decision in the matter of the appeal by John M. Becker and the draft decision in the matter of the appeal by the Estate of Kevin L. Clifton.

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17. PUBLIC FORUM (DAY 2)**Today's Item****Information** ☒**Action** ☐

Receipt of public comments, petitions for regulation change, and requests for non-regulatory actions.

Summary of Previous/Future Actions

- | | |
|---|------------------------------|
| • Today's receipt of requests and comments | Oct 11-12; Atascadero |
| • Direction to grant, deny or refer | Dec 6-7; San Diego |

Background

This agenda item is primarily to provide the public an opportunity to address FGC on topics not on the agenda. Staff also includes written materials and comments received prior to the meeting as exhibits in the meeting binder (if received by written comment deadline), or as late comments at the meeting (if received by late comment deadline), for official FGC "receipt."

Action on regulatory petitions and non-regulatory requests received at previous meetings is scheduled under separate agenda items titled "Petitions for regulation change from previous meetings" and "Non-regulatory requests from previous meetings".

Significant Public Comments

All written comments were summarized and provided as exhibits under Day 1 Public Forum.

Recommendation

Consider whether any new future agenda items are needed to address issues that are raised during public comment and are within FGC's authority.

Exhibits

See exhibits for Agenda Item 2.

Motion/Direction (N/A)

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18. HALIBUT TRAWL PERMIT TRANSFER, BRAMEL (CONSENT)**Today's Item**Information ☐Action ☒

Approve request to transfer California Halibut Bottom Trawl Vessel Permit No. BT0002 to Michael Peery.

Summary of Previous/Future Actions (N/A)**Background**

Since Apr 2006, any vessel using bottom trawl gear in the state-managed halibut fishery must possess a valid California halibut bottom trawl vessel permit (CHBTVP) issued pursuant to Fish and Game Code Section 8494. A CHBTVP may only be transferred under specific conditions.

Bruce Bramel, who holds a CHBTVP for use on F/V C, has submitted an application to transfer his permit with the vessel to another owner (Exhibit 1).

Pursuant to Fish and Game Code Section 8594(d)(3), a CHBTVP permit holder, or his/her conservator or estate representative, may request to transfer the permit with the vessel to a new permit holder if, prior to the implementation of a halibut trawl restricted access program, specific conditions are met. Since there is not a formal restricted access program for the California halibut fishery, FGC must determine if Mr. Bramel is eligible to transfer the permit to another owner.

Two conditions must be met for FGC to approve a CHBTVP transfer: (1) The permit holder has died, is permanently disabled, or is at least 65 years of age and is retiring from commercial fishing; and (2) California halibut landings contributed significantly to the record and economic income derived from the vessel, as determined by regulations adopted by FGC.

DFW has reviewed documentation submitted by Mr. Bramel (Exhibit 1) as well as landings data to support FGC consideration. Mr. Bramel's documentation indicates that he is at least 65 years of age, and his application indicates that he is retiring from commercial fishing, meeting the first condition.

Regarding the second condition that landings contributed significantly to the record and economic income derived from the vessel, FGC has not yet adopted any regulations to determine if the condition is met. In the absence of regulations, DFW limited its review of license records and landings data to verify that Mr. Bramel has current licenses and actively made landings of California halibut from the vessel. DFW has confirmed that Mr. Bramel has held a valid CHBTVP from the 2006-07 permit year to the current 2017-18 permit year, has a current commercial fishing license and commercial boat registration, and made annual California halibut landings between 2003 and 2013 (Exhibit 2).

Significant Public Comments (N/A)

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Recommendation

FGC staff: Approve the application from Mr. Bramel to transfer CHBTVP No. BT0002, under the condition recommended by DFW that Mr. Bramel not possess a commercial fishing license or otherwise participate or assist in any commercial fishing activity henceforth.

DFW: Consider the application, with approval contingent on agreement that Mr. Bramel shall not possess a commercial fishing license or otherwise participate or assist in any commercial fishing activity henceforth.

Exhibits

1. Transfer application and non-confidential documentation submitted by Bruce A. Bramel, dated May 20, 2017
2. DFW memo, received Sep 28, 2017

Motion/Direction

Moved by _____ and seconded by _____ that the Commission adopts the Consent Calendar, item 18.

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19. MARINE RESOURCES COMMITTEE**Today's Item****Information** ☐**Action** ☒

Review tasks referred to the Marine Resources Committee (MRC), review potential agenda topics for the Nov 9, 2017 MRC meeting, and consider new topics for MRC review.

Summary of Previous/Future Actions

- | | |
|--|------------------------------------|
| • Most recent MRC meeting | Jul 20, 2017; MRC, Santa Rosa |
| • Today approve draft MRC agenda topics | Oct 11-12, 2017; Atascadero |
| • Next MRC meeting | Nov 9, 2017; MRC, Marina |

Background***MRC Work Plan and Draft Timeline***

FGC directs committee work. The updated work plan in Exhibit 1 includes topics and draft timelines for items referred to MRC. Draft agenda topics proposed for the Nov 2017 MRC meeting are shown in the "Nov" column of the work plan for FGC review and consideration today:

Management plan topics

- Marine Life Management Act master plan
- Red abalone fishery management plan

Regulations topics

- Pink shrimp trawl permits
- California halibut trawl permit transferability

Special projects topics

- Fisheries Bycatch Workgroup
- Coastal fishing communities

Emerging management issues

- Box crab and king crab: increased incidental take in commercial fisheries

Informational topics

- Marine debris
 - OPC draft 2017 Ocean Litter Prevention Strategy (presentation)
 - Lobster trap gear loss prevention (video)

Three additional topics were originally identified for Nov but, due to the heavy MRC agenda proposed for Nov and based on timing considerations, staff proposes moving the topics to Mar 2018 (see "recommendations" below).

New MRC Topics

No new topics are proposed by staff. See public request under "significant public comments" below.

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Significant Public Comments

1. Request from Audubon California related to future aquaculture lease considerations, specifically to consider a resolution in support of eelgrass and seabird habitat avoidance and marine spatial planning in Tomales Bay (this request is included under Agenda Item 28, Marine non-regulatory requests from previous meetings, in Exhibit 28A.1).

Recommendation

FGC staff: Approve draft agenda topics for Nov MRC as identified above; and defer the following topics to Mar 2018:

- Herring fishery management plan update
- Kelp and algae harvest regulations (phase 2)
- Aquaculture leases - "Best management practices" regulation, and consideration of new/future lease applications

DFW: Supports FGC staff recommendation to defer the specified topics to Mar 2018.

Exhibits

1. MRC work plan with draft agenda topics for Nov 9, 2017 MRC meeting

Motion/Direction

Moved by _____ and seconded by _____ that the Commission approves the draft agenda topics for the November 2017 Marine Resources Committee meeting.

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20. COMMERCIAL NEARSHORE AND DEEPER NEARSHORE**Today's Item**Information ☐Action ☒

Adopt proposed changes to the commercial nearshore and deeper nearshore fishing permit and appeal regulations.

Summary of Previous/Future Actions

- Notice hearing Jun 21-22, 2017; Smith River
- Discussion hearing Aug 16, 2017; Sacramento
- **Today's adoption hearing Oct 11-12, 2017; Atascadero**

Background

The proposed changes to the commercial nearshore and deeper nearshore fishery regulations in sections 150, 150.02, 150.03 and 705 are outlined in staff summary from the Jun 21-22 FGC meeting (Exhibit 1) and detailed in the initial statement of reasons (Exhibit 3).

A draft notice of exemption is in Exhibit 4, which gives FGC notice of DFW's recommendation to rely on a California Environmental Quality Act categorical exemption for this regulation change.

Significant Public Comments

1. A fisherman for 45 years suggests that existing nearshore regulations are flawed due to extensive species overlap (i.e., shallow nearshore species commonly inhabit the same areas as deeper nearshore species and vice versa), and requests that the law be modified to allow only the transfer of deeper nearshore permits to shallow permit holders to reduce bycatch (Exhibit 5).
2. California fisherman for 50 years requests that his non-transferable permit be exchanged for a transferable permit. He states that he did not meet the criteria for the required landings during the window period because he was fishing other fisheries during that time (Exhibit 6).
3. Fisherman seeking a transferable nearshore permit for the last three years states that investing in the nearshore fishery without transferability of a permit is not practical (Exhibit 7).

Recommendation

FGC staff: Adopt regulations as proposed by DFW.

DFW: Adopt proposed regulations.

Exhibits

1. Staff summary for the nearshore/deeper nearshore agenda item for the Jun 21-22, 2017 FGC meeting
2. DFW memo, received May 8, 2017
3. Initial statement of reasons
4. Draft notice of exemption

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5. Email from William Diller, received Sep 21, 2017
6. Email from Fred Arnoldi, received Aug 15, 2017
7. Email from Nathan Rosser, received Jun 12, 2017
8. DFW presentation

Motion/Direction

Moved by _____ and seconded by _____ that the Commission adopts the proposed regulations to Section 150 et al., related to the nearshore fishery permit, nearshore fishery permit gear endorsements, and deeper nearshore species fishery permit transferability, and that the Commission has determined, based on the record, this approval is exempt from the California Environmental Quality Act pursuant to the guidelines in Title 14, sections 15307 and 15308.

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21. COMMERCIAL SEA CUCUMBER**Today's Item****Information** ☐**Action** ☒

Adopt proposed commercial sea cucumber regulations.

Summary of Previous/Future Actions

- | | |
|--|------------------------------------|
| • Receive/accept DFW recommendation to add sea cucumber to 2016 rulemaking calendar | Dec 3, 2014; Van Nuys |
| • FGC approved MRC recommendation to add an update on fishery to a future MRC agenda | Dec 9-10, 2015; San Diego |
| • MRC vetting | Mar 23, 2017; MRC, Oceanside |
| • Receive/accept MRC recommendation | Apr 26-27, 2017; Van Nuys |
| • Notice hearing | Jun 21-22, 2017; Smith River |
| • Discussion hearing | Aug 16, 2017; Sacramento |
| • Today's adoption hearing | Oct 11-12, 2017; Atascadero |

Background

The commercial sea cucumber fishery is a limited entry fishery with separate permits for the dive and trawl fisheries, which primarily target warty (*Apostichopus parvimensis*) and giant red (*Apostichopus californicus*) species, respectively. The fisheries are governed by the Fish and Game Code, which specifies gear types, fees, records, the number of permits, and permit renewal and transfer processes. Currently there are no statutes or regulations that specify seasons, size limits, catch limits or limits on dive gear usage. However, Fish and Game Code Section 8505.3 authorizes FGC to adopt regulations that are reasonably necessary to protect the sea cucumber resource.

At the Mar 23, 2017, MRC meeting, DFW presented its research findings and information on the status of the warty sea cucumber commercial fishery; the results indicate a significant risk to the long-term sustainability of this fishery. From 2013 to 2016 DFW conducted analyses and collected additional essential information required to inform the development of management measures for the fisheries. At its Apr 26-27, 2017, meeting, FGC accepted MRC's recommendation to add a rulemaking to FGC's 2017 rulemaking calendar to address DFW's concerns.

Informed by an evaluation of fishery trends, reproductive patterns of the species, a 2014 survey of fishery participants, and meetings with the fleet in Mar and Apr 2017, DFW determined that a seasonal closure during the key spawning period for warty sea cucumber is the preferred first step for addressing sustainability concerns. The initial statement of reasons (ISOR; Exhibit 3) proposes a new Section 128 for commercial sea cucumber and includes three seasonal closure options: (1) Apr 1 – Jun 30; (2) Mar 1 – Jun 14; or (3) Jan 1 – Jun 14. A survey of commercial divers was distributed in early Jun; results of the survey are provided in Attachment 2 of the ISOR. Of the divers surveyed, there is disagreement on the preferred seasonal closure; however, all selected Option 2 as their first or second preference (i.e., none selected it as their least preferred option).

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Significant Public Comments

At its Aug 16, 2017, meeting, FGC received an oral recommendation to implement an adaptive season based on multiple fisheries' data; however, that recommendation is outside the scope of the proposed regulations in this rulemaking. FGC also received an oral recommendation to adjust sea cucumber permit and transfer fees; however, the setting of these fees is outside FGC's authority. A third oral comment supported DFW's recommendation.

Recommendation

FGC staff: Adopt the regulations as recommended by DFW.

DFW: Adopt the proposed regulations, including seasonal closure Option 2 (Mar 1- Jun 14).

Exhibits

1. DFW memo, received Jun 5, 2017
2. DFW memo, received Jul 19, 2017
3. ISOR, with attachments 1 and 2
4. DFW memo, received Sep 28, 2017
5. Draft notice of exemption
6. DFW presentation

Motion/Direction

Moved by _____ and seconded by _____ that the Commission adopts proposed Section 128, related to commercial sea cucumber regulations as recommended by the Department, including seasonal closure Option 2, and that the Commission has determined, based on the record, this approval is exempt from the California Environmental Quality Act pursuant to the guidelines in Title 14, subdivision 15061(b)(3) and Section 15307.

OR

Moved by _____ and seconded by _____ that the Commission adopts proposed Section 128, related to commercial sea cucumber regulations, selecting seasonal closure [Option 1 (Apr 1 - Jun 30) **OR** Option 3 (Jan 1 - Jun 14)], and that the Commission has determined, based on the record, this approval is exempt from the California Environmental Quality Act pursuant to the guidelines in Title 14, subdivision 15061(b)(3) and Section 15307.

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22. ABALONE**Today's Item****Information** ☒**Action** ☐

Discussion of proposed changes to recreational abalone regulations.

Summary of Previous/Future Actions

- | | |
|-------------------------------------|------------------------------------|
| • Adopted emergency regulations | Dec 7, 2016; San Diego |
| • MRC vetting | Jul 20, 2017; MRC, Petaluma |
| • Notice hearing | Aug 16, 2017; Sacramento |
| • Today's discussion hearing | Oct 11-12, 2017; Atascadero |
| • Adoption hearing | Dec 6-7, 2017; San Diego |

Background

On Aug 16, 2017, FGC readopted the emergency action reducing the annual recreational limit from 18 to 12 abalone (except for Sonoma County, for which the annual limit remains at 9 abalone) and reduced the recreational fishing season from 7 months to 5 by closing Apr and Nov, the first and last months of the regular season. The emergency regulations are set to expire on Dec 5, 2017. In addition, FGC authorized publishing a notice of its intent to amend regulations for the recreational abalone fishery with proposed management measures more restrictive than the 2017 emergency regulations, due to the lack of significant improvement to the environmental conditions and continued declines in abalone densities and abalone health observed by DFW in 2017. The authorization includes the regulatory option presented by DFW (Option 1) and additional options discussed and requested by FGC at the Aug meeting (Option 2), options that are more restrictive than the 2017 emergency regulations.

DFW submitted the ISOR (Exhibit 3) with the two proposed regulatory options for the recreational red abalone fishery in 2018 as follows:

- Option 1– Full Fishery Closure, based on abalone densities below the density trigger for fishery closure specified in the Abalone Recovery and Management Plan (ARMP) (below 0.30 abalone per square meter).
- Option 2 - Limited Fishery Option, with four sub-options for limiting the fishery per the request of FGC. The four sub-options can be selected individually or in any combination. Two of the sub-options have ranges from which specific numbers must be selected at the adoption hearing.
 - Sub-Option A: Re-open Fort Ross for Abalone Fishing
 - Sub-Option B: Reduce Daily Bag/Possession and Annual Limits
 - Sub-Option C: Increase Minimum Size Limit to 8 Inches
 - Sub-Option D: Limit the Number of Report Cards to between 5,000 – 25,000

A draft notice of exemption (NOE) is also attached (Exhibit 4), which gives FGC notice of DFW's recommendation to rely on a California Environmental Quality Act categorical exemption for this regulation change.

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Significant Public Comments

1. Statement from a fisherman's perspective that the emergency regulations adopted at the Aug 2017 meeting have had little impact on the quality of his take and recommends two suggestions for consideration: (1) increase the minimum size to eight inches since three abalone at seven inches can be taken with little effort and increasing the size will force other fishermen to be more selective; and (2) reduce the daily bag limit to two abalone per day (Exhibit 4).
2. Suggestion from a fisherman that FGC consider: (1) keeping the abalone fishery open, (2) allowing two abalone per day, (3) limiting to eight abalone per year, and (4) leaving the size at seven inches (Exhibit 5).
3. Recommendation from a fisherman for no changes to the regulations (Exhibit 6).
4. Recommendation from a group of scientists and two fishermen that FGC include a proposed harvest control rule in the new red abalone fishery management plan (Exhibit 7).
5. Recommendation from a fisherman that the 2018 abalone season remain open pending adoption of a new fishery management plan.

Recommendation

FGC staff: Adopt DFW's recommendation to close the recreational abalone fishery, consistent with the ARMP and DFW's findings.

DFW staff: DFW recommends Option 1, to close the recreational abalone fishery. This recommendation is consistent with the ARMP and reflects evidence that the fishery is unsustainable and in rapid decline.

Exhibits

1. DFW memo, received Sep 19, 2017
2. ISOR
3. Draft NOE
4. Email from Brandon Earhard, received Sep 15, 2017
5. Email from Alex Reynaud, received Sep 26, 2017
6. Email from Whitney Hitaz, received Sep 26, 2017
7. Email from Jono Wilson, The Nature Conservancy, transmitting a proposed abalone harvest control rule, received Sep 28, 2017
8. Email from Jack Likins, dated Sep 28, 2017
9. DFW Presentation

Motion/Direction (N/A)

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23. COMMERCIAL SEA URCHIN**Today's Item****Information** ☒**Action** ☐

Discuss proposed changes to commercial sea urchin regulations.

Summary of Previous/Future Actions

- | | |
|-------------------------------------|------------------------------------|
| • Notice hearing | Aug 16, 2017; Sacramento |
| • Today's discussion hearing | Oct 11-12, 2017; Atascadero |
| • Adoption hearing | Dec 6-7, 2017; San Diego |

Background

Currently, subsection 120.7(d) sets the total number of sea urchin diving permits at 300. Subsection 120.7(e) further prescribes a random drawing system for distributing new permits as they become available. Under the current system, applicants who have held a sea urchin crewmember permit for more than two years have their name entered into the random drawing one additional time for each additional year they have held such permit; however, this advantage is very small in practice due to a maximum cap of five times that a name may be entered into a drawing. Currently Section 750(c)(4) requires no fee for the random drawing application.

Summary of Proposed Amendments

The proposed amendments to subsection 120.7(d) would decrease the sea urchin fishery's capacity goal to 150 permittees. The capacity goal will be achieved by issuing one new permit only after 11 permits have been retired; this ratio was chosen to simplify the calculation in which new permits would be issued, taking in account the new permit that is added to the fishery.

The lottery system proposed in subsections 120.7(e) and (f) would ensure that the most experienced applicants enjoy a realistic advantage over less-experienced applicants. Under the new system, 80 percent of the new permits would be given to applicants with the most experience in the fishery as crewmembers. The remaining 20 percent of the new permits would be distributed under a drawing system where every remaining applicant has an equal chance of being selected to receive a new permit.

Other amendments to Section 120.7 include:

- Add one extra fishing day per week in the months of Jun to Oct in southern California.
- Clarify the requirements for authorization of an assistant for a sea urchin diver permittee.
- Remove language that no longer has any effect and clarify other regulatory text.

The proposed amendment to Section 750(c)(4) would remove reference to the current drawing application form and add a minor administrative fee of \$4.38 for future applications to enter the drawing.

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Significant Public Comments

1. Emails from California Sea Urchin Commission (CSUC) and CSUC executive director supporting proposed regulations (exhibits 3 and 4).

Recommendation (N/A)

Exhibits

1. DFW memo, received Jul 25, 2017
2. Initial statement of reasons
3. Email from Charles Kavanagh, chairman, CSUC, received Aug 16, 2017
4. Email from David Goldenberg, executive director, CSUC received Sep 29, 2017

Motion/Direction (N/A)

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24. COMMERCIAL FISHERIES LANDING REQUIREMENTS**Today's Item**Information ☐Action ☒

Discuss and adopt the proposed regulations related to commercial fisheries landing requirements.

Summary of Previous/Future Actions

- Notice hearing Jun 21-22, 2017; Smith River
- **Today's discussion/adoption hearing Oct 11-12, 2017; Atascadero**

Background

The proposed regulations implement a transition from the current paper-based reporting system to electronic forms via a new electronic reporting system for commercial fisheries landings. DFW proposes these regulations since no regulations exist and activities are currently governed by statutes alone.

DFW is working closely with the Pacific States Marine Fisheries Commission (PSMFC) to streamline and integrate state electronic reporting with the PSMFC electronic reporting system currently in use in Washington, Oregon and California for certain federally-managed fisheries. Integration will allow fish receivers to use one system to meet both federal and state reporting requirements and will transition all state fisheries landings to electronic reporting (see Exhibit 2).

Significant Public Comments

1. Concern that the proposed regulations only allow 24 hours to submit the E-Tix, which is an unreasonable expectation not allowing for breakdowns, weekends or holidays. Reasonable time should be defined as a 24 hour business day. Business days are Mon through Fri, not including legal holidays (Exhibit 3).
2. Concern from a commercial salmon fisherman involved with the fishery for 60 years, opposing the proposed regulations and wanting to continue using the current paper-based reporting system and not be required to use the electronic reporting system (Exhibit 4).

Recommendation

FGC staff: Adopt regulations as proposed by DFW.

DFW: Adopt proposed regulations.

Exhibits

1. DFW memo, received May 26, 2017
2. Initial statement of reasons
3. Email from Mike Lucas, received Jul 25, 2017
4. Letter from Edward Boitano, received Sep 27, 2017

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Motion/Direction

Moved by _____ and seconded by _____ that the Commission adopts the proposed regulations to add Section 197 related to commercial fisheries landing requirements.

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25. SWORDFISH DRIFT GILLNET FISHERY**Today's Item****Information** ☐**Action** ☒

Discuss and adopt a resolution regarding the National Marine Fisheries Service (NMFS) rejection of a hard-cap rule for the California drift gillnet (DGN) swordfish fishery.

Summary of Previous/Future Actions

- | | |
|---|------------------------------------|
| • MRC received public request for overview | Mar 23, 2017; MRC, San Clemente |
| • FGC approved MRC request to add topic | Jun 21-22, 2017; Smith River |
| • MRC discussion | Jul 20, 2017; MRC, Santa Rosa |
| • Previous FGC discussion | Aug 16, 2017; FGC, Sacramento |
| • Discussion on hard caps and resolution | Oct 11-12, 2017; Atascadero |

Background

At its Aug 16, 2017 meeting, FGC heard testimony on a range of issues regarding the DGN swordfish fishery and approved sending a letter to the Pacific Fishery Management Council (PFMC) requesting that it consider adopting a range of gear alternatives for DGN permits for deep-set buoy gear (DSBG) and linked buoy gear (LBG). The letter (Exhibit 6) articulated that PFMC should prioritize alternatives that develop the DGN fishery but also encourage and create an incentive for current DGN fishermen to engage in commercial DSBG or LBG to reduce bycatch. DSBG and LBG provide alternative gear for use in the swordfish fishery that more selectively target highly migratory species.

At its Sep meeting, PFMC adopted a range of alternatives for authorizing DSBG, changes to federal permitting, as well as guidance and analysis on the gear types. PFMC will review the analysis on gear types, further refine the range of alternatives, and possibly select a preliminary preferred alternative at its March 2018 meeting.

Furthermore, at its Aug 2017 meeting, FGC directed staff to draft a resolution regarding the NMFS rejection of a hard-cap rule for the DGN fishery due to incidental take of marine mammals and sea turtles. The draft resolution (Exhibit 1) highlights the frustration from FGC regarding the NMFS decision to withdraw the proposed hard-cap rule for the California DGN fishery. Hard caps would have provided increased transparency as well as making way for modernization of the fishery. The rule was intended to provide an incentive to fishermen to further avoid interactions with protected species and to promote individual responsibility as well as communication and innovation by fishermen.

As outlined in the Magnuson-Stevens Fisheries Conservation and Management Act, NMFS is to base its decisions on a variety of considerations, including science, economics and social issues in order to make informed choices. The NMFS decision seems based on only one of the considerations (economic) required by the act, rather than the range of issues NMFS is to address. NMFS' job is to consider and weigh these choices to help make difficult decisions.

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Significant Public Comments

FCG has received email correspondence from Lieutenant Governor Gavin Newsom (Exhibit 2) supporting efforts to engage with stakeholders to develop balanced and informed policies. Numerous emails from the public request that FGC end the DGN fishery in California; examples are found in exhibits 3-4. FGC has also received comments from Oceana supporting FGC adoption of a resolution on hard caps for the DGN swordfish fishery (Exhibit 5).

Recommendation

FGC staff: Approve the resolution as amended today.

Exhibits

1. Draft resolution
2. Email from Lieutenant Governor Gavin Newsom, dated Sep 7, 2017
3. Email from Tania Pollak, received Sep 28, 2017
4. Email from Nancy Flores, received Aug 16, 2017
5. Email from Geoff Shester, Oceana, received Sep 28, 2017
6. Letter from FGC to PFMC, dated Sep 13, 2017

Motion/Direction

Moved by _____ and seconded by _____ that the Commission adopts the resolution regarding hard caps for the drift gillnet fishery.

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26. ITEMS OF INTEREST FROM PREVIOUS MEETINGS (MARINE)

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

This is a standing agenda item to provide FGC with updates on marine items of interest from previous meetings. For this meeting there are two topics:

- (A) Discuss FGC role related to desalination plants and living marine resources
- (B) Receive update on status of recreational razor clam fishery closure

Summary of Previous/Future Actions

(A)

- FGC letter sent to California Coastal Commission on proposed desalination project Feb 1, 2017
- FGC directs staff to schedule discussion on roles Aug 16, 2017; Sacramento
- FGC letter sent to California State Lands Commission on proposed desalination project Aug 17, 2017
- **Today's discussion on FGC's role** **Oct 11-12, 2017; Atascadero**

(B)

- FGC emergency closure of recreational razor clam fishery Apr 25, 2016; emergency teleconference
- FGC 90-day emergency closure extension Oct 19-20, 2016; Eureka
- Declaration of fishery closure by DFW director Jan 30, 2017
- FGC update on persistently elevated domoic acid levels in razor clam Aug 16, 2017; Sacramento
- **Today's update** **Oct 11-12, 2017; Atascadero**

Background

This item is an opportunity for staff to provide any follow-up information on marine topics previously before FGC.

(A) FGC role related to desalination plants and living marine resources

FGC has expressed concerns and raised questions about potential impacts to marine organisms from the proposed Huntington Beach desalination plant, particularly impacts to those associated with marine protected areas (MPAs). FGC submitted letters expressing these concerns to the California Coastal Commission in Feb 2017 and the California State Lands Commission in Aug 2017 (Exhibit A1), and through direct communication with the project applicant, Poseidon Water (see "Significant Public Comments" below).

At its Aug 2017 meeting, FGC directed staff to consult with DFW regarding stewardship responsibilities and potential actions to protect marine organisms that projects like the

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proposed desalination project may impact, and to provide an update at the Oct 2017 FGC meeting.

Staff met with DFW marine region staff to review current and prospective opportunities for possible engagement on key issues of concern. DFW and FGC do not have permitting authority associated with proposed commercial activities that may impact living marine resources, such as desalination plants; however, DFW does have an established role in the permitting process of desalination plants. DFW regularly communicates with and participates in review committees of permitting agencies. It provides scientific and biological impact information and makes recommendations intended to integrate ecological safeguards into the design and operation of projects. In addition, DFW formally comments on environmental review documents developed pursuant to CEQA, to ensure marine resources are protected. DFW's active engagement could serve to identify when DFW and FGC staff should coordinate on issues of particular concern to FGC. As such, in lieu of a direct regulatory oversight, FGC can support marine resource protection through ongoing coordination with DFW to identify projects or issues of particular concern, and discuss how to ensure priorities for resource protections are in place.

With regard to MPAs, FGC is a member of the MPA Statewide Leadership Team, convened in 2014 to ensure active and engaged communication among MPA network management partners. The leadership team consists of many of the same partner agencies that DFW coordinates with on proposed projects; the leadership team offers a potential platform to facilitate FGC and DFW coordination with permitting agencies throughout project development and decision processes to minimize impacts to marine resources associated with MPAs.

(B) *Recreational razor clam closure and status of domoic acid levels*

In Apr 2016, California's health agencies (California Department of Public Health and the Office of Environmental Health Hazard Assessment) determined that razor clams in Humboldt and Del Norte counties had high levels of domoic acid that posed a human health risk, and recommended closing the recreational fishery (there is no commercial fishery). FGC took emergency action to close the fishery from Apr to Oct 2016, FGC continued the closure through Jan 26, 2017, and DFW's director issued a declaration to uphold the closure on Jan 30, 2017 under new authority established by Fish and Game Code Section 5523. The closure continues until the director is notified by public health agencies that a health risk no longer exists.

The most recent report from the health agencies, received on Aug 18, indicates a decline in domoic acid levels; however, two out of ten samples were still above the agency-imposed 20 parts per million action level (Exhibit B1). As a result, the recreational razor clam closure remains in effect in both Humboldt and Del Norte counties.

Significant Public Comments

- (A) Poseidon Water provided responses to FGC's written concerns via letter in May 2017 (Exhibit A2), and via conference call with President Sklar, Commissioner Williams, and

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FGC staff in Sep 2017. Poseiden Water has offered to highlight at a future FGC meeting the review process and updates it has made to the proposed Huntington Beach desalination plant.

(B) N/A

Recommendation (N/A)**Exhibits**

- A1. Letter from FGC to California State Lands Commission, dated Aug 17, 2017
- A2. Letter from Scott Malone, Poseidon Water, received May 16, 2017
- B1. California Department of Public Health email and test results for domoic acid levels in the most recent razor clam samples, received Aug 18, 2017

Motion/Direction (N/A)

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27. 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 Aug 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 Aug 16, 2017; Sacramento
- **Today's action on petitions** **Oct 11-12, 2017; Atascadero**

(B)

- **Today's update** **Oct 11-12, 2017; Atascadero**

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 Aug 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. One item was scheduled for action in Aug 2017, but was deferred to this meeting for action. 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.*** Exhibit A1 summarizes the regulation petitions scheduled for action today and provides staff recommendations for each. Two marine regulation petitions from Aug 2017 are scheduled for FGC action at this meeting:
 - I. *Petition #2017-004 (authorize commercial open access fishing for market squid in northern California)* (Exhibit A2), originally scheduled for action in Aug 2017; action was deferred to this meeting at the petitioners' request.
 - II. *Petition #2017-006 (add European green crab to restricted species list)* (Exhibit A3).
- (B) ***Pending regulation petitions.*** No updates on pending marine petitions referred to FGC staff or DFW are scheduled for action at this meeting.

Significant Public Comments

1. Several comments from northern California fishermen, processors, and elected

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officials were previously submitted in support of Petition #2017-004 to authorize local squid access to support struggling north coast fishing communities.

2. Several comments from current squid limited entry permit holders and representatives were previously submitted to express concerns about authorization of any open access fishing opportunity or redirecting part of the current limited entry permit program quota (see example in Exhibit A4).
3. In Aug 2017, Humboldt Fishermen's Marketing Association suggested that FGC vote to table petition #2017-004 and direct staff and DFW to meet with proposal supporters this fall to discuss the petition's merits and obstacles (Exhibit A5).

Recommendation

- (A) Adopt the staff recommendation for each regulation petition to (1) deny, (2) grant, or (3) refer to committee, staff or DFW for further evaluation or information-gathering. See Exhibit A1 for staff recommendations.

Exhibits

- A1. FGC table of marine petitions for regulation change received through Aug 16, 2017, for action in Oct 2017
- A2. Petition #2017-004: Authorize commercial open access fishing for market squid in northern California
- A3. Petition #2017-006: Add European green crab to restricted species list
- A4. Email from California Wetfish Producers Association, received Aug 2, 2017
- A5. Email from Humboldt Fishermen's Marketing Association, received Aug 15, 2017

Motion/Direction

- (A) Moved by _____ and seconded by _____ that the Commission adopts the staff recommendations for actions on the August 2017 petitions for regulation change.

OR

Moved by _____ and seconded by _____ that the Commission adopts the staff recommendations for actions on the August 2017 petitions for regulation change, except for petition number _____ for which the action is _____.

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28. MARINE NON-REGULATORY REQUESTS**Today's Item****Information** ☐**Action** ☒

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

- (A) Action on non-regulatory requests received at the Aug 2017 meeting.
- (B) Update on pending non-regulatory requests referred to staff or DFW for review.

Summary of Previous/Future Actions

(A)

- FGC receipt of requests Aug 16, 2017; Sacramento
- **Today's action on requests** **Oct 11-12, 2017; Atascadero**

(B)

- **Today's update and possible action on referrals** **Oct 11-12, 2017; Atascadero**

Background

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

- (A) **Non-regulatory requests.** Non-regulatory requests scheduled for consideration today were received at the Aug 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.

Today, three non-regulatory requests received at the Aug 2017 meeting are scheduled for action. Exhibit A1 summarizes and contains staff recommendations for each request.

- (B) **Pending non-regulatory requests.** This item is an opportunity for staff to provide a recommendation on non-regulatory requests that were scheduled for action at a previous meeting and referred by FGC to staff or DFW for further review. FGC may act on any staff recommendations made today.

Today, one request referred to staff for review is ready for action:

- *Request from Richard James for FGC to address the legacy marine debris associated with oyster aquaculture leases.* Staff recommends the request be *denied*; FGC does not have staff or funding resources to undertake this effort. However, at the request of FGC staff and stakeholders, the removal of legacy aquaculture debris has been identified in the California Ocean Protection Council's 2017 draft California Ocean Litter Prevention Strategy ([link here](#)) as an action item associated with reducing ocean-based litter. In addition, the

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current effort to develop aquaculture lease best management practices will help to avoid new aquaculture debris.

Significant Public Comments (N/A)**Recommendation**

- (A) Adopt staff recommendations for non-regulatory requests to (1) deny; (2) grant; or (3) refer to committee, staff or DFW for further evaluation or information-gathering. See Exhibit A1 for staff recommendations.
- (B) Adopt staff recommendation for legacy marine aquaculture debris non-regulatory request.

Exhibits

A1. FGC table of marine non-regulatory requests received through Aug 16, 2017

Motion/Direction

- (A-B) Moved by _____ and seconded by _____ that the Commission adopts the staff recommendations for actions on August 2017 non-regulatory requests, and on the pending non-regulatory request.

OR

Moved by _____ and seconded by _____ that the Commission adopts the staff recommendations for actions on August 2017 non-regulatory requests, and on the pending non-regulatory request, except for item(s) _____ for which the action is _____.

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29. DEPARTMENT INFORMATIONAL ITEMS – MARINE**Today's Item****Information** ☒**Action** ☐

Standing agenda item to receive and discuss informational updates from DFW:

(A) Director's Report

(B) Marine Region

Summary of Previous/Future Actions (N/A)**Background**

Verbal reports are expected at the meeting for this agenda item.

Significant Public Comments (N/A)**Recommendation (N/A)****Exhibits (N/A)****Motion/Direction (N/A)**

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30A. OTHER INFORMATIONAL ITEMS – STAFF REPORT**Today's Item****Information** ☒**Action** ☐

Receive the staff report, including staffing updates, staff time allocations, and previous meeting outcomes.

Summary of Previous/Future Actions (N/A)**Background (N/A)**

Staffing update: A vacant position was filled in mid-Aug, one position become vacant at the end of Aug, and two other positions remain vacant.

- The vacant associate governmental program analyst (AGPA) position was filled by Rick Pimentel, who has been primarily focused on training over the last seven weeks. In the last couple of weeks has assumed more responsibilities, with a goal of being fully on-boarded by mid-Nov.
- Our administrative assistant position became vacant at the end of Aug. Staff has submitted and is awaiting approval on the paperwork necessary to reclassify the position to a staff services analyst and to advertise the position. The administrative assistant's responsibilities have been distributed among all FGC staff, with a significant portion going to our seasonal clerk and two AGPAs.
- After advertising the program manager position, over 80 applications were submitted. Applicants were asked to submit a supplemental statement of qualifications to assist with the culling process; the goal is to start interviews by the second week of November. The program manager's responsibilities have been distributed among FGC staff to the extent possible.
- Recent legislation has created the need to amend Title 14 with new Fish and Game Code citations; as this project will generate significant workload, a retired annuitant with a legal or regulatory background is needed to provide project support. Currently leadership is focused on completing onboarding for the regulatory analyst, filling the program manager position, and securing approval for and advertising the staff services analyst position. In the meantime, FGC staff is addressing updates to Title 14 on a regulation-by-regulation basis with individual rulemaking files.

Staff time allocations: To help keep FGC current on where its staff is expending time, Exhibit 1 reports the allocation of time in general categories for the previous two months, as well as highlights some specific activities during that time. Note that, not including the retired annuitant, *unfilled positions and leave represented 22% and 26% of staff's Aug and Sep hours, respectively*; while this is a slight improvement from previous months, it continues to significantly impact capacity.

Previous meeting outcomes: Due to staffing constraints, previous meeting outcomes have not been completed; official meeting minutes for FGC meetings are the video files, which are available through the FGC website at www.fgc.ca.gov/meetings.

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Significant Public Comments (N/A)

Recommendation (N/A)

Exhibits (N/A)

1. *Staff Report on Time Allocation and Accomplishments*, dated Aug 8, 2017

Motion/Direction (N/A)

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30B. OTHER INFORMATIONAL ITEMS – LEGISLATIVE UPDATE**Today's Item**Information ☐Action ☒

Review and discuss legislation of interest, and provide any staff direction.

Summary of Previous/Future Actions (N/A)**Background**

FGC staff has prepared a list of legislation that may affect FGC's resources and workload (see below); each description includes a brief synopsis and current bill status. Additional information is also available in DFW's Oct 2017 Legislative Report (Exhibit B1).

This is an opportunity for FGC to provide direction to staff concerning any proposed legislation. At any meeting, FGC may direct staff to provide information to or share concerns with bill authors. FGC members also have the option to take positions on bills at the same meeting an update is provided.

Updates on Legislation of Interest

FGC is tracking two bills currently before the Governor (as of 10/3/17) for potential signature:

1. SB 161 (McGuire) – Fish and Game Commission: tribal committee (*signed by Governor Brown 10/3/17*)
2. AB 1228 (Bloom) – Experimental fishing permits

Details for both bills are provided below.

Legislation Updates

SB 49 (De Leon and Stern) – California Environmental, Public Health, and Workers Defense Act of 2017. Status: From committee with author's amendments. Read second time and amended. Re-referred to Senate Committee on Rules. Summary: The Porter-Cologne Water Quality Control Act regulates the discharge of pollutants into the waters of the state. The California Endangered Species Act requires FGC to establish a list of endangered species and a list of threatened species and generally prohibits the taking of those species. This bill would prohibit state or local agencies from amending or revising their rules and regulations implementing the above state laws to be less stringent than the baseline federal standards, as defined, and would require specified agencies to take prescribed actions to maintain and enforce certain requirements and standards pertaining to air, water, and protected species.

SB 161 (McGuire) – Fish and Game Commission: tribal committee. Status: Enrolled and presented to the Governor. This bill would require FGC to form a tribal committee from its membership consisting of at least one commissioner and would require the committee to report to FGC from time to time on its activities, consistent with requirements for MRC and WRC, and to make recommendations on all tribal matters considered by FGC.

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SB 188 (Jackson) – State Lands: Leasing: oil and gas. Status: Held in committee and under submission. This bill would prohibit the State Lands Commission and the local trustees of granted public trust lands from entering into any new lease or other conveyance that authorizes the exploration for, or the development and production of, oil and natural gas upon those lands. The bill would prohibit the State Lands Commission and the local trustees of granted public trust lands from entering into any lease renewal, extension, or modification that authorizes a lessee to engage in new or additional exploration, development, or production of oil and natural gas.

SB 234 (Berryhill) – Fishing: local regulation: report. Status: 9/1/2017-Failed deadline pursuant to Rule 61(a)(12). Last location was Senate Appropriations Committee suspense file on 7/19/2017 and may be acted upon Jan 2018. This bill would require that FGC undertake a survey and evaluation of local ordinances that regulate fishing. In the survey and evaluation, FGC shall identify and catalog these ordinances, evaluate whether these ordinances are within or outside of the scope of the holding of *People v. Mueller* (1970) 8 Cal.App.3d. 949 or within or outside the scope of local police powers generally, and recommend to the Legislature a course of action with regard to ordinances that FGC determines to be unlawful. In addition, the bill would require that FGC submit the survey and evaluation to the Legislature in a report by December 31, 2018; the report shall be submitted in compliance with Section 9795 of the Government Code.

SB 473 (Hertzberg) - California Endangered Species Act. Status: Ordered to inactive file on request of Assembly Member Calderon. This bill makes several changes to the California Endangered Species Act that reflect input from academic, business, and conservation interests.

AB 907 (Garcia) - Office of Outdoor Recreation and Public Lands Enhancement. Status: In committee: Hearing canceled. Held under submission. This bill would establish the Office of Outdoor Recreation and Public Lands Enhancement in the Governor's Office of Business and Economic Development for specified purposes, including promoting active healthy lifestyles and improving the quality of life for all Californians, and would require the director of the Governor's Office of Business and Economic Development to administer the Office of Outdoor Recreation and Public Lands Enhancement. The bill would require the Office of Outdoor Recreation and Public Lands Enhancement to create an advisory group to offer advice, expertise, support, and service to it, without compensation.

AB 1228 (Bloom) - Experimental fishing permits. Status: Enrolled and presented to the Governor. This bill would allow for FGC to authorize DFW to issue experimental fishing permits for specified purposes that would authorize commercial or recreational fishing activity otherwise prohibited by the Fish and Game Code or regulations adopted pursuant to that code, subject to certain requirements, including a requirement that activities conducted under the permit be consistent with specified policies enacted as part of the Marine Life Management Act of 1998 and any applicable fishery management plan, and a requirement that the permit be subject to certain DFW conditions. Because a violation of the terms of a permit would be a crime, this bill would impose a state-mandated local program.

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AB 1337 (Patterson and Cooley) – Fish and Game Commission: meetings and hearings: live broadcast. Status: Ordered to inactive file at the request of Senator McGuire. This bill would require FGC provide a live video broadcast on its web site of every FGC meeting or hearing that is open and public and every meeting or hearing conducted by MRC, WRC, or tribal committee that is open and public.

AB 1544 (Dahle and Mathis) - Hunting: nonlead ammunition. Status: Failed deadline pursuant to Rule 61(a)(2). (2-year bill; may be acted upon Jan 2018) This bill would require FGC temporarily suspend the prohibition on the use of nonlead ammunition for the taking of all wildlife for a specific hunting season and caliber if FGC finds that nonlead ammunition of the specific caliber is not available for any reason. The bill would require FGC, on or before Jan 1, 2019, to adopt criteria to determine when nonlead ammunition is not available for purposes of this provision and would require those criteria to include regional availability and cost of nonlead ammunition. The bill would prohibit a suspension from remaining in effect for longer than three years. The bill would require FGC to make any finding that nonlead ammunition is not-available-publicly on its website.

AB 1617 (Bloom and Chiu) - Department of Fish and Wildlife: Fish and Game Commission: funding: strategic vision. Status: Failed deadline pursuant to Rule 61(a)(10). (2-year bill; may be acted upon Jan 2018) Requires the secretary of the Natural Resources Agency to appoint a stakeholder advisory group to report on the progress made toward implementing the California Fish and Wildlife Strategic Vision. Requires the secretary to direct DFW to evaluate and implement program efficiencies and to establish a task force that reviews and makes recommendations regarding FGC and DFW mandates, efficiencies and funding. Requires DFW to identify and propose new sources of revenue to fund its responsibilities.

Significant Public Comments (N/A)**Recommendation (N/A)****Exhibits**

B1. DFW Legislative Report, dated Oct 2017

Motion/Direction (N/A)

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30C. OTHER INFORMATIONAL ITEMS – FEDERAL AGENCIES REPORT**Today's Item****Information** ☒**Action** ☐

Standing agenda item to receive reports on any recent federal agency activities of interest not otherwise addressed under other agenda items.

Summary of Previous/Future Actions (N/A)**Background**

New Administration: As of Sep 29, 2017, appointments had not yet been made for the NOAA administrator or the director of the National Park Service.

Chris Oliver was recently appointed to the U.S. Department of Commerce as the assistant administrator for fisheries (National Marine Fisheries Service). Mr. Oliver most recently served as executive director of the North Pacific Fishery Management Council, a position he held for 16 years. He had been with the Council since 1990, also serving as a fisheries biologist and then deputy director.

Greg Sheehan was recently appointed to the newly-created position of deputy director at the U.S. Fish and Wildlife Service, where he will be acting as director until an appointment is made. Prior to his appointment, Sheehan served as director of the Utah Division of Wildlife Service. Sheehan has more than 25 years of experience with the state of Utah working in wildlife and natural resource management.

U.S. Fish and Wildlife Service: Coming later than normal, this summer thousands of tricolored blackbirds descended on five national wildlife refuges where they had not nested in four years. Once described by explorers as 'the most abundant bird species in coastal southern California,' the tricolored blackbird population is now in sharp decline due to habitat loss. Over the past 70 years, the population has decreased by 80 percent (Exhibit 1).

Significant Public Comments (N/A)**Recommendation (N/A)****Exhibits**

1. USFWS feature story: *Thousands of tricolored blackbirds nest on California wildlife refuges*, dated Sep 22, 2017

Motion/Direction (N/A)

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30D. OTHER INFORMATIONAL ITEMS – OTHER**Today's Item****Information** ☒**Action** ☐

Standing agenda item to allow staff to identify any additional informational items that arise after meeting materials are produced, or for Commissioners to provide updates on recent FGC-related activities.

Summary of Previous/Future Actions (N/A)**Background (N/A)****Significant Public Comments (N/A)****Recommendation (N/A)****Exhibits (N/A)****Motion/Direction (N/A)**

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31A. ADMINISTRATIVE ITEMS – NEXT MEETINGS**Today's Item**Information ☐Action ☒

This is a standing item to review logistics and approve draft agenda items for the next FGC meeting.

Summary of Previous/Future Actions (N/A)**Background**

The next FGC meeting is scheduled for Dec 6-7, 2017 in San Diego at the Handlery Hotel. Staff does not anticipate any special logistics for this meeting.

Potential agenda items for the Dec meeting are provided in Exhibit 1 for consideration.

Significant Public Comments (N/A)**Recommendation**

FGC staff: Approve draft agenda topics for Dec 2017 FGC meeting.

Exhibits

1. Potential agenda items for Dec meeting

Motion/Direction

Moved by _____ and seconded by _____ that the Commission approves the draft agenda items for the December 6-7, 2017 Commission meeting, as amended.

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31B. ADMINISTRATIVE ITEMS – REGULATORY TIMETABLE**Today's Item**Information ☐Action ☒

Review and approve requested changes to the perpetual timetable for anticipated regulatory actions.

Summary of Previous/Future Actions (N/A)**Background**

Each year FGC adopts and submits to the Office of Administrative Law a rulemaking calendar. Subsequently, FGC maintains a perpetual timetable for anticipated regulatory actions. At each FGC meeting, staff provides the latest approved regulatory timetable along with proposed changes highlighted in bolded blue text (Exhibit 1).

The only proposed change to the rulemaking timetable is under the annual mammal regulatory cycle. During the Sep 13 WRC meeting, DFW indicated that it would not propose any changes to mammal season dates and tag quotas for deer, elk, antelope or bighorn sheep (sections 360 et seq.).

Significant Public Comments (N/A)**Recommendation**

FGC staff: Adopt the proposed change to the timetable for anticipated regulatory actions and provide direction on the scheduling of any proposed rulemaking changes identified during the meeting.

Exhibits

1. Proposed timetable for anticipated regulatory actions, updated Sep 28, 2017

Motion/Direction

Moved by _____ and seconded by _____ that the Commission approves the proposed amendment to the timetable for anticipated regulatory actions.

STAFF SUMMARY FOR OCTOBER 11-12, 2017

31C. ADMINISTRATIVE ITEMS – NEW BUSINESS

Today's Item

Information ☒

Action ☐

This is a standing agenda item to allow Commissioners to bring new items of business to FGC.

Summary of Previous/Future Actions (N/A)

Background (N/A)

Significant Public Comments (N/A)

Recommendation (N/A)

Exhibits (N/A)

Motion/Direction (N/A)

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31D. ADMINISTRATIVE ITEMS - OTHER**Today's Item****Information** ☒**Action** ☐

This is an opportunity for Commissioners or staff to raise any other topics related to future meetings and other administrative items that have arisen since binder production.

Summary of Previous/Future Actions (N/A)**Background (N/A)****Significant Public Comments (N/A)****Recommendation (N/A)****Exhibits (N/A)****Motion/Direction (N/A)**

CALIFORNIA FISH AND GAME COMMISSION
RECEIPT LIST FOR REGULATORY REQUESTS: RECEIVED BY 5 PM ON SEP 28, 2017

Revised 09-29-2017

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

Tracking No.	Date Received	Response Due (10 work days)	Response letter to Petitioner	Accept or Reject	Name of Petitioner	Subject of Request	Code or Title 14 Section Number	Short Description	FGC Decision
2017-008	9/19/2017	10/3/2017			Trent Orr, Earthjustice and Gregory Loarie, American Bird Conservancy	Pesticide use on DFW lands	Subdivision 2, Chapter 8, T14	Ban the use of any neonicotinoid pesticides on DFW refuges	Receipt: 10/11-12/2017 Action: scheduled 12/6-7/2017
2017-009	9/28/2017	10/12/2017			Walter Lamb Ballona Wetlands Land Trust	Ballona Wetlands Land Trust	630(h)(3), T14	Eliminate parking use exemption for County of Los Angeles leases	Receipt: 10/11-12/2017 Action: scheduled 12/6-7/2017

CALIFORNIA FISH AND GAME COMMISSION
RECEIPT LIST FOR NON-REGULATORY ACTION: RECEIVED BY 5 PM ON SEP 28, 2017
Revised 10-4-2017

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	FGC Decision
8/24/2017	Peter Flournoy On behalf of Dan Major	Experimental fishing permit - octopus	Requests experimental fishing permit to target octopus using a new gear type	Receipt: 10/11-12/2017 Action: scheduled 12/6-7/2017
9/18/2017	Steve McCormick	Waterfowl hunting	Requests reduction in daily bag limit for mallards to no more than three birds	Receipt: 10/11-12/2017 Action: scheduled 12/6-7/2017
9/28/2017	Ron Ellis F/V Defiance	Experimental fishing permit - box crab	Requests experimental fishing permit for brown box crab in support of developing a box crab fishery	Receipt: 10/11-12/2017 Action: scheduled 12/6-7/2017



Tracking Number: **2017-008**
(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: Trent Orr, Gregory Loarie on behalf of American Bird Conservancy
Address: Earthjustice, 50 California St., Ste 500, San Francisco, CA 94111
Telephone number: 415-217-2000
Email address: torr@earthjustice.org; gloarie@earthjustice.org
- 2. Rulemaking Authority (Required) - Reference to the statutory or constitutional authority of the Commission to take the action requested:** F&G Code § 399 ("the commission, when adopting...a regulation pursuant to authority vested in it by this code, may, after at least one hearing, adopt...that regulation pursuant to Section 11346.1 of the Government Code, if it [finds]: That the adoption...is necessary for the immediate conservation, preservation, or protection of birds, mammals, fish, amphibians, or reptiles...."); (F&G Code § 10502 ("The commission may: (a) Exercise control over all mammals and birds in a game refuge; ... (d) Adopt regulations not in conflict with any law for the protection of birds, mammals, fish, amphibians, reptiles, or marine life within a refuge."); F&G Code § 10503 "For the purposes of ... protecting birds, mammals, fish, amphibians, and reptiles, the commission may do all of the following: Acquire ... and administer land... suitable for ... game refuges."); F&G Code § 10504 ("Any property acquired for game refuges shall ... be subject to such regulations as may be prescribed from time to time by the commission for the occupation, use, operation, protection, and administration of such property as game refuges."))
- 3. Overview (Required) - Summarize the proposed changes to regulations:** Ban the use of neonicotinoid pesticides, which are both directly and indirectly harmful to birds, mammals, amphibians, and other vertebrates, on refuge lands subject to the Commission's management jurisdiction.
- 4. Rationale (Required) - Describe the problem and the reason for the proposed change:** See attached "Rationale," which, together with the Section I items above, does not exceed five pages.



SECTION II: Optional Information

5. **Date of Petition:** September __, 2017
6. **Category of Proposed Change**
- ☐ Sport Fishing
 - ☐ Commercial Fishing
 - ☐ Hunting
 - ☒ Other, please specify: wildlife conservation
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):.
 - ☒ Add New Title 14 Section(s): to ban the use of any neonicotinoid pesticides on refuges under the California Fish and Game Commission's jurisdiction..
 - ☐ 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 .**
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, especially if any neonicotinoid pesticides are currently being used in any wildlife refuges under the Fish and Game Commission's jurisdiction.
10. **Supporting documentation:** Identify and attach to the petition any information supporting the proposal including data, reports and other documents: 1. U.S. Fish & Wildlife Service memorandum banning use of neonicotinoids in agricultural practices in the National Wildlife Refuge System (July 17, 2014) 2. Gibbons et al. 2015. A review of the direct and indirect effects of neonicotinoids and fipronil on vertebrate wildlife. 3. Hallmann, et al. 2014. Declines in insectivorous birds are associated with high neonicotinoid concentrations. 4. Hladik, et al. 2015. First national-scale reconnaissance of neonicotinoid insecticides in streams across the USA. 5. Mineau & Palmer. 2013. The Impact of the Nation's Most Widely Used Insecticides on Birds. 6. Morrissey, et al. 2015. Neonicotinoid contamination of global surface waters and associated risk to aquatic invertebrates: A review. 7. Sánchez-Bayo, et al. 2016. Contamination of the Aquatic Environment with Neonicotinoids and Its Implication for Ecosystems. 8. Van der Sluijs, et al. 2014. Conclusions of the Worldwide Integrated Assessment on the risks of neonicotinoids and fipronil to biodiversity and ecosystem functioning. 9. Wood, et al. 2017. The Environmental Risks of Neonicotinoid Pesticides: A review of the evidence post-2013.
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: Petitioner American Bird Conservancy is not aware of any impacts that a ban on the use of neonicotinoid pesticides on California wildlife refuges would have on revenues to the Department of Fish and Wildlife, individuals, businesses, jobs, other state agencies, local agencies, schools, or housing..



- 12. Forms:** If applicable, list any forms to be created, amended or repealed:
not applicable

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: _____

Meeting date for FGC consideration: _____

FGC action:

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

2017 SEP 18 PM 1:00

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Rationale for Petition by American Bird Conservancy to the California Fish and Game Commission

American Bird Conservancy recognizes that the California Fish and Game Commission works to ensure the long-term sustainability of California's wildlife resources and, to that end, plays a critical role in protecting the State's extensive network of refuges supporting California's wildlife. In furtherance of those efforts, American Bird Conservancy petitions the Commission to adopt a prohibition against the use of neonicotinoid pesticides on the more than 1,173,000 acres of wildlife habitat under its jurisdiction. These persistent and systemic insecticides are lethal to songbirds and also harm mammals such as bats. And they are deadly to many of the terrestrial and aquatic invertebrates – including bees, butterflies, earthworms, and mayflies – that are critical food sources for birds and other vertebrates.

Neonicotinoids are a relatively new class of chemicals that have the potential to derail California's efforts to safeguard its unique ecosystems. First introduced in the U.S. in 1994, they have quickly become the most widely used insecticides in the nation. Neonicotinoids persist in the soils – from months to years – and are prone to runoff and groundwater infiltration. Recent work by Morrissey, Mineau, et al. reviews the current state of knowledge on neonicotinoids in surface waters from 29 studies in nine countries worldwide and includes published data on acute and chronic toxicity to 49 species of aquatic insects and crustaceans spanning 12 invertebrate orders. That review concludes that “neonicotinoids represent a significant risk to surface waters and the diverse aquatic and terrestrial fauna that these ecosystems support.”¹ A recent survey of the concentrations of six neonicotinoids in streams across the United States found at least one neonicotinoid in 68 percent of the 48 streams sampled.² A 2016 report on neonicotinoid contamination levels in California highlights the state's underprotective aquatic life benchmarks and suggests that levels currently found in California's waters could harm aquatic species and cause cascading effects up the food chain.³

Neonicotinoids are highly toxic to a broad range of invertebrates and to birds and other wildlife, as confirmed by a growing body of research, including an authoritative global review of more than 1100

¹ Morrissey, CA, P Mineau, JH Devries, F Sanchez-Bayo, M Liess, MC Cavallaro, and K Liber. 2015. Neonicotinoid contamination of global surface waters and associated risk to aquatic invertebrates: A review. *Environment International*, 74: 291-303.
https://www.researchgate.net/publication/268333947_Neonicotinoid_contamination_of_global_surface_waters_and_associated_risk_to_aquatic_invertebrates_A_review; Sánchez-Bayo F, K Goka and D Hayasaka. 2016. Contamination of the Aquatic Environment with Neonicotinoids and its Implication for Ecosystems. *Front. Environ. Sci.* 4:71. doi: 10.3389/fenvs.2016.00071. <http://journal.frontiersin.org/article/10.3389/fenvs.2016.00071/full>; Hladik ML, et al. 2014. Widespread occurrence of neonicotinoid Insecticides in streams in a high corn and soybean producing region, USA. *Env. Poll.* 193:189-196. <http://dx.doi.org/10.1016/j.envpol.2014.06.033>; Carnemark, M, P Jenkins, and L Walker. 2015. *Water Hazard: Aquatic Contamination by Neonicotinoid Insecticides in the United States*. Unpublished report, Center for Food Safety, Washington, DC. www.centerforfoodsafety.org/files/neonic-water-report-final-242016_web_33288.pdf.

² Hladik, ML, and DW Kolpin. 2016. First national-scale reconnaissance of neonicotinoid insecticides in streams across the USA. *Environ. Chem.* <http://dx.doi.org/10.1071/EN15061>
<https://ca.water.usgs.gov/pubs/2015/HladikKolpin2015.pdf>.

³ Hoyle, S and A Code. 2016. *Neonicotinoids in California's Surface Waters: A Preliminary Review of Potential Risk to Aquatic Invertebrates*. Report by The Xerces Society for Invertebrate Conservation. Online at: http://www.xerces.org/wp-content/uploads/2016/10/XercesCAAquaticNeonics_Dec2016_Final.pdf.

published peer-reviewed studies conducted in 2014 under the auspices of the International Union for Conservation of Nature.⁴ The authors conclude that levels of these chemicals documented in the environment are “sufficient to cause adverse impacts on a wide range of non-target organisms in terrestrial, aquatic, wetland, marine and benthic habitats.” They warn of risks to ecosystem functioning, resilience, and ecological services such as pollination and nutrient cycling.

A meticulous 2017 review of the most recent science, *The Environmental Risks of Neonicotinoid Pesticides: A review of the evidence post-2013*,⁵ emphasizes the ongoing risks of neonicotinoids’ lethal and sublethal effects on a wide range of taxa. The review highlights the extreme sensitivity of aquatic invertebrates, particularly insect larvae, at levels regularly exceeded in surface waters in the United States and around the world, including Australia, Brazil, Canada, China, Hungary, Japan, the Netherlands, Sweden, Switzerland, and Vietnam. The authors state that this contamination is likely to impact significantly the abundance of aquatic insects and, thus, food availability for their predators, including fish, birds, and amphibians. Beneficial invertebrates such as earthworms and butterflies are also killed by neonicotinoids at extremely low doses.⁶ The review concludes that “new research strengthens arguments for the imposition of a moratorium, in particular because it has become evident that [neonicotinoids] pose significant risks to many non-target organisms, not just bees.”

Neonicotinoid coatings on seeds are a particular hazard to birds. As little as a single corn kernel coated with a neonicotinoid can kill a songbird, and exposure to just 1/10 of a coated seed per day during the

⁴ Van der Sluijs JP, et al. 2014. Conclusions of the Worldwide Integrated Assessment on the risks of neonicotinoids and fipronil to biodiversity and ecosystem functioning. *Environ Sci Pollut Res*. doi:10.1007/s11356-014-3229-5. Full report at: http://www.tfsp.info/assets/WIA_2015.pdf; Goulson, D. 2013. An Overview of the Environmental Risks Posed by Neonicotinoid Insecticides. *Journal of Applied Ecology*. Doi:10.1111/1365-2664.12111. <http://onlinelibrary.wiley.com/doi/10.1111/1365-2664.12111/full>; Goulson, D. 2014. Pesticides linked to bird declines. *Nature*. Doi: 10.1038/nature 13642.

⁵ Wood, TJ and D Goulson. 2017. *The Environmental Risks of Neonicotinoid Pesticides: A review of the evidence post-2013*. <http://biorxiv.org/content/biorxiv/early/2017/01/06/098897.full.pdf>
See also, Gibbons, D, C Morrissey, P Mineau. 2015. A review of the direct and indirect effects of neonicotinoids and fipronil on vertebrate wildlife. *Environ. Sci. Pollut. Res. Int.* 22:103-118. <http://dx.doi.org/10.1007/s11356-014-3180-5>. For research on bird population-level effects from reduced food abundance, see: Hallmann CA, et al. 2014. Declines in insectivorous birds are associated with high neonicotinoid concentrations. *Nature* doi: 10.1038/nature13531. <https://www.nature.com/nature/journal/v511/n7509/full/nature13531.html>. Full text at: https://pdfs.semanticscholar.org/ffa8/f7a41a8c377a613107994bde29f0e5553253.pdf?_ga=2.32271095.816967692.1498753472-614696370.1498753472

⁶ Wood, TJ and D Goulson. 2017; Van der Sluijs JP, et al. 2014. See also, Hopwood, J, SH Black, M Vaughn, and E Lee-Mader. 2013. *Beyond the Birds and the Bees: Effects of Neonicotinoid Insecticides on Agriculturally Important Beneficial Invertebrates*. Report by the Xerces Society. Online at: http://www.xerces.org/wpcontent/uploads/2013/09/XercesSociety_CBCneonics_sep2013.pdf.

egg-laying season is enough to impair reproduction.⁷ A number of recent studies have been parsing out the mechanisms of reproductive damage.⁸

Additional studies have found other sublethal effects at very low doses—for example, house sparrows become uncoordinated and unable to fly, Japanese quail exhibit DNA damage, and red-legged partridges experience reduced immune response.⁹ A 2016 study from France¹⁰ examined 103 wildlife mortality incidents totaling at least 734 dead birds. Since there is no simple biomarker for diagnosing neonicotinoid poisonings,¹¹ the researchers developed a diagnostic approach to estimate the degree of certainty that these mortalities resulted from poisoning by imidacloprid, a neonicotinoid pesticide. The probability that mortality was due to poisoning by imidacloprid-treated seeds was ranked “likely” or higher in 70 percent of incidents.

In 2014, the U.S. Fish and Wildlife Service (FWS) announced a formal decision to phase out, by 2016, all neonicotinoid use on thousands of acres of National Wildlife Refuge lands. James Kurth, Chief of the National Wildlife Refuge System at that time, stated:¹²

We have determined that prophylactic use, such as seed treatment, of the neonicotinoid pesticides that can distribute systematically in a plant and potentially affect a broad spectrum of non-target species is not consistent with Service policy.

More recently, FWS identified neonicotinoid toxicity as one of the factors that led to its decision to list the rusty patched bumble bee as endangered under the Endangered Species Act.¹³ Neonicotinoids were

⁷ Mineau, P and C Palmer. 2013. *The Impact of the Nation's Most Widely Used Insecticides on Birds*. Report by American Bird Conservancy. Online at: www.abcbirds.org/abcprograms/policy/toxins/Neonic_FINAL.pdf;

⁸ Bro E, Devillers J, F Millot, A Decors. 2016. Residues of plant protection products in grey partridge eggs in French cereal ecosystems. *Environmental Science and Pollution Research International*. 2016; 23:9559-9573.

doi:10.1007/s11356-016-6093-7. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4871908/>; Pandey, SP, B Mohanty. 2014. The neonicotinoid pesticide imidacloprid and the dithiocarbamate fungicide mancozeb disrupt the pituitary–thyroid axis of a wildlife bird. *Chemosphere*. https://www.researchgate.net/publication/269558419_The_neonicotinoid_pesticide_imidacloprid_and_the_dithiocarbamate_fungicide_mancozeb_disrupt_the_pituitary-thyroid_axis_of_a_wildlife_bird;

Chao-jie Wang, G Wang, X Wang, M Liu, M Chual, KKH Lee, XS He, D Lu, and X Yang. Imidacloprid Exposure Suppresses Neural Crest Cells Generation during Early Chick Embryo Development. 2016. *Journal of Agricultural and Food Chemistry* 2016 64 (23), 4705-4715. <http://pubs.acs.org/doi/ipdf/10.1021/acs.jafc.6b01478>.

⁹ Wood and Goulson, at 53.

¹⁰ Millot, F, A Decours, O Mastain et al. 2017. Field evidence of bird poisonings by imidacloprid-treated seeds: a review of incidents reported by the French SAGIR network from 1995 to 2014. *Environ Sci Pollut Res* DOI 10.1007/s11356-016-8272-y. <https://doi.org/10.1007/s11356-016-8272-y>

¹¹ Some techniques are under development. See, e.g., Talianky-Chamudis, A, P Gomez-Ramirez, M Leon-Ortega, and AJ Garcia-Fernandez. 2017. Validation of a QuEChERS method for analysis of neonicotinoids in small volumes of blood and assessment of exposure in Eurasian eagle owl (*Bubo bubo*) nestlings. *Sci. Total Environ*. 2017 Oct 1; 595:93-100. <https://doi.org/10.1016/j.scitotenv.2017.03.246>

¹² July 17, 2014, Memorandum on “Use of Agricultural Practices in Wildlife Management in the National Wildlife Refuge System,” issued by the then-Chief of the FWS National Wildlife Refuge System, James W. Kurth, to all Regional Refuge Chiefs. http://www.centerforfoodsafety.org/files/agricultural-practices-in-wildlife-management_20849.pdf

¹³ Department of the Interior, US Fish and Wildlife Service. Final rule, Endangered Species Status for Rusty Patched Bumble Bee, 82 Fed. Reg. 3186, Jan. 11, 2017. (“Neonicotinoids are a class of insecticides used to target pests of

also implicated in listings of two butterflies, the Dakota skipper and the Poweshiek skipperling. Among other endangered species affected, internationally recognized experts John Stark of Washington State University, John Losey of Cornell University, and Pierre Mineau, formerly with Environment Canada, have identified the Hines emerald dragonfly, Salt Creek tiger beetle, Mississippi sandhill crane, whooping crane, and Attwater's prairie chicken.¹⁴ Many other organisms are at risk.

Europe enacted a two-year moratorium on the use of neonicotinoids, likely to be extended as a total ban. And Canada's Pest Management Regulatory Agency (PMRA) has proposed to ban the neonicotinoid imidacloprid nationwide. Last November PMRA completed an aquatic risk assessment for imidacloprid, concluding that, "in aquatic environments in Canada, imidacloprid is being measured at levels that are harmful to aquatic insects. These insects are an important part of the ecosystem, including as a food source for fish, birds and other animals. Based on currently available information, the continued high volume use of imidacloprid in agricultural areas is not sustainable."

The Canadian assessment found that "there is a potential risk to birds and small mammals from feeding on seeds that are treated with imidacloprid..." Given the seriousness of the environmental threat, "PMRA is proposing to phase-out all the agricultural and a majority of other outdoor uses of imidacloprid over three to five years."¹⁵ In addition, many U.S. companies (including Home Depot, Lowe's, Walmart, True Value, and BJ's Wholesale Club), as well as state and local legislatures, are reining in the use of neonicotinoids.

In sum, hundreds of studies show that these pesticides are killing birds, bees, earthworms, butterflies, other beneficial insects, and quite possibly bats and other wildlife as well.¹⁶ Neonicotinoids can also harm threatened and endangered species on state refuge lands, both directly and through loss of their prey species.

Accordingly, American Bird Conservancy urges the Commission to adopt a state-wide prohibition on the use of neonicotinoids in all wildlife refuges under its jurisdiction.

agricultural crops, forests ..., turf, gardens, and pets and have been strongly implicated as the cause of the decline of bees in general (European Food Safety Authority 2015, p. 4211; Pisa et al. 2015, p. 69; Goulson 2013, pp. 7–8), and specifically for rusty patched bumble bees, due to the contemporaneous introduction of neonicotinoid use and the precipitous decline of the species (Colla and Packer 2008, p. 10)." *Id.* at 3190.)

¹⁴ Expert Declarations of Drs. Stark, Losey, and Mineau, in support of Plaintiffs' Memorandum of Points and Authorities in Support of Motion for Summary Judgment, *Ellis v. Housenger*, No. 3:13-cv-01266-MMC, ECF No. 215-1 (N.D. Cal. Apr. 14, 2016).

¹⁵ Health Canada, Pest Management Regulatory Agency. 2017. Proposed Re-evaluation Decision PRVD2016-20, *Imidacloprid*. <https://www.canada.ca/en/health-canada/services/consumer-product-safety/pesticides-pest-management/public/consultations/proposed-re-evaluation-decisions/2016/imidacloprid/document.html>; Pest Management Regulatory Agency, 23 November 2016, ISSN: 1925-0967. Catalogue number: H113-27/2016-20E-PDF. Proposed Re-evaluation Decision PRVD2016-20, *Imidacloprid*. http://www.hc-sc.gc.ca/cps-spc/pest/part/consultations/_prvd2016-20/prvd2016-20-eng.php#s1

¹⁶ Van der Sluijs JP, et al. 2014, *supra*.

Attachments

US Fish and Wildlife Service. Memorandum on Use of Agricultural Practices in Wildlife Management in the National Wildlife Refuge System. 2014.

http://www.centerforfoodsafety.org/files/agricultural-practices-in-wildlife-management_20849.pdf

Gibbons, D, C Morrissey, and P Mineau. 2015. A review of the direct and indirect effects of neonicotinoids and fipronil on vertebrate wildlife.

<http://dx.doi.org/10.1007/s11356-014-3180-5>.

Hallmann CA, et al. 2014. Declines in insectivorous birds are associated with high neonicotinoid concentrations.

<https://pdfs.semanticscholar.org/ffa8/f7a41a8c377a613107994bde29f0e5553253.pdf? ga=2.32271095.816967692.1498753472-614696370.1498753472>

Hladik, ML, and DW Kolpin. 2015. First national-scale reconnaissance of neonicotinoid insecticides in streams across the USA.

<https://ca.water.usgs.gov/pubs/2015/HladikKolpin2015.pdf>

Mineau, P and C Palmer. 2013. The Impact of the Nation's Most Widely Used Insecticides on Birds.

<https://abcbirds.org/article/birds-bees-and-aquatic-life-threatened-by-gross-underestimate-of-toxicity-of-worlds-most-widely-used-pesticide-2/>

Morrissey, CA, P Mineau, JH Devries, F Sanchez-Bayo, M Liess, MC Cavallaro, and K Liber. 2015. Neonicotinoid contamination of global surface waters and associated risk to aquatic invertebrates: A review.

https://www.researchgate.net/publication/268333947_Neonicotinoid_contamination_of_global_surface_waters_and_associated_risk_to_aquatic_invertebrates_A_review

Sánchez-Bayo F, K Goka and D Hayasaka. 2016. Contamination of the Aquatic Environment with Neonicotinoids and its Implication for Ecosystems.

<http://journal.frontiersin.org/article/10.3389/fenvs.2016.00071/full>

Van der Sluijs JP, et al. 2014. Conclusions of the Worldwide Integrated Assessment on the risks of neonicotinoids and fipronil to biodiversity and ecosystem functioning.

http://www.tfsp.info/assets/WIA_2015.pdf

Wood, TJ and D Goulson. 2017. The Environmental Risks of Neonicotinoid Pesticides: A review of the evidence post-2013. <http://biorxiv.org/content/biorxiv/early/2017/01/06/098897.full.pdf>



2017-009
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: Walter Lamb, Ballona Wetlands Land Trust
Address:
Telephone number:
Email address: landtrust@ballona.org
2. **Rulemaking Authority (Required)** - Reference to the statutory or constitutional authority of the Commission to take the action requested: Fish and Game Code Section 1580 ["The commission may adopt regulations for the occupation, utilization, operation, protection, enhancement, maintenance, and administration of ecological reserves."]
3. **Overview (Required)** - Summarize the proposed changes to regulations: This petition proposes to amend Section 630 of the Code of California Regulations, Title 14 to eliminate the parking use exception for "[e]xisting parking areas under leases to the County of Los Angeles" in the Ballona Wetlands Ecological Reserve, by striking that language from paragraph (h)(3). The purpose of this proposed change is to convert approximately 72,600 square feet of paved parking lot, used primarily by employees a private shopping plaza, and to a lesser extent by agencies of Los Angeles County, to a use more compatible with a public ecological reserve.
4. **Rationale (Required)** - Describe the problem and the reason for the proposed change: California taxpayers spent \$139 million over a decade ago to acquire the land which now makes up the Ballona Wetlands Ecological Reserve. This includes approximately 72,600 square feet of land currently leased to Los Angeles County, Department of Beaches and Harbors ("Beaches and Harbors"), for purposes that are primarily unrelated to the purpose of the ecological reserve (i.e. parking for Beaches and Harbors vehicles and parking for patrons and visitors to the Fisherman's Village shopping plaza across the street from the ecological reserve). The current parking exception was adopted by the Commission at its August 19, 2005 meeting. At least as early as 2011, the record shows that the California Department of Fish and Wildlife (previously Department of Fish and Game) began contemplating Beaches and Harbors' desire to construct a three-level parking garage within the

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boundaries of the ecological reserve. This proposal is currently part of all three alternatives under consideration for the Ballona Wetlands Restoration Project. The “No Project” alternative is the only alternative not to include the parking structure component.

Los Angeles County currently pays the Department of Fish and Wildlife \$1,608 per year to lease approximately 254 parking spaces, the same amount it has paid since approximately 1995. Only a small portion of this lot is used by the Department of Fish and Wildlife for its vehicles and an office trailer.

Section 630 currently provides the Department with sole discretion as to whether a more appropriate use of this parcel should take precedence over the existing parking use. There is no question that this parcel of land can and would be more appropriately used if the Department exercised that discretion, but the Department has not done so. Therefore the only available remedy short of litigation available to stakeholders of the ecological reserve is to request this regulatory change.

New information since submission of original petition:

On June 21, 2017, the Fish and Game Commission voted 3-1 to deny petition 2017-002 based on the staff recommendation asserting that the parking lot in question serves a public purpose. The staff report contained no substantive evidence in support of the denial. Two county agencies who benefit from the existing parking lots submitted letters that were highly misleading, as evidenced by new information included with this petition resubmission. Although much of this information became available prior to the August 16th hearing of a similar petition, that new information was not considered because it had not been submitted with that petition. The new information includes:

- Records from the Los Angeles County Department of Beaches and Harbors showing that the primary purpose of the existing parking lot and proposed garage is to provide parking for employees of the commercial shops and restaurants in the Fisherman’s Village shopping plaza across the street.
- Records showing that Beaches and Harbors has steadily increased the amount it charges to these commercial entities for parking in the ecological reserve but has not increased the amount it pays to CDFW. Currently it appears that the County may be receiving over three times in payments than what it is paying to CDFW.
- Records showing the limited maintenance services provided by Beaches and Harbors regarding maintenance of the parking lot.
- A Coastal Development Permit showing that the parking lot was intended to be temporary.
- Archived audio recording of a CDFW employee testifying to the Fish and Game Commission in 2005 that the restoration plan for the Ballona Wetlands would analyze the compatibility of the County parking lots.
- The recently published draft Environmental Impact Report for the Ballona Wetlands which does not analyze the compatibility of the existing parking lots but instead proposed the construction of a three-story parking garage without indicating that the primary purpose of the garage relates to Fisherman’s Village, not to the ecological reserve itself.
- The minutes from the 2003 Wildlife Conservation Board meeting at which the ecological reserve land



was acquired by the state, indicating that the state had the right to terminate the leases to the County regarding the parking lots.

- An internal e-mail from Beaches and Harbors indicating that a CDFW employee asked Beaches and Harbors what it wanted to do with the parking lots after the public scoping comment period for the draft EIR had ended and despite making no mention of the parking areas in the Notice of Preparation.

Additional information that was not discussed at previous hearings is that the purpose of the Proposition 50 bond funds used to acquire the ecological reserve land. Parking for private businesses or even for County agencies is not consistent with the purpose for which taxpayers approved those bond funds.

SECTION II: Optional Information

5. Date of Petition: September 27, 2017

6. Category of Proposed Change

- ☐ Sport Fishing
- ☐ Commercial Fishing
- ☐ Hunting
- ☒ Other, please specify: Ecological Reserves

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):630
- ☐ 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 2017-002

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 practically possible, but not an emergency

10. Supporting documentation: Identify and attach to the petition any information supporting the proposal including data, reports and other documents: Please see attached documents relating to the existing parking use and proposed parking structure, including new information that the Land Trust obtained after the June 21 hearing on our original petition

The Ballona Wetlands Draft EIR is on the CDFW site: <https://www.wildlife.ca.gov/Regions/5/Ballona-EIR>

The archived audio of the 2005 Fish and Game Commission hearing is at <http://cal->



span.org/media/audio_files/cfg/cfg_05-08-19/cfg_05-08-19.mp3 and the discussion of the parking lots occurs at 223 minutes and 25 seconds (3:43.25).

- 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: Eliminating the existing parking lease with Beaches and Harbors would result in the loss of \$1,608 in annual lease payments, which is substantially below market value. That amount would be more than offset by lease payments offered by the Land Trust to use the parcel to promote environmental education and passive recreation activities consistent with the purpose of the ecological reserve. The Department could open a competitive bidding process for other appropriate uses that also generate more income than the current lease payments. Loss of parking spaces to the County and to Fisherman's Village may have some limited economic impact, but parking does not currently appear to be a constraint in the area.

Additionally, due to lease payments that are clearly well below market value, and because parking for a shopping plaza and an unrelated County agency do not further the public purpose of the ecological reserve and the Department of Fish and Wildlife generally, the state could be in violation of the constitutional provision against gifts of public funds between agencies.

- 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: 9/28/17
[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: September 29, 2017

Meeting date for FGC consideration: _____

FGC action:

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

Walter Lamb

From: Don Geisinger
Sent: Thursday, March 10, 2011 12:57 PM
To: Gary Jones; Charlotte Miyamoto; Kerry Silverstrom
Cc: Vivian Paquin-Sanner; Kenneth Foreman; testSK
Subject: Area A Parking Lots

I had 2 conversations with David Lawhead of the Department of Fish and Game (DFG) yesterday and would like to recap the issues that were discussed.

1. Parking Lots: DFG is now willing to discuss leasing the parking lots to DBH. Rather than pay rent, DFG is proposing that we maintain (Facilities) and monitor (Parking) the Gordon's Market parking lot. In our initial conversation, David was reluctant to discuss a long-term lease or sale although he acknowledged that there had been discussions about building a parking structure in connection with the development of Fisherman's Village. I explained that DBH needs a long-term commitment in order to factor the parking lots into the Department's long-term visioning plan.
2. I discussed the conversation with both Santos and Kerry. Santos prefers a sale and would be willing to agree to maintain the Gordon's Market parking lot in exchange. Kerry raised the issue of parking and asked that I check with Vivian about the difficulties the Department would have in providing a monitoring program. (In a later conversation with Vivian, Vivian stated that there is no problem at all in providing monitoring.)
3. I spoke with David about a sale. He initially had several objections that included: a) he did not know whether a portion of the Ballona Wetlands could be sold as bonds were issued to purchase the land. b) DFG is finalizing or near finalizing the proposed plan for the development of the Ballona Wetlands and is concerned that the environmental groups might reject the plan if it were announced that the parking lots would be sold. c) if a sale could be accomplished, the money would go to the State's General Fund and would not benefit the Ballona Wetlands. This last objection appears to be critically significant because DFG appears to be concerned about having sufficient funds to maintain the Wetlands once it is developed.
4. In this connection, David raised another issue-whether DBH would be willing to have the baseball field in Area C transferred to DBH with the understanding that: a) the baseball field would be kept as a baseball field; and b) DBH would maintain the area.
5. As soon as David raised this issue, I asked why DFG could not transfer the parking lots if DFG is able and willing to "transfer" the baseball field. It appears as if it may be more an issue of timing (after the plans have been approved so that the environmental groups will not oppose the entire plans).
6. Ken Foreman and I visited both Gordon's Market and the baseball field. Several issues arose about the size and scope of work on each location. I will call DFG for more detailed information.

Finally, in discussions about negotiating for the parking lots, the issue arose as to which entity, DBH or the CEO, will be the lead agency. I will check but would appreciate any comments on this issue.

This is simply an outline of what has been discussed. If anyone has any comments or wants to give advice or instructions please do so. It appears as if there is an opportunity to acquire or control the parking lots in Area A.

Don Geisinger
Senior Real Property Agent
County of Los Angeles
Department of Beaches and Harbors
13837 Fiji Way
Marina del Rey, CA 90292
Office: (310) 305-9506
e-mail: dgeisinger@bh.lacounty

FILE COPY

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
245 WEST BROADWAY, SUITE 380
LONG BEACH, CA 90802
(213) 590-5071

Page 1 of 3

Date: December 16, 1988

Permit No. 5-88-593/AP:ak

COASTAL DEVELOPMENT PERMIT

On September 14, 1988, the California Coastal Commission granted to

Co. of LA, Dept. of Beaches and Harbors

this permit subject to the attached Standard and Special conditions, for development consisting of

Construction of a 158-car parking facility covering 98,000 square foot located just south of Fiji Way. The parking facility will be temporary, approximately five years, and used by employees and visitors to Fisherman's Village. In addition, the parking at Fisherman's Village, which is currently free to the public, will be changed to paid parking by the installation of a swing gate at the various entrances of the parking lot.

more specifically described in the application file in the Commission offices.

The development is within the coastal zone in Los Angeles County at
13715 Fiji Way, Marina Del Rey, CA 90792

Issued on behalf of the California Coastal Commission by

DBA LOT

PETER DOUGLAS
Executive Director

By: 

Title: Staff Analyst

ACKNOWLEDGMENT

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part, that: "A public entity is not liable for injury caused by the issuance. . . of any permit. . ." applies to the issuance of this permit.

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE, 14 Cal. Admin. Code Section 13158(a).

Date

Signature of Permittee

A6: 4/88

COASTAL DEVELOPMENT PERMIT

Page 2 of 3
Permit No. 5-88-593

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

1. Prior to permit issuance, the applicant shall submit for review and approval by the Executive Director, engineered plans showing the construction of the parking facility, including surface material, drainage, curb and gutter locations, striping, lighting fixtures, fencing, and landscaping. The plans shall conform to the following conditions:
 - a) All drainage shall be directed away from wetland area and towards the street (Fiji Way)
 - b) A cyclone (chain-link) shall be erected around the perimeter of the parking lot. The fence shall be at least 48 inches in height and shall not exceed 60 inches.
 - c) All lighting shall be shielded away from the habitat area and directed towards the parking lot or the street.

- d) There shall be a landscaped buffer area planted along the outside of the perimeter of the fence. Landscaping shall consist of native vegetation only or other plants approved by the Department of Fish and Game. A temporary irrigation system may be installed to ensure that the newly planted vegetation grows to maturity. Once established, the irrigation shall be removed as the plant material will not need to be irrigated.

8279A

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
245 WEST BROADWAY, SUITE 380
LONG BEACH, CA 90802
(213) 590-5071



Filed: 7/25/88
49th Day: 9/12/88
180th Day: 1/21/89
Staff: A. Padilla:mr
Staff Report: 8/26/88
Hearing Date: 9/13-16/88

REGULAR CALENDAR
STAFF REPORT AND RECOMMENDATION

Application No.: 5-88-593

Applicant: County of Los Angeles, Department of Beaches and Harbors

Description: Construction of a 158-car parking facility covering 98,000 square foot located just south of Fiji Way. The parking facility will be temporary, approximately five years, and used by employees and visitors to Fisherman's Village. In addition, the parking at Fisherman's Village, which is currently free to the public, will be changed to paid parking by the installation of a swing gate at the various entrances of the parking lot.

Site: 13715 Fiji Way, Marina del Rey, Los Angeles County.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends approval with conditions

III. SPECIAL CONDITIONS:

1. Prior to permit issuance, the applicant shall submit for review and approval by the Executive Director, engineered plans showing the construction of the parking facility, including surface material, drainage, curb and gutter locations, striping, lighting fixtures, fencing, and landscaping. The plans shall conform to the following conditions:
 - a) All drainage shall be directed away from wetland area and towards the street (Fiji Way)
 - b) A cyclone (chain-link) shall be erected around the perimeter of the parking lot. The fence shall be at least 48 inches in height and shall not exceed 60 inches.
 - c) All lighting shall be shielded away from the habitat area and directed towards the parking lot or the street.
 - d) There shall be a landscaped buffer area planted along the outside of the perimeter of the fence. Landscaping shall consist of native vegetation only or other plants approved by the Department of Fish and Game. A temporary irrigation system may be installed to ensure that the newly planted vegetation grows to maturity. Once established, the irrigation shall be removed as the plant material will not need to be irrigated.

IV. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. Project Description

The applicant, County of Los Angeles Beaches and Harbors, proposes to construct a 158 car parking facility covering an area approximately 98,000 sq. ft. in area just south and adjacent to Fiji Way, in Marina del Rey. The parking facility will be temporary, approximately five years, and used by employees and visitors to Fisherman's Village which is located on the opposite side of Fiji Way. The parking facility will be used until commercial uses in "Area A" are developed in accordance with the LUP. The applicant also proposes to install swing gates at the entrances of the parking lot at Fisherman's Village to change the currently free public parking to paid parking.

B. Background

In the County's certified LUP the Ballona wetlands area is divided into three separate areas: "Area A" which is located north of the Ballona Creek

The Commission found, however, that construction of the new boat basin in Area A is consistent with Sections 30233 and 30411 of the Coastal Act for a number of reasons. First, the Commission fully concurred with the DFG's findings and determination of degraded wetland acreage, and their recommendations regarding restoration of this acreage. The Commission found that the severely degraded wetlands occurring in Area A are not feasibly restorable on-site, due to the extensive amount of fill material that would have to be removed, and that the most feasible, and biologically superior, way to achieve restoration of this wetland acreage is to transfer and consolidate this acreage into a single, integrated management unit south of the Flood Control Channel, in Area B.

C. Environmentally Sensitive Habitat Area

Section 30240 of the Coastal Act states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

The proposed project will be located in "Area A". This area is considered to contain degraded wetlands. Though the wetlands are degraded they are considered "viably functioning wetlands" (DFG). The 37.5 acres of wetlands will be eliminated once the County begins developing the marina, however, the 37.5 acres are to be transferred and consolidated into a single integrated restoration management unit in "Area B". However, until the County begins the implementation of the development policies and the restoration program of the LUP, the existing "viably functioning wetlands" should be protected.

The proposed parking facility will be located adjacent to Fiji Way. The proposed site is the former site of the temporary parking lot constructed for the 1984 Olympics [5-84-403(Real Property Management Inc.)]. The site was selected for temporary parking for the Olympics due to its minimal habitat value. During a recent site visit with a Department of Fish and Game biologist it was observed that there was limited habitat value in the area. However, there is an identified wetland just south of the site (See Exhibit 2). Because of the location of the wetlands the proposed site functions as a buffer between the wetland habitat area and development (Fiji Way and Fisherman's Village). Therefore in order to protect the existing wetland habitat area the proposed project should be mitigated to avoid any adverse impacts to the wetland habitat. Therefore, only as conditioned to protect the existing wetlands, will this project be consistent with Section 30240 of the Coastal Act.

5-88-593

Los Angeles County
DEPARTMENT OF
REGIONAL PLANNING

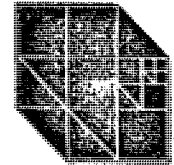
320 West Temple Street
Los Angeles
California 90012

974-6401

Norman Murdoch
Planning Director

~~5-87-848~~

CERTIFIED-RECEIPT
REQUESTED



October 13, 1987

County of Los Angeles
Department of Beaches and Harbors
13837 Fiji Way
Marina del Rey, California 90292

RECEIVED
OCT 23 1987

CALIFORNIA
COASTAL COMMISSION
SOUTH COAST DISTRICT

Dear Sirs:

RE: CONDITIONAL USE PERMIT CASE NO. 87298-(4)
To use a site located at 13715 Fiji Way,
Marina del Rey, for a temporary public
parking lot.
Playa del Rey Zoned District, Zone A-1-1

The case hearing officer on October 6, 1987, GRANTED the
above described permit. Documents pertaining to this grant
are enclosed.

You should carefully review each condition of the grant. In
particular, your attention is called to Condition No. 2
requiring the filing of the enclosed affidavit.

The hearing officer's decision may be appealed to the Regional
Planning Commission at the office of the Commission's secretary,
Room 170, Hall of Records, 320 West Temple Street, Los Angeles,
California 90012. Contact the Commission's secretary for the
necessary forms and the amount of the appeal fee at (213)
974-6409. The appeal must be postmarked or delivered in person
within 15 days after this notice is received by the applicant.
The hearing officer's decision may also be called up of review
by the Regional Planning Commission during the appeal period.
This grant will not become effective until and unless this
period has passed without an appeal or call for review.

This grant affects the following described property:

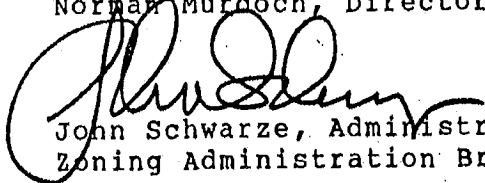
(See attached legal description.)

County of Los Angeles
Department of Beaches and Harbors
October 13, 1987
Page 2

For further information on appeal procedures, compliance with conditions or any other matter pertaining to this grant, please contact the Variances and Permits Section at (213) 974-6446.

Very truly yours,

DEPARTMENT OF REGIONAL PLANNING
Norman Murdoch, Director of Planning



John Schwarze, Administrator
Zoning Administration Branch

JS:RF:eh

Enclosures: Affidavit; Findings and Conditions

cc: Commissioners; Zoning Enforcement; Building & Safety;
Road Section;
Howard Hughes Properties, Division Summa Corp., Playa
Vista-P. O. BOX 9000, Marina del Rey, CA 90295

LEGAL DESCRIPTION

The land described herein is a portion of the Rancho La Ballona, in the County of Los Angeles, State of California:

Commencing at the most easterly corner of Lot 2, Tract No. 25165, as shown on Map recorded in Book 674, Pages 30 et seq. of Maps, Records of Los Angeles County; thence along the boundary of Said Tract No. 25165, South $62^{\circ}-01'-26''$ West, 1921.44 feet; thence South $62^{\circ}-02'-50''$ West, 1117.91 feet to the True Point of Beginning; thence Southwesterly along the Southeasterly line of said Tract No. 25165, South $31^{\circ}-01'-18''$ West, 291.35 feet; thence South 525 feet; thence East 175 feet; thence North 525 feet; thence North $31^{\circ}-01'-18''$ East, 291.35 feet; thence West 175 feet to the True Point of Beginning.

LEGAL INTEREST IN PROPERTY

The property located at 13715 Fiji Way in Marina del Rey is owned by Howard Hughes Properties/Summa Corporation. The County of Los Angeles has received a verbal approval for its use as a temporary parking lot pending actual development of the Playa Vista project. The Department of Beaches and Harbors Revenue Properties Division is working out final language with Summa Corporation for the lease of this property and a signed agreement is expected in four to six weeks. We request that the California Coastal Commission issue a coastal development permit for this project subject to a signed lease agreement between Summa Corporation and the County.

5-88-593

5-87-848

RECEIVED

JUL 18 1988

CALIFORNIA
COASTAL COMMISSION
SOUTH COAST DISTRICT

RECEIVED

OCT 23 1987

CALIFORNIA
COASTAL COMMISSION
SOUTH COAST DISTRICT

CONDITIONAL USE PERMIT NO. (PD) 87298-(4)

HEARING OFFICER'S FINDINGS AND ORDER

FACTUAL SUMMARY:

The request is to use a site located at 13715 Fiji Way, Marina del Rey, for a temporary public parking lot serving Fisherman's Village and adjacent areas of the Marina.

The site is a level irregular shaped parcel of 2.5 acres surrounded on the north, south and east by vacant land and on the west by retail commercial businesses.

The subject property is zoned A-1-1 (Light Agriculture, one acre lots) and is within the Playa del Rey Zoned District of Los Angeles County. This zone requires a Conditional Use Permit for a parking lot.

The parking lot is designed to handle the parking overflow from the Fisherman's Village commercial area on the west side of Fiji Way. The present intent is that it will be used primarily for employee parking and will be temporary for approximately 5 years until permanently developed as set forth in the Marina Plan (Parking, commercial and new boat basin). The site was previously used as a temporary parking lot during the Olympics.

The site plan, Exhibit "A", shows the 158 space paved parking lot fronting along the easterly side of Fiji Way opposite the Fisherman's Village commercial area. Two driveways will provide access to the lot near its southerly boundary.

The project is categorically exempt (Class II) from the environmental impact reporting requirements in that the parking lot is a minor accessory structure to an existing commercial use.

A public hearing was held on September 29, 1987 at which the applicant's representative testified in favor of the request.

There was no opposition testimony.

FINDINGS:

- A. The requested use will be consistent with the adopted general plan.

The site is designated for commercial use under the County General Plan and specifically designated for parking lot use under the Local Coastal Program for Marina Del Rey.

- B. With the attached restrictions and conditions, the requested use, at the location proposed, will not adversely affect the health, peace, comfort or welfare of persons residing or working in the surrounding area, and will not be materially

CONDITIONAL USE PERMIT NO. (PD) 87298-(4)

detrimental to the use, enjoyment, or valuation of property of other persons located in the vicinity of the site, and will not jeopardize, endanger or otherwise constitute a menace to the public health, safety or general welfare.

The parking lot is designed to relieve parking congestion within the existing parking lot of the adjacent commercial center and will serve both employees and the public. No adverse impacts should result from such use.

- C. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in the Zoning Ordinance, and as is otherwise required in order to integrate the use requested with the uses in the surrounding area.

The parking lot will meet all required development standards of the County Code.

- D. The proposed site has adequate traffic access and said site is adequately served by other public or private service facilities which it requires.

The parking lot will take access via 2 driveways to Fiji Way. No new utility services will be required.

And, therefore, the information submitted by the applicant and presented at the public hearing substantiates the required findings for a Conditional Use Permit as set forth in Section 25.56.090 of Title 22 of the Los Angeles County Code, the Zoning Ordinance.

HEARING OFFICER'S ACTION:

1. I find that the project is categorically exempt (Class II) from the requirements of the California Environmental Quality Act, and that the project will not have a significant effect on the environment.
2. In view of the findings of fact presented above, Conditional Use Permit 87298-(4) is GRANTED with the attached conditions.

BY: Raymond Ristic
Raymond Ristic
HEARING OFFICER
Department of Regional Planning
County of Los Angeles

DATE: October 6, 1987

1. Unless otherwise apparent from the context, the term "permittee" shall include the applicant and any other person, corporation, or other entity making use of this grant.
2. This grant will expire unless used within 2 years of the date of approval unless the subject property is acquired and posted within one year of the date of grant as provided in Section 22.56.140 of the County Code. A one year time extension may be requested before the expiration date.
3. If any provision of this grant is held or declared to be invalid, the permit shall be void and the privileges granted hereunder shall lapse.
4. The subject property shall be developed, maintained and operated in full compliance with the conditions of this grant and any law, statute, ordinance or other regulation applicable to any development or activity on the subject property.
5. This grant allows the development of a paved parking lot operated by a public agency.
6. The subject property shall be developed and maintained in substantial compliance with the plans on file marked Exhibit "A". In the event that subsequent revised plans are submitted the written authorization of the property owner is necessary.
7. All requirements of the Zoning Ordinance and of the specific zoning of the subject property must be complied with unless otherwise set forth in these conditions or shown on the approved plans.
8. Provisions shall be made for all natural drainage to the satisfaction of the Department of Public Works.

RF:JS:eh
10/5/87

Michael Tripp

From: Charlotte Miyamoto
Sent: Tuesday, April 16, 2013 6:39 PM
To: Gary Jones; Michael Tripp; John Kelly
Cc: Kerry Silverstrom
Subject: Area A Parking Lots

I met with Rick Mayfield of State Fish and Wildlife Department today and we discussed the following:

- Ballona Wetlands DEIR is expected to be out for public comment early to mid summer. The State wants to address the issue of building the interpretive center on Pcl 49 (launch ramp parking) and the parking lots on Area A.
- A cursory evaluation is being conducted on locating the proposed interpretive center that Annenberg wants to build on Pcl 49R. You may recall there is a pet adoption facility proposed as part of the interpretive center. Michael has determined this isn't an allowed use and would require an LCP amendment. I passed this along to Rick.
- Rick would like us to get back to him this week with what we'd like to see in the future for the Area A parking lots. Some of the options we discussed were:
 - Leave them as is. State and or County would need to get a CDP amendment (if that's even possible since the permit was issued by the Coastal Commission in connection with the 1984 Olympics). I believe the permit under which the lots were built required them to be removed.
 - Build a parking structure under a long term agreement (for which legislation will be needed) that includes a viewing deck and the like. This would reduce the area of the preserve covered by parking facilities. County (Sheriffs too) will need to fund the construction.
 - Eliminate the parking lots and restore habitat.
- It might be a good idea to have Rick join the meeting with Susan McCabe scheduled for April 30. He works very closely with the Annenberg folks and is willing to attend.

As for any land tenure issues, if the State acquires the lease for Pcl 49 (or whatever other conveyance document is used), there are Government code sections (65402 and 25365 among them) that would allow the Board with a 4/5 vote, to lease directly with the State.

If ultimately the interpretive center is built on Area C, Fish and Wildlife would need to seek legislation for a long term lease or other agreement of some kind with Annenberg. I would imagine if the parking structure option was selected by the County, the long term use of the State's property for that would be part of the Annenberg legislation.

Next Step: We need to discuss what we want to tell Rick about the use of the Area A parking lots.

Thank you,

Charlotte Miyamoto, Chief
Planning Division
County of Los Angeles
Department of Beaches and Harbors
13837 Fiji Way
Marina del Rey, CA 90292
Office: 310-305-9512
email: CMiyamoto@bh.lacounty.gov

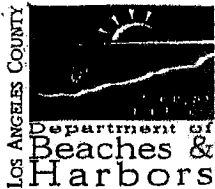


Posting	Document	Document		Project	Customer			Revenue	Applies-	Applies-	
Date	Date	Type	Document No.	Code	No.	Description	Reason Code	Amount	Account	Type	No.
12/1/2006	12/1/2006	Invoice	RIC01201	LMDR-12	GOLCOV-T3	Gold Coast Village, LLC	CONCESSION	1,925.17	8301-31		
1/8/2007	1/8/2007	Payment	4873		GOLCOV-T3	Gold Coast Village, LLC	CON-APPLIC	-1,925.17	8301-31	Invoice	RIC01201
								0.00			
8/1/2007	8/1/2007	Invoice	RIC01202	LMDR-01	GOLCOV-T3	Gold Coast Village, LLC	CONCESSION	3,032.16	8301-31		
8/1/2007	8/1/2007	Credit Memo	CONADJ00073		GOLCOV-T3	Gold Coast Village, LLC	CONCESSION	-3,032.16	8301-31	Invoice	RIC01202

Posting Date	Document Date	Document Type	Document No.	Project Code	Customer No.	Description	Reason Code	Amount	Revenue Account	Applies-to Doc. Type	Applies-to Doc. No.	Entry No.
8/1/2008	8/1/2008	Invoice	RIC01575		56 GOLCOV-T2	Gold Coast Village, LLC	CONCESSION	3,123.08	8301-31			275799
9/30/2009	8/3/2009	Payment		6524	56 GOLCOV-T2	Gold Coast Village, LLC	CON-APPLIC	-3,216.77	8301-31			343938
								-94				
8/1/2009	8/1/2009	Invoice	RIC01839		56 GOLCOV-T2	Gold Coast Village, LLC	CONCESSION	3,279.23	8301-31			344353
10/5/2009	8/3/2009	Payment		6524	56 GOLCOV-T2	Gold Coast Village, LLC	CON-APPLIC	-3,216.77	8301-31	Invoice	RIC01839	344356
10/5/2009	9/1/2009	Payment		6577	56 GOLCOV-T2	Gold Coast Village, LLC	CON-APPLIC	-62.46	8301-31	Invoice	RIC01839	344358
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8/1/2010	8/1/2010	Invoice	RIC02021		56 GOLCOV-T2	Gold Coast Village, LLC	CONCESSION	3,123.08	8301-31			382719
8/5/2010	8/5/2010	Payment		7278	56 GOLCOV-T2	Gold Coast Village, LLC	CON-APPLIC	-3,123.08	8301-31	Invoice	RIC02021	385826
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8/1/2011	8/1/2011	Invoice	RIC02251		56 GOLCOV-T2	Gold Coast Village, LLC	CONCESSION	3,123.08	8301-31			426799
8/1/2011	8/1/2011	Payment		7857	56 GOLCOV-T2	Gold Coast Village, LLC	CON-APPLIC	-3,123.08	8301-31	Invoice	RIC02251	429538
								0				

Fisherman Overflow Work Orders for the last three years

8990	Fisherman's OVerflow	6/15/14	Key broken in keypad and keycard reader not working	6/15/14	10:05	11:45	e.goodman	Diagnosed, cant remove broken key. Going to need locksmith. ISD to remove and repair keycard and keypad needs to be re- programmed.
9761	Fisherman's OVerflow	6/21/14	Key card reader not working	6/22/14	n/a	n/a	e.goodman	Keycard reader is repaired needs to be programmed by Erick or Frank.
8941	Fisherman's OVerflow	7/27/14	Inspect medeco tumbler to ensure it is in good working condition	7/27/14	2:45	3:15	e.goodman	Checked and locked cylinder working properly and waiting on program
8943	Fisherman's OVerflow	7/30/14	Install keypad on pedastal	8/19/14	9:30	9:45	J. Romero	Per F. Vargas, we are to remain with the secure key card reader
9825	Fisherman's OVerflow	11/7/14	Install blue no unauthorized parking sign at enterance. Remove old black/white sign	11/12/14	2:00	2:58	E. Goodman	Removed old sign, drilled out new sign and installed
11233	Fisherman's OVerflow	1/19/16	Ensure all belts are in normal shape inside gate arm boxes	1/26/16	1:35	2:30	E. Goodman	Checked 4 belts and replaced 2 of them; all others ok
11544	Fisherman's OVerflow	7/5/16	spike light out	7/12/16	10:30	11:10	E. Goodman	checked spike light unit, no power going to spike light unit to repair. Need electrician to find power source
12023	Fisherman's OVerflow	1/5/17	MPI reported gatearm unit not working properly	1/5/17	9:00	12:00	J. Romero	Replaced



LOS ANGELES COUNTY DEPARTMENT OF BEACHES AND HARBORS
13837 Fiji Way, Marina del Rey, California 90292

PERMIT NO. 04-015

Effective date: 8/2/05

Expiration date: month-to-month

BEACH/FACILITY (Premises): Parcel W-2, Fisherman's Village Overflow Lot, as shown in Exhibit A attached hereto and made a part hereof.

PERMITTEE:

Gold Coast Village, LLC
9255 Sunset Blvd., Suite 620
West Hollywood, CA 90069

CONTACT:

Jill Peterson, Sr. Property Manager
Pacific Ocean Management
Phone: (310) 822-6866

PURPOSE OF PERMIT: Parking for employees of Fisherman's Village.

EQUIPMENT TO BE USED: N/A

STAGING AREA: N/A

APPLICATION DATE: N/A

PROCESSING FEE: (WAIVED)

DEPOSIT: (WAIVED)

MONTHLY RENT: \$ 229.19

DUE DATE: See condition 2 below

ISSUE DATE: 5/31/06

STAN WISNIEWSKI, DIRECTOR

By: [Signature]

Charlotte Miyamoto, Chief Property Manager
Asset Management Division

RECEIPT NO. N/A 021084 C

**THIS PERMIT IS SUBJECT TO THE TERMS AND CONDITIONS LISTED BELOW
AND TO THE PROVISIONS LISTED UNDER THE "GENERAL PROVISIONS" SECTION HEREIN**

1. The term of this Permit is one (1) month and shall continue on a month-to-month basis until the Permit is terminated as outlined under General Provisions A through O.
2. The current monthly rent, through August 1, 2006, shall be \$229.19. Commencing August 2, 2006 through August 1, 2007 the monthly rent shall be \$240.64, payable in advance on an annual basis. All payments owed the County through August 1, 2006 are due by May 31, 2006. The payment for the period of August 2, 2006 through August 1, 2007 totaling \$2,887.73 is due on or before August 2, 2006. Subsequently, on August 2, 2007 and every August 2nd thereafter that this Permit is in effect, the rent will be increased by five percent (5%), and will be due and payable in advance on an annual basis on the second day of August.
3. This Permit is issued solely to provide parking for the employees of Fisherman's Village, located on Parcel 56, during an employee's work shift. Employees may access the Premises by paying the daily rate of \$5.00 or by using the key card and parking pass issued to that employee. Each employee wanting a key card and pass shall make an application with PCI, the County's parking contractor, and pay a \$50 deposit, which shall be refunded to the employee/applicant when the key card and pass are returned to the Department. Each pass must be clearly displayed on the rear view mirror of each vehicle. Photocopies of parking passes are not acceptable. Vehicles

PERMIT NO. 04-015

displaying a photocopy of the parking pass or parked without a valid parking pass or a paid parking ticket displayed on the dashboard, are subject to a \$50 citation. This Permit shall be subject to revocation if employees are using their key card and pass to park for non work-related reasons.

4. Employees use of the premises is limited to their working hours. If the employee's vehicle becomes disabled and the vehicle must remain on the lot for more than 24 hours, the Department should be notified at (310) 305-9534 to avoid a \$50 citation. Vehicles stored for longer than 24 hours and not called in will be cited and will be subject to towing.
5. County shall designate 16 to 20 spaces for County use and shall re-stripe the designated spaces at the South end of the premises and indicate for "County use only."
6. No storage containers or equipment are allowed on the property.
7. Permittee is responsible for ensuring that any persons, or vehicles, entering the Premises under this Permit refrain from littering the Premises.
8. Permittee agrees to keep all advertising signs and marketing material off the Premises, other than signs displaying the name of Permittee.
9. Permittee agrees to keep and perform all provisions contained in any Permit issued or to be issued to Permittee by any governmental agency or commission.
10. Permittee agrees to conduct the permitted activities in a courteous and non-profane manner, operate without interfering with the use of the Premises by the County or the public, except as herein permitted, and remove any agent, servant or employee who fails to conduct permitted activities in the manner heretofore described.
11. Permittee acknowledges that this Permit is issued by County of Los Angeles to Permittee for the intended activities and is not intended, and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between County and Permittee. It is expressly understood by Permittee that in permitting the right to use the Premises, no estate or interest in real property is being conveyed to Permittee, and that the right to use is only a nonexclusive, revocable and unassignable permission to occupy the Premises in accordance with the terms and conditions of the Permit for the purpose of conducting the permitted activities.
12. Permittee shall accommodate the Public's need by freeing up as many parking spaces as possible on, but not limited to, the following days: Memorial Day, July 4th, Labor Day and on the day the Christmas Boat Parade is held.

13. GENERAL PROVISIONS

- A. Permittee has examined the Premises and knows the conditions thereof. Permittee accepts the Premises in the present state and condition and waives any and all demand upon County for alteration, repair, or improvement thereof. Permittee shall make no alteration or improvements to the Premises without prior written approval from the County. Permittee shall arrange for and bear the cost of any other Permits required by Federal, State or local law, site preparation, installation of utilities, treatment of surface, enclosure of Premises, insurance premiums, utility bills, and other costs of any nature whatsoever, which are necessary in connection with or appurtenant to the operation and maintenance of Premises as used by the Permittee. County will allow no credit for the cost of any such expenditure, work performed, or ordered done by Permittee.
- B. Permittee shall re-stripe the parking lot at least every 3 years and seal and re-slurry the parking lot every 5 years or at the request of County.
- C. Permittee may terminate this Permit at anytime by giving County not less than thirty-(30)-days advance written notice of intention to terminate. However, the termination shall not be effective unless Permittee has complied with all of the following:



PERMIT NO. 04-015

- Returned all key cards and parking passes.
 - Vacated the Premises.
 - Removed all improvements Permittee has constructed or placed upon the Premises, if applicable.
 - Restored the Premises to as good a condition as existed on the day possession of Premises was taken by Permittee, allowing for the ordinary wear and tear associated with the normal usage during occupancy and to reimburse the County for any damage done to the Premises.
 - An authorized County representative shall inspect the site for safety hazards before a release is issued. Until a release is issued, Permittee shall continue to be responsible for the condition of the Premises.
- D. County may terminate this Permit at any time by giving Permittee not less than thirty (30) days advance written notice of intention to terminate. Upon receipt of such notice, Permittee shall vacate the Premises as required herein. Permittee agrees that should it fail to vacate as herein provided, the County or its authorized agents may enter upon said Premises and remove Permittee's personal property therefrom, and in this event, Permittee waives any and all claims for damages against the County, its officers, agents, or employees. Permittee shall reimburse County for all expenses incurred by County plus maximum interest allowed by law accruing from the day County incurred the expenses until such time as the principal and interest are fully paid by Permittee. Nothing herein shall be deemed a waiver of any rights of the County to demand and obtain permission of the Premises in accordance with law in the event Permittee violates any part of any of the terms or conditions herein.
- E. It is understood and agreed to be part of the herein consideration that County may temporarily suspend or terminate the Permit without notice to Permittee in order to allow the performance by County, its officers, agents, and employees, of work necessary to protect persons or property, including the Premises, from impending danger, hazard or harm. In the event County exercises such right, County will credit Permittee a prorated share of the prepaid rent based on the time period County has possession of the Premises.
- F. Permittee shall keep Premises and any improvements it constructed or placed on Premises in good working order and maintain such in a neat, clean, and orderly condition at all times during occupancy and not permit graffiti, rubbish, tin cans, garbage, etc., to accumulate, nor to use or allow use of Premises for any illegal or unauthorized purposes, and to comply with all State laws and local ordinances concerning Premises and the use thereof.
- G. Permittee is responsible for any and all damages done to the Premises by Permittee, agents, contractors, subcontractors, invitees, visitors and anyone holding under the Permittee. Permittee shall promptly repair any such damage as soon as Permittee is aware of the damages but not later than 10 days upon receipt of notification from the County.
- H. It is understood and agreed that County shall not be responsible for any damage to Premises or injuries to persons which may arise from or be incidental to the use and occupancy of Premises, or for damages to the property of Permittee, or for injuries to the person of Permittee, Permittee's agents, servants, successors, subtenants, invitees or others who may be on Premises at anyone's invitation, arising from or incidental to the use of Premises by the Permittee or anyone under the Permittee or County, and/or its agents, contractors, employees or assigns. Permittee agrees to indemnify, defend, and hold the County, its elected officials, officers, employees and agents, harmless from any and all such claims, including defense costs and legal fees.
- I. This Permit shall cancel and terminate any prior oral or written agreement, if any, between County and Permittee for use of the Premises, as of the commencement date of this Permit.
- J. This Permit may create a possessory interest upon which a property tax may be levied. In such event, Permittee shall pay before delinquency all such taxes or assessments.



PERMIT NO. 04-015

K. Without limiting Permittee's indemnification of the County, Permittee shall at its own expense take out and maintain in force, at all times during the term of this Permit, a policy or policies of insurance covering Premises. Such insurance shall be provided by insurer(s) satisfactory to the County Risk Manager. At a minimum, the policy shall meet the following minimum criteria:

- Coverage for comprehensive general liability and property damage in the amount not less than One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) aggregate.
- Coverage for automobile liability in the amount not less than One Million Dollars (\$1,000,000) per occurrence.
- The COUNTY OF LOS ANGELES, its governing board, officers, and employees shall be named as Additional Insured on all policies of liability insurance to be evidenced by an endorsement or similar instrument. (If County is not named as an Additional Insured in the original policy, an endorsement will be necessary to satisfy this provision.)
- This Permit No. 04-015 is included as part of the insured premises to be evidenced by an endorsement or a similar instrument. (If the premises or this Permit is not named as an Additional Insured in the original policy, an endorsement will be necessary to satisfy this provision.)
- Coverage for Workers' Compensation insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California and which specifically covers the persons and risks involved in this Permit. Permittee understands and agrees that all persons furnishing services to the County pursuant to this Permit are, for purposes of Workers' Compensation liability, employees solely of Permittee and not of County. Permittee shall bear the sole responsibility and liability for furnishing Workers' Compensation benefits to any person for injuries arising from or connected with services performed on behalf of Permittee pursuant to this Permit.

All policies of insurance shall be with a company or companies authorized by law to transact insurance business in the State of California. Prior to the commencement date of this Permit, Permittee shall furnish to County a copy of the policy of insurance evidencing Permittee's insurance coverage. Failure on the part of Permittee to procure or maintain required insurance shall constitute a material breach of contract upon which the County may immediately terminate this Permit.

Upon renewal of any of the policies of insurance, Permittee shall furnish to County a Certificate of Insurance evidencing Permittee's continued insurance coverage. The County shall be given notice in writing at least (30) days in advance of cancellation or modification of such policy.

In the event any of the policies are changed or if the insurance carrier is changed, Permittee shall provide County a copy of the replacement policy meeting the minimum requirements as above noted.

- L. Permittee expressly acknowledges that Permittee is a post acquisition tenant and shall not be entitled to any claim of status as a "displaced person" as such is defined in Section 7260 of the Government Code of the State of California. Permittee hereby acknowledges Permittee's ineligibility for relocation assistance as provided in Government Code Sections 7260 through 7277, inclusive, as it exists or as it may be amended.
- M. Permittee shall not construct or place any improvements on the premises.
- N. County may, at its sole discretion, enter premises to conduct Environmental Site Assessments. Upon review of such Assessments, County may, at its sole discretion, terminate this Permit consistent with General Provision D. Permittee shall bear any and all responsibility, expense, and liability incurred in the cleanup and treatment of any



PERMIT NO. 04-015

hazardous materials or condition found on the Premises caused by Permittee's use, storage, or treatment of any hazardous materials on/or within the Premises.

- O. Each County Lobbyist as defined in Los Angeles County Code Section 2.160.010, retained by Permittee, shall fully comply with the County Lobbyist Ordinance, Los Angeles County Code Chapter 2.160. Failure on the part of any Lobbyist retained by Permittee to fully comply with the County Lobbyist Ordinance, shall constitute a material breach of this Permit upon which the County may terminate or suspend this Agreement.

ACCEPTANCE

We, the undersigned Permittee, have read, understood and agreed to all the terms, conditions, and restriction contained in this Permit.

PERMITTEE:

GOLD COAST VILLAGE, LLC

Signature: *Michael Pasbair*

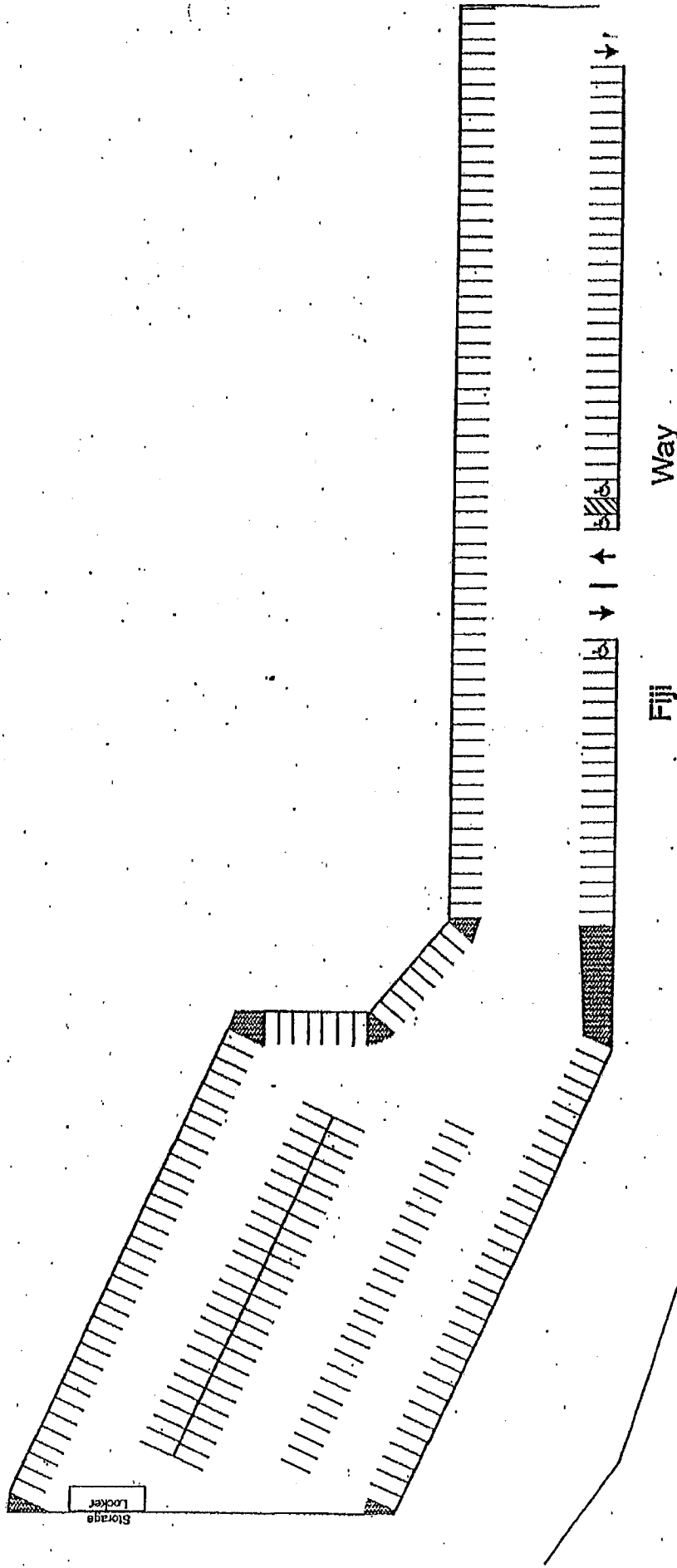
Name in Print: Michael Pasbair

Title: Managing Member

Date: 5-31-06



FISHERMAN'S VILLAGE (Parcel 56) OVERFLOW LOT



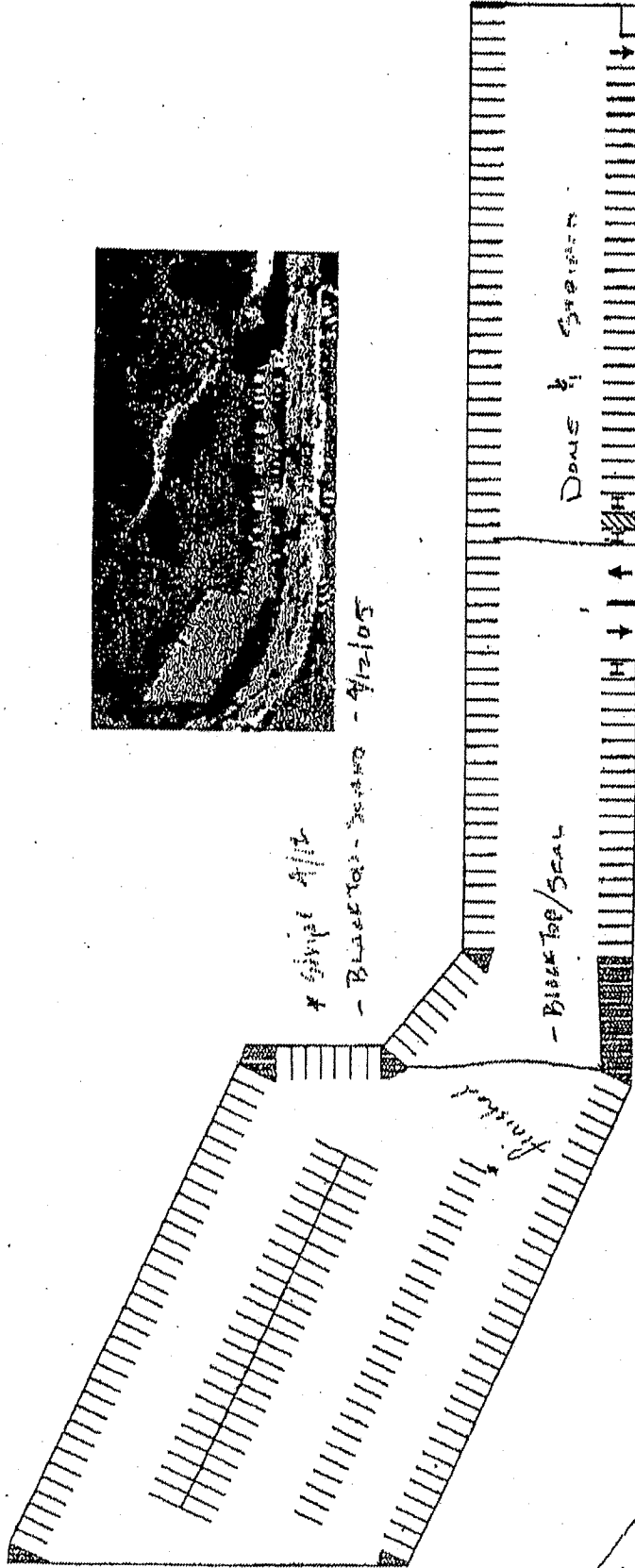
Fisherman's
Village

PERMIT 04-015
EXHIBIT A

REGULAR SPACES	262*
DISABLED	3
TOTAL	265

* Count is approximate, due to poor stippling condition of lot.

L.A. COUNTY DEPARTMENT OF BEACHES AND HARBORS Revised 8 / 2002 by CLS



* Sample 4/12
- Black Top - Sealed - 4/12/05

- Black Top/Seal

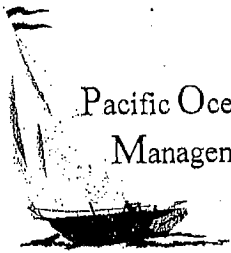
Dome & Storage

Fiji Way

Parcel W Overflow Lot

REGULAR SPACES	262
DISABLED	3
TOTAL	265

Revised 03/2002
Site Verified 03/20/2002 by CS
Coverage approximate, due to poor striping conditions of lot.



Pacific Ocean
Management, LLC

May 31, 2006

Hand Delivered

Mr. Paul Wong, Chief Property Manager
County of Los Angeles
Dept. of Beaches & Harbors
13837 Fiji Way
Marina del Rey, CA 90292

Re: Parcel W-2 Fisherman's Village Overflow Lot Notice to Pay Rent

Dear Mr. Wong:

Attached please find the signed copy of permit #04-015 in regards to the overflow lot for Fisherman's Village. Per your conversation today with Michael Pashaie, the total cost of our recent improvements to the overflow lot amounting to \$4,750.00 has been deducted from the requested amount due. Check #4550 is attached for \$11,959.40. Thank you!

Best regards,

Michael Selden
Controller

cc: Michael Pashaie

CPR SERVICES LLC
Commercial Property Repair Services

PHONE: (909) 874-9773 * FAX: (909) 874-9774
1760 N. Date Ave., Rialto, CA 92376

INVOICE # 250

Company: **Pacific Ocean Management**

Property: **Dock 52**

Address: **13575 Mindanao Way**

Location: **Marina Del Rey, CA**

City/State/Zip: **Marina Del Rey, CA, 90292**

Contact: **Doris**

Phone: **(310) 822-4266**

Service Rendered: **Seal Coat and Strip**

Date Work Completed

Date invoiced:

Due on Completion

April 11, 2005

April 11, 2005

April 12, 2005

DESCRIPTION: Contract sold for: Asphalt, seal coating with new striping layout

Price \$ 4,750.00

Amount Due \$ 4,750.00

Thank You For The Work!

REMITTANCE ADVICE

TOTAL

4,750.00

0.00

4,750.00

(80501)

GOLD COAST VILLAGE, LLC
BY PACIFIC OCEAN MANAGEMENT, LLC
13575 MINDANAO WAY
MARINA DEL REY, CA 90292

CITY NATIONAL BANK
9229 SUNSET BLVD.
W. HOLLYWOOD, CA 90069

16-1608
1220

DATE	CHECK NO.	AMOUNT
04/12/05	003926	\$*****4,750.00*

FOUR THOUSAND SEVEN HUNDRED FIFTY AND NO/100 DOLLARS *****

PAY
TO THE
ORDER OF

CPR SERVICES, LLC

1760 N. DATE AVE.
RIALTO, CA 92376

⑈003926⑈ ⑆122016066⑆ 006⑈707882⑈

Amount Due \$ 4,750.00

Thank You For The Work!

COUNTY OF LOS ANGELES DEPARTMENT OF BEACHES AND HARBORS

DEPARTMENTAL RECEIPT No. 021084 C

RECEIVED FROM

5/31 20 06
Gold Coast Village \$ 11,959.40Eleven thousand nine hundred fifty nine & 40 cents DOLLARS

FOR

Right of entry permit for overflow parking at
Permit # 04-015City National Bank
004530

SIGNATURE

OFFICIAL TITLE

DIVISION COPY



LOS ANGELES COUNTY DEPARTMENT OF BEACHES AND HARBORS
13837 Fiji Way, Marina del Rey, California 90292

PERMIT NO. 10-001

Effective Date: **04/01/2010**

Expiration Date: **month-to-month**

BEACH/FACILITY (Premises): Parcel XT (Fisherman's Village Overflow Lot, as shown in Exhibit A attached hereto and made a part hereof.

PERMITTEE:

Dey Rey Restaurant Corporation
Specialty Restaurants Corp.
Shanghai Red's Restaurant
8191 E. Kaiser Blvd, Anaheim, CA 92808-2214

CONTACT: Parviz Gerami
~~Francisco Perez~~, General Manager
Phone #: 310-823-4522
Emergency #: 714-240-2584

PURPOSE OF PERMIT: Parking for employees of Shanghai Red's Restaurant, MdR

EQUIPMENT TO BE USED: N/A

STAGING AREA: N/A

APPLICATION DATE: 2/3/2010

ISSUE DATE: 4-5-2010

SANTOS H. KREIMANN, DIRECTOR

By: 

Paul Wong, Chief Property Manager
Asset Management Division

PROCESSING FEE: (WAIVED)

DEPOSIT: (WAIVED)

MONTHLY RENT: \$150.00 / \$250.00 (see Terms and Conditions #3)

TOTAL DUE: \$2200.00 for calendar year 2010.

RECEIPT NO. _____

PERMIT NO. 10-001

**THIS PERMIT IS SUBJECT TO THE TERMS AND CONDITIONS LISTED BELOW
AND TO THE PROVISIONS LISTED UNDER THE "GENERAL PROVISIONS" SECTION HEREIN**

1. The term of this Permit is one (1) month and shall continue on a month-to-month basis until the Permit is terminated as outlined under General Provisions A through O.
2. Permittee understands and acknowledges that parking privileges herein are nonexclusive.
3. The monthly rental rates shall be \$150.00 per month October 1st through May 31st and \$250.00 per month June 1st through September 31st, payable in advance on annual basis on January 1st of each year the Permit is in effect. The rental rates are subject to change as directed by the County of Los Angeles Board of Supervisors. County shall notify Permittee no less than thirty (30) days prior to any increase. If Permittee disagrees with a rent adjustment, Permittee shall have the option to terminate this Permit as provided herein. Permittee's continued occupancy of the Premises on and after the effective date of the rental adjustment shall constitute the Permittee's agreement to remain in possession of the Premises subject to the new rental rate specified in the notice.
4. This Permit is issued solely to provide parking for the employees of Shanghai Red's Restaurant, located on Parcel 61, Marina del Rey, during an employee's work shift. Employees may access the Premises by using the key card and parking pass issued to that employee. Only the Permittee's management may apply directly to PCI, the County's parking contractor, for key cards and parking passes. A total of no more than forty-five (45) key cards and parking passes will be made available to the Permittee. Each application for a key card and parking pass must be in a form and manner as prescribed by PCI and must be accompanied by a \$50 deposit, which shall be refunded to the Permittee when the key card and parking pass are returned to PCI. Each parking pass must be clearly displayed on the rear view mirror of each vehicle, unless otherwise instructed. Photocopies of parking passes are not acceptable. Vehicles displaying a photocopy of the parking pass or parked without a valid parking pass are subject to a parking citation. This Permit shall be subject to revocation if key cards and parking passes are used to access the Premises for non-work-related reasons.
5. Employee's use of the Premises is limited to their working hours. If the employee's vehicle becomes disabled and the vehicle must remain on the lot for more than 24 hours, the Department should be notified at (310) 305-9534 to avoid a parking citation. Vehicles stored for longer than 24 hours and not called in will be cited and will be subject to towing at the owner's expense.
6. No storage containers or equipment are allowed on the Premises.
7. Permittee is responsible for ensuring that any person or vehicles entering the Premises under this Permit refrain from littering the Premises.
8. This Permit does not grant any special parking privileges to Permittee. Permittee must obey all posted parking lot rules and regulations. For any County parking lot other than the Premises, Permittee must pay the posted parking lot entry fee for each vehicle upon entry.
9. Permittee agrees to keep and perform all provisions contained in any permit issued or to be issued to Permittee by any governmental agency or commission. Failure to comply with this condition shall constitute a material breach of contract upon which the County may immediately terminate or suspend this Permit.
10. Permittee agrees to keep all advertising signs and marketing material off the Premises.
11. Permittee agrees to conduct the permitted activities in a courteous and non-profane manner, to operate without interfering with the use of the Premises by the County or the public, except as herein permitted, and to remove any agent, servant or employee who fails to conduct permitted activities in the manner heretofore described.

PERMIT NO. 10-001

12. Permittee acknowledges that this Permit is issued by County of Los Angeles to Permittee for the intended activities and is not intended, and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between County and Permittee. It is expressly understood by Permittee that in permitting the right to use the Premises, no estate or interest in real property is being conveyed to Permittee, and that the right to use is only a nonexclusive, revocable and unassignable permission to occupy the Premises in accordance with the terms and conditions of the Permit for the purpose of conducting the permitted activities.
13. Permittee shall accommodate the Public's need for parking by freeing up as many parking spaces as possible on, but not limited to, the following days: Memorial Day, Independence Day, Labor Day and on the day the Christmas Boat Parade is held.

14. GENERAL PROVISIONS

- A. Permittee has examined the Premises and knows the conditions thereof. Permittee accepts the Premises in the present state and condition and waives any and all demand upon County for alteration, repair, or improvement thereof. Permittee shall make no alteration or improvements to the Premises without prior written approval from the County. County will allow no credit for the cost of any expenditure for any work performed by Permittee, or for any work ordered done by Permittee.
- B. Permittee may terminate this Permit at anytime by giving County no less than thirty (30) days advance written notice of intention to terminate. However, the termination shall not be effective unless Permittee has vacated the Premises; returned all key cards and parking passes.
- C. County may terminate this Permit at any time by giving Permittee no less than thirty (30) days' advance written notice of intention to terminate. Upon receipt of such notice, Permittee shall vacate the Premises as required herein. Permittee agrees that should it fail to vacate as herein provided, the County or its authorized agents may enter upon said premises and remove Permittee's personal property therefrom, and in this event, Permittee waives any and all claims for damages against the County, its officers, agents, or employees. Permittee shall reimburse County for all expenses incurred by County plus maximum interest allowed by law accruing from the day County incurred the expenses until such time as the principal and interest are fully paid by Permittee. Nothing herein shall be deemed a waiver of any rights of the County to demand and obtain possession of the Premises in accordance with law in the event Permittee violates any part of any of the terms or conditions herein.
- D. It is understood and agreed to be part of the herein consideration that County may temporarily suspend or terminate the Permit without notice to Permittee in order to allow the performance by County, its officers, agents, and employees, of work necessary to protect persons or property, including the Premises, from impending danger, hazard or harm. In the event County exercises such right, County will credit Permittee a prorated share of the prepaid rent based on the time period County has possession of the Premises.
- E. Permittee shall not permit graffiti, rubbish, tin cans, garbage, etc., to accumulate, nor to use or allow use of Premises for any illegal or unauthorized purposes, and to comply with all State laws and local ordinances concerning Premises and the use thereof.
- F. Permittee is responsible for any and all damages done to the Premises by Permittee, agents, contractors, subcontractors, invitees, visitors and anyone holding under the Permittee. Permittee shall promptly repair any such damage as soon as Permittee is aware of the damages but not later than 10 days upon receipt of notification from the County.
- G. It is understood and agreed that County shall not be responsible for any damage to Premises or injuries to persons or property that may arise from or be incidental to the use and occupancy of Premises, or for damages to the property of Permittee, or for injuries to the person of Permittee, Permittee's agents, servants, successors, subtenants, invitees or others who may be on Premises at anyone's invitation, arising from or incidental to the use

PERMIT NO. 10-001

of Premises by the Permittee or anyone under the Permittee, and/or its agents, contractors, employees or assigns. Permittee agrees to indemnify, defend, and hold harmless the County, for such claims and liability pursuant to the condition immediately below.

- H. Permittee shall indemnify, defend, and hold harmless County, its Special Districts, elected and appointed officers, employees and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs and expenses (including attorney and expert witness fees), arising from or caused by, in whole or in part, the activities of Permittee, its agents, contractors, employees or assigns on the Premises.
- I. This Permit shall cancel and terminate any prior oral or written agreement, if any, between County and Permittee for use of the Premises, as of the commencement date of this Permit.
- J. This Permit may create a possessory interest upon which a property tax may be levied. In such event, Permittee shall pay before delinquency all such taxes or assessments.
- K. Without limiting Permittee's indemnification of the County, Permittee shall at its own expense take out and maintain in force, at all times during the term of this Permit, a policy or policies of insurance covering Premises. Such insurance shall be provided by insurer(s) satisfactory to the County Risk Manager. At a minimum, the policy shall meet the following minimum criteria:
 - Coverage for comprehensive general liability and property damage in the amount not less than One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) aggregate.
 - Coverage for automobile liability in the amount not less than One Million Dollars (\$1,000,000) per occurrence.
 - The COUNTY OF LOS ANGELES, its governing board, officers, and employees shall be named as Additional Insured on all policies of liability insurance to be evidenced by an endorsement or similar instrument. (If County is not named as an Additional Insured in the original policy, an endorsement will be necessary to satisfy this provision.)
 - This Permit No. is included as part of the insured premises to be evidenced by an endorsement or a similar instrument. (If the Premises or this Permit number is not included in the original policy, an endorsement will be necessary to satisfy this provision.)
 - Coverage for Workers' Compensation insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California and which specifically covers the persons and risks involved in this Permit. Permittee understands and agrees that all persons furnishing services to the County pursuant to this Permit are, for purposes of Workers' Compensation liability, employees solely of Permittee and not of County. Permittee shall bear the sole responsibility and liability for furnishing Workers' Compensation benefits to any person for injuries arising from or connected with services performed on behalf of Permittee pursuant to this Permit.

To the fullest extent permitted by law, the Permittee hereby waives its rights and its insurer(s)' rights of recovery against County under all the insurance required under this Permit for any loss arising from or relating to this Permit. The Permittee shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to effect such waiver.

All policies of insurance shall be with a company or companies authorized by law to transact insurance business in the State of California. Prior to the commencement date of this Permit, Permittee shall furnish to County a copy of the policy of insurance evidencing Permittee's insurance coverage. Failure on the part of Permittee to procure or maintain required insurance shall constitute a material breach of contract upon which the County may immediately terminate or suspend this Permit.

PERMIT NO. 10-001

Upon renewal of any of the policies of insurance, Permittee shall furnish to County a Certificate of Insurance evidencing Permittee's continued insurance coverage. The County shall be given notice in writing at least (30) days in advance of cancellation or modification of such policy.

In the event any of the policies are changed or if the insurance carrier is changed, Permittee shall provide County a copy of the replacement policy meeting the minimum requirements as above noted.

- L. Permittee expressly acknowledges that Permittee is a post acquisition tenant and shall not be entitled to any claim of status as a "displaced person" as such is defined in Section 7260 of the Government Code of the State of California. Permittee hereby acknowledges Permittee's ineligibility for relocation assistance as provided in Government Code Sections 7260 through 7277, inclusive, as it exists or as it may be amended.
- M. Permittee shall not construct or place any improvements on the Premises.
- N. County may, at its sole discretion, enter Premises to conduct Environmental Site Assessments. Upon review of such Assessments, County may, at its sole discretion, terminate this Permit consistent with General Provision C. Permittee shall bear any and all responsibility, expense, and liability incurred in the cleanup and treatment of any hazardous materials or condition found on the Premises caused by Permittee's use, storage, or treatment of any hazardous materials on/or within the Premises.
- O. Each County Lobbyist as defined in Los Angeles County Code Section 2.160.010, retained by Permittee, shall fully comply with the County Lobbyist Ordinance, Los Angeles County Code Chapter 2.160. Failure on the part of any Lobbyist retained by Permittee to fully comply with the County Lobbyist Ordinance shall constitute a material breach of this Permit upon which the County may terminate or suspend this Permit.

ACCEPTANCE

We, the undersigned Permittee, have read, understood and agreed to all the terms, conditions, and provisions contained in this Permit.

PERMITTEE:

Signature: _____

Name in Print: _____

Title: _____

Date: _____



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/31/2011

3/24/2010

PRODUCER Lockton Insurance Brokers, LLC
725 S. Figueroa Street, 35th Fl.
CA License #0F15767
Los Angeles CA 90017
(213) 689-0065

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED Shanghai Reds
1315305 13813 Fiji Way
Marina del Rey CA 90291

INSURERS AFFORDING COVERAGE**NAIC #**

INSURER A: Great American Alliance Insurance Co

26832

INSURER B: Allied Insurance Company

36528

INSURER C: American Zurich Insurance Company

40142

INSURER D:

INSURER E:

COVERAGES

SPERE01

FA

THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER AND THE CERTIFICATE HOLDER.

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS											
A	X	GENERAL LIABILITY	PAC2267345	1/31/2010	1/31/2011	EACH OCCURRENCE	\$ 1,000,000										
		<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000										
		<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person)	\$ Excluded										
		<input checked="" type="checkbox"/> Liq. Liab. \$1MM				PERSONAL & ADV INJURY	\$ 1,000,000										
		<input checked="" type="checkbox"/> \$25,000 Ded.				GENERAL AGGREGATE	\$ 2,000,000										
		GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMP/OP AGG	\$ 2,000,000										
		<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC															
		B				X	AUTOMOBILE LIABILITY	7804292173	1/31/2010	1/31/2011	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000					
							<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$ XXXXXXXX					
							<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$ XXXXXXXX					
<input type="checkbox"/> SCHEDULED AUTOS	PROPERTY DAMAGE (Per accident)		\$ XXXXXXXX														
<input checked="" type="checkbox"/> HIRED AUTOS																	
<input checked="" type="checkbox"/> NON-OWNED AUTOS																	
<input checked="" type="checkbox"/> Med Pay \$2,000																	
<input checked="" type="checkbox"/> Comp/Coll Ded \$1,000																	
			GARAGE LIABILITY	NOT APPLICABLE							AUTO ONLY - EA ACCIDENT	\$ XXXXXXXX					
			<input type="checkbox"/> ANY AUTO								OTHER THAN AUTO ONLY: EA ACC	\$ XXXXXXXX					
			AGG			\$ XXXXXXXX											
						EXCESS / UMBRELLA LIABILITY		NOT APPLICABLE			EACH OCCURRENCE	\$ XXXXXXXX					
						<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE					AGGREGATE	\$ XXXXXXXX					
						<input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> UMBRELLA FORM						\$ XXXXXXXX					
						<input type="checkbox"/> RETENTION \$						\$ XXXXXXXX					
						C					X	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	WC937869806	1/31/2010	1/31/2011	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTI-ER	
												ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)				E.L. EACH ACCIDENT	\$ 1,000,000
												If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
	E.L. DISEASE - POLICY LIMIT			\$ 1,000,000													
OTHER																	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

This Certificate of Liability relates to the Los Angeles County Department of Beaches and Harbors Permit No. 10-001. The County of Los Angeles, its governing board, officers and employees are an Additional Insured to the extent provided by the policy language or endorsement issued or approved by the insurance carrier.

CERTIFICATE HOLDER

10833225

The County of Los Angeles,
its governing board, officers and employees
13837 Fiji Way
Marina Del Rey CA 90292

CANCELLATION [D447908]

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

ACORD 25 (2009/01)

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April 1, 2010

The County of Los Angeles, its governing board, officers and employees
13837 Fiji Way
Marina Del Rey , CA 90292

Re: Notice of Cancellation Clause

To Whom It May Concern:

Please be advised that we cannot fulfill the request to alter the cancellation clause of the certificate. The insurance carriers have advised that they will not allow us to do this, as it is impossible for them to guarantee compliance with this request given the large number of certificate holders. However, the certificate will contain the standard "endeavor to" wording.

Thank you for your understanding.

Regards,

A handwritten signature in cursive script, appearing to read "David Burgos".

David Burgos
Assistant Vice President
Lockton Insurance Brokers

SPECIALTY RESTAURANTS CORPORATION



March 31, 2010

Jules Trifler
Los Angeles County Beaches & Harbors
13837 Fiji Way
Marina del Rey, CA 90292

Re: Shanghai Red's Restaurant
Permit No. 10-001

Dear Mr. Trifler:

Enclosed please find the original executed Permit No. 10-001 for Shanghai Red's Restaurant in Marina del Rey. Also enclosed is the Certificate of Insurance that was requested.

If you need anything further, please do not hesitate to contact me or this office. Thank you for your assistance in this matter.

Very truly yours,



Lynn Kellum, PLS
Legal Department Administrator

Enclosures

Los Angeles County
Department of Beaches and Harbors
13575 Mindanao Way
Marina Del Rey, California 90292



CASH APPLIED REPORT

Agreement # R90063 - Del Rey Restaurant Corp.
Parcel # MXT

DEL REY RESTAURANT CORP. (P61)
8191 EAST KAISER BOULEVARD
ANAHEIM, CA 92808-2214

DATE	PAYMENT TYPE	CHECK #	PAYMENT TOTAL	APPLIED TO INVOICE #	REV ACCT	FUNC	FUND	AMOUNT APPLIED	DEPOSIT AMOUNT
02/27/2013	Check	534583	\$ 2,200.00	R19120	8301	PM2	A01	\$ 2,200.00	--
03/28/2016	Check	580634	\$ 6,600.00	B25238	8371	PM2	A01	\$ 2,200.00	--
				B32171	8371	PM2	A01	\$ 2,200.00	--
				M40042	8371	PM2	A01	\$ 2,200.00	--
03/21/2017	Check	595850	\$ 2,200.00	B48923	8371	PM2	A01	\$ 2,200.00	--
Account Balance								\$ 11,000.00	

DEPARTMENT OF FISH AND GAME

WILDLIFE CONSERVATION BOARD

1807 13TH STREET, SUITE 103
SACRAMENTO, CALIFORNIA 95814
(916) 445-8448
FAX (916) 323-0280
www.dfg.ca.gov/wcb

State of California
The Resources Agency
Department of Fish and Game
WILDLIFE CONSERVATION BOARD
Minutes
September 30, 2003

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DEPARTMENT OF FISH AND GAME

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State of California
The Resources Agency
Department of Fish and Game
WILDLIFE CONSERVATION BOARD

Minutes
September 30, 2003

The Wildlife Conservation Board met on Wednesday, September 30, 2003, in Room 4203 of the State Capitol in Sacramento, California. The meeting was called to order at 10:00 A.M. by Chairman Michael Flores. Mr. Flores introduced the Board Members and then turned over the meeting to Mr. Al Wright, Executive Director of the Board.

6. Roll Call

WILDLIFE CONSERVATION BOARD MEMBERS

Michael Flores, Chairperson
President, Fish and Game Commission
Fred Klass, Program Budget Manager
Vice, Steve Peace, Member
Director, Department of Finance
Robert C. Hight, Member
Director, Department of Fish and Game

JOINT LEGISLATIVE INTERIM ADVISORY COMMITTEE

Assembly Member Patty Berg
Kristin Stauffacher,
Vice, Senator Michael J. Machado
Jeff Arthur,
Vice, Assembly Member Hannah-Beth Jackson
Debra Gravert,
Vice, Assembly Member Fran Pavley

EXECUTIVE DIRECTOR

Al Wright

Staff Present: Al Wright, Executive Director
John Donnelly, Assistant Executive Director
Marilyn Cundiff, Public Land Management Specialist
Jenny Smith, Staff Services Analyst
Peter Perrine, Public Land Management Specialist
Bonnie Turner, Public Land Management Specialist
Scott Clemons, Public Land Management Specialist
Tony Chappelle, Public Land Management Specialist
Ajit Bindra, Associate Budget Analyst
Gary Cantrell, Research Analyst
Dave Means, Senior Land Agent
William Gallup, Senior Land Agent
Steven Christensen, Senior Land Agent
Ken Morefield, Research Analyst
Elena Salas, Secretary
Mary Grande, Secretary
Jan Beeding, Office Technician
Maureen Rivera, Executive Assistant

Others Present: Susannah Churchill, Environment California
Melanie Choy, Robinson and Associates
Dottie Jensen, WAMU
Jan Owen, WAMU
Victoria Rome, Natural Resources Defense Council
Joe Caves, Conservation Strategy Group
Paul Martin
Tom Francis, Ballona Wetlands Land Trust
Steve Soboroff, Playa Vista
David Vena, Latham and Watkins
Rorie Skei, Santa Monica Mountains Conservancy
Patti Sinclair, Playa Capital Company LLC
Ruth Lansford, Friends of Ballona Wetlands
Jim Landry, Ballona Wetlands Foundation
and Loyola Marymount University
Rex Frankel, Sierra Club
Mathew Hayden, City of Calabasas
Jared Carter, Pacific Lumber Company
Susan McCabe, McCabe and Company
David Nelson, Playa Capital
Liza Riddle, Trust for Public Land
Catherine Tyrrell, Playa Capital
Marcia Hanscom, Wetlands Action Network
Laurie Collins, Santa Monica Mountains Conservancy
Cara Horowitz, Santa Monica Mountains Conservancy
Leslie Purcell
Debra Gravert, Office of Assembly Member Fran Pavley
Nick Smith, Governor's Office

Others Present: Tami Miller, Platinum Advisors

(Continued) John Stevens, State Assembly
Brian Miller, Resources Agency
Linda Parks, County of Ventura
Rick Rayburn, Department of Parks and Recreation
Jim Metropulos, Sierra Club

2. Ballona Wetlands, Los Angeles County \$140,000,000.00

Mr. Wright reported that this proposal was to consider a cooperative project with the State Coastal Conservancy (SCC), the Trust for Public Land (TPL), the Department of Fish and Game (DFG) and the Wildlife Conservation Board (WCB) to acquire approximately 483± acres of private land and property interests in Los Angeles County in order to preserve critical habitat and key open space, including a large portion of what remains of the Ballona Wetlands. The property is located on the western edge of the Los Angeles metropolitan area, in Los Angeles County, just north of Los Angeles International Airport. The subject property is the largest remaining undeveloped and restorable coastal wetland in Los Angeles and consists of three distinct areas identified as Area A (138± acres), B Residential (54± acres) and the Ballona Wetlands Parcel, including the Ballona Creek Channel (291± acres). The total to be conveyed to the State is 483± acres. Mr. John Donnelly described the project and its location.

As part of the transaction, Playa Capital Company, LLC (Playa), the present owner of the property, would also release its right of first refusal to purchase adjacent property identified as Area C. Playa will release its rights to an easement across Area C if relieved of its obligation to construct a road and bridge to connect Culver Boulevard with Playa Vista Drive. A trust currently holds title to Area C for the benefit of the State and legislation has passed to formally transfer title to the State acting by and through the DFG, WCB.

Mr. Donnelly reported that prior to this meeting, a summary paper which discussed several key points of the project, the State's Purchase Agreement and Environmental Site Assessment for this project, were available at the following locations on September 19, 2003:

1. The California Resources Agency, 1416 Ninth Street, Suite 1311, Sacramento, CA 95814 (916) 653-5656
2. Wildlife Conservation Board, 1807 13th Street, Suite 103, Sacramento, CA 95814 (916) 445-8448
3. Los Angeles River Center and Gardens, 570 West Avenue Twenty-six (at San Fernando Road), Los Angeles, CA 90065 (323) 221-9959 Ext. 0
4. Franklin Canyon Park, 2600 Franklin Canyon Drive, Beverly Hills, CA 90210 (310) 858-7272 Ext. 0

Mr. Donnelly explained that the documents and summaries were also available for review on the Internet by accessing the Wildlife Conservation Board's website or the California Resources Agency website.

The subject property is a composition of upland scrub, open salt/mud flat, riparian, coastal dune and grasslands providing habitat for a number of special animal species. A few of the species found on site include Lange's El Segundo dune weevil, Dorothy's El Segundo dune weevil, wandering skipper (federal species of concern), silvery legless lizard, Stevens' California vole (federal and State species of concern), California brown pelican (federally and State-listed endangered), California least tern (federally and State-listed endangered) and Belding's Savannah sparrow (a federal species of concern and State-listed endangered).

Several of the species listed above rely on wetland habitat, which is quickly disappearing. The Ballona Wetlands once consisting of approximately 1,500 acres, has been reduced over time to less than 150 acres. However, several narrow corridors, such as the Ballona Creek Channel connect the subject property with other open areas nearby, including Baldwin Hills to the northeast and a restored dune system at the western end of the Los Angeles International Airport located to the south.

The property will be acquired on behalf of the State and will be under the interim jurisdiction of the DFG. TPL has agreed to pay and provide for management of the property during this interim period (estimated to be approximately five years) which will provide the DFG, SCC and others involved in the transaction, the time needed to complete the planning processes and identify the appropriate entity to manage the property and implement long-term restoration. It is envisioned that restoration will incorporate, as appropriate, Area C, once that property is conveyed to the DFG, and an adjacent fresh water marsh recently restored by Playa as a condition of its present development.

Area A and Area B Residential have been appraised and the value has been reviewed and approved by the Department of General Services (DGS) at \$140,000,000.00, with concurrence from the WCB. Playa Capital Company, LLC has agreed to sell these areas at \$139,000,000.00, thereby providing a donation to the State. In addition, Playa has agreed to transfer the Ballona Wetlands Parcel and release its rights as described above in Area C to the State at no cost. It is estimated that an additional \$1,000,000.00 will be needed for project expenses, including title and escrow company costs, appraisal and the DGS' review charges, bringing the total allocation needed to complete this project to \$140,000,000.00.

The proposed acquisition project is exempt from the California Environmental Quality Act (CEQA) pursuant to Class 13 and 25 categorical exemptions. (California Code of Regulations, Title 14, §15313 and 15325) Class 13 of categorical exemptions consists of acquisitions of land for wildlife conservation purposes. Class 25 of categorical exemptions consists of transfers of land in order to preserve open space, habitat or historical resources. Subject to approval by the Board, the appropriate Notice of Exemption will be filed with the State Clearinghouse. CEQA analysis for restoration will be a component of the restoration planning process.

Mr. Wright reported that the Board received numerous letters of support for this project including letters from Senator John Burton; Zev Yaroslavsky, Third District

Supervisor of Los Angeles County; Larry Myers of the Native American Heritage Commission; the Ballona Valley Preservation League, representing 24 individuals and organizations; and Kathy Knight from the Spirit of the Sage Council. Mr. Wright stated that the Board received a rather lengthy email from Tom Francis raising a number of concerns regarding the acquisition.

Ms. Ruth Lansford, President of Friends of Ballona Wetlands, addressed the Board in support of this project. She stated that Friends of Ballona Wetlands is the longest running organization that has been fighting for over twenty-five years to preserve the wetlands. Ms. Lansford went on to read a prepared statement. (See Attachment A)

Mr. John Tommy Rosas, Vice Chair of the Gabrielino/Tongva Indians of California Tribal Council addressed the Board. He stated that the land of this project is theirs, basically and traditionally, which is all documented. Mr. Rosas stated that he has talked with Mr. Wright who provided Mr. Rosas with requested documents. Mr. Rosas expressed concern that the Native Americans have lost a lot of land, that a lot of land needs to be saved and expressed support for the preservation of the property. He stated that their main objection and concern to this transaction is the way it was proposed and lack of communication with the Tribal Council. Mr. Rosas stated that the Native Americans are protected under CEQA and the Public Resources Code and that those don't seem to work, adding that another burial site was dug up last week at Playa Vista. Mr. Rosas stated that someone cited the letter from Mr. Larry Myers, but in the second sentence of the letter, referring to both the Playa Vista area and Ahmanson Ranch property, both areas contain extremely sensitive Native American cultural sites. He added that in his review of documents faxed to him, there were only two references to historic or cultural resources, yet there was great detail about other aspects of the project and feels they have been left out of the process. He stated that several archeological sites in the Playa Vista area are eligible for listing on the national register for historic places, which usually triggers a 106 consultation, which has not happened. He stated that the area also contains the Ballona Lagoon archeological district, and that district has been determined to be eligible for the national register and is listed on the State register. He stressed the importance of protecting their burial sites and cultural resources and requested they be more involved in the project and their concerns acknowledged ahead of time, and under those conditions they would then lift their opposition to the project. Mr. Rosas provided written comments for the record. (See Attachment B).

At this time Mr. Flores welcomed Assembly member Patty Berg.

Mr. Wright stated that he and Mr. Rosas talked recently and that the Board received a letter from the Native American Heritage Commission in strong support of the acquisition and identifying the area of Playa Vista in total as having cultural resources on it. Mr. Wright stated he is not personally aware of any specific sites on the property that are part of this acquisition, that the State is aware of three

scattered shell sites, and that there may be other information the State is not aware of but is certainly interested in obtaining. Mr. Wright stated that because this project is an acquisition, it does not cause any physical change to the land or the

environment does not trigger the 106 consultation requirements that Mr. Rosas has talked about. He added that as Mr. Donnelly discussed in the presentation, one of the primary goals of the restoration that will be led by the State Coastal Conservancy is to protect cultural resource values that may exist on the property. Mr. Wright agreed with Mr. Rosas before the Board meeting that he would convene a meeting in the near future if it was possible to get all of the parties together with the State Coastal Conservancy and the Department of Fish and Game, who would be managing the property, to meet with Mr. Rosas and hear his concerns more specifically so that when the State Coastal Conservancy begins the restoration planning we have made certain that we have incorporated in the public process the concerns of the Native Americans. Mr. Rosas stated that when there are test digs on the property, the soil is going to be disturbed and that is when there are usually archeological finds. He stated there are archeological sites recorded on this property and a number of others that are not recorded and that is why, when they are consulted, the Council can advise the State of those sites, otherwise the sites are confidential. He again stated that is their issue - it is required that they be consulted.

Mr. Hight agreed with Mr. Wright's statements that the Department of Fish and Game will be happy to work with them in resolving their issues. Mr. Rosas expressed appreciation for the opportunity to further discuss their concerns.

Ms. Leslie Purcell addressed the Board and expressed appreciation to the State, the Trust for Public Land and the many people that have worked on saving the Ballona Wetlands. Ms. Purcell stated she is a member of the Sierra Club and that she has worked with many of the local groups in Los Angeles to try to save the wetlands. She expressed support for the State acquiring the land and considering parts of Area D that are not yet entitled. She stated that she is concerned about the amount of money being spent on this proposal comparing it to the amount of money being spent on the Ahmanson Ranch proposal. Ms. Purcell reported that there are toxic issues that have been skimmed over, old oil field gases and residues in that area, and most of the land west of Lincoln Boulevard is a wetlands area that is not very developable. She commented that she understood the State has an appraisal process but when she looked at the Ahmanson and Grizzly Creek properties, the developer was willing to take a substantially less figure and get a tax benefit, \$20 million for Ahmanson and \$6,300,000.00 for Grizzly Creek, whereas Playa Vista is only taking \$1 million off and still trying to get a tax benefit. Ms. Purcell stated that Playa Vista is also released from a traffic mitigation they were supposed to do which was a bridge and road project that would have cost about \$10 million. She stated they were also supposed to do the wetland restoration at the west end of the wetlands, maybe \$13 million, at the end of the development process they were required to do that restoration. She stated she has been working with several people to save the Ballona west bluff, located above the freshwater marsh. She reported the bluff is being graded at this time and burials are being uprooted and being taken off the site. Ms. Purcell again expressed concern to please consider the bluff area for acquisition.

Mr. Tom Francis, Executive Director of the Ballona Wetlands Land Trust, stated that

since 1994, the sole mission of the organization has been to facilitate the acquisition and preservation of the entire Ballona wetlands ecosystem. He reported that the Trust has several concerns about the way the State is approaching this acquisition, but also has suggestions on how, in the future, the State can do a better job on acquisitions, get more land for the taxpayer and therefore do better for the environment. Mr. Francis stated that the Trust supports acquisition of the Ballona Wetlands in concept, but feels the State should be acquiring the entire ecosystem, not just part of it, adding that there are still 350 acres on the other side of the street that are threatened by development and not part of this proposal. He stated that the Trust urges the Board to postpone this acquisition so that the State has an opportunity to renegotiate it so that the taxpayers get a fair deal and the State do something that truly protects the environment from the threat of development. Mr. Francis commented that this acquisition will likely generate significant interest in reevaluating the State's acquisition policy so that the State can stop competing with itself by overpaying for a small part of land that needs protection while leaving other ecosystems to be paved over due to lack of acquisition funds. He stressed the environmental community and the State need to face the fact that we have a small amount of money relative to the amount of land that needs to be purchased and there is a need to reevaluate how we approach purchases.

Mr. Jim Metropulos, representing the Sierra Club California, addressed the Board and read a prepared statement in support of this proposal. (See Attachment C)

Mr. Rex Frankel, President of the Ballona Ecosystem Education Project, addressed the Board in support of the proposed preservation of this area and expressed concern regarding the purchase price of the property. He stated that the Ballona Ecosystem Education Project is the second oldest group that has been working on the Ballona Wetlands issue and that he has been working since 1985 to save the Ballona Wetlands, uplands and open space around it. Mr. Frankel stated he is also a member of the Executive Committee of the Sierra Club of Los Angeles. He praised Governor Davis for his support of this proposal. Mr. Frankel expressed concern regarding the amount of money the State was paying for this acquisition thereby possibly hindering the State's ability to acquire other properties, including Ballona Bluffs, Palos Verdes Peninsula and Santa Clarita Valley in the Newhall area. Mr. Frankel stated that Ballona Bluffs and the Newhall Ranch area face imminent threat of development while the Ballona properties being considered today face enormous regulatory hurdles to build anything, have no permits and may take many years of litigation. He stated that it will take years for permits to be issued and therefore they are concerned that the purchase price may be excessive for the amount of property being acquired in comparison to the Ahmanson Ranch proposal. Mr. Frankel commented that he felt Playa Vista and their supporters are using the panic of the recall to press Governor Gray Davis into making a bad deal for the taxpayers even if it is good for the environment. Mr. Frankel stated that the Board should reconsider the transaction and urge Playa Vista to accept a fair price and save more land.

Ms. Marsha Hanscom, Executive Director of the Wetlands Action Network, addressed the Board in support of this project. She reported that she also serves

on the National Board of Directors of the Sierra Club and wanted to clarify that Mr. Jim Metropulos was the official spokesperson from the Sierra Club regarding this proposal. She reported that their National Board of Directors passed a resolution in support of this acquisition last week at its annual meeting. She stated that Wetlands Action Network is one of the cofounders of the Citizens United coalition to save all of Ballona Wetlands, with 110 groups participating in that coalition. She stated that over the past 30 years, thousands of people have been involved in various ways to protect the Ballona Wetlands. Ms. Hanscom addressed Mr. Frankel's and Mr. Francis' comments regarding issues about entitlements and that the developers could never get permits on this land. She stated that those comments were not entirely accurate and that there are some entitlements on the property from a settlement several years ago and that there is an underlying land use plan where the Coastal Commission would have been required to permit hundreds of houses, a marina and residential units to be built on this land. She added that while there have been some changes in the law or clarifications in the law, there is no question in her mind that after attending many Coastal Commission hearings, the developers would get permits to build something on this land. She stated that development on this land is not acceptable and that it should be protected for the public. She again expressed their support for this proposal and that the management of the property will improve under the Department of Fish and Game and the Trust for Public Land and not stay the same as was mentioned earlier. She stated that they wanted to make sure, before closing escrow, that all of the agreements that are detailed in the purchase agreement are made available to the public; all of the agreements about the parking lots that were originally built for the 1984 Olympics are still there. She commented that today's proposal regarding Grizzly Creek is related to Ballona Wetlands because the Marbled Murrelet, the endangered bird that nests at the top of the redwoods, has actually been seen on several occasions at Marina Del Rey adjacent to the Ballona Wetlands, and that if we restore these wetlands and give the birds more space, we are helping endangered species that travel up and down the Pacific Flyway. She commented that these two acquisitions will be a legacy to Governor Davis and his administration.

Mr. Hight thanked Ms. Hanscom for seeing the connection between the two parcels and that the Department of Fish and Game is very excited about the combination of the two acquisitions.

Ms. Victoria Rome, Policy Analyst with the Natural Resources Defense Council (NRDC), addressed the Board in support of this proposal. On behalf of California's 110,000 members, she asked the Board to approve this proposal. She submitted for the record a copy of a Commentary by Mark Gold and Joel R. Reynolds, Southern California colleagues, which appeared in the Los Angeles Times on July 21, 2003, and provides further detail on all of the reasons why the NRDC supports acquisition of this property and Ahmanson Ranch. (See Attachment D)

Mr. Reed Holderman, Vice President and Regional Director for The Trust for Public Land (TPL), addressed the Board in support of this proposal. Mr. Holderman stated that the TPL is the only national nonprofit land conservation organization dedicated to conserving land for people, no matter where they live. Mr. Holderman stated that

The Trust for Public Land has been in existence for over 30 years and saved over 1.5 million acres in the United States and over 250,000 acres here in California. Mr. Holderman stated that over the past two years his organization has had the pleasure of working with the Board staff, the Department of General Services, Playa Capital and the environmental community to create an opportunity for public purchase of the Ballona Wetlands. This opportunity has been over 20 years in the making, involving studies, land use and public hearings, appraisals and lawsuits. Mr. Holderman stated that the Ballona Wetlands is probably the most analyzed and thought over property in the State and believes that the proposal offers the best chance of saving the portion of Playa Capital's ownership that can be reclaimed and restored as a fully functioning wetland. He added that most groups and elected officials at all levels of government support the Board's acquisition of this property. He stated that the overwhelming support stems from the fact that the Los Angeles area has experienced incredible growth and urbanization without providing the necessary open space and outdoor recreational opportunities to meet the social, recreational and spiritual needs of the community. Mr. Holderman reported that in 1950, the population of New York City was eight million people and Los Angeles County had four million people, and in 2000, New York City still had eight million people, but Los Angeles County had grown to ten million people, an increase of 150 percent. He stated Los Angeles is now known as one of the most "park poor" cities in the United States and the natural areas in Los Angeles are disappearing at an alarming rate. He explained that Southern California has lost all but 10 percent of its historic wetlands and Los Angeles County has been even harder hit with only two to three percent of Los Angeles County's wetlands remaining. He commented that this acquisition is so important to the fragile chain of wetlands dotting California's coast because it will more than double the current wetland supply in Los Angeles by making approximately 500 acres available for wetland restoration. Mr. Holderman stated that the purchase of Ballona Wetlands is arguably the most significant wetland acquisition on the south coast during the last twenty years. He stated this acquisition will also reaffirm a commitment made by Governor Davis to create and expand open space. He reported that the land use plan for the subject properties was approved twice by the City and County of Los Angeles and the California Coastal Commission calls for intensive residential, commercial and visitor serving development on these graded and historic wetlands. The California Coastal Commission signed an agreement a few years ago to expedite project permits and has already approved several infrastructure projects that reference the larger unbuilt development on the subject properties. Mr. Holderman stated that if the Board did not approve today's proposal, Playa Capital will proceed with efforts toward development. He added that The Trust for Public Land enthusiastically supports the recommendation to approve this proposal.

Ms. Susannah Churchill, Preservation Advocate with Environment California, addressed the Board in support of this proposal. She stated that they have been involved in the effort to save Ballona Wetlands since 1996. On behalf of Environment California, she expressed appreciation to the Davis administration, Senator Bowen and Assembly member Nakano for taking action to preserve Ballona Wetlands. She commented that they believe these lands will be valuable as wildlife habitat and as open space in a part of the State where over 95 percent of the

wetlands have been destroyed by development. She added that they also believe \$140 million is a lot of money, that protecting the land is priceless and urged the Board to approve this proposal. She presented for the record a Position Statement representing over 40 groups and individuals in support of this acquisition. (See Attachment E) Ms. Churchill also submitted for the record a response to the Ballona Land Trust Position Paper outlining why the State is justified in moving forward on this proposal. (See Attachment F)

Dr. James Landry, representing Ballona Wetlands Foundation, expressed support for this proposal and their desire to assist the State, especially through the expertise of their science advisory board in the planning and eventual restoration of the salt marsh. He stated that he also represented Loyola Marymount University and expressed the University's support of the acquisition of this land, both as a neighbor and community member. Dr. Landry stated that for many years they have been involved in a variety of activities in the wetlands, from workshops to research, and will be happy to provide assistance to the State in the restoration of the wetlands. He stated that they viewed the wetlands as a great site and opportunity to help education and train their scientists as well as all of their students about the importance of the wetlands and environment in their lives.

Mr. Flores asked if there were any further comments or questions.

Mr. Hight stated that in 1985 Governor Davis, at that time State Controller, became involved in this project and has been heavily involved ever since with the goal in mind of trying to figure out how to preserve and restore as much of the wetlands as possible. Mr. Hight stated that this area has been appraised and reappraised and that he is exceedingly comfortable with the appraised value and that it is fair, just and equitable. He thanked the local activists who have worked through the years and spent many hours to get to this point.

Mr. Flores requested Mr. Wright address some of the issues regarding toxics, Area D, full disclosure of documents, etc. Mr. Wright discussed the property value and stated that no one wants to pay more for the property than they have to, including the Wildlife Conservation Board. He reported that the State must adhere to strict processes in order to make value determinations. He stated that the Trust for Public Land contracted for an appraisal and once that appraisal was done, the Wildlife Conservation Board contracted with another private contractor, also licensed by the State to review the appraisal. Once the review was done, both documents were given to the Department of General Services, who has authority and the mandate to approve all appraisals for the State before we approve the acquisitions. After consultation with others, Mr. Wright felt it would be appropriate for the State to contract with yet another contractor for another appraisal. Another appraisal was done, the fair market value was determined by that appraiser, which came in \$10 million less than the first appraisal that was contracted by The Trust for Public Land. Mr. Wright addressed issues regarding toxics that may or may not exist on the property. He stated that The Trust for Public Land paid for an extensive environmental site assessment done by a contractor, URS, and that report has been made available for public review. Mr. Wright has asked the contractor to update the

site assessment for better interpretation of the data contained in the report and may ask URS to do additional sampling. He stated that, from what is known at this time, there is nothing on the property that would cause the Board concern, that we would ask Playa Capital to pay for remediation since everything we know about the property relative to toxics occurred on the property long before their ownership. He stated there are hydrocarbons in the soils because of the approximate 22 old oil wells, most are currently operated by Southern California Gas Company, either as monitoring or as wells, to inject and withdrawn natural gas from the property and they will have continuing responsibilities in that area. Mr. Wright stated there is an issue about an old agricultural dump and sampling in that area. He stated that from what we know about it today, they have not detected any pesticides even though apparently a pesticide was used on the celery grown in the area and fuel oil might have been used as the celery was discarded to reduce the amount of odor. He stated that none of those contaminants were found in the testing and URS is continuing to evaluate whether or not they need to go in and resample those sites. He added that there were also some heavy metals found, and it is believed some of that is a result of dredge spoils on the property. Mr. Wright stated there is also the issue of soil gases, the methane gas, which some believe would preclude Playa Capital from developing the property and ultimately reducing the value of the property. Mr. Wright passed around a map showing soil gases from a survey of the property and he stated most of the soil gases are in Area D, where Playa Capital is presently developing and very little is found or known to exist on the areas that are the subject of this acquisition. Mr. Wright stated that he has spoken to Southern California Gas Company staff because there have been allegations over the years from people that the gas reservoir that exists 6,000 feet under the ground is leaking and there are gases coming to the surface. In addition to the gas company and Playa Capital investigating that, the City of Los Angeles has also investigated the issue and everybody has come to the conclusion that there is no connection between the underground gas reservoir and the soil gases which is natural occurring methane that appears in several areas in Southern California. Mr. Wright pointed out that the worst gas occurrences are in Area D, and both the city and the county have building codes that provide for construction in those areas by the use of mitigation measures such as venting and impervious soil membranes so that they protect people that live in those areas. He stated that both the Board and the appraiser feel that would have no impact on the value. Mr. Wright addressed zoning and planning. He referred to previous testimony by one of the speakers where they stated there are no entitlements on the property and other speakers have said there are.

Mr. Wright reported that one of the issues in the first appraisals was whether or not there was adequate investigation with the permitting authorities about entitlements and the risk that Playa Capital or the landowner was taking in proceeding with building. Mr. Wright stated that the appraiser discovered in his review regarding entitlements, and by speaking with city and county staff, also talking with the Executive Director, Chair and voting members of the Coastal Commission, that in 1984 there was a land use plan that was approved and it has been resubmitted to the Coastal Commission and accepted by the City of Los Angeles and the County of Los Angeles. He stated that everybody recognizes this will be a difficult place to

develop. In addition to that, because of legal challenges, there was a settlement agreement in 1994, Friends of Ballona Wetlands vs. the California Coastal Commission, in which there were specific agreements reached about building density, building heights and several other things. Mr. Wright stated that these were all taken into consideration by the appraiser in developing the highest and best use scenario of the properties. Mr. Wright stated the appraiser made certain that the proposed development scenario was also compliant with the Bolsa Chica decision.

Mr. Wright stated that discussions with and correspondence from the City and County indicate that they believe that once the applications are perfected, that permits would be issued within a period of about 18 months. Mr. Wright stated that he talked with the appraiser this morning on the issue of litigation because in a conversation with one of the speakers a couple of days ago they raised the issue of how could one assume the litigation would be resolved in a year to a year and a half, and therefore asked what he took into consideration to come to that conclusion. The appraiser advised him that he recognized this is a difficult property to develop, but no more difficult than Area D, where special construction techniques are being used now by Playa Capital to construct. There was a boat basin proposed in one development scenario and this appraiser took that out. He stated that there was a cluster of wetlands, the appraiser drew a line around those wetlands and put a 100 foot buffer on it and assumed that most of the rest of the property could be developed. The wetlands delineations that have been approved previously totaled approximately 25 acres on Area B residential and on Area A this appraiser set aside a total of about 65 acres, so the appraiser believes he has created plenty of room to protect wetlands, provide buffers and open space that are necessary, and if there is mitigation required as a result of the proposed development scenario that he assessed, it could be done on site. Mr. Wright stated that in the end, the appraiser said that in the event litigation went beyond the estimated period, the profit margin that he built into the appraisal would still take care of the additional litigation time. Mr. Wright explained that, in other words, if someone were to go to Playa Capital today and offer them what the State is proposing to pay and they develop this out to where they have a lot ready to sell on the open market to build, there is a huge profit margin built into the appraisal. Mr. Wright went on to say that the appraiser believes that even though this property is appraised at \$140 million, we are dealing with the Los Angeles market and he believes it is a very reasonable value which was approved by the Department of General Services. Mr. Wright acknowledged that when this large amount of money is taken out of a source to purchase and do restoration work, it will have an impact on our ability to purchase other properties in Los Angeles. He stated the funds are coming out of Prop 50 money designated specifically for Los Angeles and Ventura Counties. He stated that another issue that was raised is why we don't buy other lands that Playa Capital may be proposing to develop or other lands that may be held by other parties. Proposition 50 specifically states that we will only purchase land from willing sellers and buyers. Mr. Wright stated that, as far as he knows, this Board has never tried to force a landowner to sell something they don't want to sell and that we are in the business to work with willing sellers and we try to negotiate fair deals for the State and the public, and for the landowners as well. Addressing Ms. Hanscom's question regarding whether or not all of the agreements will be available for the public to view before we close

escrow, Mr. Wright stated that once we complete those licenses, which the Department of Fish and Game will be working with Playa Capital and the WCB on, he did not see any reason why we could not make those available to the public.

Mr. Wright stated that it will be important that we have a strong partnership with the Department of Fish and Game, they are going to need a lot of local support and we hope they will continue to be there after we acquire the property. He added that this acquisition presents a tremendous opportunity to save a large open space in Los Angeles and that the planning and management is done so that there is consensus about how we move forward.

Mr. Flores requested clarification regarding full public access. Mr. Wright stated public access would be decided by the planning process. The Department of Fish and Game will have many discussions regarding that aspect and he assured everything possible would be done to make the property available for public access. Mr. Hight stated there are issues regarding safety and the adjacent Ballona canal, but he assured they would work on providing as much public access as possible. Mr. Wright reported that during his site visits to the wetlands, he observed many students in the area, that there is already a lot of environmental education going on in the community and he expects to continue to see that in the future.

Staff recommended that the Board approve the acquisition of Area A, B Residential and Ballona Wetlands Parcel as proposed; allocate \$140,000,000.00 from the Water Security, Clean Drinking Water, Coastal and Beach Protection Fund of 2002 (Prop. 50), Section 79572(b) to cover acquisition and project expenses; authorize acceptance of any and all interests in Area C, the freshwater marsh, and the expanded wetland parcel, as appropriate; authorize transfer of the property to the appropriate managing entity as identified at the end of the restoration planning process; authorize staff to enter into appropriate agreements as necessary to accomplish this project; and authorize staff and the Department of Fish and Game to proceed substantially as planned.

It was moved by Mr. Robert Hight that the Board approve the acquisition of Area A, B Residential and Ballona Wetlands Parcel as proposed; allocate \$140,000,000.00 from the Water Security, Clean Drinking Water, Coastal and Beach Protection Fund of 2002 (Prop. 50), Section 79572(b) to cover acquisition and project expenses; authorize acceptance of any and all interests in Area C, the freshwater marsh, and the expanded wetland parcel, as appropriate; authorize transfer of the property to the appropriate managing entity as identified at the end of the restoration planning process; authorize staff to enter into appropriate agreements as necessary to accomplish this project; and authorize staff and the Department of Fish and Game to proceed substantially as planned.

Motion carried.

Mr. Wright expressed appreciation to the many people who worked on this project.

From: Peter H Flournoy
Sent: Thursday, August 24, 2017 10:35 AM
To: FGC
Subject: REQUEST FOR EXPERIMENTAL GEAR PERMIT FOR OCTOPUS

Dear Sirs:

Attached is a letter which Sonke Mastrup was supposed to present to the Commission for your June Meeting. Somehow it was misplaced and since then we have not been able to track down its whereabouts. Would you please consider it expeditiously at your next Commission meeting. We will also be submitting for consideration at that meeting a petition to change the rock crab permit regulations to allow octopus to become a directed species under those regulations as contrasted to an allowable bycatch which I understand to be the current consideration.

Please do not hesitate to contact me if you have any questions, Thank you, Peter H. Flournoy

PETER H. FLOURNOY
International Law Offices of San Diego
740 North Harbor Drive
San Diego, CA 92101
619-232-0954
619-203-5349

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740 NORTH HARBOR DRIVE
SAN DIEGO, CA 92101-5806
established 1989

FACSIMILE

619.923.3618

PETER H. FLOURNOY

June 14, 2017

Re: Request for Experimental Gear Permit to Fish Octopus

Dear Commissioners:

My client's name is **Dan Major**, and he has been a commercial fishermen licensed by the State of California for twenty (20) years. The purpose of this letter is to ask that Dan be allowed to start the process, with the approval of the California Fish and Wildlife Commission, to obtain an experimental gear permit for an octopus fishery. I understand that the Commission is encouraged to develop new types of commercial fishing gear and new methods of using existing gear by the California legislature.

Over the years Dan has been a commercial fisherman, licensed for and still is involved in the following fisheries: Southern rock crab, nearshore fisheries, lobster, open access ground fish, and highly migratory species. Over the last several years he has been getting a lawful incidental bycatch of octopus in his crab fishery. As you may be aware, octopus is becoming more and more popular in California restaurants. Dan believes there is a healthy octopus resource off the shores of Southern California, and perhaps elsewhere off California, which could be harvested by California fishermen. In other countries octopus is caught in clay pots which rest on the ocean bottom and are marked by a buoy. That would be the subject of the experimental gear permit.

Another possibility for an octopus fishery would be to make it an allowable *target* species for those who possess Southern rock crab permits. I am not sure how this would be handled by the California Fish and Wildlife Department; however, Dan would be willing to work with its staff on this possibility also. Nevertheless, since clay pots would be such a benign gear type, it might be preferable to follow the experimental gear permit process initially.

Dan has given the possibility of an octopus fishery a substantial amount of thought, and he has already researched several of the scientific studies on octopus and on different techniques for harvesting them. He has also explored the possibility of marketing octopus here in California and has been encouraged by the results.

Thank you for your consideration of Dan's request for an experiment gear permit and we look forward to hearing from you.

Sincerely,


Peter H. Flournoy

Cc: Dan Major

letter to Commissioners

Steve McCormick [REDACTED]

Mon 9/18/2017 3:41 PM

To:FGC <FGC@fgc.ca.gov>;

1 attachments (39 KB)

CFG Commission letter.pdf;

The attached letter is a comment on waterfowl hunting regulations.

Thank you
Steve McCormick

Steve McCormick

Los Altos, CA 94022

Date: September 18, 2017

Members, California Fish and Game Commission
1416 Ninth St. Room 1320
Sacramento, CA 95814

Dear Commissioners:

I'm writing to urge the Commission to reduce the daily bag limit for mallards beginning with the 2018/19 season, given the perilously diminished breeding population in California, after years of steady decline.

The 2017 California Waterfowl Breeding Population Survey conducted by DFW reveals that "the total breeding population of ducks in the survey area was down 28% below the long-term average. Mallards (*Anas platyrhynchos*) were down 42% below the long-term average." Further in the Survey it is reported that: The most notable decrease [in mallard populations] occurred in the Sacramento Valley stratum, where the population was estimated at a record low 31,000, *73% below the long-term average* [emphasis mine]."

This downward trend in breeding populations of mallards is very alarming. The Fall 2017 issue of the magazine of the California Waterfowl Association, reporting on the survey, observes, "The mallard count matters because about 70 percent of the mallards we kill are California mallards." Elsewhere the article notes: "reduced nesting and brooding habitat is more than likely the driving force" behind the downward trend in mallards.

Clearly, hunting pressure -- esp. early in the season, before migrating birds arrive -- is contributing significantly to the downward trend. As the Survey reveals, the decline is especially precipitous in the Sacramento Valley. Which is not surprising, given that more ducks are shot at in the Valley than anywhere else in the state. In any event, if indeed there is reduced nesting and brooding, and we're shooting so many of a *diminishing number* mallards, a seven-bird limit is wholly unjustifiable.

I have been a passionate waterfowl hunter since I began hunting ducks in California in the 1960's. I am also a passionate conservationist, having spent over thirty years working in the sector, mostly with The Nature Conservancy. I worked closely with the Department over many years to help create several refuges and hunting areas. As a hunter and a conservationist, I ask you to do the right thing: reduce the daily take of mallards to no more than three birds. If we don't do so, we run the very real risk of getting to where we are with pintails: one male per day.

Sincerely,



Cc: Chuck Bonham, John Carlson

FGC

From: refishsb
Sent: Thursday, September 28, 2017 10:48 AM
To: FGC
Subject: EFP Letter of interest
Attachments: RonEllisBoxCrabLtr9-28-17.docx

Please accept this letter of interest for an experimental fishery permit for the Box crab in California.
thank you,
Ron Ellis

Sent from my Verizon, Samsung Galaxy smartphone

September 28, 2017

Ron Ellis
F/V DEFIANCE

Mr. Eric Sklar, President
And Commissioners
California Fish and Game Commission
P.O Box 944209
Sacramento, CA 94244-2090

RE: EXPERIMENTAL FISHERY PERMIT FOR BOX CRAB, *Lopholithodes foraminatus*

Dear Mr. Sklar and Commissioners:

I am writing to express my interest in working with the Department of Fish and Wildlife to develop an experimental fishery for the brown box crab, *Lopholithodes foraminatus*. In the course of my fishing for rock crab, I have occasionally taken box crab in my rock crab traps. When I bring them to market, this specialty crab has piqued interest at high-end market levels. As such, a low-volume high-value fishery for this species may bring a novel crab to market, assist in fishery development, and satisfy a market demand for this specialty crab. As you aware, the concept of low-volume, high-value fisheries is one embraced, even endorsed, by the ocean conservation community, including The Nature Conservancy.

I have over 20 years experience fishing rock crab, so have the expertise to assist the department in looking into this fishery. I would imagine that this experimental fishery project would fall under the provisions of newly enrolled legislation (AB-1228) amending the California Fish and Game Code, specifically:

FGC Sec. 1022 (g)(1) "Compensation fishing" means fishing conducted for the purpose of recovering costs associated with resource surveys and scientific studies that support the management of a fishery, or fishing that serves as an incentive for participation in those studies. Compensation fishing may include fishing before, during, or following those surveys or studies.

And

FGC Sec. 1022 (g)(3) "Exploratory fishing" means fishing to collect data or conduct other research, typically to provide information that could inform the potential opening of a new fishery or an area currently closed to fishing."

I have spoken with Sea Grant Marine Advisors in this region and Sea Grant Extension is highly interested in collaborative research to gain important biological information on the brown box crab, and willing to work with me on the project. With Sea Grant Extension's expertise in collecting relevant population biology information on the species, the project is assured of getting the right information in

place should the commission decide, down the road, that this would be a good new fishery. I have worked with Sea Grant Extension on two different projects in the past collecting data on the rock crab fishery over the last 8 years. Data included sex ratio by size class, spatial distribution and abundance.

I am also in the process of contacting a crustacean biologist at the University of California, Santa Barbara, Marine Science Institute, who has worked extensively with Sea Grant, with rock crab, and other relevant research, who may also provide valuable expertise in data collection and analysis.

With these scientific underpinnings, I believe that we have an excellent chance to pursue opening a new sustainable, low-volume, high-value fishery for California. I urge you to direct Department staff to contact me at the earliest opportunity to further this experimental fishery permit request. I can be contacted at any time via the information on the letterhead, above.

Thank you for considering this request.

Sincerely,



RON ELLIS

F/V DEFIANCE

Stop the hunt!

john kovach



Sat 8/19/2017 11:34 AM

To:FGC <FGC@fgc.ca.gov>;

Hunting the Roosevelt elk during their mating season is absurd because it is crucial to their survival! They are endangered! Please don't hunt these majestic creatures to extinction!

Re: New falconry regulations

From: Fred Seaman [REDACTED]
Sent: Thursday, August 31, 2017 6:48:02 AM
To: FGC
Subject: New falconry regulations

Let the law suits begin.

Despicable violation of constitutional rights, civil rights and creates a danger to wardens and civilians.

Do you not understand that there are falconers who are veterans (not me) who have PTSD and when confronted by a man with a gun may defend himself as the constitution permits.

--

Fred Seaman
[REDACTED]

P.E.T.A

Raymond ` Levy



Mon 9/18/2017 1:26 PM

To:FGC <FGC@fgc.ca.gov>;

Dear commission, My name is Raymond Levy, and I have hunted here in California all of my adult life, on September 15 , 2017 I and my wife went into the Mendocino national forest , Tehama county above the little town of Paskenta to hunt on opening day of deer season, and to meet up with other people that where to come and meet with us opening morning September 16 2017, the evening of the 15 September I was talking to some fellow campers that where set up about 80 yards away from our camp site , I was not in camo , gust jeans and a tee shirt , as the conversation went on , they told me that they where part of the P.E.T.A organization , and that they are beating the hunters at their own game, I did not tell them that I was there to hunt on opening morning, the group was about 15 strong, they had confided with me that the P.E.T.A organization had paid for them to go to hunters Ed , and then go and perches hunters lic, and deer tags , 1st and 2nd tags ,they bragged about it and told me that because of them 30 deer lives where saved , and they showed me their tags, now this was gust one small grope of people, but how many more of them are doing the same thing?? this is vary disturbing to me, because this is legal for them to do. and true hunters will suffer because they are buying as much tags as they can, this has got to stop.. and we must stop it , how , I do not know how, but it has to, the next morning opening day I came out of my tent in full camo and with my rifle , the P.E.T.A people where dumbfounded to see that I was a hunter, and knew that I knew their secret , my group and I went on the morning hunt, and when we got back to camp for lunch , the P.E.T.A people where gone all of them, they packed up all of their gear and left, my feelings where that they did not want a confrontation, because we where ready to confront them, you have to do something about this, they P.E.T.A are nothing but domestic terrorist , and if need be real hunters will confront them, and the outcome will not be vary nice for them.....yours truly Raymond Levy P.S IT IS IMPORTANT THAT YOU DO SOMETHING ABOUT THIS.....

With all the possible restrictions nobody will be buying a license before long.

Bill Corkery



Wed 9/20/2017 3:51 PM

To:FGC <FGC@fgc.ca.gov>;

Sent from my iPad

.



Supporters for Del Norte Roosevelt Elk

Like us on Facebook: supportersfordelnorteroosevelt.org

Crescent City, CA

Sept. 16, 2017

Ms. Valerie Termini, c/o Fish and Game Commission

P O Box 944209

Sacramento, CA 94244

Dear Wildlife Branch,

This letter is sent to your attention as a prelude to the approaching FGC meeting next month to determine the 2018-2019 hunting regulations as they pertain to Roosevelt elk in Del Norte County.

It is my hope that the poor decision that was made by the FGC to allow a "general hunt" of Roosevelt elk bulls (in Del Norte County) during the peak of "the rut" in 2017-2018 will NOT be repeated. I understand that the DFW, the Northern Region Wildlife Management Program, and the Wildlife Branch make recommendations regarding the fate of the Roosevelt elk for the approaching 2018-2019 hunting season.

If you/FGC plans to repeat the aforementioned poor decision, then I request that you/FGC provide scientific research and data that supports you/FGC's approval of another "general hunt" of Roosevelt elk bulls (in DNC) during the peak of "the rut" as practicing "good stewardship" for the public to review.

In addition, I think it is important for the public to know population counts for bulls and cows (in these very small herds in DNC) that you/FGC plans to permit hunting. I think this data is critical to determine hunting quotas and has NOT been provided for previous hunting seasons. It makes me wonder if you/FGC have ever had the statistics when the quotas are established? As far as I know, to date, there is NO official count of Roosevelt elk in DNC. So then, what population information (if any) is being used? Is it ever a consideration

RECEIVED
CALIFORNIA
FISH AND GAME
COMMISSION
2017 SEP 21 PM 1:00

that the percentage of Roosevelt elk bulls is about ½ the number in hunted herds (compared to the bulls living in the wild)?

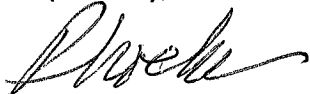
According to public records, it appears that the commissioners on the FGC are the same people as those who serve on the Wildlife Resources Committee. If public records are correct, none of the commissioners on the FGC have a college degree in the biological sciences. Further, if public records are correct, the commissioners on the FGC lack experience in employment in wildlife management.

If you/FGC are making "life and death" decisions regarding any species (particularly the Roosevelt and tule elk-both thought to be extinct species at one point in history), then you/FGC needs to be accountable for their ignorance of nature's laws of "natural selection". If "natural selection" was understood, then it is obvious how critical September is for the Roosevelt elk and what bad timing a "general hunt" of Roosevelt elk bulls is. In my opinion, to practice good stewardship, you/FGC's decisions need to be supported by scientific research and data. I want to read it.

Proceedings of the National Academy of Sciences published that there appears to be signs that this planet is in an irreversible decline of "mass extinction" caused by the destruction of the animals' habitats, pollution, and climate change-to name a few. This study is co-authored by two scientists from Stanford University. I think that is a very credible reference. They have the scientific data that supports this study. It is the same method used by the International Union for Conservation of Nature. They found that 30% of all land vertebrates have declining populations and that 70% of the populations of mammals are declining around the world due to habitat loss.

Are you/FGC are going to be part of the problem or part of the solution?

Respectfully,

A handwritten signature in black ink, appearing to read 'Phoebe', with a stylized, flowing script.

Phoebe Lenhart

LAW OFFICES OF BRIAN ACREE

5042 WILSHIRE BLVD #38524

LOS ANGELES, CA 90036

(510) 517-5196 TEL

(510) 291-9629 FAX

August 28, 2017

VIA ELECTRONIC MAIL

Valerie Termini

Executive Director, California Fish and Game Commission

1416 9th Street, Suite 1320

Sacramento, CA 95814

Email: valerie.termini@fgc.ca.gov

RE: Request for public records and reconsideration of petition (Gov. Code § 11340.7(c))

Dear Ms. Termini:

I represent the Ballona Wetlands Land Trust, a 501(c)(3) non-profit organization dedicated to the protection of the Ballona Wetlands. On June 21, 2017, the California Fish and Game Commission ("Commission") voted to deny my client's petition to strike a provision from the regulations governing the Ballona Wetlands Ecological Reserve that currently allows parking in the reserve for vehicles of Los Angeles County and also many private businesses. This result was based on a staff recommendation claiming that the parking in question provided a public benefit. My client subsequently requested all records from the Commission used to support either the staff recommendation of the Commission vote to deny the petition. On July 26th, 2017, the Commission provided my client with responsive e-mails and other records, but provided no indication that any records had been withheld pursuant to exemptions outlined in the California Public Records Act. The disclosed e-mail records referenced conversations between Commission staff and the staff of other agencies, namely the State Coastal Conservancy and the California Department of Fish and Wildlife. Also on July 26, 2017, my client requested any handwritten or typed notes from those agency discussions. After multiple follow-up requests, the Commission responded that "[d]ocuments that consisted of staff notes were withheld from your response; those documents were withheld from your public records request because the legislature has designated them as exempt from disclosure in Gov. Code, § 6254(a)."

Gov. Code, § 6254(a) exempts from disclosure "[p]reliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure." (emphasis added) In such balancing tests, the burden is on the withholding agency to demonstrate that the public interest is better served by non-disclosure than disclosure. Additionally,

the Courts have generally found that only information that is “recommendatory” in nature will pass this balancing test, whereas information that is factual in nature is to be disclosed. (See for example *Citizens for a Better Environment v. Department of Food & Agriculture* (1985), 171 Cal. App. 3d 704, 217 Cal. Rptr. 504.)

My client is interested in any factual information provided to the Commission from these other agencies that could have contributed to the Commission’s staff finding that the parking in question, largely used for commercial purposes, provided a public benefit. The public has a fundamental right to understand all of the facts used to support the staff recommendation. Therefore, it is in the best interest of all parties for the Commission to voluntarily disclose these notes to the public at the earliest possible time.

Additionally, while my client appreciates that the Commission will include a discussion of the Ballona Wetlands Restoration Project for its October 11 meeting in Atascadero, California, my client believes that the Commission should also have an opportunity to revisit its decision regarding my client’s petition at that time. The Commissioners clearly lacked important information and context at the June 21 hearing that should have been provided in the staff report, such as the history of the parking lots, information regarding who was using the parking lots in question, for what purpose, and based on what financial arrangements, and also the market value of any consideration provided to the State of California in return for the parking. Due to the lack of substantive facts to support the conclusionary findings in the staff report, my client is exploring its legal options with regard to California Code of Civil Procedure Section 1085, which provides remedy for quasi-legislative decisions by an agency which “has acted arbitrarily, capriciously, or without evidentiary basis.” (*Concerned Citizens of Calaveras County v. Board of Supervisors* (1985), 166 Cal.App.3d 90)

However, the best interests of all parties would be better served if Commission staff reconsidered its “public benefit” finding and brought the petition back in front of the Commission for reconsideration with a more factually substantive staff report. As such, please consider this letter as a formal request, pursuant to Gov. Code § 11340.7(c), for the Commission to reconsider my client’s petition (#2017-002). Section 11340.7(c) allows 60 days for a request for reconsideration following the date of the decision involved. Although the decision in question was made on June 21, 2017, my client did not receive official notice until July 6, 2017 (a letter from Fish and Game Commission staff). Nor does the decision appear to have been published in the California Regulatory Notice Register pursuant to Gov. Code § 11340.7(d). If the Commission determines, despite this information, that the 60 day period for request for reconsideration has expired, then my client alternatively requests reconsideration of petition #2017-003, a similar petition heard on August 16, 2017 and denied on procedural grounds.

The request for reconsideration (of either petition) is based on the aforementioned lack of factual substance in the staff recommendations for denial. Specific examples of factual information that was missing from the staff recommendation is outlined below:

- Historical context: The staff recommendation provided Commissioners with no historical context for the existing regulation which currently allows commercial parking and parking by the County of Los Angeles within the ecological reserve. The Director of the California Department of Fish and Wildlife simply described the history as “complicated.” No

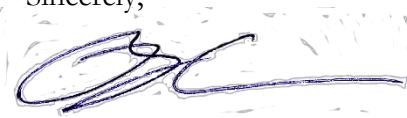
historical records were attached to the staff recommendation, such as the statement of reasons for the 2005 regulation change, the purchase agreement for the property, the text of the bond proposition which provided the funds to acquire the property, the local coastal plan, or any other factual historical record.

- Applicable permits and leases: The staff recommendation provided no information regarding whether the parking lots in question have valid Coastal Development Permits and provided no information about the leases which govern use of the parking lots. CDFW's Director acknowledged that he only came into possession of certain lease documents, obtained by my client via a public records act request, days before the August 16 hearing. The records in question were requested from the Los Angeles County Department of Beaches and Harbors by my client on April 12, 2017, and my client is investigating why Beaches and Harbors delayed disclosure of the documents until after the June 21, 2017 hearing, for which Beaches and Harbors was an interested party. That question notwithstanding, these documents should have been obtained by CDFW long ago, and obtained by Commission staff prior to recommending denial of the petition.
- Parking studies, logs of services, market value assessments: The staff recommendation provided no evidentiary support for its conclusionary assertion that the parking in question provided a public benefit. There was no information from any parking studies, no logs of services (or summaries of such logs) provided by the County agencies in question, and no discussion of the market value of the parking area.
- Regulatory context: The staff recommendation broadly discussed a "public benefit" without any discussion of the specific public purpose of the Commissions, which is independent from the public purpose of various departments of Los Angeles County, and certainly different than the commercial purpose of Fisherman's Village.

All of this information was more easily obtainable by the Commission and/or CDFW than by my client. Without this information, the Commission was unable to make an informed policy decision regarding a valuable natural resource. The Commission now has an opportunity to voluntarily remedy that mistake.

Please feel free to have the Commission's legal counsel contact me directly to discuss this matter further. My client is eager to resolve these matters of public interest in a way that is mutually beneficial to all parties.

Sincerely,



Brian Acree

Attorney for Ballona Wetlands Land Trust

California Fish and Game Commission
Tribal Committee (TC) Work Plan
Revised October 2017

Topic	Type	Goals	2017			2018
			Feb 7	Jun 20	Oct 10	TBD
			Santa Rosa	Smith River	Atascadero	
Special Projects						
Co-management	TC workgroup	Development of a vision statement and definition	X	X	X	
Regulatory/Legislative						
Formalizing Tribal Committee in statute	TC project	Legislative Bill	X	X	X	
Kelp and algae harvest management	DFW project	Recommendation and guidance	X	X		
Emerging Management Issues						
FGC Climate Policy	FGC policy	Development of a policy for the FGC. Looking for recommendations and guidance as we move forward.	X			X
Fishing communities	MRC project	Recommendation and guidance	X	X		X
Management Plans						
Marine Life Management Act (MLMA) Master Plan for Fisheries	Management framework document - part of MRC crosswalk	Updates on DFW process to amend the Master Plan for Fisheries, and identify areas of interest to Tribes	X		X	
Elk	DFW		X	X	X	
Informational/Special topics						
Cross pollination with MRC and WRC	Ongoing FGC committee coordination	Identification of tribal concerns and common themes that overlap between WRC and MRC.	X	X	X	
Annual Commission-Tribal planning meeting pursuant to Commission's tribal consultation policy	Annual FGC- Tribal coordination and consultation	1) Identify process to inform Tribes of anticipated regulatory and policy topics to be considered each year; 2) Identify tribal priorities from within topics; 3) Develop collaborative interests; 4) Contribute to planning logistics for annual meeting	X	X	X	
OPC update on tribal participation in the statewide leadership team	OPC project			X		
OPC update on Safeguarding California and Sea Level Rise	OPC project			X		
Request for a presentation and update on the implementation of Prop 64	DFW/LED					X
FGC staff to provide a regulatory calendar overview and where tribal interests could provide feedback	FGC			X		
New Topics						
Begin planning for February 2018 Annual tribal committee planning meeting	FGC				X	
Develop tribal solicitation letter and conference call regarding co-management draft language for vision statement and definition	FGC	Develop draft language for Oct TC meeting based on input from a wide variety of tribes			X	X

FGC = California Fish and Game Commission MRC = FGC's Marine Resources Committee WRC = FGC's Wildlife Resources Committee
DFW = California Department of Fish and Wildlife LED = DFW's Law Enforcement Division OPC = California Ocean Protection Council

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Fish and Game Commission



Wildlife Heritage and Conservation
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TRIBAL COMMITTEE

Committee Chair: Commissioner Hostler-Carmesin

Meeting Agenda
October 10, 2017, 1:30 p.m.

SpringHill Suites by Marriott
900 El Camino Real, Atascadero, CA 93422

This meeting may be audio-recorded

NOTE: See important meeting procedures and information at the end of the agenda. Unless otherwise indicated, the California Department of Fish and Wildlife is identified as Department. All agenda items are informational and/or discussion only. The Committee develops recommendations to the Commission but does not have authority to make policy or regulatory decisions on behalf of the Commission.

Call to order

1. Approve agenda and order of items
2. Public forum for items not on the agenda
The Committee may not discuss or take action on any matter raised during this item, except to consider whether to recommend that the matter be added to the agenda of a future meeting.
[Sections 11125, 11125.7(a), Government Code]
3. Staff updates
 - (A) Efforts to formalize the Tribal Committee in statute (Senate Bill 161)
 - (B) Planning for the annual Commission-Tribal planning meeting pursuant to the Commission's tribal consultation policy
 - (C) Commission's Marine Resources and Wildlife Resources committee updates
4. Department updates
 - (A) Marine Life Management Act (MLMA)
 - (B) Red abalone
 - (C) Kelp and algae harvest management regulations
 - (D) Commercial sea urchin (Phase II) regulations
 - (E) North coast state of the region marine protected areas report
 - (F) Elk management plan

- (G) Antelope management plan
- (H) Deer management plan

5. Update and outcomes from the September 7 co-management call

- (A) Continue discussion on developing a vision statement on co-management

6. Update on topics previously before the Committee

7. Future agenda topics

- (A) Review work plan agenda topics and timeline
- (B) Potential new agenda topics for Commission consideration

Adjourn

**CALIFORNIA FISH AND GAME COMMISSION
2017 AND 2018 MEETING SCHEDULE**

Note: As meeting dates and locations can change, please visit www.fgc.ca.gov for the most current list of meeting dates and locations.

Meeting Date	Commission Meetings	Committee Meetings	Other Meetings
October 11			Coastal Fishing Communities Public Meeting SpringHill Suites by Marriott 900 El Camino Real Atascadero, CA 93422
October 11-12	SpringHill Suites by Marriott 900 El Camino Real Atascadero, CA 93422		
October 18			Coastal Fishing Communities Public Meeting E.P. Foster Library 651 East Main Street Ventura, CA 93001
November 8			Coastal Fishing Communities Public Meeting Middlebury Institute of International Studies at Monterey 460 Pierce Street Monterey, CA 93940
November 9		Marine Resources Marina Branch Public Library 190 Seaside Circle Marina, CA 93933	
December 5			Coastal Fishing Communities Public Meeting Handlery Hotel 950 Hotel Circle North San Diego, CA 92108
December 6-7	Handlery Hotel 950 Hotel Circle North San Diego, CA 92108		
2018			
January 11		Wildlife Resources Santa Rosa or Sacramento	

Meeting Date	Commission Meetings	Committee Meetings	Other Meetings
February 6		Tribal Resources Building Auditorium, First Floor 1416 Ninth Street Sacramento, CA 95814	
February 7-8	Resources Building Auditorium, First Floor 1416 Ninth Street Sacramento, CA 95814		
March 6		Marine Resources Petaluma	
March 15	Teleconference — Arcata, Napa, Sacramento, Los Alamitos, and San Diego		
April 12	Teleconference — Arcata, Napa, Sacramento, Los Alamitos and San Diego		
April 18-19	Ventura		
May 17		Wildlife Resources WestEd Building- Edwin C. Myers Classroom 4665 Lampson Ave. Los Alamitos, CA 90720	
June 19		Tribal Resources Building Auditorium, First Floor 1416 Ninth Street Sacramento, CA 95814	
June 20-21	Resources Building Auditorium, First Floor 1416 Ninth Street Sacramento, CA 95814		
July 17		Marine Resources San Clemente	
August 22-23	North Coast		
September 20		Wildlife Resources Resources Building Auditorium, First Floor 1416 Ninth Street Sacramento, CA 95814	
October 16		Tribal San Joaquin Valley	
October 17-18	San Joaquin Valley		
November 14		Marine Resources Resources Building Auditorium, First Floor 1416 Ninth Street Sacramento, CA 95814	

Meeting Date	Commission Meetings	Committee Meetings	Other Meetings
December 12-13	Los Angeles or San Diego		

OTHER MEETINGS OF INTEREST

Association of Fish and Wildlife Agencies

- September 9-12, 2018, Tampa, FL

Pacific Fishery Management Council

- November 14-20, 2017, Costa Mesa, CA
- March 7-14, 2018, Rohnert Park, CA
- April 4-11, 2018, Portland, OR
- June 6-14, 2018, Spokane, WA
- September 5-12, 2018, Seattle, WA
- November 1-8, 2018, San Diego, CA

Pacific Flyway Council

- March 2018
- August 2018

Western Association of Fish and Wildlife Agencies

- January 3-8, 2018, San Diego, CA
- July 12-17, 2018, Eugene, OR

Wildlife Conservation Board

- November 30, 2017, Sacramento, CA
- February 2018, Sacramento, CA
- May 2018, Sacramento, CA
- August 2018, Sacramento, CA
- November 2018, Sacramento, CA

IMPORTANT COMMITTEE MEETING PROCEDURES INFORMATION

Welcome to a meeting of the California Fish and Game Commission's Tribal Committee. The Committee is chaired by up to two Commissioners; this assignment is made by the Commission.

The goal of the Committee is to allow greater time to investigate issues before the Commission than would otherwise be possible. Committee meetings are less formal in nature and provide for additional access to the Commission. The Committee follows the noticing requirements of the Bagley-Keene Open Meeting Act. It is important to note that the Committee chair cannot take action independent of the full Commission; instead, the chair makes recommendations to the full Commission at regularly scheduled meetings.

The Commission's goal is the preservation of our heritage and conservation of our natural resources through informed decision making; Committee meetings are vital in developing recommendations to help the Commission achieve that goal. In that spirit, we provide the following information to be as effective and efficient toward that end. Welcome, and please let us know if you have any questions.

PERSONS WITH DISABILITIES

Persons with disabilities needing reasonable accommodation to participate in public meetings or other Commission activities are invited to contact the Reasonable Accommodation Coordinator at (916) 651-1214. Requests for facility and/or meeting accessibility should be received at least 10 working days prior to the meeting to ensure the request can be accommodated.

SUBMITTING WRITTEN MATERIALS

The public is encouraged to attend Committee meetings and engage in the discussion about items on the agenda; the public is also welcome to comment on agenda items in writing. You may submit your written comments by one of the following methods (only one is necessary): **Email** to fgc@fgc.ca.gov; **deliver** to California Fish and Game Commission, 1416 Ninth Street, Room 1320, Sacramento, CA 95814; or **hand-deliver to a Committee meeting**.

COMMENT DEADLINES

The **Written Comment Deadline** for this meeting is **5:00 p.m. on September 28, 2017**. Written comments received at the Commission office by this deadline will be made available to the Commissioner prior to the meeting.

The **Late Comment Deadline** for this meeting is **noon on October 6, 2017**. Comments received by this deadline will be marked "late" and made available to the Commissioner at the meeting.

After these deadlines, written comments may be delivered in person to the meeting – please bring five (5) copies of written comments to the meeting.

The Committee **will not** consider comments regarding proposed changes to regulations that have been noticed by the Commission. If you wish to provide comment on a noticed item, please provide your comments during Commission business meetings, via email, or deliver to the commission office.

Materials provided to the Committee may be made available to the general public.

REGULATION CHANGE PETITIONS

As a general rule, requests for regulatory change need to be redirected to the full Commission and submitted on the required petition form, FGC 1, titled "Petition to the California Fish and Game Commission for Regulation Change" (Section 662, Title 14, CCR). However, at the Committee's discretion, the Committee may request that staff follow up on items of potential interest to the Committee and possible recommendation to the Commission.

SPEAKING AT THE MEETING

Committee meetings operate informally and provide opportunity for everyone to comment on agenda items. If you wish to speak on an agenda item, please follow these guidelines:

1. Raise your hand and wait to be recognized by the Committee chair or co-chair(s).
2. Once recognized, please begin by giving your name and affiliation (if any) and the number of people you represent.
3. Time is limited; please keep your comments concise so that everyone has an opportunity to speak.
4. If there are several speakers with the same concerns, please try to appoint a spokesperson and avoid repetitive comments.
5. If you would like to present handouts or written materials to the Committee, please provide five copies to the designated staff member just prior to speaking.
6. If speaking during public forum, the subject matter you present should not be related to any item on the current agenda (public comment on agenda items will be taken at the time the Committee members discuss that item). As a general rule, public forum is an opportunity to bring matters to the attention of the Committee, but you may also do so via email or standard mail. At the discretion of the Committee, staff may be requested to follow up on the subject you raise.

VISUAL PRESENTATIONS/MATERIALS

All electronic presentations must be submitted by the **Late Comment Deadline** and approved by the Commission executive director before the meeting.

1. Electronic presentations must be provided by email by the written materials deadline.
2. All electronic formats must be Windows PC compatible.
3. It is recommended that a print copy of any electronic presentation be submitted in case of technical difficulties.
4. A data projector, laptop and presentation mouse will be available for use at the meeting.

LASER POINTERS may only be used by a speaker during a presentation.

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Fish and Game Commission



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WILDLIFE RESOURCES COMMITTEE

Committee Co-Chairs: Commissioner Williams and Commissioner Burns

September 13, 2017 Meeting Summary

The following is a summary of the meeting as prepared by staff.

Call to order

The meeting was called to order at 10:05 a.m. by Commissioner Burns at the California Tower Highgrove, Room 200, 3737 Main Street, Riverside. Commissioner Burns gave welcoming remarks.

Erin Chappell introduced California Fish and Game Commission (Commission) staff and California Department of Fish and Wildlife (DFW) staff, and outlined the meeting procedures and guidelines, noting that the Committee is a non-decision making body that provides recommendations to the Commission. She reminded participants that the meeting was being audio-recorded and that the recording will be posted to the Commission website.

Committee Co-Chairs

Anthony Williams	Present
Russell Burns	Present

Commission Staff

Valerie Termini	Executive Director
Erin Chappell	Wildlife Advisor
Rick Pimentel	Analyst

DFW Staff

Stafford Lehr	Deputy Director, Wildlife and Fisheries Division
Kevin Shaffer	Chief, Fisheries Branch
Kari Lewis	Acting Chief, Wildlife Branch
Patrick Foy	Captain, Law Enforcement Division
Chris Stoots	Lieutenant, Law Enforcement Division

1. Approve agenda and order of items

The Committee co-chairs approved the agenda and order of items.

2. Public forum for items not on the agenda

Roy van de Hoek (Ballona Institute): Encouraged efforts to bring back species such as the sharp-tailed grouse, Guadalupe fur seal, butterflies, and pin cushion orchids. Noted appreciation for Commissioner Williams' engagement on the Ballona wetlands restoration and parking lot issues.

Marcia Hanscome (Ballona Institute): Concerned about impacts to wildlife associated with the restoration of Ballona wetlands as proposed under the anticipated draft environmental impact report (DEIR) and requested a delay in the release of the DEIR until the baseline is changed.

Winston Vickers (UC Davis): Provided information about mountain lions in the Santa Ana Mountains, including concerns about genetic isolation and need for habitat connectivity.

Vicki Long (The Cougar Connection): Concerned about the impacts of development and lack of habitat connectivity on mountain lions, in particular, connectivity issues within the I-15 corridor. Extended an invitation to the Commission to tour the area to get a better understanding of the issue.

David Warren (Sierra Club, Los Angeles Chapter): Noted homeless encampments in the area are interfering with mountain lion use of some corridors.

3. Identify and discuss initial recommendations for 2018-19 upland game bird regulations

Erin Chappell provided background information, noting the referral of Petition #2016-010 from the Commission to DFW for consideration in this package, and introduced Kari Lewis. Kari noted that DFW does not plan to propose any changes except possible changes to the sage grouse quotas, based on the spring survey data. Stafford Lehr discussed the sage grouse survey protocol and conservation framework.

Public Discussion

A stakeholder asked about the age and sex of harvested sage grouse; DFW did not have that information available. A stakeholder noted that hunted species are not listed as threatened or endangered. Stafford Lehr responded that DFW will recommend listing species as threatened or endangered as warranted but noted the important contributions of hunters in species recovery through conservation efforts. For example, through partnerships with the hunting community, the tule elk population has increased from fewer than 20 to more than 1700 animals. Likewise, conservation efforts for sage grouse are now focusing on improving the sage brush ecosystem, benefiting not only sage grouse, but also many other species. Another stakeholder expressed appreciation for the efforts of DFW and farmers and ranchers to conserve lands for sage grouse. Another stakeholder noted that DFW has been ultra-conservative with sage grouse management and that hunting organizations are supportive of this approach, given the concern for the species.

4. Discuss and approve recommendations for 2018-19 regulations

Erin Chappell provided background information, noting this is the last opportunity for WRC to make any recommendation on proposed regulation changes for four rulemaking packages before the notice hearing in December.

(A) Mammal hunting

Kari Lewis noted that DFW does not plan to propose any changes, beyond the anticipated changes to season and bag limits, pending completion of the management plans. Stafford noted that the elk management plan is close to completion, the deer plan will be next, followed by the antelope and sheep plans.

Public Discussion

A stakeholder expressed appreciation for the update on the status of the elk management plan and noted that the SHARE (Shared Habitat Alliance for Recreational Enhancement) Program is helping in Del Norte County and there is interest in expanding the program. A stakeholder asked whether the elk and antelope plans would include a chapter on the interaction with other species.

(B) Waterfowl hunting

Kari Lewis presented on a proposed change in the Northeastern Zone to create a 3-way split season for white-fronted geese, coinciding with the white goose season to address depredation issues in the Northeastern California Zone, except in the newly established Klamath Basin Special Management Area (SMA). The SMA would maintain the majority of hunt days during the general season.

Public Discussion

Two stakeholders expressed appreciation for DFW's efforts to work on the SMA to address concerns in the Northeastern California Zone. A stakeholder noted the potential for the Ballona Wetlands Ecological Reserve to provide habitat for migrating greater white fronted geese.

(C) Central Valley Chinook salmon sport fishing

Kevin Shaffer noted that DFW does not plan to propose any changes beyond the anticipated changes to season and bag limits, and that the Pacific Fisheries Management Council is just starting the pre-stock analyses.

Public Discussion

A stakeholder asked if there are any efforts planned to restore salmon in the Santa Margarita watershed. Kevin Shaffer responded that efforts related to steelhead are underway but not for salmon.

(D) Klamath River sport fishing

Kevin Shaffer noted that DFW does not plan to propose any changes beyond the anticipated changes to season and bag limits. He also discussed last year's closure and noted that salmon are just starting to return to the Trinity River.

No public comments.

Committee Recommendation

WRC recommends that the Commission authorize publication of a notice of its intent to amend regulations for mammal hunting, waterfowl hunting, Central Valley Chinook salmon sport fishing, and Klamath River sport fishing for the 2018-19 seasons, consistent with changes discussed during today's meeting.

5. Discuss and possible recommendation for phase 2 falconry regulation change options and potential timing

Erin Chappell provided background and an overview of the discussions at the January 2016 and May 2016 WRC meetings. She also noted that the Office of Administrative Law approved the most recent regulation changes adopted by Commission in December 2016, and that the new regulations will go into effect on October 1, 2017. Stafford Lehr reviewed four requests currently being discussed with stakeholders: (1) Petition #2016-014, related to rehabilitated raptors; (2) changes to the prairie falcon drawing; (3) goshawks in the Lake Tahoe Basin; and (4) peregrine falcons. Stafford Lehr requested additional time before moving forward with a possible WRC recommendation to give DFW time to identify any issues with implementation of the new regulations and to continue working with the falconers on the remaining issues.

Public Discussion

Two stakeholders expressed appreciation for DFW's efforts to work with the falconers on these issues and supported DFW's request for additional time. One stakeholder requested more transparency with the data collected by wildlife rehabilitators, noting that the data is valuable to researchers. Another stakeholder noted appreciation for DFW and Commission support of falconry, suggested allowing falconers to keep red-tailed hawks that cannot be relocated away from airports, and opposed the take of prairie falcon fledglings from the wild for falconry.

Committee Direction

The WRC co-chairs agreed to DFW's request for additional time and will revisit this issue at a future WRC meeting.

6. Discuss and possible recommendation for wild pig management proposal

Erin Chappell presented an overview of the process to date and highlighted changes to the staff proposal based on stakeholder input received during and after the May 2017 WRC meeting related to importation and transportation, recreational take, depredation, revenue, and the two proposed options.

Public Discussion

A stakeholder commented that the proposal has a measured, balanced approach and tone, and supports Option 2, the new designation, as wild pig is a non-native species that should not be classified with either native game or native nongame species. Another stakeholder commented that the proposal is headed in the right direction, noting that a majority of the hunting community agrees that a non-game designation (Option 1) is not appropriate and that special attention should be given to the title for the new designation (Option 2), suggesting “exotic game” or “invasive game” as possible options. The stakeholder further noted concerns about revenue associated with the validation fee, the need to address agricultural impacts, and support for increasing SHARE Program opportunities. Another stakeholder noted this has been a long process and the proposal presented today is a strong one. A stakeholder commented about the need for the Commission and DFW to be open and transparent about whether the goal is to eradicate wild pigs or not. A stakeholder suggested offering both the individual wild pig tag and the validation at the same time as an option, and asked how the proposal concluded that night hunting was a safety issue. DFW Law Enforcement Division staff explained that the proportion of hunting accidents at night are much higher than hunting accidents during the day, and gave several examples.

Commissioner Williams noted the lack of strategies to address wild pig management and asked if it would be possible to direct some of the revenue generated from the sale of wild pig tags toward resources to address impacts from wild pigs. Stafford Lehr responded that the Wildlife Branch is planning to develop a strategic plan for the Big Game Management Account to look at all the programs, noting the need to address the damage wild pigs are causing on the landscape.

Committee Recommendation

WRC recommends that the Commission forward the proposal on wild pig management with Option 2 to California State Assembly Member Bigelow for consideration.

7. Predator Policy Workgroup

- (A) Predator Policy Workgroup member presentations on draft terrestrial predator policy and regulatory proposals**
- (B) Discuss and possible recommendation for terrestrial predator policy and regulatory proposals**

Erin Chappell provided an overview of the July 2017 Predator Policy Workgroup (PPWG) meeting outcomes and an update on the draft PPWG report developed following the meeting. Erin explained that PPWG was unable to finalize the report in time for this WRC meeting and that a majority of PPWG members were requesting additional time to complete the report. As a result, no presentations were made and, without a PPWG report, there was no discussion of the policy or potential regulatory proposals.

Public Discussion

Three PPWG members spoke in support of having additional time to finalize the report, noting

that the draft report is close to being complete and they would like the opportunity to complete it so all the effort that has gone into this process is not delegitimized. However, the members noted staff workload should be a consideration. A PPWG reviewer commented that the reviewers have not had an opportunity to comment on the PPWG report and reminded the group of the original issues and intent behind the workgroup. A stakeholder presented on coyote populations, noting the need to manage the populations to protect threatened and endangered species.

Committee Direction

WRC agreed to the PPWG request for additional time to complete the report with stipulations: (1) a PPWG meeting will be held before Thanksgiving; (2) PPWG must finalize the report at that meeting; (3) no changes will be made to the report after the meeting; (4) once finalized, the report will be sent to the reviewers to provide them with an opportunity to comment on the report; and (5) PPWG members will be given time to present the report at the January 2018 WRC meeting, as originally proposed for this meeting. The WRC co-chairs also noted that if PPWG is unable to finalize the report at its final meeting, WRC would proceed without the report.

8. Delta Fisheries Forum

(A) Staff report on Delta Fisheries Forum

Erin Chappell presented an overview of the Delta Fisheries Forum held in May 2017, highlighting staff recommendations from the staff report on possible next steps.

(B) Discuss and possible recommendation for next steps

Public Discussion

A stakeholder supported the staff recommendation for a delta fisheries management policy, noted the importance of research to inform management decisions, presented a proposal related to scientific collecting permits, and suggested ways the Commission could encourage DFW to facilitate additional research. Another stakeholder encouraged the Commission to meet with Peter Moyle (UC Davis) and other specialists on this issue.

Committee Recommendation

WRC recommends that the Commission adopt the recommendations as presented in the staff report.

9. Future agenda items

(A) Review work plan agenda topics and timeline

Erin Chappell reviewed the current work plan and proposed agenda topics for the January 2018 WRC meeting, which include discussions of upland game bird and sport fishing regulations, Russian River sport fishing regulations, and lead ban implementation. Staff proposed expanding Russian River sport fishing regulations to

coastal low-flow regulations to include an update and discussion of the DFW coastal streams workshop scheduled for this fall. Staff also proposed adding PPWG per WRC direction under Agenda Item 7.

No public comments

(B) Potential new agenda topics for Commission consideration

No public comments.

Committee Recommendation

WRC recommends that the Commission approve changing the Russian River sport fishing agenda topic to coastal streams low-flow regulations and adding PPWG to the work plan for January 2018.

Adjourn

Commissioner Burns adjourned the meeting at 2:48 p.m.

California Fish and Game Commission
Wildlife Resources Committee
Staff Proposal on Wild Pig Management Options
Revised August 30, 2017

Background

In California, wild pigs are managed to reduce impacts from depredation (Fish and Game Code, Section 4181 and California Code of Regulations Title 14, Section 401) and as game mammals (Fish and Game Code, sections 3950 and 4650-4657, and Title 14, sections 350 and 368). Depredation take involves permits and reporting requirements. Hunting as game requires a license, tags, reporting, and fees. Wild pigs are on one hand a valued game animal and, on the other, a destructive, non-native animal that causes significant damage to public and private lands, adversely affects California ecosystems statewide, and causes injury to livestock. Its popularity as a game species generates about \$1.2 million a year in revenue for the California Department of Fish and Wildlife (DFW) from the sale of wild pig tags alone, while reported damage to agriculture is estimated at \$2 million per year in California and nationwide at around \$2.5 billion per year. Ecological impacts include soil compaction, damage to native plant communities, reduced water quality from increased turbidity and bacterial contamination, competition with other game species—particularly deer and wild turkeys—for food and space, and predation on ground-nesting bird eggs, amphibians, reptiles, and small mammals.

In 2015, Assembly Member Bigelow introduced Assembly Bill 290 (AB 290), in an effort to resolve some of the issues around wild pigs. The California Fish and Game Commission's (Commission) Wildlife Resources Committee (WRC) discussed elements of AB 290 at its September 2015 meeting; the discussion focused on how to protect revenues coming into DFW, maintain hunting opportunities, streamline depredation, and minimize waste of game meat. WRC recommended that the Commission support legislative efforts to increase efficiency in addressing depredation by wild pigs; the Commission approved that recommendation in October 2015.

In January 2016, Commission President Sklar, Commission staff, and DFW staff attended a meeting with Assembly Member Bigelow to discuss some of the issues raised by the proposed legislation, where it was suggested that the Commission work with interested stakeholders through WRC to craft a potential solution. In February 2016, the Commission directed WRC to discuss possible changes in pig regulations and to provide suggestions for potential legislation to share with Assembly Member Bigelow.

The purpose of this document is to provide a stakeholder-vetted proposal that offers potential statutory and regulatory changes to achieve the goal of reducing wild pig populations to benefit native species and their habitats, as well as to protect public and private property, while maintaining hunting opportunities. This document contains information on existing statutes and regulations, summarizes concerns raised by stakeholders, and outlines options for potential statutory and regulatory changes that take into account stakeholder concerns.

Stakeholder Discussions on Proposed Options

WRC held discussions with stakeholders on wild pig management at its May 2016 and September 2016 meetings. At the September 2016 WRC meeting, Commission staff presented three possible approaches with the goal of reducing wild pig populations to benefit native species and their habitats and to protect private and public property while maintaining hunting opportunities:

- (1) maintain the game status designation with modifications to the depredation and tag provisions;
- (2) change the status designation to non-game and add provisions for tags, methods of take, and depredation; and
- (3) create a new designation with provisions for hunting, depredation, and importation, transportation, and release.

Based on input from the stakeholders and discussion at the September meeting, the second and third approaches were identified as more effective for meeting the stated goal; WRC directed staff to develop a more detailed proposal for these two approaches to present to WRC in January 2017 for further evaluation and discussion. In January 2017, staff presented additional information and an overview of two options for potential changes to statutes and regulations to address stakeholder concerns. Option 1 builds off the original proposal in AB 290, while Option 2 establishes a new status designation to address stakeholder concerns regarding the nongame status designation used in Option 1. Key statutes and regulations that generally apply to game mammals or specifically to wild pigs that may require revision under the two proposed options are identified at the end of this proposal.

- Option 1 would change the designation of wild pigs from a game mammal to a nongame mammal, which would result in changes to how wild pigs are regulated for both recreational take and take for depredation purposes. In general, game mammals are more stringently regulated than nongame mammals for which take is permitted.
- Option 2 would create a new, separate designation for wild pigs. As defined in Fish and Game Code, game mammals include species such as deer, elk, wild pigs, jackrabbits, and tree squirrels, which are primarily hunted for food. Nongame mammal is defined as a mammal that occurs naturally in California that is not a game mammal, fully protected mammal, or fur-bearing mammal; nongame mammals are generally hunted or trapped more for non-consumptive purposes. Wild pigs are hunted primarily for their meat and, therefore, do not fit as well into the nongame mammal designation as they might in a new designation. In addition, a new designation could more clearly acknowledge and define the different management objectives for wild pigs compared to other game and nongame mammals in California. While not proposed here, this new designation could also be used for other non-native game species such as fallow deer, aoudad, and mouflon, which are currently designated as nongame mammals.

After further discussion and stakeholder input, WRC directed staff to provide a more detailed proposal on potential statutory and regulatory changes at its May 2017 meeting. At the May 2017 WRC meeting, Commission staff presented a draft proposal and received additional stakeholder input; WRC directed staff to work with stakeholders on the concerns raised at the meeting, with a focus on Option 2 as the preferred option. Commission staff met with

stakeholders following the May 2017 WRC meeting to solicit additional input on possible options to address concerns about the use of dogs, use of snares, and disposal. Staff also solicited input from stakeholders on the status designation. Some stakeholders' concerns about the change in the status designation were specifically that maintaining the game designation with modification to the depredation provisions should have been included as an option in the original proposal; in response to those concerns, an evaluation of that option is provided in Appendix F.

Management Concerns Associated with a Change in Designation

Some stakeholders raised concerns during development of AB 290 and at WRC meetings regarding how a change in designation from game mammal to nongame mammal could impact wild pig management in four areas: (1) importation and transportation; (2) methods, hours, and access for recreational take; (3) depredation; and (4) revenue. There are a number of potential statutory and regulatory changes to address the concerns, which could be integrated into either option.

(1) *Importation and Transportation*

Wild pigs are a valued game animal and, as such, there are concerns about wild pigs being imported and released or being moved from one area to another in order to establish a local population for hunting purposes.

Currently, wild pigs are regulated as restricted species and designated as “detrimental animals” under Section 2118 of the Fish and Game Code and Section 671(c)(2)(Q) of Title 14 because they are considered undesirable and pose a threat to native wildlife, agriculture, or public health or safety. As a restricted species, importing, transporting and possessing live wild pigs is only authorized under a permit issued by DFW. However, under the current definition (Fish and Game Code Section 4650), only “free-roaming” pigs are considered wild; therefore, any pig contained in a cage, pen, fence, or truck is no longer considered wild. This loophole enables people to import, transport, and release wild pigs under the guise of domestic swine, which limits effective enforcement of the current law and regulations.

The California Department of Food and Agriculture (CDFA) regulates the importation of domestic swine and requires an Interstate Livestock Entry Permit and a Certificate of Veterinary Inspection for swine imported into the state, except for swine being moved directly to a state- or federally-approved slaughter facility. All swine are also required to have official identification. Approved identification methods vary by importation purpose. Breeding and show swine or feeder swine must have ear tags, ear notches, or tattoos (ear or inner flank). Slaughter swine must have ear tags, tattoos, or U.S. Department of Agriculture back tags. Companion and pet swine may have electronic implants or microchips. There are concerns about domestically-raised European or Russian wild boars, imported under domestic swine permits, being intentionally released or used for hunting purposes. Once in California, tracking these swine to ensure compliance with the importation permit can be challenging since ear tags are easily removed and damaged ears are common for pigs, making ear notches difficult to identify. One option to improve tracking and enforcement is to require official radio-frequency identification

(RFID) ear tags be used. RFID ear tags are already considered “official identification”, removal of the tags is illegal under current federal and State regulations, are easily visible, and if placed properly deep in the ear, should have good retention.

Domestic swine are usually marked using ear tags, ear notches, paint, or tattoo. However, permanent identification marks are only required for swine being imported into California, not swine raised within California, making it difficult to distinguish domestic swine from wild or feral pigs in cases where a domestic swine has escaped or been intentionally released into the wild. In addition, there are a small number of swine producers in California engaged in producing domestic swine that have been bred with and may contain varying amounts of European wild boar genes; these swine may exhibit the same phenotypic characteristics as wild pigs, making it difficult to distinguish them for the enforcement of both CDFA and DFW regulations.

Proposed Solution

To improve enforcement of existing regulations related to importing, transporting, and possessing wild pigs and to reduce the transportation and release of wild pigs into new areas or supplementing existing populations, the following is proposed:

- Modify the existing definition of wild pig, in Section 4650 of the Fish and Game Code, using phenotypic characteristics to differentiate wild pigs from domestic swine. Within the definition, create a subsection that gives CDFA the authority to adopt regulations, for domestic swine that meet the definition of a wild pig based on the phenotypical characteristics, to determine approved identification marks. A proposed definition is provided in Appendix B.
- Create new CDFA regulations to identify what types of marks shall be used by producers of domestic swine that meet the phenotypical definition of a wild pig to facilitate differentiation. The marks may include specific types of ear tags, ear notching—consistent with the Universal Ear Notching System—or tattoos. In addition, add a provision requiring official RFID ear tags at change of ownership for any domestic swine that meets the phenotypical definition of a wild pig.
- Modify Food and Agriculture Code to give CDFA authority to adopt regulations related to the importation of domestic swine that meet the phenotypical definition of a wild pig. In addition, modify existing CDFA regulations governing importation permits to require that domestically-raised swine, including European or Russian wild boars, have official RFID ear tags, a negative pseudorabies and brucellosis test, and a statement on the Certificate of Veterinary Inspection form signed by an accredited veterinarian that the pig has been domestically raised for at least four months.

(2) *Recreational Take and Access*

The proposed change in wild pig designation from a game mammal to a nongame mammal in AB 290 raised concerns about the use of lead ammunition, methods of take, night hunting, the use of dogs, and limited access to private lands.

Use of lead ammunition for the take of wildlife is being phased out pursuant to Section 3004.5 of the Fish and Game Code and Section 250.1 of Title 14. Under current regulations, non-lead ammunition is required for the take of big game with a rifle or pistol and when taking coyotes within the California condor range. Non-lead ammunition is also required for the take of all wildlife in any wildlife area or ecological reserve and when using a shotgun to take nongame mammals or any wildlife for depredation purposes. Under current regulations, non-lead ammunition will be required for the take of all wildlife starting July 1, 2019; however, Section 3004.5 provides for earlier implementation, if practicable. Some stakeholders expressed interest in incorporating early implementation of the non-lead requirements for the take of wild pigs under AB 290. At this time, enacting legislation and adopting regulations associated with this proposal would likely require an effective date of July 1, 2019, making early implementation impracticable.

Methods of take for game mammals is more restrictive than methods of take permitted for nongame mammals, raising concerns about inappropriate or ineffective methods being allowed for the take of wild pigs with a change in designation. The concerns can be addressed in regulation by limiting the methods of take to those allowed for game mammals, as is currently done for nongame mammals such as sambar and fallow deer.

Stakeholder comments were divided on whether to allow night hunting and whether to loosen or tighten regulations for the use of dogs. While night hunting can be effective, especially during the warmer summer months, there are concerns about safety, enforcement, and the accidental take of non-target species. Dogs can be an effective tool for hunters in pursuing wild pigs; however, the use of dogs also raises concerns about the health and safety of the dogs, fair chase, and possible impacts to non-target wildlife. Under current regulations, up to three dogs per hunter may be used for the take of wild pigs except, no more than one dog per hunter where general deer season is open and no dogs may be used within the dog control zones, as specified. During the stakeholder vetting process, a change from three dogs per hunter to three dogs per hunt group was proposed. However, concerns about how to define a “hunt group” and the enforceability of such a regulation may make implementation infeasible. Broad stakeholder agreement regarding night hunting and use of dogs provisions is unlikely. Integrating the current regulations into this proposal would maintain the status quo and, at such time as changes are deemed warranted, the regulations could be revised by the Commission.

Section 4188 of the Fish and Game Code requires that DFW notify a landowner or tenant applying for a depredation permit about options for allowing access to licensed hunters to take wild pigs that are damaging property or threatening damage. Under AB 290, a depredation permit would no longer be required, raising concerns over a loss of incentive to provide hunters access to properties, especially given liability concerns by some landowners. DFW’s Shared Habitat Alliance for Recreational Enhancement (SHARE) program is designed to improve public access to private or landlocked public land via compensation and liability protection for providing access to or through their land for recreational use and enjoyment of wildlife. Increasing participation through the SHARE program may provide additional hunting opportunities, addressing concerns about the loss of that incentive, as well as providing new opportunities for youth hunters.

Proposed Solution

- Establish an effective date of July 1, 2019 for the statutes and accompanying regulations; this maintains the current requirement for use of non-lead ammunition for the take of wild pigs in the California condor range for the period between adoption of the new legislation and the full implementation of the ban on lead ammunition for the take of wildlife.
- Maintain the current hours for take from one-half hour before sunrise to one-half hour after sunset; include an exemption for take at night for depredation purposes by the property owner, tenant, employee or designated agent (see Item 3, Depredation).
- Maintain the current methods of take under sections 353 and 465.5 of Title 14.
- Maintain the current regulations for the use of dogs for hunting under Section 265(c)(2)) of Title 14.
- Improve hunter access by increasing private property owner participation in the SHARE program and look for opportunities to increase the number of hunts on public land, where feasible.

(3) Depredation

The proposed change in wild pig designation from a game mammal to a nongame mammal in AB 290 raised concerns about changes in depredation requirements, including permits, reporting, methods of take, use of lead ammunition, and disposal. Fish and Game Code sections 4181, 4181.1, 4181.2, and 4188 govern the take of wild pigs pursuant to a depredation permit issued by DFW. Section 401, Title 14, CCR, outlines the process for applying for and the terms and conditions of a depredation permit, including permit period, use of dogs, methods of take, use of Government employees and designated agents, reporting requirements, utilization of the carcass, and tagging requirements for the take of wild pigs causing or threatening to cause damage. While there was support from agricultural stakeholders to remove the permit requirement for wild pigs, other stakeholders were concerned that removing the requirement, without adequate provisions, would result in: (1) the wanton waste of useable meat; (2) use of methods not currently authorized; (3) ecological impacts from use of lead ammunition; and (4) health impacts, to both humans and wildlife, if large numbers of carcasses were left in the field to rot. Integrating some of the current depredation permit requirements into the regulations could address these concerns while at the same time removing the permit requirement.

Proposed Solution

- Create a subsection for methods of take pursuant to sections 353 and 465.5 of Title 14. Add a provision to allow take at night by private landowners, their tenants, paid employees, or designated agents for animals causing damage or that pose an immediate threat to livestock (see draft regulatory text provided in Appendices C and E). Include the use of artificial lights to assist in taking pigs at night but, if using spotlights at night, require the property owner to notify DFW of night operations. Add a provision limiting the use of snares to designated agents

providing services under a valid trapping license and to federal, state, or local wildlife control officers while acting in their official capacity. Add a provision that requires designated agents to have a hunting license and validation or a trapping license. Add a provision defining paid employees.

- Create a subsection related to the use of dogs that allows for the use of dogs when pursuing/taking depredating pigs but require the dog handler to have a hunting license and validation, with an exemption for local, state, or federal employees acting in their official capacity.
- Create a subsection to require utilization of the carcass, consistent with the current requirements under Section 401 of Title 14, to minimize issues associated with disposal of carcasses and reduce waste of meat.
- Create a subsection requiring a property owner, tenant, or paid employee to tag any animal prior to transporting it off the property; DFW would need to create the tag for this purpose.
- Eliminate all requirements for depredation permits and reporting take.

(4) Revenue

Recreational take of a wild pig requires a wild pig tag pursuant to Section 4652 of the Fish and Game Code. Fish and Game Code Section 4656 requires that the revenues received be deposited into the Big Game Management Account (BGMA), while the expenditure of those funds is addressed in Fish and Game Code Section 3953. AB 290 proposed changing the individual wild pig tag to a one-year validation, which would allow unlimited take of wild pigs as a way to incentivize the take of more wild pigs. While there was support for replacing the tag with the validation, support was mixed for a provision that would continue directing revenues to BGMA. Some stakeholders proposed redirecting the fund to a separate account and stipulating that those funds be spent on projects to restore habitat damaged by pigs, research, or alternative population control methods.

All revenue from the sale of antelope, deer, elk, wild pig, bear, and sheep tags are deposited into BGMA, which receives approximately \$1.2 million per year from the sale of wild pig tags. BGMA funds can be used by DFW to acquire land, complete projects, and implement programs to benefit these species, expand hunting opportunities, conduct related outreach, and administer and enforce the programs. DFW may also award grants to fund projects that benefit big game populations and the habitat upon which they depend. Annually, DFW distributes approximately \$1 million in grant funding for projects, including habitat restoration, research, and monitoring improvements. Redirecting funds from the sale of wild pig validations could impact DFW programs that benefit native game species and reduce funds available for the grant program.

There is uncertainty about whether the one-year validation would generate the same level of revenue as wild pig tags. If revenues significantly decline, there would not be adequate revenue to fund a separate, distinct program targeted at mitigating wild pig damage. Even if revenues were maintained or increased slightly with the switch, it is unclear whether there would be adequate revenue to support a dedicated wild pig

program. However, if revenues continue to be directed to BGMA, a change in funding level would be buffered to some extent and the revenue could still be directed, through either program activities or grant funding, to support habitat restoration, research, and targeted control programs. Other funding sources could also be explored to address and mitigate the impacts wild pigs have on public and private lands.

There are also concerns about how the new base fee for the one-year validation may affect overall revenue. The proposal under AB 290 used the \$15 base fee in Fish and Game Code Section 4654, while the current fee for a wild pig tag with the annual adjustments is \$22. Concerns were raised that a decrease in the fee along with a decrease in purchases associated with individuals who purchase multiple wild pig tags each year would result in a significant decrease in revenue. However, the switch to the validation and a lower base price than the current \$22 may incentivize more hunters to purchase the validation, offsetting the loss associated with the purchase of multiple tags. In response to the concerns, an analysis of the proportion of individuals purchasing multiple tags in the last five to ten years with an assessment of the fiscal impacts associated with the change to a single validation could be conducted to help inform a decision on the new base fee.

Proposed Solution

- Modify language in Fish and Game Code Section 4654 and Section 708.13, Title 14, CCR to switch from individual tags to a one-year validation; this also requires an adjustment to the existing fees and tagging requirements. Add a provision authorizing DFW to adjust the base fee, if necessary, to maintain revenues within 10 percent of the long-term average.
- Maintain the current age requirement to obtain a validation at the minimum age of 12.
- Continue directing funds to BGMA and pursue additional funding opportunities, such as state- or federally-funded grants, for research, local eradication efforts, habitat restoration, or other efforts to minimize damage caused by wild pigs.

Other Considerations

There are several game mammal regulations in Title 14 which may need to be modified if there is a desire to expand those regulations to still include wild pigs under a new status designation: sections 251.3 (feeding), 251.8 (tribal take), 257.5 (baiting), 260.2 (Lake Oroville Recreation Area), and 551 (Wildlife Areas). Under the non-game regulations, Section 475 of Title 14 contains provisions related to baiting that, while different from those in Section 257.5, are similar enough that modifying 257.5 may not be necessary under Option 1.

Changes under the Proposed Options

Option 1: Change Designation from Game Mammal to Nongame Mammal

A number of statutory and regulatory changes would be required under this option to integrate the solutions proposed to address identified management concerns. Appendix D contains specific proposed changes to statutory and regulatory text, which are generally described here.

Changes to Fish and Game Code Statutes under Option 1

- Establish an effective date of July 1, 2019
- Remove wild pig from Section 3950 (definition of game mammal)
- Modify Section 3953(c) (BGMA, use of funds) to remove wild pig from the list of species for implementing beneficial programs
- Remove all references to wild pig in sections 4181 and 4181.1 (required permits and reporting for depredation)
- Repeal Section 4181.2 (damage definition)
- Remove all reference to wild pig in Section 4188 (permits for licensed hunters)
- Modify Section 4304 to add wild pig to game mammals and game birds (waste of game carcass prohibited)
- Modify definition of wild pig in Section 4650 (see Appendix B)
- Modify Section 4651 (management plan) to simplify requirements to those identified in (b)(1), (b)(2), (b)(3) and (b)(4)
- Modify Section 4654(a) and (b) to adjust for the new base fee for the validation, modify language regarding the number of tags, and update license year from 2004 to 2019
- Modify Section 4657 to remove all language related to affixing tags to pigs and the reporting requirement and modify the possession requirement to include language pursuant to regulations adopted by the Commission

Changes to Title 14 Regulations under Option 1

- Modify sections 251.3, 251.8, 257.5, and 260.2 to include wild pig
- Remove references to wild pig from sections 350, 352, and 401
- Repeal Section 368
- Add wild pig to sections 472, 474, and 475 (see example in Appendix C)
- Add new section(s) specifically for wild pig for licensing/tag requirements, hunting provisions, and depredation provision (see example in Appendix C)
- Repeal section 708.13 and integrate tag requirements into new subsection specifically for wild pig licensing/tag requirements (see example in Appendix C)

Option 2: Change Designation from Game to New Designation

A number of statutory and regulatory changes would be required under this option to integrate the solutions proposed to address identified management concerns. Appendix D contains specific proposed changes to statutory and regulatory text, which are generally described here.

Changes to Fish and Game Statutes under Option 2

Statutory changes proposed under Option 1 would also be necessary under this option. In addition:

- Modify Section 3003.1(c) to add wild pig (body-gripping traps)
- Modify Section 3005.5 to add wild pig (capture or possess wildlife)
- Add a new section to provide for take of wild pigs damaging property, similar to Section 4152 for nongame mammals (See example in Appendix D)

Changes to Title 14 Regulations under Option 2

- Modify sections 251.3, 251.8, 257.5, and 260.2 to include wild pig
- Remove references to wild pig from sections 350, 352, 353, and 401
- Repeal Section 368
- Create a chapter in subdivision 2 specifically for wild pig regulations
- Within the new chapter, add sections to establish bag and season, methods of take, hours for take, licensing and validation, and depredation provisions proposed under Option 1 (See example in Appendix E)
- Repeal section 708.13 and integrate tag requirements into new subsection specifically for wild pig licensing/tag requirements (see example in Appendix E)

Stakeholder Support for the Proposed Options

Based on input received during this process, Option 2 garnered the strongest support from the broadest range of stakeholders. Stakeholders representing hunting, animal welfare, and environmental interests expressed support for creating a new designation that acknowledges wild pig's value as a game mammal while, on the other hand, recognizing the different management objectives for wild pigs compared to other game and nongame mammals. However, there is opposition from some within the hunting community to any change in the status designation and many representatives from the hunting community expressed opposition to Option 1 due to the nongame status designation.

Statutes and Regulations Relevant to Wild Pig

Key statutes and regulations that generally apply to game mammals or specifically to wild pigs that may require revision under the proposed options are identified here; a more detailed description of these code and regulation sections is provided in Appendix A.

Fish and Game Code Statutes

- Section 2005 – use of artificial lights; infrared lights; night vision equipment
- Section 3000 – prohibits take of mammals at night
- Section 3004.5 – prohibits use of lead projectiles and ammunition for take of wildlife
- Section 3950 – enumerates game mammals
- Section 4181 – requires DFW permit to take elk, bear, beaver, wild pig, or gray squirrels damaging or destroying, or threatening to damage or destroy, land or property
- Section 4181.1 – allows for immediate take of bear or wild pig inflicting injury to livestock or damage to property
- Section 4181.2 – defines damage and requires DFW develop guidelines for determining damage by wild pigs

- Section 4188 – option for allowing licensed hunters to take wild pigs, wild turkeys, or deer damaging or threatening to damage property (references Section 4181)
- Section 4304 – prohibits waste of game mammals due to carelessness or neglect
- Section 4650 – defines wild pig
- Section 4651 – requires DFW develop a plan for wild pig management
- Section 4652 – requires hunters to have a wild pig tag
- Section 4653 – allows DFW to design the wild pig tag and determine the procedures for issuing and using tags
- Section 4654 – sets age requirement for procuring wild pig tags and establishes wild pig tag fees
- Section 4655 – establishes time period when the wild pig tag is valid
- Section 4656 – directs revenue from wild pig tags to the Big Game Management Account
- Section 4657 – establishes possession, information, affixing, and reporting requirements for wild pig tags

Title 14 Regulations

- Section 250.1 – phases in the prohibition on the use of lead projectiles and ammunition for take of wildlife
- Section 251.3 – prohibits knowingly feeding big game mammals
- Section 251.8 – permits tribal members to transport game mammals off tribal lands with a tribe-issued permit
- Section 257.5 – prohibits the use of bait to take game mammals
- Section 260.2 – permits hunting of game species on Lake Oroville Recreational Area with some restrictions
- Section 265 – regulates the use of dogs for the pursuit/take of mammals for depredation and hunting
- Section 352 – establishes the hours for hunting big game mammals
- Section 353 – authorizes methods of take for big game mammals
- Section 368 – establishes season, bag, and possession limits for wild pigs
- Section 401 – regulates the issuance of depredation permits for game mammals and bobcats
- Section 465.5 – regulates the use of traps for game mammals, nongame mammals, and furbearing mammals
- Section 551 – permits hunting of wild pigs on DFW wildlife areas with some restrictions
- Section 671 – requires permit to import, transport, or possess live restricted animals, including wild pigs
- Section 671.3 – establishes facility standards for live restricted species, including wild pigs
- Section 708.13 – establishes requirements for procuring wild pig tags, time period when tags are valid, and tagging requirements

Appendix A. Descriptions of Relevant Wild Pig Statutes and Regulations

Fish and Game Code Statutes		
Section	Title	Brief Description
2005	Lights and Sniperscopes - exemptions	Unlawful to use artificial light for take of game mammal; unlawful to throw or cast rays of light while in possession of a firearm; unlawful to use or possess night vision equipment for take of mammal; exception for depredation
3000	Take Game During Hours of Darkness	Unlawful to take any mammal, except nongame mammal, between one-half hour after sunset and one-half hour before sunrise, except as otherwise provided in this code or under regulations adopted by the Commission (to limit take of nongame mammals)
3004.5	Nonlead Centerfire Ammunition Required	Nonlead rifle and pistol ammunition required when taking big game or coyotes in condor range; phasing of nonlead via regulations adopted by Commission; required for take of all wildlife effective July 1, 2019
3950	Definitions of Game Mammals	Defines wild pigs, including feral pigs and European wild boars (genus <i>Sus</i>) as a game mammal
4181	Kill elk, bear, beaver, wild pig, or gray squirrels damaging property; permit required	Except as provided in 4181.1, any landowner or tenant may apply to DFW for permit to take wild pigs damaging or threatening to damage property; permit conditions
4181.1	Take bear or wild pig in act of injuring livestock, reporting requirements, etc.	Allows for the immediate take of a wild pig caught impacting livestock or posing an immediate threat to property and report it to DFW no later than the next working day
4181.2	Damage by wild pigs defined	Defines damage as loss or harm resulting from injury to person or property; requires DFW develop statewide guidelines for determining damage
4188	Permits for licensed hunter to take wild pigs or deer	Option for landowners that allows for access by licensed hunters to control wild pigs under a depredation permit

Appendix A. Descriptions of Relevant Wild Pig Statutes and Regulations

Fish and Game Code Statutes (continued)		
Section	Title	Brief Description
4651	Management plan	Requires DFW prepare a plan for the management of wild pigs
4652	License to take	Unlawful to take a pig, except as provided in Section 4181, without a tag
4653	License design, information, and procedures for issuance	DFW may determine the design and type of information included on the wild pig tag and prescribe the procedures for the issuance and use of the tag
4654	Tag procurement by licensed hunter; age limit and fee	Sets 12 as the minimum age for procuring a wild pig tag and establishes the fees for residents and nonresident wild pig tags
4655	License tags only valid during current hunting season	Tags are only valid during the portion of the current hunting license year in which wild pigs may be taken or possessed in any area of the state
4656	Revenues and expenditures	Directs revenue from the tags to the Big Game Management Account
4657	Tags; possession, affixing, and other requirements	Requires tag holder to keep the tag in their possession while hunting; make date of kill on the tag; attach tag to carcass before transporting; and report take to DFW

Appendix A. Descriptions of Relevant Wild Pig Statutes and Regulations

Title 14, California Code of Regulations		
Section	Title	Brief Description
250.1	Prohibition on use of lead projectiles for take of wildlife	Pursuant to Section 3004.5, Fish and Game Code, prohibits use of lead ammunition for take of game mammals in California condor range; phased approach to prohibit the use of lead ammunition for take of wildlife
251.3	Prohibition against feeding big game mammals	Prohibits knowingly feeding big game mammals
251.8	Transportation of game birds and game mammals off reservations	Permits the transportation of game mammals taken by tribal members on tribal land off tribal land with a tribe-issued permit
257.5	Prohibition on the take of resident game birds and mammals with the aid of bait	Prohibits the take of game mammals within 400 yards of any baited area
260.2	Hunting restrictions on Lake Oroville Recreational Area	Permits hunting of game species on the Lake Oroville State Recreation Area with some restrictions
265	Use of dogs for pursuit/take of mammals or for dog training	(b)(3) Permits use of dogs to pursue/take depredating mammals by fed/county officer or permittee under depredation permit (c)(2) Permits use of dogs to take wild pigs with some restrictions (3/hunter, except 1/hunter during deer season, closure applies)
352	Shooting hours on big game	Permits hunting and shooting from one half hour before sunrise to one half hour after sunset
353	Methods authorized for take of big game	Authorizes use of rifle (expanding), bow and arrow, wheellock, matchlock, flintlock or percussion type muzzleloader, shotgun, pistol/revolvers (expanding), and crossbow (regular season only); prohibits devices that throw/cast/project light to visibility enhance or visible point of aim (sniperscopes, night vision scopes/bino, infra-red); permits use of laser rangefinders and use of disabled muzzleloader scope with a permit.
368	Wild pig	Season open all year; no daily bag or possession limit for wild pigs

Appendix A. Descriptions of Relevant Wild Pig Statutes and Regulations

Title 14, California Code of Regulations (continued)		
Section	Title	Brief Description
401	Issuance of permit to take animals causing damage	Establishes application requirements, permit period, permit conditions, authorized methods of take, government employees and designated agents, reporting requirements, tagging requirements, and utilization of carcasses for DFW issued permits
465.5	Use of traps	Establishes the types of traps and restrictions on use of traps for the take of furbearing mammals, game mammals, and nongame mammals
551	Additional visitor use regulations for DFW wildlife areas	Permits hunting of wild pigs on specific wildlife areas; special drawings; use of dogs
671	Import, transport, or possession of live restricted animals	(c)(2)(Q) Order Artiodactyla - requires DFW issued permit for importation, transportation, or possession of 'swine' except domestic swine (<i>Sus scrofa domestica</i>)
671.3	Minimum facility and caging standards for wild animals housed at permanent facilities	Establishes space and fence height requirements for holding a 'wild pig' under a DFW issued permit pursuant to Section 671
708.13	Wild Pig License Tags	Allows licensed hunter (12 or older) to purchase pig tag; defines period for which tag valid; and tagging requirements

Appendix B. Sample Fish and Game Code Text for Wild Pigs Definition

The following is an example of how the definition of wild pigs could be modified to more clearly differentiate wild pigs from domestic swine. Strikethrough denotes potential deleted text, and italics denotes potential new text.

Fish and Game Code Division 4. Birds and Mammals Part 3. Mammals Chapter 7. Wild Pigs

4650. ~~Wild pigs, as used in this chapter, means free-roaming pigs not distinguished by branding, ear marking, or other permanent identification methods.~~ ***Wild Pigs.***

(a) Wild pigs, as used in this chapter, means any pig having two or more phenotypical characteristics as specified in subsection (c) of these regulations with no brand, tattoo, or other permanent mark or visible tags pursuant to regulations adopted by the California Department of Food and Agriculture; or free-roaming pigs having no visible tags, markings, or characteristics indicating that such swine is from a domestic herd.

(b) Wild pigs include feral pigs and European wild boars

(c) Phenotypic characteristics of wild pigs:

(1) Coat: long, dark, coarse bristles and guard hairs; the undercoat, when present, is lighter in color than the overlaying coat; individual hairs have bristle tips that are lighter in color than the rest of the hair shaft.

(2) Dark "Point" Coloration: distal portion of the snout, ears, legs, and tail are dark brown to black in coloration.

(3) Skeletal appearance: skull is large, measuring up to one-third the total body length; short massive trunk with underdeveloped hindquarters.

(4) Head: small, deep set eyes and elongated snout.

(5) Tail: tails are held straight or slightly curved but contain muscular structure to curl the tail.

(6) Teeth: males have well-developed canine teeth; upper canines are relatively short and grow sideways early in life and gradually curl upwards with age; lower canines are sharper and longer with exposed parts measuring up to 10 to 12 cm (3.9 to 4.7 inches) in length.

Appendix C. Sample Regulation Text for Wild Pigs under a Nongame Designation

The following is an example of how wild pigs could be integrated into the current nongame mammal regulations. Potential new regulation language, offered only as an example, is denoted by italicized text. For purposes of brevity only the relevant subsections are provided.

472. General provisions.

Except as otherwise provided in Sections 478, 485, and 4XX, and subsections (a) through (d) below, nongame birds and mammals may not be taken.

474. Hours for Taking.

Nongame mammals may be taken at any time except as provided in this section.

(e) Wild pig may be taken only from one-half hour before sunrise to one-half hour after sunset, except as provided for in Section 4XX(c).

475. Methods of Take for Nongame Birds and Nongame Mammals.

Nongame birds and nongame mammals may be taken in any manner except as follows:

(c) Fallow deer, sambar deer, axis deer, sika deer, aoudad, mouflon, tahr, feral goats, and wild pigs may be taken only with the equipment and ammunition specified in Section 353 of these regulations.

(e) No feed, bait or other material capable of attracting a nongame mammal may be placed or used in conjunction with dogs for the purpose of taking any nongame mammals. Nothing in this section shall prohibit an individual operating in accordance with the provisions of Section 465.5 from using a dog to follow a trap drag and taking the nongame mammal caught in that trap.

The take of wild pig shall be in accordance with Section 257.5 of these regulations.

4XX. Wild Pig.

(a) It shall be unlawful to pursue, take, or possess any wild pig without first procuring a hunting license and wild pig hunting validation. This section shall not apply to wild pigs taken pursuant to Section 4152 of the Fish and Game Code and subsection (c) of this section.

(b) Hunting: The pursuit, take, or possession of a wild pig under the authority of a hunting license and a wild pig hunting validation shall be in accordance with sections 472, 473, 474, 475, and 4XX.1 of these regulations. Wild pigs may be taken statewide under the authority of a hunting license and wild pig hunting validation at any time of year and in any number.

(c) Depredation: A person who is a property owner, tenant, or paid employee may take wild pigs that are damaging or destroying or immediately threatening to damage or destroy, land or property without a hunting license and hunting tag/validation under the following conditions.

(1) Methods of Take.

(A) Wild pigs may be taken by any method in accordance with sections 465.5 and 475(c) of these regulations. Except only designated agents providing services under a valid trapping license or by an employee of a federal, State, or local government agency or local district with responsibilities, including but not limited to animal control, animal

control damage, irrigation, flood, or natural resource reclamation, while acting in their official capacity may use snares.

(B) Use of dogs shall be in accordance with the provisions of section 265 of these regulations.

(C) Artificial lights may be used to assist in taking wild pigs. If using spotlights at night, the property owner shall notify DFW to inform them of night operations and location.

(2) Government Employees and Designated Agents.

(A) A landowner may authorize an employee of a federal, State, or local government agency or local district with responsibilities including but not limited to animal control, animal damage control, irrigation, flood, or natural resources reclamation, while acting in their official capacity to take depredating wild pigs on the property.

(B) A landowner may designate other persons, including any dog handler who will be utilized in any pursuit, as their agent to take depredating wild pigs on the property. The designated agent must have a trapping license or hunting license and wild pig hunting validation.

(3) Tagging Animals. Wild pigs shall be tagged prior to being transported from the property by the property owner, tenant, or paid employee. Tags shall clearly show the property owner's name, address, date and location the animal was taken and shall include the signature of the person taking the animal.

(4) Utilization of the Carcass. Animals taken shall be utilized by the property owner, tenant, paid employee, or designated agent except the property owner, tenant, paid employee, or designated agent may leave the carcass of any wild pig where it was taken for reasons of high air temperature, disease, parasites, or conditions which preclude use of the carcass.

4XX.1 Wild Pig Hunting Validation.

(a) Any licensed hunter, 12 years of age or older taking wild pigs, including feral pigs and European wild boars (genus Sus), must have a current state wild pig hunting validation in possession.

(b) Wild pig hunting validations, as specified in Section 4654 of the Fish and Game Code, may be procured through the department's Automatic License Data System terminals at any department license agent or department license sales office.

(c) Wild pig hunting validations are valid only during that portion of the current hunting license year in which wild pigs may be legally harvested as provided in subsection 4XX(b).

Appendix D. Proposed Changes to Fish and Game Code and Title 14, CCR Sections Related to Wild Pigs under Options 1 and 2

Note: Strikethrough denotes deleted text and italicized and underlined denotes new text.

Fish and Game Code Statutes	
Section	Proposed Revision
3003.1	(c) It is unlawful for any person, including an employee of the federal, state, county, or municipal government, to use or authorize the use of any steel-jawed leghold trap, padded or otherwise, to capture any game mammal, <u>wild pig</u> , fur-bearing mammal, nongame mammal, protected mammal, or any dog or cat. <i>Note: only necessary under Option 2.</i>
3950	(a) Game mammals are: deer (genus <i>Odocoileus</i>), elk (genus <i>Cervus</i>), prong-horned antelope (genus <i>Antilocapra</i>), wild pigs, including feral pigs and European wild boars (genus <i>Sus</i>), black and brown or cinnamon bears (genus <i>Euarctos</i>), mountain lions (genus <i>Felis</i>), jackrabbits and varying hares (genus <i>Lepus</i>), cottontails, brush rabbits, pigmy rabbits (genus <i>Sylvilagus</i>), and tree squirrels (genus <i>Sciurus</i> and <i>Tamiasciurus</i>).
3953	(c) Funds deposited in the Big Game Management Account shall be available for expenditure upon appropriation by the Legislature to the department. These funds shall be expended solely for the purposes set forth in this section and Sections 3951 and 3952, and Chapter 5 (commencing with Section 450) of Division 1, Chapter 7 (commencing with Section 4650), and Chapter 11 (commencing with Section 4900), including acquiring land, completing projects, and implementing programs to benefit antelope, elk, deer, wild pigs , bear, and sheep, and expanding public hunting opportunities and related public outreach. Any land acquired with funds from the Big Game Management Account shall be acquired in fee title or protected with a conservation easement and, to the extent possible, be open or provide access to the public for antelope, elk, deer, wild pig, bear, or sheep hunting. The department may also use funds from the Big Game Management Account to pay for administrative and enforcement costs of the programs and activities described in this section. The amount allocated from the account for administrative costs shall be limited to the reasonable costs associated with administration of the programs and activities described in this section.

Appendix D: Proposed Changes to Fish and Game Code and Title 14, CCR Sections Related to Wild Pigs under Options 1 and 2

Fish and Game Code Statutes (continued)	
Section	Proposed Revision
4181	<p>(a) Except as provided in Section 4181.1, any owner or tenant of land or property that is being damaged or destroyed or is in danger of being damaged or destroyed by elk, bear, beaver, wild pig, wild turkeys, or gray squirrels, may apply to the department for a permit to kill the animals...</p> <p>(c) With respect to wild pigs, the department shall provide an applicant for a depredation permit to take wild pigs or a person who reports taking wild pigs pursuant to subdivision (b) of Section 4181.1 with written information that sets forth available options for wild pig control, including, but not limited to, depredation permits, allowing periodic access to licensed hunters, and holding special hunts authorized pursuant to Section 4188. The department may maintain and make available to these persons lists of licensed hunters interested in wild pig hunting and lists of nonprofit organizations that are available to take possession of depredating wild pig carcasses.</p>
4181.1(b)	<p>(b) Notwithstanding Section 4652, any wild pig that is encountered while in the act of inflicting injury to, molesting, pursuing, worrying, or killing livestock or damaging or destroying, or threatening to immediately damage or destroy, land or other property, including, but not limited to, rare, threatened, or endangered native plants, wildlife, or aquatic species, may be taken immediately by the owner of the livestock, land, or property or the owner's agent or employee, or by an agent or employee of any federal, state, county, or city entity when acting in his or her official capacity. The person taking the wild pig shall report the taking no later than the next working day to the department and shall make the carcass available to the department. Unless otherwise directed by the department and notwithstanding Section 4657, the person taking a wild pig pursuant to this subdivision, or to whom the carcass of a wild pig taken pursuant to this subdivision is transferred pursuant to subdivision (c), may possess the carcass of the wild pig. The person in possession of the carcass shall make use of the carcass, which may include an arrangement for the transfer of the carcass to another person or entity, such as a nonprofit organization, without compensation. The person who arranges this transfer shall be deemed to be in compliance with Section 4304. A violation of this subdivision is punishable pursuant to Section 12000. It is the intent of the Legislature that nothing in this subdivision shall be interpreted to authorize a person to take wild pigs pursuant to this subdivision in violation of a state statute or regulation or a local zoning or other ordinance that is adopted pursuant to other provisions of law and that restricts the discharge of firearms.</p>

Appendix D: Proposed Changes to Fish and Game Code and Title 14, CCR Sections Related to Wild Pigs under Options 1 and 2

Fish and Game Code Statutes (continued)	
Section	Proposed Revision
4181.1(c)	(c) The department shall make a record of each report made pursuant to subdivision (a) or (b) and may have an employee of the department investigate the taking or cause the taking to be investigated. The person taking a wild pig shall provide information as deemed necessary by the department. Upon completion of the investigation, the investigator may, upon a finding that the requirements of this section have been met with respect to the particular bear or wild pig taken under subdivision (a) or (b) , issue a written statement to the person confirming that the requirements of this section have been met. The person who took the wild pig may transfer the carcass to another person without compensation.
4182	Repeal entire section.
4188	(a) If a landowner or tenant applies for a permit under Section 4181 for wild pigs or wild turkeys, or under Section 4181.5 for deer, the department shall notify the landowner or tenant about available options for allowing access by licensed hunters, including, but not limited to, access authorized pursuant to Article 3 (commencing with Section 1570) of Chapter 5 of Division 2 to control wild pigs , wild turkeys, and deer. (b) The commission, in lieu of a permit as described in subdivision (a), and with the consent of, or upon the request of, the landowner or tenant, under appropriate regulations, may authorize the issuance of permits to persons holding valid hunting licenses to take wild pigs , wild turkeys, or deer in sufficient numbers to stop the damage or threatened damage. Before issuing permits to licensed hunters, the department shall investigate and determine the number of permits necessary, the territory involved, the dates of the proposed hunt, the manner of issuing the permits, and the fee for the permit.
4304	No person shall at any time capture or destroy any deer and detach or remove from the carcass only the head, hide, antlers, or horns; nor shall any person at any time leave through carelessness or neglect any game mammal or game bird <u>or wild pig</u> which is in his possession, or any portion of the flesh thereof usually eaten by humans, to go needlessly to waste. The provisions of this section shall not apply to game mammals <u>or wild pigs</u> taken under the authority of Sections 4152 and 4183 of this code.
4650	<i>Replace text with revised definition proposed in Appendix B</i>

Appendix D: Proposed Changes to Fish and Game Code and Title 14, CCR Sections Related to Wild Pigs under Options 1 and 2

Fish and Game Code Statutes (continued)	
Section	Proposed Revision
4651	<p>(a) The department shall prepare a plan for the management of wild pigs. Under the plan, the status and trend of wild pig populations shall be determined and management units shall be designated within the state. The plan may establish pig management zones to address regional needs and opportunities. In preparing the plan, the department shall consider available, existing information and literature relative to wild pigs.</p> <p>(b) The plan may include all of the following:</p> <p>(1) The distribution and abundance of wild pigs, as described in Section 3950.</p> <p>(2) A survey of range conditions.</p> <p>(3) Recommendations for investigations and utilization of wild pigs.</p> <p>(4) Encouraging mitigation of depredation by sport hunting pursuant to this chapter.</p> <p>(5) Live trapping and relocation of wild pigs to areas suitable and accessible to mitigation of depredation, with the consent of the landowner and after prior consultation with adjacent landowners who, in the department's opinion may be impacted, pursuant to this chapter.</p>
4652	<p>It is unlawful to take any wild pig, except as provided in Section 4181 <u>4152</u>, without first procuring a tag authorizing the taking of that wild pig in accordance with this chapter. <i>Note: change to Section 4152 under Option 1; change to new Section under Option 2.</i></p>
4654	<p>(a) Any resident of this state, 12 years of age or older, who possesses a valid hunting license, may procure the number of a <u>a</u> wild pig tags corresponding to the number of wild pigs that may legally be taken by one person during the license year upon payment of a base fee of fifteen dollars (\$15), for each wild pig tag.</p> <p>(b) Any nonresident, 12 years of age or older, who possesses a valid California nonresident hunting license, may procure the number of a <u>a</u> wild pig tags corresponding to the number of wild pigs that may legally be taken by one person during the license year upon payment of a base fee of fifty dollars (\$50), for each wild pig tag.</p> <p>(c) The base fees specified in this section are applicable to the 2004 2018 license year, and shall be adjusted annually thereafter pursuant to Section 713.</p>
4655	<p>Tags are only valid during the portion of the current hunting license year in which wild pigs make by taken or possessed in any area of the state</p>

Appendix D: Proposed Changes to Fish and Game Code and Title 14, CCR Sections Related to Wild Pigs under Options 1 and 2

Fish and Game Code Statutes (continued)	
Section	Proposed Revision
4657	<p>The holder of a wild pig tag shall keep the tag in his or her possession while hunting wild pig. <u>The commission may adopt such regulations as it deems necessary to govern the transportation of the carcass and any harvest reporting.</u> Before the taking of any wild pig, the holder of a wild pig tag, except for wild pig tags issued through the Automated License Data System, shall legibly write or otherwise affix his or her hunting license number to the wild pig tag. Upon the killing of any wild pig, the date of the kill shall be clearly marked by the holder of the tag on both parts of the tag. Before transporting the pig, a tag shall be attached to the carcass by the holder of the tag. The holder of the wild pig tag shall immediately, upon harvesting a pig, notify the department in a manner specified by the commission.</p>
New section	<p>Proposed text under Option 2 (see Section 4652 above): <u>(a) Any wild pig found to be injuring, molesting, pursuing, worrying, or killing livestock or damaging or destroying, or threatening to damage or destroy land or other property, including, but not limited to, rare, threatened, or endangered native plants, wildlife, or aquatic species, may be taken at any time or in any manner in accordance with this code and regulations adopted pursuant to this code by the owner or tenant of the premises or employees and agents in immediate possession of written permission from the owner or tenant thereof. They may also be taken by officers or employees of the Department of Food and Agriculture or by federal, county, or city officers or employees when acting in their official capacities pursuant to the Food and Agricultural Code pertaining to pests, or pursuant to Article 6 (commencing with Section 6021) of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code. Persons taking wild pig in accordance to this section are exempt from Section 3007, except when providing trapping services for a fee. (b) Traps used pursuant to this section shall be inspected and all animals in the traps shall be removed at least once daily. The inspection and removal shall be done by the person who sets the trap or the owner of the land where the trap is set or an agent of either.</u></p>

Appendix D: Proposed Changes to Fish and Game Code and Title 14, CCR Sections Related to Wild Pigs under Options 1 and 2

Title 14, California Code of Regulations	
Section	Proposed Revisions
251.3	No person shall knowingly feed big game mammals, as defined in Section 350 of these regulations, <u>or wild pigs</u> .
251.8	<p>(a) Pursuant to the provisions of sections 3080 and 3081(b) of the Fish and Game Code, game birds, game mammals, <u>and wild pigs</u> taken by California Indians on reservations under those circumstances wherein the taking of such animals is excepted from the application of the California Fish and Game Code in accordance with the provisions of section 12300 of the Fish and Game Code may be transported off the reservation and possessed within the state subject to the following conditions:</p> <p>(1) A permit, in such form as shall be prescribed by the Department of Fish and Game, to transport the carcass of a game bird or mammal, <u>or wild pig</u>, or parts thereof off a particular California Indian reservations shall first be obtained from tribal members designated by the tribal council of the reservation. Copies of the permit shall be maintained and distributed by the designated tribal members in accordance with instructions issued by the Department of Fish and Game.</p> <p>(b) The carcass of each game bird or mammal, <u>or wild pig</u>, or parts thereof shall be suitably stamped and/or tagged in such manner as shall be designated by the Department of Fish and Game prior to the transportation off the reservation.</p>
257.5	Except as otherwise provided in these regulations or in the Fish and Game Code, resident game birds and mammals, <u>and wild pigs</u> , may not be taken within 400 yards of any baited area.
260.2	<p>Game species <u>and wild pigs</u> may be taken on the Lake Oroville State Recreation Area only as follows:</p> <p>(c) Game species <u>and wild pigs</u> may be taken only during their respective open seasons or portions thereof falling within the period September 15 through January 31; and as provided in (a) above; and as otherwise provided by state Parks and Recreation are regulations (see area regulations).</p>
350	"Big game" means the following: deer (genus <i>Odocoileus</i>), elk (genus <i>Cervus</i>), pronghorn antelope (genus <i>Antilocarpa</i>), wild pig (feral pigs, European wild pigs and their hybrids (genus <i>Sus</i>), black bear (genus <i>Ursus</i>), and Nelson bighorn sheep (subspecies <i>Ovis canadensis nelsoni</i>) in the areas described in subsection 4902(b) of the Fish and Game Code.
352	Hunting and shooting hours for big game, including but not limited to deer, antelope, elk, <u>and</u> bear, and wild pig , shall be from one half hour before sunrise to one half hour after sunset.

Appendix D: Proposed Changes to Fish and Game Code and Title 14, CCR Sections Related to Wild Pigs under Options 1 and 2

Title 14, California Code of Regulations (continued)	
Section	Proposed Revisions
368	Repeal entire section; <i>move wild pig season and bag and possession limit to Chapter 6 Nongame Animals. See example in Appendix C.</i>
401	<p>(a) Application. A person who is a property owner or tenant may apply to the department for a permit to take elk, bear, bobcat, beaver, wild pigs, deer, wild turkeys, or gray squirrels that are damaging or destroying, or immediately threatening to damage or destroy, land or property...</p> <p>(b)(1) Permits issued pursuant to this section for beaver, wild pigs, or gray squirrels shall be valid for a period not to exceed one year.</p> <p>(g)(1) Holders of permits authorizing take of wild pigs shall provide a report listing the date and sex of each wild pig taken. A report shall be submitted whether or not any animals were taken. The reporting period shall be by calendar month. Their permittee or designated agent shall complete and submit the report to the department on or before the 15th day of the following month. Reports shall be submitted to the address provided by the department.</p> <p>(h) Tagging Animals. All animals taken pursuant to a permit, except wild pigs, shall be immediately tagged with tags provided by the department. Wild pigs shall be tagged prior to being transported from the property designated in the permit. Tags for animals except wild pigs shall be completed at the time the animal is taken. Tags for wild pigs shall be completed before the wild pigs are removed from the property...</p> <p>(i) Utilization of Carcass. Animals taken pursuant to this permit must be disposed of as required by the permit. No animals, except wild pigs, may be utilized by the permittee or designated agent. The permittee or designated agent may leave the carcass of any wild pig where it was taken for reasons of high temperatures, disease, parasites, or conditions which preclude use of the carcass. A person who makes every reasonable attempt to utilize the carcass of any wild pig as required in this subsection shall be deemed to be in compliance with Section 4304 of the Fish and Game Code.</p>
Additional Revisions Specific to Option 1	
472	General Provisions. Add wild pig; see example in Appendix C
474	Hours for Taking. Add wild pig; see example in Appendix C
475	Methods of Take for Nongame Birds and Nongame Mammals. Add wild pig; see example in Appendix C
***	New section with provisions, including depredation, specific to wild pig; see example in Appendix C

Appendix D: Proposed Changes to Fish and Game Code and Title 14, CCR Sections Related to Wild Pigs under Options 1 and 2

Title 14, California Code of Regulations (continued)	
	Additional Revisions Specific to Option 1 (continued)
***	New section for wild pig validation; see example in Appendix C
708.13	Repeal entire section and move wild pig tag requirements to new section above; see example in Appendix C
	Additional Revisions Specific to Option 2
***	New section to define species in new designation; see example in Appendix E
***	New section for general provisions; see example in Appendix E
***	New section for hours for taking; see example in Appendix E
***	New section for methods of take; see example in Appendix E
	New section for depredation provisions; see example in Appendix E
***	New section for wild pig validation; see example in Appendix E
708.13	Repeal entire section and move to new section above; see example in Appendix E

Appendix E. Sample Regulation Text for Wild Pigs under a New Designation

The following is an example of how wild pig regulations could be developed under a new status designation. Chapter and Section numbers are for illustrative purposes only and are provided as an example of where the regulations could be placed within Title 14 of the California Code of Regulations. The potential new language, offered only as an example, is denoted by italicized text.

Chapter 3.5. Exotic Game

375. Exotic Game Defined.

“Exotic game” means wild pig, including feral pig, European wild pig, and their hybrids (genus Sus).

376. General Provisions.

(a) It shall be unlawful to pursue, take, or possess any wild pig without first procuring a hunting license and wild pig hunting validation. This section shall not apply to wild pigs taken pursuant to Section 46XX of the Fish and Game Code and Section 379 of these regulations.

(b) Wild pigs may be taken statewide under the authority of a hunting license and wild pig hunting validation at any time of year and in any number. There is no daily bag or possession limit.

377. Hours for Taking.

Wild pig may be taken only from one-half hour before sunrise to one-half hour after sunset, except as provided for in Section 379 of these regulations.

378. Methods of Take.

Wild pigs may be taken in any manner except as follows:

(a) Poison may not be used.

(b) Wild pig may be taken only with the equipment and ammunition specified in Section 353 of these regulations.

(c) Traps may be used to take wild pigs only in accordance with the provisions of Section 465.5 of these regulations and Section 3003.1 of the Fish and Game Code.

(d) The take or attempted take of wild pigs shall be in accordance with the use of nonlead projectiles and ammunition pursuant to Section 250.1 of these regulations.

(e) The take of wild pig shall be in accordance with Section 257.5 of these regulations.

379. Wild Pig Depredation.

A person who is a property owner, tenant, or paid employee, as defined in subsection (f) of this section, may take wild pigs that are damaging or destroying or immediately threatening to damage or destroy, land or property without a hunting license and hunting tag/validation under the following conditions.

(a) Methods of Take.

(1) Wild pig may be taken by any method in accordance with Section 378 of these regulations.

(2) Any person utilizing dogs in the pursuit or take of wild pigs pursuant to this section must have a valid hunting license and wild pig validation. This does not apply to employees of a federal, State, or local government agency or local district with responsibilities including but not limited to animal control, animal damage control, irrigation, flood, or natural resources reclamation, while acting in their official capacity.

(3) Any person utilizing snares pursuant to this section must have a valid trapping license. This does not apply to employees of a federal, State, or local government agency or local district with responsibilities including but not limited to animal control, animal damage control, irrigation, flood, or natural resources reclamation, while acting in their official capacity.

(b) Hours for Take.

(1) Wild pigs causing damage or threatening to cause damage may be taken at any time except that they may not be taken from one-half hour after sunset to one-half hour before sunrise in the area described in Section 474(a) of these regulations.

(2) On privately-owned property, not included in Section 474(a) of these regulations, wild pigs may be taken from one-half hour after sunset to one-half hour before sunrise only by the landowner, tenant, paid employee, or a designated agent.

(3) Artificial lights may be used to assist in the taking wild pigs. If using spotlights at night, the property owner shall notify DFW of night operations and location at least 72 hours in advance.

(c) Government Employees and Designated Agents.

(1) A landowner or tenant may authorize an employee of a federal, State, or local government agency or local district with responsibilities including but not limited to animal control, animal damage control, irrigation, flood, or natural resources reclamation, while acting in their official capacity to take depredating wild pigs on the property.

(2) A landowner or tenant may designate other persons, including any dog handler who will be utilized in any pursuit, as their agent to take depredating wild pigs on the property. The designated agent must have written authorization from the landowner or tenant, and a trapping license or a hunting license and wild pig hunting validation. Written authorization shall include the landowner or tenant's name, phone number, and the address for the property where take is authorized.

(d) Tagging Animals. Wild pigs shall be tagged prior to being transported from the property by the property owner, tenant, or paid employee. Tags shall clearly show the property owner's name, address, date and location the animal was taken and shall include the signature of the person taking the animal.

(e) Utilization of the Carcass. Animals taken shall be utilized by the property owner, tenant, paid employee, or designated agent except the property owner, tenant, paid employee, or designated agent may leave the carcass of any wild pig where it was taken for reasons of high air temperature, disease, parasites, or conditions which preclude use of the carcass.

(f) Definition of Paid Employee. Definition under development and not available at this time.

380. Wild Pig Hunting Validation.

(a) Any licensed hunter, 12 years of age or older taking wild pigs, including feral pigs and European wild boars (genus Sus), must have a current state wild pig hunting validation in possession.

(b) Wild pig hunting validations, as specified in Section 4654 of the Fish and Game Code, may be procured through the department's Automatic License Data System terminals at any department license agent or department license sales office.

(c) Wild pig hunting validations are valid only during that portion of the current hunting license year in which wild pigs may be legally harvested, as provided in Section 376 of these regulations.

SAMPLE TEXT

Appendix F. Proposed Changes to Fish and Game Code and Title 14, CCR Sections Related to Wild Pigs under an Option Maintaining the Current Game Status

The following is an example of how wild pig code and regulation sections could be modified to integrate the proposed changes while maintaining the current big game status. Section numbers denoted by an asterick are for illustrative purposes only and are provided as an example of where the new regulation section could be placed within Title 14, CCR. Note: Strikethrough denotes deleted text and italicized and underlined denotes new text.

Fish and Game Code Statutes	
Section	Proposed Revision
3953	(c) Funds deposited in the Big Game Management Account shall be available for expenditure upon appropriation by the Legislature to the department. These funds shall be expended solely for the purposes set forth in this section and Sections 3951 and 3952, and Chapter 5 (commencing with Section 450) of Division 1, Chapter 7 (commencing with Section 4650), and Chapter 11 (commencing with Section 4900), including acquiring land, completing projects, and implementing programs to benefit antelope, elk, deer, wild pigs , bear, and sheep, and expanding public hunting opportunities and related public outreach. Any land acquired with funds from the Big Game Management Account shall be acquired in fee title or protected with a conservation easement and, to the extent possible, be open or provide access to the public for antelope, elk, deer, wild pig, bear, or sheep hunting. The department may also use funds from the Big Game Management Account to pay for administrative and enforcement costs of the programs and activities described in this section. The amount allocated from the account for administrative costs shall be limited to the reasonable costs associated with administration of the programs and activities described in this section.
4181	(a) Except as provided in Section 4181.1, any owner or tenant of land or property that is being damaged or destroyed or is in danger of being damaged or destroyed by elk, bear, beaver, wild pig , wild turkeys, or gray squirrels, may apply to the department for a permit to kill the animals... (c) With respect to wild pigs, the department shall provide an applicant for a depredation permit to take wild pigs or a person who reports taking wild pigs pursuant to subdivision (b) of Section 4181.1 with written information that sets forth available options for wild pig control, including, but not limited to, depredation permits, allowing periodic access to licensed hunters, and holding special hunts authorized pursuant to Section 4188. The department may maintain and make available to these persons lists of licensed hunters interested in wild pig hunting and lists of nonprofit organizations that are available to take possession of depredating wild pig carcasses.

Fish and Game Code Statutes (continued)

Section	Proposed Revision
4181.1(b)	<p>(b) Notwithstanding Section 4652, any wild pig that is encountered while in the act of inflicting injury to, molesting, pursuing, worrying, or killing livestock or damaging or destroying, or threatening to immediately damage or destroy, land or other property, including, but not limited to, rare, threatened, or endangered native plants, wildlife, or aquatic species, may be taken immediately by the owner of the livestock, land, or property or the owner's agent or employee, or by an agent or employee of any federal, state, county, or city entity when acting in his or her official capacity. The person taking the wild pig shall report the taking no later than the next working day to the department and shall make the carcass available to the department. Unless otherwise directed by the department and notwithstanding Section 4657, the person taking a wild pig pursuant to this subdivision, or to whom the carcass of a wild pig taken pursuant to this subdivision is transferred pursuant to subdivision (c), may possess the carcass of the wild pig. The person in possession of the carcass shall make use of the carcass, which may include an arrangement for the transfer of the carcass to another person or entity, such as a nonprofit organization, without compensation. The person who arranges this transfer shall be deemed to be in compliance with Section 4304. A violation of this subdivision is punishable pursuant to Section 12000. It is the intent of the Legislature that nothing in this subdivision shall be interpreted to authorize a person to take wild pigs pursuant to this subdivision in violation of a state statute or regulation or a local zoning or other ordinance that is adopted pursuant to other provisions of law and that restricts the discharge of firearms.</p>
4181.1(c)	<p>(c) The department shall make a record of each report made pursuant to subdivision (a) or (b) and may have an employee of the department investigate the taking or cause the taking to be investigated. The person taking a wild pig shall provide information as deemed necessary by the department. Upon completion of the investigation, the investigator may, upon a finding that the requirements of this section have been met with respect to the particular bear or wild pig taken under subdivision (a) or (b), issue a written statement to the person confirming that the requirements of this section have been met. The person who took the wild pig may transfer the carcass to another person without compensation.</p>

Fish and Game Code Statutes (continued)	
Section	Proposed Revision
4181.2	<p>For the purposes of this article relating to damage caused by wild pigs, "damage" means loss or harm resulting from injury to person or property. The department shall develop statewide guidelines to aid in determining the damage caused by wild pigs. The guidelines shall consider various uses of the land impacted by pigs.</p> <p><u>(a) Any wild pig found to be injuring, molesting, pursuing, worrying, or killing livestock, or damaging or destroying, or threatening to damage or destroy land or other property, including, but not limited to, rare, threatened, or endangered native plants, wildlife, or aquatic species, may be taken at any time or in any manner in accordance with this code and regulations adopted pursuant to this code, by the owner or tenant of the premises or employees and agents in immediate possession of written permission from the owner or tenant thereof. They may also be taken by officers or employees of the Department of Food and Agriculture or by federal, county, or city officials when acting in their official capacities pursuant to the Food and Agricultural Code pertaining to pests, or pursuant to Article 6 (commencing with Section 6021) of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code. Persons taking wild pig in accordance to this section are exempt from Section 3007, except when providing trapping services for a fee. (b) Traps used pursuant to this section shall be inspected and all animals in the traps shall be removed at least once daily. The inspection and removal shall be done by the person who sets the trap or the owner of the land where the trap is set or an agent of either.</u></p>
4188	<p>(a) If a landowner or tenant applies for a permit under Section 4181 for wild pigs or wild turkeys, or under Section 4181.5 for deer, the department shall notify the landowner or tenant about available options for allowing access by licensed hunters, including, but not limited to, access authorized pursuant to Article 3 (commencing with Section 1570) of Chapter 5 of Division 2 to control wild pigs, wild turkeys, and deer.</p> <p>(b) The commission, in lieu of a permit as described in subdivision (a), and with the consent of, or upon the request of, the landowner or tenant, under appropriate regulations, may authorize the issuance of permits to persons holding valid hunting licenses to take wild pigs, wild turkeys, or deer in sufficient numbers to stop the damage or threatened damage. Before issuing permits to licensed hunters, the department shall investigate and determine the number of permits necessary, the territory involved, the dates of the proposed hunt, the manner of issuing the permits, and the fee for the permit.</p>
4650	<i>Replace text with revised definition proposed in Appendix B</i>

Fish and Game Code Statutes (continued)

Section	Proposed Revision
4651	<p>(a) The department shall prepare a plan for the management of wild pigs. Under the plan, the status and trend of wild pig populations shall be determined and management units shall be designated within the state. The plan may establish pig management zones to address regional needs and opportunities. In preparing the plan, the department shall consider available, existing information and literature relative to wild pigs.</p> <p>(b) The plan may include all of the following:</p> <p>(1) The distribution and abundance of wild pigs, as described in Section 3950.</p> <p>(2) A survey of range conditions.</p> <p>(3) Recommendations for investigations and utilization of wild pigs.</p> <p>(4) Encouraging mitigation of depredation by sport hunting pursuant to this chapter.</p> <p>(5) Live trapping and relocation of wild pigs to areas suitable and accessible to mitigation of depredation, with the consent of the landowner and after prior consultation with adjacent landowners who, in the department's opinion may be impacted, pursuant to this chapter.</p>
4652	<p>It is unlawful to take any wild pig, except as provided in Section 4181, <u>4181.2</u>, without first procuring a tag authorizing the taking of that wild pig in accordance with this chapter.</p>
4654	<p>(a) Any resident of this state, 12 years of age or older, who possesses a valid hunting license, may procure the number of a wild pig tags corresponding to the number of wild pigs that may legally be taken by one person during the license year upon payment of a base fee of fifteen dollars (\$15), for each wild pig tag.</p> <p>(b) Any nonresident, 12 years of age or older, who possesses a valid California nonresident hunting license, may procure the number of a wild pig tags corresponding to the number of wild pigs that may legally be taken by one person during the license year upon payment of a base fee of fifty dollars (\$50), for each wild pig tag.</p> <p>(c) The base fees specified in this section are applicable to the 2004 2018 license year, and shall be adjusted annually thereafter pursuant to Section 713.</p>
4655	<p>Tags are only valid during the portion of the current hunting license year in which wild pigs make by taken or possessed in any area of the state</p>

Fish and Game Code Statutes (continued)	
Section	Proposed Revision
4657	<p>The holder of a wild pig tag shall keep the tag in his or her possession while hunting wild pig. <u>The commission may adopt such regulations as it deems necessary to govern the transportation of the carcass and any harvest reporting.</u> Before the taking of any wild pig, the holder of a wild pig tag, except for wild pig tags issued through the Automated License Data System, shall legibly write or otherwise affix his or her hunting license number to the wild pig tag. Upon the killing of any wild pig, the date of the kill shall be clearly marked by the holder of the tag on both parts of the tag. Before transporting the pig, a tag shall be attached to the carcass by the holder of the tag. The holder of the wild pig tag shall immediately, upon harvesting a pig, notify the department in a manner specified by the commission.</p>

Title 14, California Code of Regulations	
Section	Proposed Revisions
352	Hunting and shooting hours for big game, including but not limited to deer, antelope, elk, <u>and</u> bear, and wild pig shall be taken from one-half hour before sunrise to one-half hour after sunset. <u>Wild pig shall be taken from one-half hour before sunrise to one-half hour after sunset except as provided for in subsection 4XX(b) of these regulations.</u>
401	<p>(a) Application. A person who is a property owner or tenant may apply to the department for a permit to take elk, bear, bobcat, beaver, wild pigs, deer, wild turkeys, or gray squirrels that are damaging or destroying, or immediately threatening to damage or destroy, land or property...</p> <p>(b)(1) Permits issued pursuant to this section for beaver, wild pigs, or gray squirrels shall be valid for a period not to exceed one year.</p> <p>(g)(1) Holders of permits authorizing take of wild pigs shall provide a report listing the date and sex of each wild pig taken. A report shall be submitted whether or not any animals were taken. The reporting period shall be by calendar month. Their permittee or designated agent shall complete and submit the report to the department on or before the 15th day of the following month. Reports shall be submitted to the address provided by the department.</p> <p>(h) Tagging Animals. All animals taken pursuant to a permit, except wild pigs, shall be immediately tagged with tags provided by the department. Wild pigs shall be tagged prior to being transported from the property designated in the permit. Tags for animals except wild pigs shall be completed at the time the animal is taken. Tags for wild pigs shall be completed before the wild pigs are removed from the property...</p> <p>(i) Utilization of Carcass. Animals taken pursuant to this permit must be disposed of as required by the permit. No animals, except wild pigs, may be utilized by the permittee or designated agent. The permittee or designated agent may leave the carcass of any wild pig where it was taken for reasons of high temperatures, disease, parasites, or conditions which preclude use of the carcass. A person who makes every reasonable attempt to utilize the carcass of any wild pig as required in this subsection shall be deemed to be in compliance with Section 4304 of the Fish and Game Code.</p>
403*	<u>Take of Wild Pig Causing Damage. A person who is a property owner, tenant, or paid employee, as defined in subsection (f) of this section, may take wild pigs that are damaging or destroying or immediately threatening to damage or destroy, land or property without a hunting license and hunting tag/validation under the following conditions.</u>

Title 14, California Code of Regulations	
Section	Proposed Revisions
403(a)	<u>Method of Take. (1) Wild pig may be taken by any method in accordance with Section 353 and 465.5 of these regulations. (2) Any person utilizing dogs in the pursuit or take of wild pigs pursuant to this section must have a valid hunting license and wild pig validation. This does not apply to employees of a federal, State, or local government agency or local district with responsibilities including but not limited to animal control, animal damage control, irrigation, flood, or natural resources reclamation, while acting in their official capacity. (3) Any person utilizing snares pursuant to this section must have a valid trapping license. This does not apply to employees of a federal, State, or local government agency or local district with responsibilities including but not limited to animal control, animal damage control, irrigation, flood, or natural resources reclamation, while acting in their official capacity. (4) No poison may be used.</u>
403(b)	<u>Hours for taking. (1) Wild pigs causing damage or threatening to cause damage may be taken at any time except that they may not be taken from one-half hour after sunset to one-half hour before sunrise in the area described in Section 474(a) of these regulations. (2) On privately-owned property, not included in Section 474(a) of these regulations, wild pigs may be taken from one-half hour after sunset to one-half hour before sunrise only by the landowner, tenant, paid employee, or a designated agent. (3) Artificial lights may be used to assist in the taking wild pigs. If using spotlights at night, the property owner shall notify DFW of night operations and location at least 72 hours in advance.</u>
403(c)	<u>Government Employees and Designated Agents. (1) A landowner may authorize an employee of a federal, State, or local government agency or local district with responsibilities including but not limited to animal control, animal damage control, irrigation, flood, or natural resources reclamation, while acting in their official capacity to take depredating wild pigs on the property. (2) A landowner may designate other persons, including any dog handler who will be utilized in any pursuit, as their agent to take depredating wild pigs on the property. The designated agent must have a trapping license or hunting license and wild pig hunting validation.</u>
403(d)	<u>Tagging Animals. Wild pigs shall be tagged prior to being transported from the property by the property owner, tenant, or paid employee. Tags shall clearly show the property owner's name, address, date and location the animal was taken and shall include the signature of the person taking the animal.</u>
403(e)	<u>Utilization of the Carcass. Animals taken shall be utilized by the property owner, tenant, paid employee, or designated agent except the property owner, tenant, paid employee, or designated agent may leave the carcass of any wild pig where it was taken for reasons of high air temperature, disease, parasites, or conditions which preclude use of the carcass.</u>
403(f)	<u>Definition of Paid Employee.</u> Definition under development and not available at this time

Title 14, California Code of Regulations	
Section	Proposed Revisions
404*	<u>Wild pig validation.</u>
404(a)	<u>Any licensed hunter, 12 years of age or older taking wild pigs, including feral pigs and European wild boars (genus Sus), must have a current state wild pig hunting validation in possession.</u>
404(b)	<u>(a) Wild pig hunting validations, as specified in Section 4654 of the Fish and Game Code, may be procured through the department's Automatic License Data System terminals at any department license agent or department license sales office.</u>
404(c)	<u>Wild pig hunting validations are valid only during that portion of the current hunting license year in which wild pigs may be legally harvested, as provided in Section 368 of these regulations.</u>

California Fish and Game Commission
Wildlife Resources Committee
Staff Report on the Delta Fisheries Forum
August 2017

At the direction of the California Fish and Game Commission (Commission), the California Department of Fish and Wildlife (Department) and Commission staff co-hosted a Delta Fisheries Forum to identify potential Commission actions to support and enhance the State's current fisheries management goals for the Sacramento-San Joaquin Delta (Delta). This report provides an overview of the forum, summarizes key findings, and includes four staff recommendations on potential next steps for Commission consideration.

Background

In June 2016, the Commission received a petition from the Coalition for a Sustainable Delta and others requesting regulation changes to increase the bag limit and reduce the minimum size limit for striped bass and black bass in the Delta. The expressed intent of the petition was to reduce predation by non-native bass on fish that are native to the Delta and are listed as threatened or endangered under the federal or California endangered species acts, including winter-run and spring-run Chinook salmon, Central Valley steelhead, and Delta smelt. While the petition was formally withdrawn prior to Commission action, the Commission requested that the Wildlife Resources Committee (WRC) schedule a discussion to explore the issue more comprehensively. WRC directed staff to hold a half-day forum focused on the State's vision for managing fisheries in the Delta for the benefit of native fish species and sport fisheries, the implementation of the State's vision, and soliciting stakeholder input on potential actions the Commission could consider related to this topic.

Held on May 24, 2017 in Sacramento, the forum was publicized and open to the public. Approximately 50 people attended, including WRC co-chairs Commissioner Williams and Commissioner Burns. The forum was structured to include a state agency panel discussion, an overview of the Commission's policies and regulations for sport fisheries in the Delta, and a full group discussion. The full group discussion included two presentations by representatives for the original petition, consistent with direction provided by the Commission in August 2016.

Forum Highlights

State Agency Panel

The state agency panel members included:

- Carl Wilcox, Policy Advisor to the Director, California Department of Fish and Wildlife
- Cindy Messer, Chief Deputy Director, California Department of Water Resources
- Eric Oppenheimer, Chief Deputy Director, State Water Resources Control Board
- Rainer Hoenicke, Deputy Executive Officer, Science Program, Delta Stewardship Council

Panel members gave an overview of their agency's role in implementing the State's vision for managing the Delta and answered questions from the audience.

Key Findings

Existing Conditions – the Delta has undergone significant changes, especially in terms of habitat for native fish. Changes in habitat, hydrodynamics, and aquatic vegetation has resulted in a new ecosystem that favors and supports non-native centrarchids, such as largemouth bass, over native fish species, including Chinook salmon and Delta smelt.

Planning for the Future – the Delta Stewardship Council's Delta Plan, California Natural Resources Agency's California EcoRestore, and the multi-agency Ecosystem Restoration Program's Conservation Strategy for Restoration are large-scale planning efforts that provide the long-term vision, management goals, and implementation strategies for the Delta. Other State plans, such as the Delta Smelt Resiliency Strategy, Chinook Salmon Resiliency Strategy, and California Water Action Plan, guide more specific, near-term strategies and actions for management in the Delta.

Management Priorities – there has been a shift in management priorities over the last 30-40 years from managing the Delta for sport fisheries to managing for native species to prioritizing management for threatened and endangered species. During this time, there has also been a growing awareness and understanding of the value of managing the ecosystem as a whole rather than managing for individual species, and a greater emphasis has been placed on addressing stressors more holistically. Restoration objectives have also changed with increased focus on restoring key attributes, such as specific habitat types, habitat diversity, and functional flow regimes, to support native species in the Delta. There is also more emphasis on integrating the adaptive management process into management plans and actions.

Interagency Coordination – a myriad of state and federal agencies have management responsibilities within the Delta, which necessitates a certain level of coordination and collaboration. The Interagency Ecological Program, established in the 1970s, provides a framework for agencies to work together to conduct ecological investigations in the Delta. Two decades later, the CALFED Bay-Delta Program built on that effort, forming a consortium of 25 state and federal agencies working together to improve California's water supply and the ecological health of San Francisco Bay and the Delta. In 2009, the Delta Reform Act established the Delta Stewardship Council to further advance the State's goals for a more reliable water supply and a healthy, protected Delta ecosystem through the development of the Delta Plan. The Delta Reform Act also established the Delta Plan Interagency Implementation Committee, made up of the 17 state and federal agencies responsible for implementing the Delta Plan. Key efforts that support continued interagency coordination in the Delta include:

- Interagency Ecological Program (IEP) – focuses on providing and integrating relevant and timely ecological information for managing the Delta ecosystem through collaborative and scientifically-sound monitoring, research, modeling, and data synthesis efforts.
- IEP Pelagic Organism Decline Management Team – formed in 2005, this team is tasked with designing and managing a comprehensive study to evaluate the causes of the decline of pelagic organisms, including stock-recruitment effects, declines in habitat quality, increased mortality rates, and reduced food availability due to invasive species.

- Delta Plan Interagency Implementation Committee – facilitates work on the Delta Plan through increased coordination and integration between 17 agencies and focuses on the intersection of Delta Plan and California Water Action Plan implementation.
- Collaborative Science and Adaptive Management Program – formed in 2013 under a court order to inform management actions incorporated into the biological opinions for operating the state and federal water projects and considering alternative management actions. The court order ended in 2015; however, the participating agencies agreed to continue the program in an effort to promote the collaborative development of scientific information to inform management decisions.

Implementing Under Uncertainty – there was broad acknowledgement that there will never be enough science to fully inform all management decisions and that an emphasis is needed on approaching management and policy decisions in flexible and adaptive ways. The importance of evaluating the effectiveness of decisions once they have been implemented was highlighted. Key efforts to improve our scientific understanding in the Delta include:

- Delta Science Plan (also known as One Delta, One Science) – establishes a shared vision for Delta science and a framework to guide, organize, and integrate science in the Delta.
- Science Action Agenda – prioritizes near-term actions to achieve the objectives of the Delta Science Plan and identifies priorities for research, monitoring, data management, and communication.
- The State of Bay-Delta Science reports – a periodically updated summary that synthesizes the current science knowledge of the Delta.

Full Group Discussion

This portion of the forum started with two presentations highlighting ideas for potential near-term strategies to reduce scientific uncertainty. The first presentation by Brad Cavallo, president and principle scientist for Cramer Fish Sciences, evaluated non-native predator management opportunities in the Delta with a focus on scientific collecting permits and engaging with the angling public to conduct scientific studies. The second presentation by Doug Demko, president of FishBio, covered key uncertainties and identified data needs related to abundance, distribution, and predation impacts of non-native species, and highlighted opportunities for public-private research partnerships with case studies.

Following the presentations, Commission staff facilitated a discussion with the audience centered on three questions. Stakeholders provided a variety of proposals, which are summarized below. Specific input in response to the three questions included:

Question 1: What are your long-term goals/visions for fisheries management in the Delta?

- Holistically manage fisheries in a way that accounts for the unique life history strategies of individual species
- Reduce impacts from water project operations on fish species in the Delta
- Take a holistic approach to addressing stressors

- Take a holistic, collaborative approach to management that accounts for disparities in funding needs
- Manage the estuary and riverine system as a whole

Question 2: What actions can the Commission take in the near-term (5-10 years) to support the State's vision and management objectives?

- Stress the importance of conducting research
- Be willing to take adaptive actions to test management options
- Implement the existing striped bass policy
- Focus efforts on hatchery operations and predation hotspots
- Clarify the scientific collecting permit process
- Support predation-related pilot projects and research

Question 3: What actions can the Commission take in the long term (10-20 years) to support the State's vision and management objectives?

- Pursue opportunities to ensure adequate funding to complete the full adaptive management cycle

Additional Stakeholder Input

Throughout the forum stakeholders raised concerns and provided input on a number of topics related to Delta management, including:

- predation, while a stressor for listed species is not a primary stressor and management actions should be focused on addressing the primary stressors;
- management actions to reduce predation impacts should be targeted at known predation hot spots;
- management actions to reduce striped bass and black bass populations may have unintended consequences, such as increases in other prey populations that would result in increased competition for limited food resources;
- recommendations to improve hatchery practices to reduce predation on hatchery salmon;
- main issues affecting listed species in the Delta are flow, habitat, and water quality;
- more information on striped bass abundance, distribution, and reproduction is needed to inform any proposed regulation changes;
- more information on direct and indirect loss of fish due to operations of the federal water pumping facility is needed; and
- concerns about management decisions negatively affecting sport fisheries and, in particular, potential economic impacts.

Staff Recommendations

1. *Develop and adopt a Delta Fisheries Management policy* – develop a policy that: (1) aligns with the State's goals for the Delta; (2) supports more holistic management of the Delta; (3) encourages interagency coordination and collaboration; (4) requires

integration of the best available science into decision-making; and (5) clarifies the Commission's management goals for both listed species and sport fisheries in the Delta.

2. *Increase Commission awareness of and participation in interagency coordination efforts in the Delta* – improve communication about Delta activities through:
 - Department updates on outcomes from the Delta Plan Interagency Implementation Committee, as appropriate;
 - staff participation in interagency meetings and conferences, as appropriate; and
 - periodic updates from agencies on key initiatives, such as the Science Action Agenda or the State of Bay-Delta Science updates.
3. *Explore opportunities for targeted predation-related research* – encourage staff engagement in efforts to identify possible research options including:
 - coordinate with the Delta Stewardship Council's Science Program and Department to identify key research questions and possible mechanisms to fund that research, and
 - a collaborative effort to model the effects of various regulatory scenarios.
4. *Continue stakeholder engagement on key uncertainties related to fisheries management in the Delta* – as time allows, use WRC as a forum to further explore some of the key uncertainties and identify possible options to address them.

Wildlife Resources Committee (WRC) 2017-2018 Draft Work Plan: Scheduled topics and timeline for items referred to WRC (Updated for Aug 2017 FGC meeting)

Topic	Type of Topic	2017			2018
		JAN (Redding)	MAY (Sacramento)	SEP (Riverside)	JAN (TBD)
Annual Regulations					
Upland Game Birds	Annual	X / R		X	X / R
Sport Fish	Annual	X	X / R		X
Mammals	Annual			X / R	
Waterfowl	Annual			X / R	
Central Valley Salmon	Annual			X / R	
Klamath River Sport Fish	Annual			X / R	
Regulations & Legislative Mandates					
Falconry	Referral for review	X	X	X / R	
Russian River sport fishing	Referral for review				X
Emerging Management Issues					
Lead Ban Implementation	DFW project	X			X
Wild Pig Management	Referral for review	X	X	X / R	
Special Projects					
Predator Policy Workgroup	WRC workgroup	X	X	X / R	
Delta Fisheries Forum (May 24, 2017)	Referral			X / R	

KEY X Discussion scheduled R Recommendation developed and moved to FGC



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SCI CA Coalition

September 28, 2017

VIA E-Mail

Ms. Valerie Termini, Executive Director
Fish and Game Commissioners
California Fish and Game Commission
1416 Ninth Street, Room 1320
Sacramento, CA 95814

Re: Comments on Options for Possible Changes in Statutes and Regulations for Managing Wild Pig Depredation, Fish and Game Commission Meeting, October 11, 2017, Agenda Item 4

Dear Ms. Termini and Commissioners:

SCI has reviewed the two options for possible changes to the Fish and Game Code and Title 14 regulations pertaining to wild pig depredation management that were discussed by the Wildlife Resources Committee (WRC) at its meeting on September 13, 2017.

SCI is opposed to the removal of game mammal status for wild pigs, but could support changes to the depredation laws that give property owners more flexibility.

Accordingly, SCI asks that a third option be considered that would keep the wild pig as a game mammal, but would modify the depredation laws and regulations to give property owners experiencing property damage more flexibility for dealing with it.

The following is SCI's response to the individual provisions of the two options that were before the WRC committee:

Of significant concern is that some of the most critical subject areas in the options could be subjected to political, rather than scientific wildlife management, concerns and treatment.

Although many items have been identified for possible inclusion in the Fish and Game Code, further code language would still be needed to assure that there are no inappropriate interpretations of statute or the establishment of "emergency wild pig regulations" that override the code.

The commission has the authority to do so under current California Fish and Game Code section 219 which provides authority to supersede by regulation ". . . any section of this code designated by number in the regulation, but shall do so only to the extent specifically provided in the regulation. . .".

Of specific concern are current code sections that could be overridden by employing section 219, such as those that prevent poisoning and other forms of depredation control that result in large scale killing of wild pigs and other wildlife, and the wasting of wild pigs killed by property owners, their tenants, their paid employees, or employees of government agencies.

There are many provisions addressed by the two options but there is no protection proposed that would prevent the commission from employing section 219. Such protection is considered to be a critical issue.

The options do not propose to modify current code section 4152 relative to the taking of depredating wild pigs. Section 4152 provides that nongame mammals (except furbearers) “. . . may be taken at any time or in any manner in accordance with this code and regulations adopted pursuant to this code by the owner or tenant of the premises. . .”.

If the wild pig were made a nongame mammal, this would seem to allow the use of any method to kill depredating wild pigs, and it could be in conflict with safeguards against this elsewhere in the options. It may be necessary to include clarifying language to assure that there is no confusion relative to what would be permitted.

The options do not contain language preventing the use of other codes, such as the Food and Agricultural Code or the Public Resources Code, to circumvent the Fish and Game Code relative to managing wild pig depredation. If one of the options is to be adopted, such a provision should be included.

Option 1: Change Designation from Game Mammal to Nongame Mammal

SCI opposes the proposed change in game mammal designation for the wild pig.

A number of statutory and regulatory revisions would be required under this option.

Appendix D in the complete option document contains the specifically proposed language changes to both statutory and regulatory code sections that are generally described below.

Many of these changes were contained in [AB 2268](#) (Bigelow – 2014) and in [AB 290](#) (Bigelow – 2015).

Both bills were opposed by SCI at that time.

Although SCI recognizes that the current options make an effort to resolve the objections of SCI and other stakeholder groups, more work would be needed on them to assure that the department, commission, landowners, or government agencies cannot find a pathway to engage in the uncontrolled, large scale killing of wild pigs and the wastage of their carcasses.

Specific Changes to the Fish and Game Code under Option 1:

Remove all references to wild pig in sections 4181 and 4181.1 (required permits and reporting for depredation)

Repeal Section 4181.2 (definition of damage)

Comments:

By repealing the definition of damage, and the requirement that there be damage or a threat of imminent damage, property owners could just kill pigs upon sighting them, thus potentially excessively and unnecessarily destroying the wild pig resource.

There should be specific statutory language to specify more clearly when land owners, their tenants, or their employees could actually kill pigs under a claim of depredation.

Remove all reference to wild pigs in Section 4188 (permits for licensed hunters)

Comments:

Since depredation permits would no longer be needed to take depredating wild pigs, such permits for licensed hunters on private land would no longer be relevant.

SCI does not object to this provision.

Modify Section 4304 to add wild pig to game mammals and game birds (waste of game carcass prohibited).

Comments:

This would keep the waste of wild pig carcasses law the same as it is currently, thus not allowing the abandonment of carcasses in the field to rot.

However, this proposal would allow landowners to determine for themselves whether a carcass can be left in the field due to high ambient temperatures, disease or parasites (proposed in Title 14). There is no proposed requirement that such persons be qualified to make these determinations or, in the case of disease or parasites, that they possess and know how to use the proper scientific analytical equipment.

If wild pigs were killed on a summer morning, but not checked on until sometime later in the day, there is a good chance of spoilage. There should be a provision that pigs must be recovered immediately upon killing.

Again, however, current code section 219 would allow the commission to override any of these provisions were they to be enacted.

Modify definition of wild pig in Section 4650.

Comments:

The proposed definition, based on physical characteristics and an absence of any kind of owner branding, appears to be reasonable. SCI does not object to this provision.

Modify Section 4651 (management plan) to simplify requirements to those identified in 4651(b)(1), (b)(2), (b)(3) and (b)(4)

Comments:

The proposed modifications would maintain a management plan for wild pigs that is the same as the current law except for the establishment of management zones based on regional needs and opportunities, and the authorization to trap and relocate wild pigs would be repealed. SCI does not object to this provision.

Modify Section 4654(a) and (b) to adjust for a new base fee for the wild pig license validation, modify language governing the number of tags, and update license year from the current 2004 to 2019

Comments:

Since there would no longer be a limit on how many wild pigs a hunter could take each year, this change would remove the provision limiting the number of tags that could be purchased per year. SCI does not object to this provision.

Modify Section 4657 to remove all language related to affixing tags to pigs or reporting the taking of a pig (as there no longer would be a tag or reporting requirement), and modify the possession requirement to include language pursuant to regulations adopted by the Commission.

Comments:

This would pave the way for using license “wild pig validations” instead of physical tags that must be carried while hunting, and would allow the commission to establish regulations governing the transportation of pig carcasses and any harvest reporting to the department which the commission may decide to require.

SCI does not object to this provision.

Changes to Title 14 Regulations under Option 1

As in the proposed changes to the Fish and Game Code, SCI opposes changing the wild pig’s status to a nongame mammal. Notwithstanding this position, the following are SCI’s comments on the options being discussed for changes to the regulations:

Modify sections 251.3, 251.8, 257.5, and 260.2 to include wild pig

Comments:

If the law were changed so that the wild pig would no longer be a game mammal, these proposed regulatory changes would apply the restrictions on taking game mammals to wild pigs as well. This would include a prohibition against feeding them, extend the restrictions on transporting game species taken on Indian reservations to include wild pig, prohibit taking pigs within 400 yards of a baited area, and also apply the restrictions on taking game species on the Lake Oroville State Recreation Area to wild pigs.

SCI does not object to such a provision.

Remove references to wild pig from sections 350, 352, and 401

Comments:

These proposed changes would provide consistency with the proposed changes to the code by removing wild pigs from the list of game mammals, deleting big game restrictions on hunting and shooting hours for wild pigs, and move the wild pig to the list of Nongame Animals.

Though SCI opposes removal of the wild pig’s game mammal status, this provision if adopted would be consistent with changing the wild pig from a Game mammal to a Nongame animal.

Repeal Section 368

Comments:

This would move the requirements pertaining to wild pigs from the game mammal section of the regulations and place them under the provisions for taking nongame animals (sections 472, 474, and 475 described below).

Though SCI opposes the removal of game mammal status, this would be consistent with changing the wild pig from a Game mammal to a Nongame animal.

Add wild pig to sections 472, 474, and 475

Comments:

These sections govern general provisions, hours for taking, and methods of take for Nongame birds and Nongame mammals. Specifies that the take of wild pig shall be in accordance with the provisions of Section 3950 of the Fish and Game Code (Game Mammals) and Section 257.5 of Title 14 regulations (prohibition on taking within 400 yards of any baited area).

This is consistent with changing the wild pig from a Game mammal to a Nongame animal, but keeping such restrictions on taking.

Add new section(s) specifically for wild pig for licensing/tag requirements, hunting provisions, and depredation provisions

Comments:

Would establish a hunting license wild pig “validation” instead of a physical tag, provides that wild pig hunting season will be year-round (no closed season) and removes any bag limit.

Would provide that no hunting license or validation would be required for taking wild pigs causing, or immediately threatening to cause, depredation by a landowner, their tenant, or their employees, and allows landowners to designate government employees, agents (such as licensed hunters) and other persons to take depredating pigs on their property. They must use the method of take specified in the regulations for taking Big Game or trapping, as applicable.

The use of artificial lights would be allowed at night by landowners, their tenants, or their employees for the taking of depredating wild pigs.

This would appear to allow the live cage trapping of wild pig(s) and shooting them while they are in the trap. SCI would oppose a provision allowing this practice.

Repeal section 708.13, Wild pig license tags, and integrate tag requirements into a new subsection specifically for wild pig licensing/tag requirements.

Comments:

Conforms to the establishment of the wild pig license validation for licensed hunters, but requires that land owners or their tenants attach a tag to a pig before transporting off of the property.

SCI does not object to this provision.

Option 2: Change Wild Pig Designation from Game Mammal to a New Designation

A number of statutory and regulatory changes would be required under this option to integrate the solutions identified to address management concerns. Appendix D of the complete option document contains the specific possible changes to statutory and regulatory text that is generally described below.

This option is essentially the same as option one, except that wild pigs would have their own designation instead of being Nongame Animals.

Changes to Fish and Game Code under Option 2

The same changes to the Fish and Game Code proposed under Option 1 would also be necessary under this option.

SCI’s comments would remain the same for such changes.

Changes to Title 14 Regulations under Option 2

Modify sections 251.3, 251.8, 257.5, and 260.2 to include wild pig

Comments:

If, by law, the wild pig would no longer be a game mammal, these proposed regulatory changes would apply restrictions on taking game mammals to wild pigs as well. This would include a prohibition against feeding them, extend the restrictions on transporting game species taken on Indian reservations to include wild pig, prohibit taking pigs within 400 yards of a baited area, and also apply the restrictions on taking game species on the Lake Oroville State Recreation Area to wild pigs.

SCI would not oppose this if the wild pig were no longer a game mammal, as it would keep the current restrictions in place for taking wild pigs. However, SCI would not support changing the game mammal status of wild pigs.

Remove references to wild pig from sections 350, 352, 353, and 401

Comments:

Would remove wild pig from the regulatory definition of “Big game” which is opposed by SCI.

Would also remove the restrictions on hunting and shooting them at night for property owners, tenants, or paid employees taking wild pigs that are destroying, or immediately threatening to damage or destroy, land or property. In this situation, no hunting license or validation would be required.

Would eliminate the depredation permit and reporting requirement to take depredating wild pigs and prohibit wasting of carcasses.

There would no longer be department oversight of the handling of wild pig depredation by landowners, their tenants, or their employees, and no reports would have to be made by them to the department. The department would no longer know how many wild pigs they kill or the methods used to kill them.

SCI would oppose most of these provisions.

The method of take for wild pigs would be the same as for game mammals, thus legally prohibiting such methods of take as poisoning or baiting. However, current code section 219 would allow the commission to override this provision.

Repeal Section 368

Comments:

This moves the requirements pertaining to wild pigs from the game mammal section of the regulations. It would be consistent with changing the wild pig from a Game mammal to a separate designation.

Create a chapter in subdivision 2 of the regulations specifically for wild pig regulations, separate from Game Mammals and Nongame Animals.

Within the new regulatory chapter, add sections to establish bag and season, methods of take, hours for take, licensing and validation, and depredation provisions as proposed under Option 1.

Repeal section 708.13 and integrate wild pig license validation and other requirements into a new subsection (4XX) specifically for wild pig.

Comments:

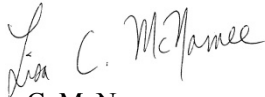
Conforms to the establishment of the wild pig license validation for licensed hunters, but requires that land owners or their tenants attach a tag to a pig before transporting off of the property. SCI would oppose if the wild pig's game mammal status would be removed.

Comments on Appendix F - Proposed Changes to Fish and Game Code and Title 14, CCR Sections Related to Wild Pigs under an Option Maintaining the Current Game Mammal Status

Appendix F provides an example of how wild pig code and regulation sections could be modified to integrate the proposed changes while maintaining the current big game status of wild pigs.

SCI would support keeping the game mammal status of wild pigs, and thus the protections afforded by keeping the same methods and hours of take. Its comments relative to the remaining provisions that this option would have in common with options 1 and 2 would remain the same as for those options.

Sincerely,



Lisa C. McNamee
Co-Legislative Coordinator
SCI CA Coalition



Don Giottonini
Co-Legislative Coordinator
SCI CA Coalition

cc: SCI CA Coalition



Dedicated to Preserving Your Rights To Hunt and Fish In the State of California

September 28, 2017

VIA E-Mail

Ms. Valerie Termini, Executive Director
Fish and Game Commissioners
California Fish and Game Commission
1416 Ninth Street, Room 1320
Sacramento, CA 95814

Re: Comments on Options for Possible Changes in Statutes and Regulations for Managing Wild Pig Depredation, Fish and Game Commission Meeting, October 11, 2017, Agenda Item 4

Dear Ms. Termini and Commissioners:

OSCC has reviewed the two options for possible changes to the Fish and Game Code and Title 14 regulations pertaining to wild pig depredation management that were discussed by the Wildlife Resources Committee (WRC) at its September 13th meeting.

OSCC is opposed to the removal of game mammal status for wild pigs, but could support changes to the depredation laws that give property owners more flexibility.

Accordingly, OSCC asks that the Fish and Game Commission (FGC) consider a third option that would keep the wild pig as a game mammal, but would modify the depredation laws and regulations to give property owners experiencing property damage more flexibility for dealing with it.

The following is OSCC's response to the individual provisions of the two options that were before the committee:

Of significant concern is that some of the most critical subject areas in the options could be subjected to political, rather than scientific wildlife management, concerns and treatment.

Although many items have been identified for possible inclusion in the Fish and Game Code, further code language would still be needed to assure that there are no inappropriate interpretations of statute or the establishment of "emergency wild pig regulations" that override the code. The commission has the authority to do so under current California Fish and Game Code section 219 which provides authority to supersede by regulation ". . . any section of this code designated by number in the regulation, but shall do so only to the extent specifically provided in the regulation. . .".

Of specific concern are current code sections that could be overridden by employing section 219, such as those that prevent poisoning and other forms of depredation control that result in large scale killing of wild pigs and other wildlife, and the wasting of wild pigs killed by property owners, their tenants, their paid employees, or employees of government agencies.

There are many provisions addressed by the two options, but there is no protection proposed that would prevent the commission from employing section 219. Such protection is considered to be a critical issue.

The options do not propose to modify current code section 4152 relative to the taking of depredating wild pigs. Section 4152 provides that nongame mammals (except furbearers) “. . . may be taken at any time or in any manner in accordance with this code and regulations adopted pursuant to this code by the owner or tenant of the premises. . .”.

If the wild pig were made a nongame mammal, this would seem to allow the use of any method to kill depredating wild pigs, and it could be in conflict with safeguards against this elsewhere in the options. It may be necessary to include clarifying language to assure that there is no confusion relative to what would be permitted.

The options do not contain language preventing the use of other codes, such as the Food and Agricultural Code or the Public Resources Code, to circumvent the Fish and Game Code relative to managing wild pig depredation. If one of the options is to be adopted, such a provision should be included.

Option 1: Change Designation from Game Mammal to Nongame Mammal

OSCC opposes the proposed change in game mammal designation for the wild pig.

A number of statutory and regulatory revisions would be required under this option.

Appendix D in the complete option document contains the specifically proposed language changes to both statutory and regulatory code sections that are generally described below.

Many of these changes were contained in [AB 2268](#) (Bigelow – 2014) and in [AB 290](#) (Bigelow – 2015).

Both bills were opposed by OSCC at that time.

Although OSCC recognizes that the current options make an effort to resolve the objections of OSCC and other stakeholder groups, more work would be needed on them to assure that the department, commission, landowners, or government agencies cannot find a pathway to engage in the uncontrolled, large scale killing of wild pigs and the wastage of their carcasses.

Specific Changes to the Fish and Game Code under Option 1:

Remove all references to wild pig in sections 4181 and 4181.1 (required permits and reporting for depredation)

Repeal Section 4181.2 (definition of damage)Comments:

By repealing the definition of damage, and the requirement that there be damage or a threat of imminent damage, property owners could just kill pigs upon sighting them, thus potentially excessively and unnecessarily destroying the wild pig resource.

There should be specific statutory language to specify more clearly when land owners, their tenants, or their employees could actually kill pigs under a claim of depredation.

Remove all reference to wild pigs in Section 4188 (permits for licensed hunters)Comments:

Since depredation permits would no longer be needed to take depredating wild pigs, such permits for licensed hunters on private land would no longer be relevant.

OSCC does not object to this provision.

Modify Section 4304 to add wild pig to game mammals and game birds (waste of game carcass prohibited).Comments:

This would keep the waste of wild pig carcasses law the same as it is currently, thus not allowing the abandonment of carcasses in the field to rot.

However, this proposal would allow landowners to determine for themselves whether a carcass can be left in the field due to high ambient temperatures, disease or parasites (proposed in Title 14). There is no proposed requirement that such persons be qualified to make these determinations or, in the case of disease or parasites, that they possess and know how to use the proper scientific analytical equipment.

If wild pigs were killed on a summer morning, but not checked on until sometime later in the day, there is a good chance of spoilage. There should be a provision that pigs must be recovered immediately upon killing.

Again, however, current code section 219 would allow the commission to override any of these provisions were they to be enacted.

Modify definition of wild pig in Section 4650.Comments:

The proposed definition, based on physical characteristics and an absence of any kind of owner branding, appears to be reasonable. OSCC does not object to this provision.

Modify Section 4651 (management plan) to simplify requirements to those identified in 4651(b)(1), (b)(2), (b)(3) and (b)(4)Comments:

The proposed modifications would maintain a management plan for wild pigs that is the same as the current law except for the establishment of management zones based on regional needs and opportunities, and the authorization to trap and relocate wild pigs would be repealed. OSCC does not object to this provision.

Modify Section 4654(a) and (b) to adjust for a new base fee for the wild pig license validation, modify language governing the number of tags, and update license year from the current 2004 to 2019

Comments:

Since there would no longer be a limit on how many wild pigs a hunter could take each year, this change would remove the provision limiting the number of tags that could be purchased per year. OSCC does not object to this provision.

Modify Section 4657 to remove all language related to affixing tags to pigs or reporting the taking of a pig (as there no longer would be a tag or reporting requirement), and modify the possession requirement to include language pursuant to regulations adopted by the Commission.

Comments:

This would pave the way for using license “wild pig validations” instead of physical tags that must be carried while hunting, and would allow the commission to establish regulations governing the transportation of pig carcasses and any harvest reporting to the department which the commission may decide to require.

OSCC does not object to this provision.

Changes to Title 14 Regulations under Option 1

As in the proposed changes to the Fish and Game Code, OSCC opposes changing the wild pig’s status to a nongame mammal. Notwithstanding this position, the following are OSCC’s comments on the options being discussed for changes to the regulations:

Modify sections 251.3, 251.8, 257.5, and 260.2 to include wild pig

Comments:

If the law were changed so that the wild pig would no longer be a game mammal, these proposed regulatory changes would apply the restrictions on taking game mammals to wild pigs as well. This would include a prohibition against feeding them, extend the restrictions on transporting game species taken on Indian reservations to include wild pig, prohibit taking pigs within 400 yards of a baited area, and also apply the restrictions on taking game species on the Lake Oroville State Recreation Area to wild pigs.

OSCC does not object to such a provision.

Remove references to wild pig from sections 350, 352, and 401

Comments:

These proposed changes would provide consistency with the proposed changes to the code by removing wild pigs from the list of game mammals, deleting big game restrictions on hunting and shooting hours for wild pigs, and move the wild pig to the list of Nongame Animals.

Though OSCC opposes removal of the wild pig's game mammal status, this provision if adopted would be consistent with changing the wild pig from a Game mammal to a Nongame animal.

Repeal Section 368

Comments:

This would move the requirements pertaining to wild pigs from the game mammal section of the regulations and place them under the provisions for taking nongame animals (sections 472, 474, and 475 described below).

Though OSCC opposes the removal of game mammal status, this would be consistent with changing the wild pig from a Game mammal to a Nongame animal.

Add wild pig to sections 472, 474, and 475

Comments:

These sections govern general provisions, hours for taking, and methods of take for Nongame birds and Nongame mammals. Specifies that the take of wild pig shall be in accordance with the provisions of Section 3950 of the Fish and Game Code (Game Mammals) and Section 257.5 of Title 14 regulations (prohibition on taking within 400 yards of any baited area).

This is consistent with changing the wild pig from a Game mammal to a Nongame animal, but keeping such restrictions on taking.

Add new section(s) specifically for wild pig for licensing/tag requirements, hunting provisions, and depredation provisions

Comments:

Would establish a hunting license wild pig "validation" instead of a physical tag, provides that wild pig hunting season will be year-round (no closed season) and removes any bag limit.

Would provide that no hunting license or validation would be required for taking wild pigs causing, or immediately threatening to cause, depredation by a landowner, their tenant, or their employees, and allows landowners to designate government employees, agents (such as licensed hunters) and other persons to take depredating pigs on their property. They must use the method of take specified in the regulations for taking Big Game or trapping, as applicable.

The use of artificial lights would be allowed at night by landowners, their tenants, or their employees for the taking of depredating wild pigs.

This would appear to allow the live cage trapping of wild pig(s) and shooting them while they are in the trap. OSCC would oppose a provision allowing this practice.

Repeal section 708.13, Wild pig license tags, and integrate tag requirements into a new subsection specifically for wild pig licensing/tag requirements.

Comments:

Conforms to the establishment of the wild pig license validation for licensed hunters, but requires that land owners or their tenants attach a tag to a pig before transporting off of the property.

OSCC does not object to this provision.

Option 2: Change Wild Pig Designation from Game Mammal to a New Designation

A number of statutory and regulatory changes would be required under this option to integrate the solutions identified to address management concerns. Appendix D of the complete option document contains the specific possible changes to statutory and regulatory text that is generally described below.

This option is essentially the same as option one, except that wild pigs would have their own designation instead of being Nongame Animals.

Changes to Fish and Game Code under Option 2

The same changes to the Fish and Game Code proposed under Option 1 would also be necessary under this option.

OSCC's comments would remain the same for such changes.

Changes to Title 14 Regulations under Option 2

Modify sections 251.3, 251.8, 257.5, and 260.2 to include wild pig

Comments:

If, by law, the wild pig would no longer be a game mammal, these proposed regulatory changes would apply restrictions on taking game mammals to wild pigs as well. This would include a prohibition against feeding them, extend the restrictions on transporting game species taken on Indian reservations to include wild pig, prohibit taking pigs within 400 yards of a baited area, and also apply the restrictions on taking game species on the Lake Oroville State Recreation Area to wild pigs.

OSCC would not oppose this if the wild pig were no longer a game mammal, as it would keep the current restrictions in place for taking wild pigs. However, OSCC would not support changing the game mammal status of wild pigs.

Remove references to wild pig from sections 350, 352, 353, and 401

Comments:

Would remove wild pig from the regulatory definition of "Big game" which is opposed by OSCC.

Would also remove the restrictions on hunting and shooting them at night for property owners, tenants, or paid employees taking wild pigs that are destroying, or immediately threatening to damage or destroy, land or property. In this situation, no hunting license or validation would be required.

Would eliminate the depredation permit and reporting requirement to take depredating wild pigs and prohibit wasting of carcasses.

There would no longer be department oversight of the handling of wild pig depredation by landowners, their tenants, or their employees, and no reports would have to be made by them to the department. The department would no longer know how many wild pigs they kill or the methods used to kill them.

OSCC would oppose most of these provisions.

The method of take for wild pigs would be the same as for game mammals, thus legally prohibiting such methods of take as poisoning or baiting. However, current code section 219 would allow the commission to override this provision.

Repeal Section 368

Comments:

This moves the requirements pertaining to wild pigs from the game mammal section of the regulations. It would be consistent with changing the wild pig from a Game mammal to a separate designation.

Create a chapter in subdivision 2 of the regulations specifically for wild pig regulations, separate from Game Mammals and Nongame Animals.

Within the new regulatory chapter, add sections to establish bag and season, methods of take, hours for take, licensing and validation, and depredation provisions as proposed under Option 1.

Repeal section 708.13 and integrate wild pig license validation and other requirements into a new subsection (4XX) specifically for wild pig.

Comments:

Conforms to the establishment of the wild pig license validation for licensed hunters, but requires that land owners or their tenants attach a tag to a pig before transporting off of the property. OSCC would oppose if the wild pig's game mammal status would be removed.

Comments on Appendix F - Proposed Changes to Fish and Game Code and Title 14, CCR Sections Related to Wild Pigs under an Option Maintaining the Current Game Mammal Status

Appendix F provides an example of how wild pig code and regulation sections could be modified to integrate the proposed changes while maintaining the current big game status of wild pigs.

OSCC would support keeping the game mammal status of wild pigs, and thus the protections afforded by keeping the same methods and hours of take. Its comments relative to the remaining provisions that this option would have in common with options 1 and 2 would remain the same as for those options.

Sincerely,

A handwritten signature in black ink, appearing to read "Ringgenberg", with a large, stylized loop at the end.

Keith Ringgenberg
President, Outdoor Sportsmen's Coalition

cc: Outdoor Sportsmen's Coalition of California



The California
Sportsman's Lobby, Inc.

September 28, 2017

VIA E-Mail

Ms. Valerie Termini, Executive Director
Fish and Game Commissioners
California Fish and Game Commission
1416 Ninth Street, Room 1320
Sacramento, CA 95814

Re: Comments on Options for Possible Changes in Statutes and Regulations for Managing Wild Pig Depredation, Fish and Game Commission Meeting, October 11, 2017, Agenda Item 4

Dear Ms. Termini and Commissioners:

CSL has reviewed the two options for possible changes to the Fish and Game Code and Title 14 regulations pertaining to wild pig depredation management that have been discussed by the Wildlife Resources Committee (WRC).

CSL is opposed to the removal of game mammal status for wild pigs, but could support changes to the depredation laws that give property owners more flexibility.

Accordingly, CSL asks that a third option be considered that would keep the wild pig as a game mammal, but would modify the depredation laws and regulations to give property owners experiencing property damage more flexibility for dealing with it.

The following is CSL's response to the individual provisions of the two options that were before the Wildlife Resources Committee at its meeting on September 13th:

Of significant concern is that some of the most critical subject areas in the options could be subjected to political, rather than scientific wildlife management, concerns and treatment.

Although many items have been identified for possible inclusion in the Fish and Game Code, further code language would still be needed to assure that there are no inappropriate interpretations of statute or the establishment of "emergency wild pig regulations" that override the code.

The Fish and Game Commission (FGC) has the authority to do so under current California Fish and Game Code section 219 which provides authority to supersede by regulation ". . . any section of this code designated by number in the regulation, but shall do so only to the extent specifically provided in the regulation. . .".

Of specific concern are current code sections that could be overridden by employing section 219, such as those that prevent poisoning and other forms of depredation control that result in large scale killing

of wild pigs and other wildlife, and the wasting of wild pigs killed by property owners, their tenants, their paid employees, or employees of government agencies.

There are many provisions addressed by the two options, but there is no protection proposed that would prevent the commission from employing section 219. Such protection is considered to be a critical issue.

The options do not propose to modify current code section 4152 relative to the taking of depredating wild pigs. Section 4152 provides that nongame mammals (except furbearers) “. . . may be taken at any time or in any manner in accordance with this code and regulations adopted pursuant to this code by the owner or tenant of the premises. . .”.

If the wild pig were made a nongame mammal, this would seem to allow the use of any method to kill depredating wild pigs, and it could be in conflict with safeguards against this elsewhere in the options. It may be necessary to include clarifying language to assure that there is no confusion relative to what would be permitted.

The options do not contain language preventing the use of other codes, such as the Food and Agricultural Code or the Public Resources Code, to circumvent the Fish and Game Code relative to managing wild pig depredation. If one of the options is to be adopted, such a provision should be included.

Option 1: Change Designation from Game Mammal to Nongame Mammal

CSL opposes the proposed change in game mammal designation for the wild pig.

A number of statutory and regulatory revisions would be required under this option.

Appendix D in the complete option document contains the specifically proposed language changes to both statutory and regulatory code sections that are generally described below.

Many of these changes were contained in [AB 2268](#) (Bigelow – 2014) and in [AB 290](#) (Bigelow – 2015).

Both bills were opposed by CSL at that time.

Although CSL recognizes that the current options make an effort to resolve the objections of CSL and other stakeholder groups, more work would be needed on them to assure that the department, commission, landowners, or government agencies cannot find a pathway to engage in the uncontrolled, large scale killing of wild pigs and the wastage of their carcasses.

Specific Changes to the Fish and Game Code under Option 1:

Remove all references to wild pig in sections 4181 and 4181.1 (required permits and reporting for depredation)

Repeal Section 4181.2 (definition of damage)

Comments:

By repealing the definition of damage, and the requirement that there be damage or a threat of imminent damage, property owners could just kill pigs upon sighting them, thus potentially excessively and unnecessarily destroying the wild pig resource.

There should be specific statutory language to specify more clearly when land owners, their tenants, or their employees could actually kill pigs under a claim of depredation.

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Comments:

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CSL does not object to this provision.

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Comments:

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Modify definition of wild pig in Section 4650.

Comments:

The proposed definition, based on physical characteristics and an absence of any kind of owner branding, appears to be reasonable. CSL does not object to this provision.

Modify Section 4651 (management plan) to simplify requirements to those identified in 4651(b)(1), (b)(2), (b)(3) and (b)(4)

Comments:

The proposed modifications would maintain a management plan for wild pigs that is the same as the current law except for the establishment of management zones based on regional needs and opportunities, and the authorization to trap and relocate wild pigs would be repealed. CSL does not object to this provision.

Modify Section 4654(a) and (b) to adjust for a new base fee for the wild pig license validation, modify language governing the number of tags, and update license year from the current 2004 to 2019

Comments:

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Modify Section 4657 to remove all language related to affixing tags to pigs or reporting the taking of a pig (as there no longer would be a tag or reporting requirement), and modify the possession requirement to include language pursuant to regulations adopted by the Commission.

Comments:

This would pave the way for using license “wild pig validations” instead of physical tags that must be carried while hunting, and would allow the commission to establish regulations governing the transportation of pig carcasses and any harvest reporting to the department which the commission may decide to require.

CSL does not object to this provision.

Changes to Title 14 Regulations under Option 1

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Modify sections 251.3, 251.8, 257.5, and 260.2 to include wild pig

Comments:

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Comments:

These proposed changes would provide consistency with the proposed changes to the code by removing wild pigs from the list of game mammals, deleting big game restrictions on hunting and shooting hours for wild pigs, and move the wild pig to the list of Nongame Animals.

Though CSL opposes removal of the wild pig’s game mammal status, this provision if adopted would be consistent with changing the wild pig from a Game mammal to a Nongame animal.

Repeal Section 368

Comments:

This would move the requirements pertaining to wild pigs from the game mammal section of the regulations and place them under the provisions for taking nongame animals (sections 472, 474, and 475 described below).

Though CSL opposes the removal of game mammal status, this would be consistent with changing the wild pig from a Game mammal to a Nongame animal.

Add wild pig to sections 472, 474, and 475

Comments:

These sections govern general provisions, hours for taking, and methods of take for Nongame birds and Nongame mammals. Specifies that the take of wild pig shall be in accordance with the provisions of Section 3950 of the Fish and Game Code (Game Mammals) and Section 257.5 of Title 14 regulations (prohibition on taking within 400 yards of any baited area).

This is consistent with changing the wild pig from a Game mammal to a Nongame animal, but keeping such restrictions on taking.

Add new section(s) specifically for wild pig for licensing/tag requirements, hunting provisions, and depredation provisions

Comments:

Would establish a hunting license wild pig “validation” instead of a physical tag, provides that wild pig hunting season will be year-round (no closed season) and removes any bag limit.

Would provide that no hunting license or validation would be required for taking wild pigs causing, or immediately threatening to cause, depredation by a landowner, their tenant, or their employees, and allows landowners to designate government employees, agents (such as licensed hunters) and other persons to take depredating pigs on their property. They must use the method of take specified in the regulations for taking Big Game or trapping, as applicable.

The use of artificial lights would be allowed at night by landowners, their tenants, or their employees for the taking of depredating wild pigs.

This would appear to allow the live cage trapping of wild pig(s) and shooting them while they are in the trap. CSL would oppose a provision allowing this practice.

Repeal section 708.13, Wild pig license tags, and integrate tag requirements into a new subsection specifically for wild pig licensing/tag requirements.

Comments:

Conforms to the establishment of the wild pig license validation for licensed hunters, but requires that land owners or their tenants attach a tag to a pig before transporting off of the property.

CSL does not object to this provision.

Option 2: Change Wild Pig Designation from Game Mammal to a New Designation

A number of statutory and regulatory changes would be required under this option to integrate the solutions identified to address management concerns. Appendix D of the complete option document contains the specific possible changes to statutory and regulatory text that is generally described below.

This option is essentially the same as option one, except that wild pigs would have their own designation instead of being Nongame Animals.

Changes to Fish and Game Code under Option 2

The same changes to the Fish and Game Code proposed under Option 1 would also be necessary under this option.

CSL's comments would remain the same for such changes.

Changes to Title 14 Regulations under Option 2

Modify sections 251.3, 251.8, 257.5, and 260.2 to include wild pig

Comments:

If, by law, the wild pig would no longer be a game mammal, these proposed regulatory changes would apply restrictions on taking game mammals to wild pigs as well. This would include a prohibition against feeding them, extend the restrictions on transporting game species taken on Indian reservations to include wild pig, prohibit taking pigs within 400 yards of a baited area, and also apply the restrictions on taking game species on the Lake Oroville State Recreation Area to wild pigs.

CSL would not oppose this if the wild pig were no longer a game mammal as it would keep the current restrictions in place for taking wild pigs. However, CSL would not support changing the game mammal status of wild pigs.

Remove references to wild pig from sections 350, 352, 353, and 401

Comments:

Would remove wild pig from the regulatory definition of "Big game" which is opposed by CSL.

Would also remove the restrictions on hunting and shooting them at night for property owners, tenants, or paid employees taking wild pigs that are destroying, or immediately threatening to damage or destroy, land or property. In this situation, no hunting license or validation would be required.

Would eliminate the depredation permit and reporting requirement to take depredating wild pigs and prohibit wasting of carcasses.

There would no longer be department oversight of the handling of wild pig depredation by landowners, their tenants, or their employees, and no reports would have to be made by them to the department. The department would no longer know how many wild pigs they kill or the methods used to kill them.

CSL would oppose most of these provisions.

The method of take for wild pigs would be the same as for game mammals, thus legally prohibiting such methods of take as poisoning or baiting. However, current code section 219 would allow the commission to override this provision.

Repeal Section 368

Comments:

This moves the requirements pertaining to wild pigs from the game mammal section of the regulations. It would be consistent with changing the wild pig from a Game mammal to a separate designation.

Create a chapter in subdivision 2 of the regulations specifically for wild pig regulations, separate from Game Mammals and Nongame Animals.

Within the new regulatory chapter, add sections to establish bag and season, methods of take, hours for take, licensing and validation, and depredation provisions as proposed under Option 1.

Repeal section 708.13 and integrate wild pig license validation and other requirements into a new subsection (4XX) specifically for wild pig.

Comments:


Conforms to the establishment of the wild pig license validation for licensed hunters, but requires that land owners or their tenants attach a tag to a pig before transporting off of the property. CSL would oppose if the wild pig's game mammal status would be removed.

Comments on Appendix F - Proposed Changes to Fish and Game Code and Title 14, CCR Sections Related to Wild Pigs under an Option Maintaining the Current Game Mammal Status

Appendix F provides an example of how wild pig code and regulation sections could be modified to integrate the proposed changes while maintaining the current big game status of wild pigs.

CSL would support keeping the game mammal status of wild pigs, and thus the protections afforded by keeping the same methods and hours of take. Its comments relative to the remaining provisions that this option would have in common with options 1 and 2 would remain the same as for those options.

Sincerely,



Randy Walker
President, California Sportsman's Lobby

cc: California Sportsman's Lobby

Memorandum

2017 SEP 18 PM 1:06

Date: September 15, 2017

To: Valerie Termini
Executive Director
Fish and Game Commission

From: Charlton H. Bonham
Director



Subject: **Initial Statement of Reasons to Add Section 749.9, Re: Special Order Relating to Incidental Take of Tricolored Blackbird During Candidacy Period, to Title 14, California Code of Regulations**

Attached is the Department of Fish and Wildlife's Initial Statement of Reasons to add regulations authorizing take of tricolored blackbird in limited circumstances subject to certain terms and conditions, during the species' candidacy under CESA.

If you have any questions or need additional information, please contact Scott Gardner at 916-445-5545 or Scott.Gardner@wildlife.ca.gov.

Attachments

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Add Section 749.9, Title 14, California Code of Regulations,
Re: Special Order Relating to Incidental Take of
Tricolored Blackbird (*Agelaius tricolor*) During Candidacy Period

- The Fish and Game Commission (Commission) is the decision-making body that implements the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.). As described in greater detail below, CESA authorizes the Commission to establish lists of threatened and endangered species, and to add or remove species from those lists if it finds, upon receipt of sufficient scientific information, that the action is warranted. Pursuant to Section Fish and Game Code 2084, the Commission may authorize, subject to the terms and conditions it prescribes, the taking of any candidate species while the Department of Fish and Wildlife (Department) and Commission evaluate whether the species should be listed as threatened or endangered under CESA.

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the Commission a petition evaluation as required by CESA. (Fish & G. Code, § 2073.5(a).) The Commission received the Department's petition evaluation at its April 9, 2015, meeting and on June 11, 2015, the Commission made a decision that listing tricolored blackbird as endangered was not warranted. On August 19, 2015, the Center for Biological Diversity submitted a new petition to the Commission to list the tricolored blackbird as an endangered species. On December 10, 2015, the Commission considered the adoption of findings designating the tricolored blackbird as a candidate species under CESA. Findings were published on January 8, 2016, initiating the development of a status review report by the Department to inform the listing decision. (Fish & G. Code, §§ 2074.2(e)(2), 2074.6; Cal. Reg. Notice Register 2016, No. 2-Z, p. 57.) On December 8, 2016, the Commission approved the Department's request for a six month extension to complete its report on the status of tricolored blackbird. This six month extension will further delay final resolution of the tricolored blackbird final listing decision, which cannot occur until after the Commission receives the Department's completed status review report pursuant to Fish and Game Code Sections 2074.6 and 2075.

The Commission prepared a Statement of Emergency Action as required by the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.) on February 19, 2016 in connection with its subsequent adoption of Section 749.8 of Title 14 of the California Code of Regulations (CCR). The Commission's adoption of Section 749.8 as an emergency action under APA was based, in part, on authority provided by Fish and Game Code sections 399 and 2084. Pursuant to Fish and Game Code Section 2084, Section 749.8 authorized incidental "take" of tricolored blackbird during candidacy, subject to certain terms and conditions prescribed by the Commission (See generally Fish & G. Code, §§ 86, 2080, 2084, and 2085). On February 16, 2017, the Commission proposed a second Statement of Emergency Action and re-adopted regulations to authorize incidental take of tricolored blackbird as Section 749.9 of Title 14, CCR. This emergency regulation expired on September 6, 2017.

The adoption of Section 749.9 pursuant to Fish and Game Code sections 399 and 2084 constitutes a necessary action by the Commission under the APA. In the absence of this regulation, individuals engaging in activities authorized pursuant to Section 749.9 would need to obtain an incidental take permit (ITP; Fish & G. Code, § 2081(b)) or other authorization from the Department on a project-by-project basis to avoid potential criminal liability for violating CESA. Issuing individual ITPs authorizing incidental take is a complicated and lengthy process, and the Commission finds specifically that it is not feasible for the regulated community to obtain, and the Department to issue, ITPs or other

authorizations on a project-by-project basis for the numerous activities that would otherwise be prohibited during the candidacy period for tricolored blackbird.

Historically, tricolored blackbirds nested in native flora in or adjacent to wetlands in the Central Valley and elsewhere across the State of California. Concomitant with the loss of wetlands during the 19th and 20th centuries, tricolored blackbirds have adapted to nest in varied substrates. For example, grain fields planted for winter silage on dairy farms provide attractive nesting sites for the species; unfortunately, nesting occurs at about the same time the crops are scheduled for harvest.

For the past two decades, a patchwork of funding sources has been used to pay farmers when they agree to delay harvest until after tricolored blackbird nesting is complete. In some cases, particularly where funding was unavailable or farmers were not aware of the potential for funding to offset losses, harvest has occurred before the young fledged. Recently, the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) committed to provide multiple years of funding to support a program to delay harvest of fields in which tricolored blackbird colonies have nested. At the same time, Dairy Cares, an organization composed of dairy businesses across California, in coordination with other farming interests has initiated an active campaign to educate dairy farmers about tricolored blackbird and the NRCS-funded program. In 2016, through a coordinated effort including NRCS, farming interests, the Department, and Audubon California, dairy farmers enrolled in the NRCS program delayed harvest on fields where an estimated 67,000 tricolored blackbirds nested.

NRCS funds compensate a farmer for about 85 percent of the value of a crop affected by a harvest delay. Under the NRCS program, a colony is identified and the area inhabited by the colony is delineated by a biologist. Once the colony is delineated, a buffer is established and the farmer is allowed to harvest only those fields outside the colony site and buffer area. Delaying harvest protects the vast majority of the colony until the birds fledge, but it does not guarantee that no take will occur. The tricolored blackbird was designated as a candidate for listing, and is therefore subject to the regulatory protections provided by CESA. Promulgating a regulation to authorize incidental take provides farmers assurances that if they agree to follow the requirements imposed by NRCS, delay harvest, and protect the colony nesting in their field, they will not be penalized in the event a small number of birds are taken incidental to their beneficial conservation actions in delaying harvest and otherwise lawful agricultural activities.

The harvest management programs administered by NRCS and the

Department can be expected to protect tens of thousands of nesting tricolored blackbirds, provided farmers are incentivized to participate. However, the designation of the tricolored blackbird as a candidate for listing under CESA could inhibit participation in the harvest management programs. This regulation, in combination with funding from NRCS, will provide farmers with a strong incentive to participate in the harvest management program.

Tricolored blackbird nesting can begin as early as February. The timing of this nesting relative to the listing determination requires that a regulation be in place to conserve nesting tricolored blackbirds and protect farmers that enroll in one of the harvest management programs in 2018. Such action will effectuate the purposes of Fish and Game Code Section 2084 and CESA more broadly. Absent this regulation, enrollment in the NRCS program may decline. Furthermore, farmers may elect to plant lower value crops that do not provide nesting habitat for tricolored blackbird, thereby decreasing available nesting habitat; farmers may harvest their crop early before onset of the nesting season, which would decrease the value of the crop and also decrease available nesting habitat; or farmers may risk harvesting their crop even if tricolored blackbird are present.

Without this regulation, prospective permittees, many of whom already have the necessary entitlements to proceed with their approved projects, would be subject to CESA's take prohibition without, by any reasonable measure, an ability to obtain the necessary state authorization during the candidacy period. As a practical matter, activities that result in the take of tricolored blackbird would be prohibited and could not be implemented pending final action by the Commission on the listing petition, an action whereby tricolored blackbird may or may not be listed as endangered or threatened under CESA. As a result, many projects that are planned or underway that provide great economic and other benefits to the permittees, their employees, their local communities, and the State of California would be postponed during the candidacy period or canceled entirely.

Proposed Regulations

Section 749.9 authorizes incidental take of the tricolored blackbird during candidacy for three categories of activities:

- (1) Actions to protect, restore, conserve or enhance habitat.
- (2) Actions to monitor tricolored blackbird breeding colonies.

- (3) Harvest of grain crops under a harvest management program to protect colonies.

The regulation authorizes take, as defined by Fish and Game Code Section 86, of tricolored blackbird in the limited circumstances described below subject to certain terms and conditions, during the species' candidacy under CESA.

(a) Take Authorization.

(1) Actions to Protect, Restore, Conserve, or Enhance Habitat.

Subdivision 749.9(a)(1), authorizes take of the tricolored blackbird incidental to otherwise lawful activity, where the purpose of the activity is to protect, restore, conserve, or enhance habitat for a species designated as an endangered, threatened, or candidate species under state or federal law. Without Section 749.9, subdivision (a)(1), take of the tricolored blackbird incidental to otherwise lawful activities to protect, restore, conserve, or enhance habitat for a species designated as an endangered, threatened, or candidate species under state or federal law would require authorization by the Department through an individual ITP which is a lengthy, complicated process. Ongoing and planned activities to protect, restore, conserve, or enhance habitat are critical during this candidacy period. The status of many listed species is precarious, and even the slightest delay in initiated or continued implementation of any related conservation actions could adversely affect or otherwise cause further decline of these species. In addition, any further decline in the status of listed species will lead to increased costs to the Department because more resources will be required to conserve species populations to the extent where protective measures are no longer necessary. Increased cost will also be shouldered by prospective permittees, who will be charged with funding mitigation and related monitoring required for impacts of their projects on the species.

Adoption of this regulation would minimize the hardships that would result from delays in ongoing or new lawful activities to protect, restore, conserve, and enhance the habitat of state or federally threatened or endangered species (including the tricolored blackbird). The Commission finds that impacts to activities to protect, restore, conserve, or enhance habitat of state or federally threatened or endangered species caused by designating the tricolored blackbird as a candidate species requires immediate action.

(2) Actions to Monitor Tricolored Blackbird Breeding Colonies.

Section 749.9, subdivision (a)(2), authorizes take of tricolored blackbird incidental to efforts to monitor active tricolored blackbird breeding colonies, including entering colonies to perform walking transects. Only trained observers approved by the Department will be authorized to engage in such monitoring.

Without Section 749.9, subdivision (a)(2), the necessary monitoring would not occur to ensure the protection and immediate conservation of tricolored blackbird during the upcoming harvest of grain fields planted for silage. Department guidance suggests that walking survey transects through a portion of the colony could be used to estimate the nesting stage of breeding colonies and inform decisions necessary to comply with subsection (a)(3).

(3) Harvest of Grain Crops under a Harvest Management Program to Protect Colonies.

Section 749.9, subdivision (a)(3), authorizes take of tricolored blackbird incidental to harvest of grain fields and related agricultural activities where the individual participates in a harvest management program administered by the Natural Resources Conservation Service (NRCS), or harvest management program administered or approved by the Department. The harvest management program shall include the establishment of a buffer zone and harvest date as described under Topics 1 and 2 in the document "California Department of Fish and Wildlife (Department) Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015" (adopted on March 19, 2015 and available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=99310&inline>) . An individual seeking authorization for take incidental to harvest of grain fields and related agricultural activities shall receive written confirmation of participation in the harvest management program and must obtain specific authorization for the timing of harvest and related agricultural activities from NRCS, the Department, or a biologist authorized by the Department or NRCS before proceeding with any harvest activities that take tricolor blackbirds

Without Section 749.9, subdivision (a)(3), enrollment in the NRCS program may decline, which is necessary to ensure the protection and immediate

conservation of the tricolored blackbird during the upcoming harvest of grain fields planted for silage.

(b) Reporting.

Section 749.9, subdivision (a)(2), requires that any person, individual, organization, or public agency, or their agents, for which incidental take of tricolored blackbirds is authorized pursuant to subdivision (a)(1) or (a)(3), shall report observations and detections of tricolored blackbird colonies, including take, to the Department's Wildlife Branch by August 1 during the candidacy period.

As discussed in III above, it is vital that during this candidacy period detections and observations of the tricolored blackbird are reported to the Department so the Department can base its recommendation to the Commission on whether listing tricolored blackbird is warranted on the most complete information possible.

(c) Additions, Modifications or Revocation.

Incidental take of tricolored blackbird from activities not addressed in this section may be authorized during the candidacy period by the Commission pursuant to Fish and Game Code Section 2084, or by the Department on a case-by-case basis pursuant to Fish and Game Code Section 2081, or other authority provided by law.

This subdivision is necessary to clarify that subdivision (a)(1)-(3) are not the only ways in which incidental take may be allowed and that other avenues for authorizing the take of tricolored blackbird are not precluded by the language.

(b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Section(s) 200, 265, 399, and 2084, Fish and Game Code.

Reference: Section(s) 200, 265, 399, 2080, 2084, and 2085, Fish and Game Code.

(c) Specific Technology or Equipment Required by Regulatory Change:

None.

(d) Identification of Reports or Documents Supporting Regulation Change:

None.

(e) Public Discussions of Proposed Regulations Prior to Notice Publication:

No public meetings are being held prior to the notice publication. The 45-day comment period provides adequate time for review of the proposed amendments.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

No alternatives were identified by or brought to the attention of Commission staff that would have the same desired regulatory effect.

(b) No Change Alternative:

The no change alternative would result in no take authorization for habitat protection during the candidacy period. Absent this regulation, enrollment in the NRCS program may decline. Furthermore, farmers may elect to plant lower value crops that do not provide nesting habitat for tricolored blackbird, thereby decreasing available nesting habitat; farmers may harvest their crop early before onset of the nesting season, which would decrease the value of the crop and also decrease available nesting habitat; or farmers may risk harvesting their crop even if tricolored blackbird are present.

(c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the proposed regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Farmers that participate in the NRCS program were compensated for about 85 percent of the value of a crop lost by harvest delay. The late harvest silage crop may retain a portion of its full value after the tricolored blackbird have vacated the affected acreage.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission does not anticipate impact on the creation or elimination of jobs within the state. The proposed action is not anticipated to exert significant impact on the creation of new businesses or the elimination of existing businesses because the proposed action does not introduce new costs. No impact on the Health and Welfare of California Residents, or Worker Safety are anticipated. The State's Environment should benefit by the improved management of tricolored blackbirds.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

NRCS compensates a farmer for about 85 percent of the value of a crop affected by harvest delay. The late harvest silage crop may retain a portion of its full value after the tricolored blackbirds have vacated the affected acreage. The funds compensate for 85 percent of the fullest crop value or \$633.99 per acre. The proposed regulation would permit farmers that participate in the NRCS program to avoid costs that could be incurred in the event of the incidental take of tricolored blackbird. Farmers may be able to retain some crop value (greater than the NRCS 85 percent compensation value) from the delayed harvest and also avoid take penalties and processing costs.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The Commission has determined that the proposed regulation will likely provide cost savings to state agencies in an undetermined amount. In the absence of the proposed regulation, the Department would have to authorize take of the tricolored blackbird on a project-by-project basis, which is both time-consuming and costly for both the Department in processing and authorizing such take, as well as to state agencies seeking take authorization.

(e) Nondiscretionary Costs/Savings to Local Agencies:

The Commission has determined that adoption of the proposed regulation will likely provide cost savings to local agencies in an undetermined amount. In the absence of the proposed regulation, the Department would have to authorize take of the tricolored blackbird on a project-by-project basis, which is both time-consuming and costly to local agencies seeking take authorization. These delays and cancellations may cause great economic harm to persons already lawfully engaged in such activities, their employees, their local communities, and the State of California.

(f) Programs Mandated on Local Agencies or School Districts: None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.

(h) Effect on Housing Costs: None.

VII. Economic Impact Assessment:

Without the proposed regulation, prospective permittees, many of whom already have the necessary entitlements to proceed with their approved projects, would be subject to CESA's take prohibition without, by any reasonable measure, an ability to obtain the necessary state authorization during the candidacy period. As a practical matter, activities that result in the take of tricolored blackbird would be prohibited and could not be implemented pending final action by the Commission on the listing petition, an action whereby tricolored blackbird may or may not be listed as endangered or threatened under CESA. As a result, many projects that are planned or underway that provide great economic and other benefits to the permittees, their employees, their local communities, and the State of California would be postponed during the candidacy period or canceled entirely.

NRCS funds compensate a farmer for about 85 percent of the value of a crop affected by a harvest delay. Under the NRCS program, a colony is identified and the area inhabited by the colony is delineated by a biologist. Once the colony is delineated, a buffer is established and the farmer is allowed to harvest only those

fields outside the colony site and buffer area. The tricolored blackbird was designated as a candidate for listing, and is therefore subject to the regulatory protections provided by CESA. Promulgating a regulation to authorize incidental take provides farmers assurances that if they agree to follow the requirements imposed by NRCS, delay harvest, and protect the colony nesting in their field, they will not be penalized in the event a small number of birds are taken incidental to their beneficial conservation actions in delaying harvest and otherwise lawful agricultural activities.

The NRCS program provides compensation at \$636.99 per acre of tricolored blackbird occupied land for delaying the harvest of silage crops. Farmers are funded for approximately 85% of the peak crop value. Farmers may be able to reap some value from the late harvest of the silage crop and also avoid take penalties and processing costs.

(a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State:

The Commission does not anticipate impact on the creation or elimination of jobs within the state.

(b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State:

The proposed action is not anticipated to impact the creation of new businesses or the elimination of existing businesses within the state.

(c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State:

The proposed action is not anticipated to impact the expansion of businesses currently doing business within the state.

(d) Benefits of the Regulation to the Health and Welfare of California Residents:

No impact on the Health and Welfare of California Residents is anticipated.

(e) Benefits of the Regulation to Worker Safety:

No impact to Worker Safety is anticipated.

(f) Benefits of the Regulation to the State's Environment:

The Commission anticipates benefits to the State's Environment with the

improved protection of tricolor blackbirds.

(g) Other Benefits of the Regulation:

None.

DRAFT

Informative Digest/Policy Statement Overview

The Fish and Game Commission (Commission) is the decision-making body that implements the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.). As described in greater detail below, CESA authorizes the Commission to establish lists of threatened and endangered species, and to add or remove species from those lists if it finds, upon receipt of sufficient scientific information, that the action is warranted. Pursuant to Section 2084, Fish and Game Code, the Commission may authorize, subject to the terms and conditions it prescribes, the taking of any candidate species while the Department of Fish and Wildlife (Department) and Commission evaluate whether the species should be listed as threatened or endangered under CESA.

Historically, tricolored blackbirds nested in native flora in or adjacent to wetlands in the Central Valley and elsewhere across the State of California. Concomitant with the loss of wetlands during the 19th and 20th centuries, tricolored blackbirds have adapted to nest in varied substrates. For example, grain fields planted for winter silage on dairy farms provide attractive nesting sites for the species; unfortunately, nesting occurs at about the same time the crops are scheduled for harvest.

For the past two decades, a patchwork of funding sources has been used to pay farmers for a lost crop when they agree to delay harvest until after tricolored blackbird nesting is complete. In some cases, particularly where funding was unavailable or farmers were not aware of the potential for funding to offset losses, harvest has occurred before the young fledged. Recently, the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) committed to provide multiple years of funding to support a program to delay harvest of fields in which tricolored blackbird colonies have nested. At the same time, Dairy Cares, an organization composed of dairy businesses across California, in coordination with other farming interests has initiated an active campaign to educate dairy farmers about tricolored blackbird and the NRCS-funded program. In 2016, through a coordinated effort including NRCS, farming interests, the Department, and Audubon California, dairy farmers enrolled in the NRCS program delayed harvest on fields where an estimated 67,000 tricolored blackbirds nested.

NRCS funds compensate a farmer for about 85 percent of the value of a crop lost by a harvest delay. Under the NRCS program, a colony is identified and the area inhabited by the colony is delineated by a biologist. Once the colony is delineated, a buffer is established and the farmer is allowed to harvest only those fields outside the colony site and buffer area. Delaying harvest protects the vast majority of the colony until the birds fledge, but it does not guarantee that no take will occur. The tricolored blackbird was designated as a candidate for listing, and is therefore subject to the regulatory protections provided by CESA. Promulgating a regulation to authorize incidental take provides farmers assurances that if they agree to follow the requirements imposed by NRCS, delay harvest, and protect the colony nesting in their field, they will not be

penalized in the event a small number of birds are taken incidental to their beneficial conservation actions in delaying harvest and otherwise lawful agricultural activities.

The harvest management programs administered by NRCS and the Department can be expected to protect tens of thousands of nesting tricolored blackbirds provided farmers are incentivized to participate. However, the designation of the tricolored blackbird as a candidate for listing under CESA could inhibit participation in the harvest management programs. This regulation, in combination with funding from NRCS, will provide farmers with a strong incentive to participate in the harvest management program.

Tricolored blackbird nesting can begin as early as February. The timing of this nesting relative to the listing determination requires that a regulation be in place to conserve nesting tricolored blackbirds and protect farmers that enroll in one of the harvest management programs in 2018. Such action will effectuate the purposes of Fish and Game Code Section 2084 and CESA more broadly. Absent this regulation, enrollment in the NRCS program may decline. Furthermore, farmers may elect to plant lower value crops that do not provide nesting habitat for tricolored blackbird, thereby decreasing available nesting habitat; farmers may harvest their crop early before onset of the nesting season, which would decrease the value of the crop and also decrease available nesting habitat; or farmers may risk harvesting their crop even if tricolored blackbird are present.

Without this regulation, prospective permittees, many of whom already have the necessary entitlements to proceed with their approved projects, would be subject to CESA's take prohibition without, by any reasonable measure, an ability to obtain the necessary state authorization during the candidacy period. As a practical matter, activities that result in the take of tricolored blackbird would be prohibited and could not be implemented pending final action by the Commission on the listing petition, an action whereby tricolored blackbird may or may not be listed as endangered or threatened under CESA. As a result, many projects that are planned or underway that provide great economic and other benefits to the permittees, their employees, their local communities, and the State of California would be postponed during the candidacy period or canceled entirely.

Proposed Regulations

Section 749.9 authorizes incidental take of the tricolored blackbird during candidacy for three categories of activities:

- (1) Actions to protect, restore, conserve or enhance habitat.
- (2) Actions to monitor tricolored blackbird breeding colonies.
- (3) Harvest of grain crops under a harvest management program to protect colonies.
 - (a) Take Authorization.

(1) Actions to Protect, Restore, Conserve, or Enhance Habitat.

Subdivision 749.9(a)(1), authorizes take of the tricolored blackbird incidental to otherwise lawful activity, where the purpose of the activity is to protect, restore, conserve, or enhance habitat for a species designated as an endangered, threatened, or candidate species under state or federal law. Without Section 749.9, subdivision (a)(1), take of the tricolored blackbird incidental to otherwise lawful activities to protect, restore, conserve, or enhance habitat for a species designated as an endangered, threatened, or candidate species under state or federal law would require authorization by the Department through an individual ITP which is a lengthy, complicated process. Ongoing and planned activities to protect, restore, conserve, or enhance habitat are critical during this candidacy period. The status of many listed species is precarious, and even the slightest delay in initiated or continued implementation of any related conservation actions could adversely affect or otherwise cause further decline of these species. In addition, any further decline in the status of listed species will lead to increased costs to the Department because more resources will be required to conserve species populations to the extent where protective measures are no longer necessary. Increased cost will also be shouldered by prospective permittees, who will be charged with funding mitigation and related monitoring required for impacts of their projects on the species.

Adoption of this regulation would minimize the hardships that would result from delays in ongoing or new lawful activities to protect, restore, conserve, and enhance the habitat of state or federally threatened or endangered species (including the tricolored blackbird). The Commission finds that impacts to activities to protect, restore, conserve, or enhance habitat of state or federally threatened or endangered species caused by designating the tricolored blackbird as a candidate species requires immediate action.

(2) Actions to Monitor Tricolored Blackbird Breeding Colonies.

Section 749.9, subdivision (a)(2), authorizes take of tricolored blackbird incidental to efforts to monitor active tricolored blackbird breeding colonies, including entering colonies to perform walking transects. Only trained observers approved by the Department will be authorized to engage in such monitoring.

Without Section 749.9, subdivision (a)(2), the necessary monitoring would not occur to ensure the protection and immediate conservation of tricolored blackbird during the upcoming harvest of grain fields planted for silage. Department guidance suggests that walking survey transects

through a portion of the colony could be used to estimate the nesting stage of breeding colonies and inform decisions necessary to comply with subsection (a)(3).

(3) Harvest of Grain Crops under a Harvest Management Program to Protect Colonies.

Section 749.9, subdivision (a)(3), authorizes take of tricolored blackbird incidental to harvest of grain fields and related agricultural activities where the individual participates in a harvest management program administered by the Natural Resources Conservation Service (NRCS), or harvest management program administered or approved by the Department. The harvest management program shall include the establishment of a buffer zone and harvest date as described under Topics 1 and 2 in the document "California Department of Fish and Wildlife (Department) Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015" (adopted on March 19, 2015 and available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=99310&inline>) . An individual seeking authorization for take incidental to harvest of grain fields and related agricultural activities shall receive written confirmation of participation in the harvest management program and must obtain specific authorization for the timing of harvest and related agricultural activities from NRCS, the Department, or a biologist authorized by the Department or NRCS before proceeding with any harvest activities that take tricolor blackbirds

Without Section 749.9, subdivision (a)(3), enrollment in the NRCS program may decline, which is necessary to ensure the protection and immediate conservation of the tricolored blackbird during the upcoming harvest of grain fields planted for silage.

(b) Reporting.

Section 749.9, subdivision (a)(2), requires that any person, individual, organization, or public agency, or their agents, for which incidental take of tricolored blackbirds is authorized pursuant to subdivision (a)(1) or (a)(3), shall report observations and detections of tricolored blackbird colonies, including take, to the Department's Wildlife Branch by August 1 during the candidacy period.

As discussed in III above, it is vital that during this candidacy period detections and observations of the tricolored blackbird are reported to the Department so the Department can base its recommendation to the Commission on whether listing tricolored blackbird is warranted on the

most complete information possible.

(c) Additions, Modifications or Revocation.

Incidental take of tricolored blackbird from activities not addressed in this section may be authorized during the candidacy period by the Commission pursuant to Fish and Game Code Section 2084, or by the Department on a case-by-case basis pursuant to Fish and Game Code Section 2081, or other authority provided by law.

This subdivision is necessary to clarify that subdivision (a)(1)-(3) are not the only ways in which incidental take may be allowed and that other avenues for authorizing the take of tricolored blackbird are not precluded by the language.

Benefits of the Proposed Regulations

It is the policy of this state to encourage the conservation, maintenance, and utilization of the living resources of the ocean and inland waters under the jurisdiction and influence of the state for the benefit of all the citizens of the State. The objectives of this policy include, but are not limited to, the maintenance of sufficient populations of all species of terrestrial organisms to ensure their continued existence and the maintenance of a sufficient resource to support a reasonable sport use.

The benefits of the proposed regulations are concurrence with Federal law, sustainable management of California's tricolored blackbird resources.

Evaluation of Incompatibility With Existing Regulations:

Section 20, Article IV, of the State Constitution specifies that the Legislature may delegate to the Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to establish regulations for the incidental take of a candidate species (FGC Section 2084). Commission staff has searched California Code of Regulations and has found that the proposed regulation is neither inconsistent nor incompatible with existing state regulations.

Regulatory Text

Section 749.9, Title 14, CCR, is added to read:

Section 749.9. Incidental Take of Tricolored Blackbird (*Agelaius tricolor*) During Candidacy Period

This regulation authorizes take as defined by Fish and Game Code Section 86, of tricolored blackbird in the limited circumstances described below, subject to certain terms and conditions, during the species' candidacy under the California Endangered Species Act (Fish and Game Code, Section 2050 et seq.).

(a) Take Authorization.

The commission authorizes the take of tricolored blackbird during the candidacy period subject to the terms and conditions herein.

(1) Actions to Protect, Restore, Conserve, or Enhance Habitat.

Take of tricolored blackbird incidental to otherwise lawful activity, where the purpose of the activity is to protect, restore, conserve, or enhance habitat for a species designated as an endangered, threatened, or candidate species under state or federal law.

(2) Actions to Monitor Tricolored Blackbird Breeding Colonies.

Take of tricolored blackbird incidental to efforts to monitor active tricolored blackbird breeding colonies, including entering colonies to perform walking transects. Only trained observers who are approved by the department will be authorized to engage in such monitoring.

(3) Harvest of Grain Crops Under Harvest Management Program to Protect Colonies.

Take of tricolored blackbird incidental to harvest of grain fields and related agricultural activities is authorized where an individual participates in a harvest management program administered by the Natural Resources Conservation Service (NRCS), or harvest management program administered or approved by the department; the harvest management program shall include the establishment of a buffer zone and harvest date as described under Topics 1 and 2 in the document "California Department of Fish and Wildlife (Department) Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015" (adopted on March 19, 2015 and available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=99310&inline>). The individual seeking authorization for take incidental to harvest of grain fields and related agricultural activities shall receive written confirmation of participation in the harvest management program and must obtain specific authorization for the timing of harvest and related agricultural activities from NRCS, the department, or a biologist authorized by the department or NRCS before proceeding with any harvest activities that take tricolor blackbirds.

(b) Reporting.

Any person, individual, organization, or public agency, or their agents, for which incidental take of tricolored blackbirds is authorized pursuant to subsections (a)(1) or (a)(3), shall report observations and detections of tricolored blackbird colonies, including take, to the department's Wildlife Branch by August 1 during the candidacy period.

Information reported to the department pursuant to this subsection shall include: a contact name; the date and location (GPS coordinate preferred) of the colony or take; colony size; colony outcome; and details regarding the tricolored blackbirds observed. Colony outcome means whether the colony was abandoned or whether young in a colony fledged. Any person, individual, organization, or public agency, or their agents seeking incidental take authorization pursuant to subsection (a)(3), shall report their participation in an approved harvest management program to the department prior to grain harvest.

(c) Additions, Modifications or Revocation.

Incidental take of tricolored blackbird from activities not addressed in this section may be authorized during the candidacy period by the commission pursuant to Fish and Game Code Section 2084, or by the department on a case-by-case basis pursuant to Fish and Game Code Section 2081, or other authority provided by law.

Note: Authority cited: Sections 200, 265, 399 and 2084, Fish and Game Code.
Reference: Sections 200, 265, 399, 2080, 2084 and 2085, Fish and Game Code.



CALIFORNIA FARM BUREAU FEDERATION

GOVERNMENTAL AFFAIRS DIVISION

1127-11TH STREET, SUITE 626, SACRAMENTO, CA 95814 • PHONE (916) 446-4647

September 28, 2017

Eric Sklar, President
California Fish and Game Commission
1416 9th Street, Room 1320
Sacramento, CA 95814

RE: Regulations concerning the incidental take of tricolored blackbird (*Agelaius tricolor*) during candidacy period

Dear President Sklar:

The California Farm Bureau Federation (Farm Bureau) is writing to express appreciation and support for the proposed notice of intent to adopt a 2084 regulation allowing incidental take in limited circumstances during the candidacy period of the Tricolored Blackbird. Farm Bureau represents more than 48,000 members as it strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources. Our dairy farmer members who plant small grain crops adjacent to their dairies provide valuable nesting habitat for Tricolored Blackbirds, but need incidental take protection when they agree to provide that habitat.

Farm Bureau appreciates the Fish and Game Commission's (Commission) continued engagement on this issue. The 2084 regulation protects dairy farmers who provide habitat for Tricolored Blackbirds from liability under the California Endangered Species Act (CESA). Farm Bureau appreciates the Commission's adoption of a 2084 regulation for Tricolored Blackbirds the previous two breeding seasons. Both nesting seasons proved successful and having a 2084 regulation in place has been helpful when conducting outreach with dairy farmers on this important issue.

Having a 2084 regulation in place for the 2017 nesting season will ensure that farmers who agree to protect colonies of Tricolored Blackbirds nesting in their grain fields are not put at risk of violating CESA. Farm Bureau appreciates the Commission's continued commitment to providing incidental take protection to dairy farmers who agree to provide and protect nesting habitat for Tricolored Blackbirds by proposing to publish a notice of intent to adopt another 2084 regulation. Should you have any questions, please contact Noelle G. Cremers (916/446-4647 or ncremers@cfbf.com).

Sincerely,

A handwritten signature in cursive script, reading "Noelle Cremers".

Noelle G. Cremers
Director, Natural Resources and Commodities



VIA ELECTRONIC MAIL

September 28, 2017

Fish and Game Commissioners
Valerie Termini, Executive Director
1416 Ninth Street, Room 1320
Sacramento, CA 95814
fgc@fgc.ca.gov

Re: Comments re Item #5. Authorize publication of notice of intent to adopt regulations concerning the incidental take of tricolored blackbird during candidacy period (Section 749.9, Title 14, CCR)

Dear Commissioners and Executive Director Termini,

I am writing on behalf of the Center for Biological Diversity (“Center”) regarding the possible authorization of publication of a notice of intent to adopt regulations concerning the incidental take of tricolored blackbird during candidacy period (Section 749.9, Title 14, CCR), pursuant to Fish and Game Code Section 2084.

The Center has not opposed similar regulations adopted in the past. However, as the Tricolor Blackbird awaits a full status review from the California Department of Fish and Wildlife (“CDFW”), the Center is very concerned about the large numbers of Tricolor Blackbirds taken during harvesting activities in 2017 in violation of CESA. The Center believes that before authorizing publication of this notice, the Commission must review how the regulation authorizing incidental take functioned over the last season and whether the regulation needs to be revised.

Because it is unclear from the agenda whether CDFW is going to make a presentation at the October 11, 2017 meeting, the Center is providing the information we have been able to obtain to date that shows significant impacts to nest Tricolor Blackbirds last year with an identical regulation in place. Attached is an email the Center received from CDFW on August 7, 2017 along with a spreadsheet transmitting data from the 2017 harvest season. (Attachments A and B.)

The Commission and the public need to understand what happened this year that lead to the loss of nests and birds, in order to fully consider whether changes are need in the regulation to better protect the Tricolor Blackbird.

Of greatest concern is the loss of approximately 11,000 Tricolor Blackbirds from the nesting colony in Madera County (see Attachment B, Footnote d estimating that the colony had

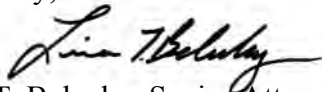
approximately 12,500 birds before harvesting, and an entry regarding Madera estimating the colony size as approximately 1,000 birds “during contract” after it was belatedly enrolled in the NRCS program; indicating a loss of approximately 11,000 nesting birds). While not all of those 11,000 birds were likely killed, many certainly were and the disruption of eggs and nests and breeding is a significant loss to this candidate species. (*See also* discussion in Attachment C at 22 [“reproductive success of this colony was minimal due to the harvest activities.”].) It appears that despite the large amount of unpermitted take, the site was later enrolled in the program to cover the remaining nesting colony. There is no public information explaining why this large amount of take occurred despite the regulation and program being in place—was outreach and information lacking? Is more oversight of the program needed by CDFW?

In contrast, there was a small amount of incidental take of nests in Kern County which more properly appears to be within what was contemplated in adopting the regulation. In that case, “6-10 nests were accidentally destroyed by a tractor that was turning in a field” at a dairy supporting over 45,000 birds at 4 locations. (Attachment A, Attachment B.) And “1,000s of fledglings observed in multiple fields; at least 2 nesting attempts in all four fields.” (Attachment B.) The dairy was enrolled in the NRCS program and this incidental take was covered by the 2084 take authorization.

While the Center appreciates all the efforts that have been made to protect breeding colonies of Tricolor Blackbirds under the programs, at this time we must oppose the Commission authorizing the publication of a notice of intent at this time. I hope to attend the meeting on October 11, 2017 in order to participate in the discussion regarding whether changes should be made to the proposed regulation before the notice is published.

Please do not hesitate to contact me if you have any questions about the issues raised in these comments.

Sincerely,



Lisa T. Belenky, Senior Attorney
Center for Biological Diversity
1212 Broadway, Suite 800
Oakland, CA 94612
lbelenky@biologicaldiversity.org

Attachment A: Email from CDFW, August 7, 2017.

Attachment B: Data from CDFW provided with August 7, 2017 email.

Attachment C: 2017 Tricolored Blackbird Monitoring Report, Tricolored Blackbird Survey and Colony Protection, San Joaquin Valley, California (received September 28, 2017).

Attachment A

Lisa Belenky

From: Clipperton, Neil@Wildlife <Neil.Clipperton@wildlife.ca.gov>
Sent: Monday, August 7, 2017 4:33 PM
To: Lisa Belenky
Subject: RE: Data on Tricolor and this year's program?
Attachments: TRBL_2017season_AgColoniesSummary.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: remember

Hi Lisa,

Sorry it took me a little long to compile everything from the 2017 breeding season. See attached for a table of results for silage colonies. Some of this info might change if I receive additional reports, but it should be pretty close to final.

There was a small amount of take on a single dairy in Kern County. 6-10 nests were accidentally destroyed by a tractor that was turning in a field. The dairy hosted more than 45,000 breeding birds so the take was relatively small and they were covered by the 2084 take authorization.

A grain field in Madera County that hosted a breeding colony was partially harvested and a portion of the colony was destroyed. This site was not enrolled in the NRCS program and no take authorization was in place. This is an ongoing law enforcement case, which I cannot discuss.

Because of the potential sensitivity of the data, I have removed specific locality information and landowner contact information from the table.

Please let me know if you have any questions or would like to discuss.

Thanks,

Neil

Neil Clipperton
California Department of Fish and Wildlife
Statewide Coordinator - Bird Conservation
Wildlife Branch
1812 9th Street
Sacramento, CA 95811
916-445-9753
neil.clipperton@wildlife.ca.gov
www.wildlife.ca.gov

From: Lisa Belenky [mailto:lbelenky@biologicaldiversity.org]
Sent: Monday, July 31, 2017 4:19 PM
To: Clipperton, Neil@Wildlife <Neil.Clipperton@wildlife.ca.gov>
Subject: RE: Data on Tricolor and this year's program?

Attachment B

Observations of Tricolored Blackbird colonies on agricultural silage fields during the 2017 breeding season.

County	Name	Observation Dates	Colony Size ^a	Colony Outcome	Acres Occupied	Acres protected (including buffer)	Take	Other Details
Kern	Poso ^b	March 15 - May 22	45,000+ total at four sites ^c	Fledged young	minumum of 92	160.3 total contracted acres for four Poso sites	6-10 nests destroyed in one field (some nests with eggs; 2 or more nests with 7-9 day old nestlings)	1,000s of fledglings observed in multiple fields; at least 2 nesting attempts in all four fields.
Kern	Pond Road	March 15 - May 30	16,000	Fledged young	not reported	38	none known	Multiple nesting attempts (believed 3); 40+ fledglings observed on site on May 30.
Tulare	Deer Creek	March 21 -April 28	6,500	Fledged young	not reported	18	none known	Fledglings observed in field but no large groups of fledglings observed. Likely low productivity.
Tulare	Cornerstone	April 17 - May 8	1,000	Fledged young	not reported	39	none known	Few small groups (10-15) of fledglings observed.
Merced	West of Lone Tree	March 29 - May 1	4,200	Fledged young	4.1	9	none known	5,000 birds originally reported to be scouting but fewer settled at site.
Madera	Avenue 14 and Road 15	April 19 - May 22	1,000 during contract ^d	Fledged young	not reported	32	none known during contract term	A portion of the field was harvested before enrolled in NRCS program, and a portion of the colony was destroyed. Colony produced young but only small groups (10-15) observed.
Riverside	Boersma	March 17 - May 11	1,500	Fledged young	not reported	15.1	none known	At least 200 fledglings observed on a single day.
						311.4		
						total acres contracted		

^a All colonies were observed on multiple occasions by multiple observers; colony size reported here is the maximum reliable estimate of breeding birds. Estimates do not necessarily represent the number of birds that completed the breeding cycle at a site; a decrease in number of birds over the nest cycle is not uncommon. Estimates also do not necessarily represent unique birds; birds are suspected to have moved between sites in some cases.

^b Four sites (separate triticales fields with somewhat independent colonies) were tracked independently on a single ownership; compiled into a single record here.

^c At least 45,000 total birds occurred at four locations. Re-nesting at each of the four sites and potential movement between sites makes total estimation for each of the four sites difficult.

^d Up to 12,500 birds estimated at the site prior to harvest and prior to enrollment in NRCS program.

Attachment C

2017 Tricolored Blackbird Monitoring Report

Tricolored Blackbird Survey and Colony Protection
San Joaquin Valley, California
Agreement Number P1680043



PREPARED FOR:

California Department of Fish and Wildlife
Nongame Wildlife Program
1812 9th Street
Sacramento, CA 95811

PREPARED BY:

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September 2017

Abstract

We located and monitored tricolored blackbird (*Agelaius tricolor*) nesting colonies in Merced, Madera, Tulare, and Kern counties, California, in agricultural fields and wetlands that have historically supported large colonies of nesting tricolored blackbirds. The surveys were performed between late March and early June under contract with the California Department of Fish and Wildlife, Agreement Number P1680043. As stipulated in the contract, we focused our monitoring efforts on tricolored blackbird colonies in grain crops adjacent to dairies. We located and monitored tricolored blackbird colonies at 13 sites throughout the San Joaquin Valley. Of these, eight colonies were in agricultural fields associated with dairies, four colonies were in wetlands, and one colony was in native pastureland. We documented an estimated total of 72,964–110,414 adult tricolored blackbirds. Tricolored blackbirds nested and successfully fledged young at 11 of the 13 colony sites. Agricultural activities adversely impacted two or three tricolored blackbird colonies, including one large colony that was destroyed by silage harvest.

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Introduction

The tricolored blackbird (*Agelaius tricolor*) is a colonially nesting songbird that is largely endemic to California, with more than 99% of its population occurring in the state (Meese et al. 2014). It is an itinerant breeder, capable of nesting multiple times each breeding season. It nests in wetlands and agricultural fields, where it forms the largest nesting colonies of any North American passerine bird (Meese et al. 2014).

Once abundant, the tricolored blackbird has undergone population declines throughout its historical range, especially in the San Joaquin Valley (Kyle and Kelsey 2011). Tricolored blackbird populations have declined owing to habitat loss resulting from water diversions, draining of wetlands, conversion to agriculture, conversion of row crops to orchards or other unsuitable crops, and urbanization (UC Davis 2017). Tricolored blackbirds are persecuted as agricultural pests and are sometimes shot or poisoned despite their legal protection under federal and state laws. Tricolored blackbirds are also vulnerable to the destruction of large breeding colonies during the harvest of grain crops in which they often nest.

The tricolored blackbird has been designated a Species of Conservation Concern by the United States Fish and Wildlife Service (USFWS 1995). It was state-listed as endangered in California under an emergency petition in 2014, but that status expired in 2015. It is currently a candidate species for listing under the California Endangered Species Act. It is also considered a Species of Special Concern by the California Department of Fish and Wildlife (CDFW) (Shuford and Gardali 2008).

In the San Joaquin Valley, tricolored blackbirds often associate with dairies and feedlots, where they form colonies in silage fields planted with triticale or other grain crops used as cattle forage. These dairy sites provide the three critical breeding habitat elements tricolored blackbirds require: suitable nesting substrate (grain crops), a water source (agricultural ditches or wastewater ponds), and an abundance of food (grain and insects) (Meese 2013). However, dairy sites also render tricolored blackbird colonies susceptible to destruction from grain harvest. Protecting these large colonies in agricultural fields associated with dairies is a main conservation focus of the Tricolored Blackbird Working Group. The tricolored blackbird Working Group is voluntary alliance of state and federal agency biologists, non-governmental organizations, industry representatives, and academic scientists who work cooperatively to help sustain and enhance tricolored blackbird populations and habitats. Through their efforts,

several silage-buyout and silage-harvest-delay programs have been established and implemented to encourage farmers to avoid harvesting fields containing tricolored blackbird colonies.

The CDFW has participated in developing a conservation plan for the tricolored blackbird. Among the tasks included in that plan are the annual detection and season-long monitoring of tricolored blackbird colonies to estimate colony size and reproductive success of the largest colonies. Fulfilling these tasks was the focus of our surveys and monitoring. We located and monitored tricolored blackbird colonies in California with emphasis on those in the San Joaquin Valley. We also assessed the productivity of these colonies and served as a colony evaluator for a multidisciplinary team addressing issues surrounding colonies established in grain fields. As specified in the contract, the focus of our surveys and monitoring was tricolored blackbird colonies established in agricultural grain fields associated with dairies. The surveys were performed under contract with CDFW, Agreement Number P1680043.

Methods

We detected tricolored blackbird colonies in portions of Madera, Merced, Tulare, and Kern counties, California, by driving public roads in and around silage fields associated with dairies, while actively searching for large concentrations of tricolored blackbirds and foraging flights indicative of colony establishment. In addition, we visited wetlands and agricultural fields that have historically supported large colonies of tricolored blackbirds (Figure 1).

Colibri Senior Scientist, Scott Frazer, conducted the field work, with ancillary support from Colibri Principal Scientist Jeff Davis. Historical tricolored blackbird colony sites were surveyed and monitored with varying levels of effort, beginning in late March and early April and continuing through early June. Priority was given to sites adjacent to dairies, where as many as nine site visits were made per site. Wetland sites were visited less frequently.

Each site was viewed from various vantage points using binoculars and a spotting scope to estimate colony size, determine ratios of male to female tricolored blackbirds, evaluate and characterize nesting activity, and identify and quantify any fledglings. Access to two colony sites was limited due to private property constraints. The Cherokee Forebay site and the Poso site were viewed from adjacent state-owned lands or duck clubs at a range of 0.2–0.5 miles. Determining sex ratios and identifying fledglings was generally not achievable under these circumstances.

Colony size was generally estimated during the settlement and nestling stages, periods when most birds in the colony are visible (Meese 2017). However, due to delays in the contract and periods of inclement weather, this was not always possible. Colony sizes were estimated following the guidelines provided in *Tricolored Blackbird 2017 Statewide Survey Training* (Meese 2017). For smaller colonies, precise counts were made by counting individual tricolored blackbirds or by counting tricolored blackbirds in groups of fives or tens. For larger colonies, where precise counting is not feasible, scanning surveys were conducted. Such surveys were conducted by estimating the number of tricolored blackbirds in a defined fraction of the colony, then multiplying this estimate by the number of defined areas the colony occupies. Scanning surveys were also conducted of tricolored blackbirds in transit by estimating the number of tricolored blackbirds flying past a point during a specified interval of time then multiplying the resulting estimate by the number of time intervals needed for the flock to pass. Estimating sizes of larger colonies typically involved using both scanning survey techniques.

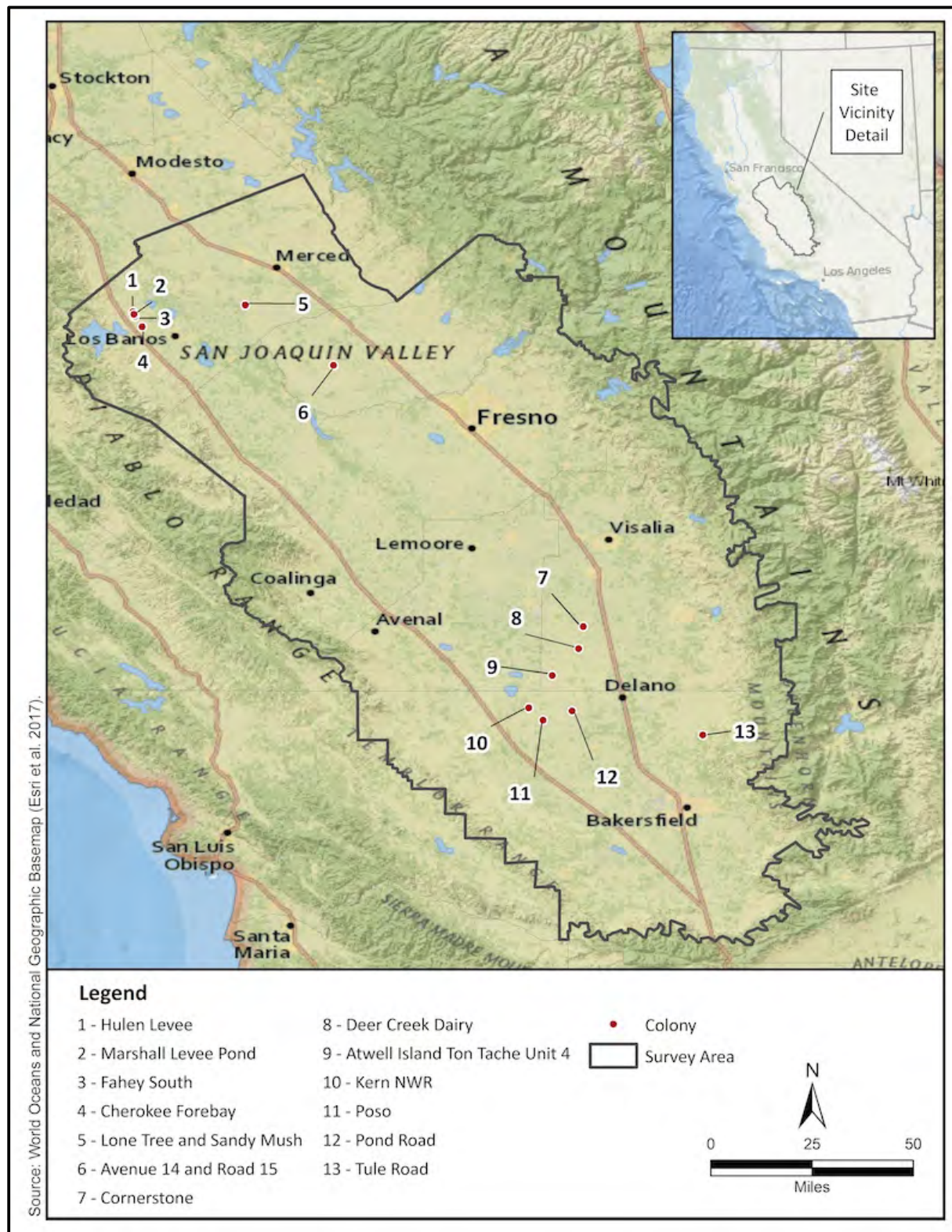


Figure 1. Survey area.

We confirmed nesting activity when female tricolored blackbirds were observed carrying nesting material into fields containing large numbers of tricolored blackbirds. Whenever a tricolored blackbird colony was detected in an agricultural field where routine crop harvest could destroy the colony, landowners were contacted by Tricolored Blackbird Working Group partner organizations (Audubon California, Western United Dairymen, National Resources Conservation Service) or CDFW contract manager Neil Clipperton to prevent colony destruction.

Reproductive success was categorized as low, moderate, or high based on observations of colony behavior, number of juvenile tricolored blackbirds, and the extent of the period during which tricolored blackbirds fledged from the colony. Nest census surveys were conducted at three sites (Cornerstone, Deer Creek Dairy, and Road 14 and Avenue 15), where tricolored blackbird nests were counted and characterized during walking transects.

Results

We detected and monitored 12 historical tricolored blackbird colonies in Merced, Tulare, and Kern counties, California, in and around agricultural fields or wetlands (Figure 1, Table 1). In addition, we detected and monitored a 13th colony site in an agricultural field at Avenue 14 and Road 15 in Madera County (Figures 1 and 2) that was previously undocumented and incidentally located on 08 April 2017. We surveyed and monitored five historical sites in Merced County, including two in fallow agricultural fields (Hulen Levee and Fahey South, Figures 3 and 4), one in a wetland (Marshall Levee Pond, Figure 5), one in native pasture (Cherokee Forebay, Figure 6), and one in an agricultural field planted with triticale (West of Lone Tree, Figure 7). We surveyed three historical sites in Tulare County, including two in agricultural fields planted with triticale (Cornerstone and Deer Creek Dairy, Figures 8 and 9) and one in a wetland (Atwell Island Ton Tache Unit 4, Figure 10). Four historical sites were surveyed in Kern County, including two in wetlands (Kern National Wildlife Refuge and Tule Road, Figures 11 and 12), one in an agricultural field planted with triticale (Poso, Figure 13), and one in an agricultural field planted with forage mix (Pond Road, Figure 14).

Eight tricolored blackbird colonies were in agricultural fields associated with dairies, four were in wetlands, and one was in native pastureland (Table 1). Of the eight colonies in agricultural fields, two colonies were in fallow fields, four colonies were in fields planted with triticale, and two colonies were in fields planted with forage mix (Table 1). We detected a total of 72,964 (low estimate) to 110,414 (high estimate) adult tricolored blackbirds at these 13 colony sites (Table 1). The largest colonies were Poso (with 30,000–35,000 adult tricolored blackbirds), Pond Road (with 12,000–20,000 adult tricolored blackbirds), and Road 14 and Avenue 15 (with 10,000–20,000 adult tricolored blackbirds). The smallest colony was at the Tule Road site, where only 14 adult tricolored blackbirds were detected.

We confirmed tricolored blackbird nesting at 12 of the 13 colony sites¹. Of the 12 known breeding sites, 11 successfully fledged young tricolored blackbirds. However, the reproductive output was minimal at the Road 14 and Avenue 15 colony due to grain harvest and at Cherokee Forebay due to heavy cattle grazing. We heard nestling tricolored blackbirds at the Tule Road site but were unable to confirm fledging there. Five of the 11 tricolored blackbird colonies that fledged young had high reproductive success. Those included the colonies at Marshall Levee Pond, Fahey South, Atwell Island Ton Tache Unit 4, Poso, and Pond Road.

¹ Audubon California (2017) independently documented nesting near the one site (West of Lone Tree) where we did not confirm nesting.

Table 1. Tricolored blackbird sites by habitat, nesting outcome, reproductive success, colony size, and adverse impacts from agriculture.

Site # (See Figure 1)	Site Name	Habitat	Nesting Outcome	Reproductive Success (RS)	Colony Size (# of breeding adults)	Adverse Impacts from Agriculture	Comments
1	Hulen Levee	Ag-Fallow	Fledged	Unknown	2,000–3,000	None	
2	Marshall Levee Pond	Wetland adjacent to a lagoon	Fledged	High (for a small colony)	150–200	None	Vigorous small colony
3	Fahey South	Ag-Fallow	Fledged (multiple cycles)	High	3,000–6,000	None Field untouched by farming operations for duration of nesting season	
4	Cherokee Forebay	Native Pasture	Fledged	Minimal	1,000–2,000	Colony adversely impacted by grazing activity	RS difficult to determine from distant vantage point
5	West of Lone Tree	Ag-Triticale at historical site; oats and mallow at occupied site	Fledged*	Minimal*	3,000	Possible impacts from harvest	*Successful nesting and fledging documented by Audubon California (2017)
6	Avenue 14 and Road 15	Ag-Forage Mix	Colony effectively destroyed by harvest	Minimal	10,000–20,000	Large portion of colony was harvested during nesting	Minimal nesting occurred in unharvested portion of field
7	Cornerstone	Ag-Triticale	Fledged	Low	800–1,200	None	Small colony size and patchy nest substrate

Site # (See Figure 1)	Site Name	Habitat	Nesting Outcome	Reproductive Success (RS)	Colony Size (# of breeding adults)	Adverse Impacts from Agriculture	Comments
8	Deer Creek Dairy	Ag-Triticale	Fledged	Low to Moderate	4,000–5,000	None	Nest substrate patchily distributed
9	Atwell Island Ton Tache Unit 4	Wetland	Fledged	High	4,000–10,000	None	Problem with water delivery prevented subsequent nesting activity
10	Kern NWR	Wetland/Slough	Fledged	Unknown	3,000–5,000	None	
11	Poso ²	Ag-Triticale	Fledged (Two cycles)	High	30,000–35,000	None Field untouched by farming operations for duration of nesting season	This site included four individual fields occupied by tricolored blackbirds.
12	Pond Road	Ag-Forage Mix	Fledged (Multiple cycles of nesting)	High	12,000–20,000	None Field untouched by farming operations for duration of nesting season	Asynchronous colony fledged young for over 30 days
13	Tule Road	Wetland	Likely fledged but unknown	Unknown	14	None	Only small portion of historical habitat suitable for nesting this year

² This site represents four occupied fields that are tracked as separate colony sites (Poso 2, Poso 5, Poso 6, and Poso 7) in the Tricolored Blackbird Portal (<http://tricolor.ice.ucdavis.edu>).

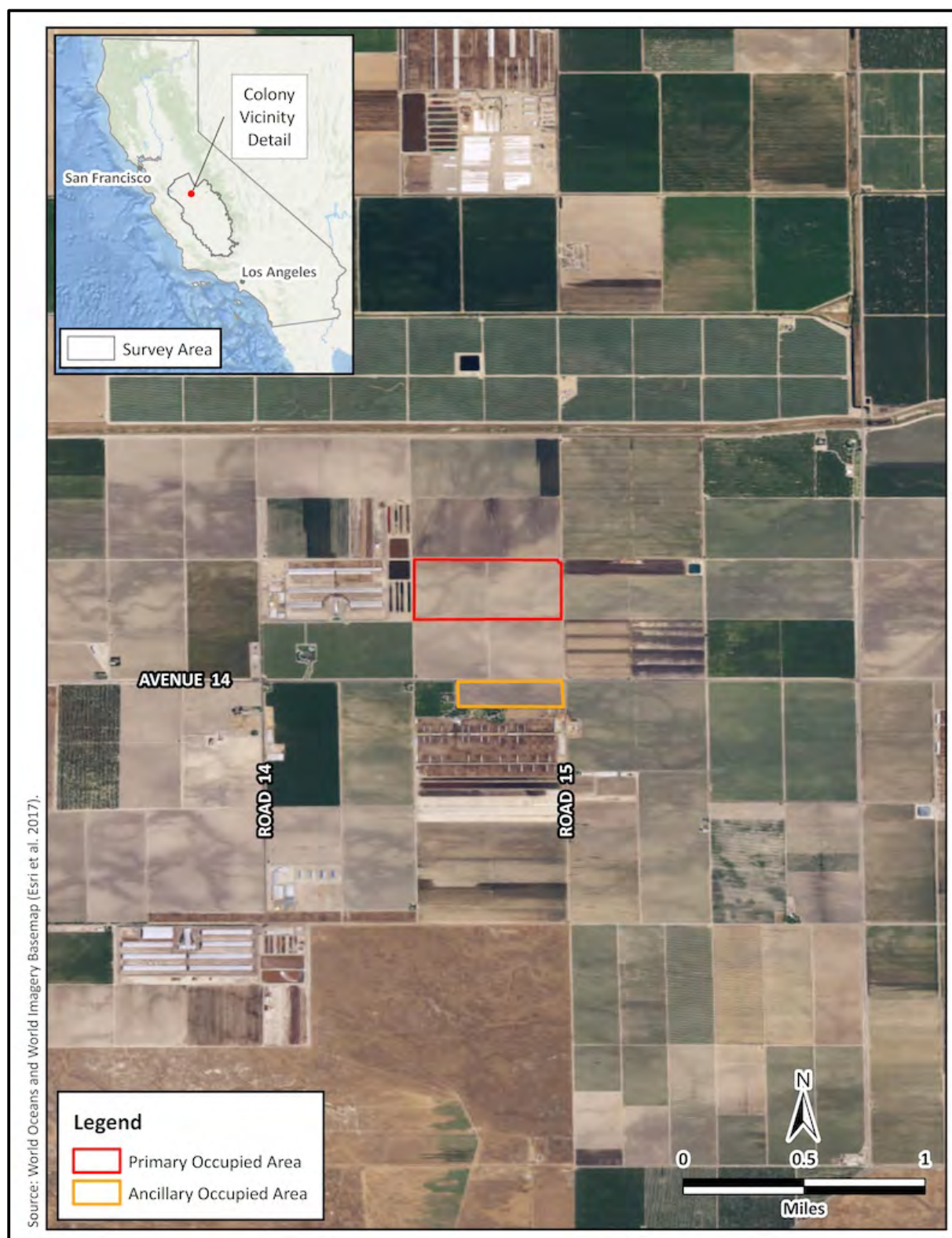


Figure 2. Avenue 14 and Road 15, Madera County. Agricultural field planted with forage mix.



Figure 3. Hulen Levee, Merced County. Fallow agricultural field.



Figure 4. Fahey South, Merced County. Fallow agricultural field.



Figure 5. Marshall Levee Pond, Merced County. Wetland adjacent to a lagoon.



Figure 6. Cherokee Forebay, Merced County. Native pastureland.



Figure 7. West of Lone Tree, Merced County. Agricultural field planted with triticale.



Figure 8. Cornerstone, Tulare County. Agricultural field planted with triticale.

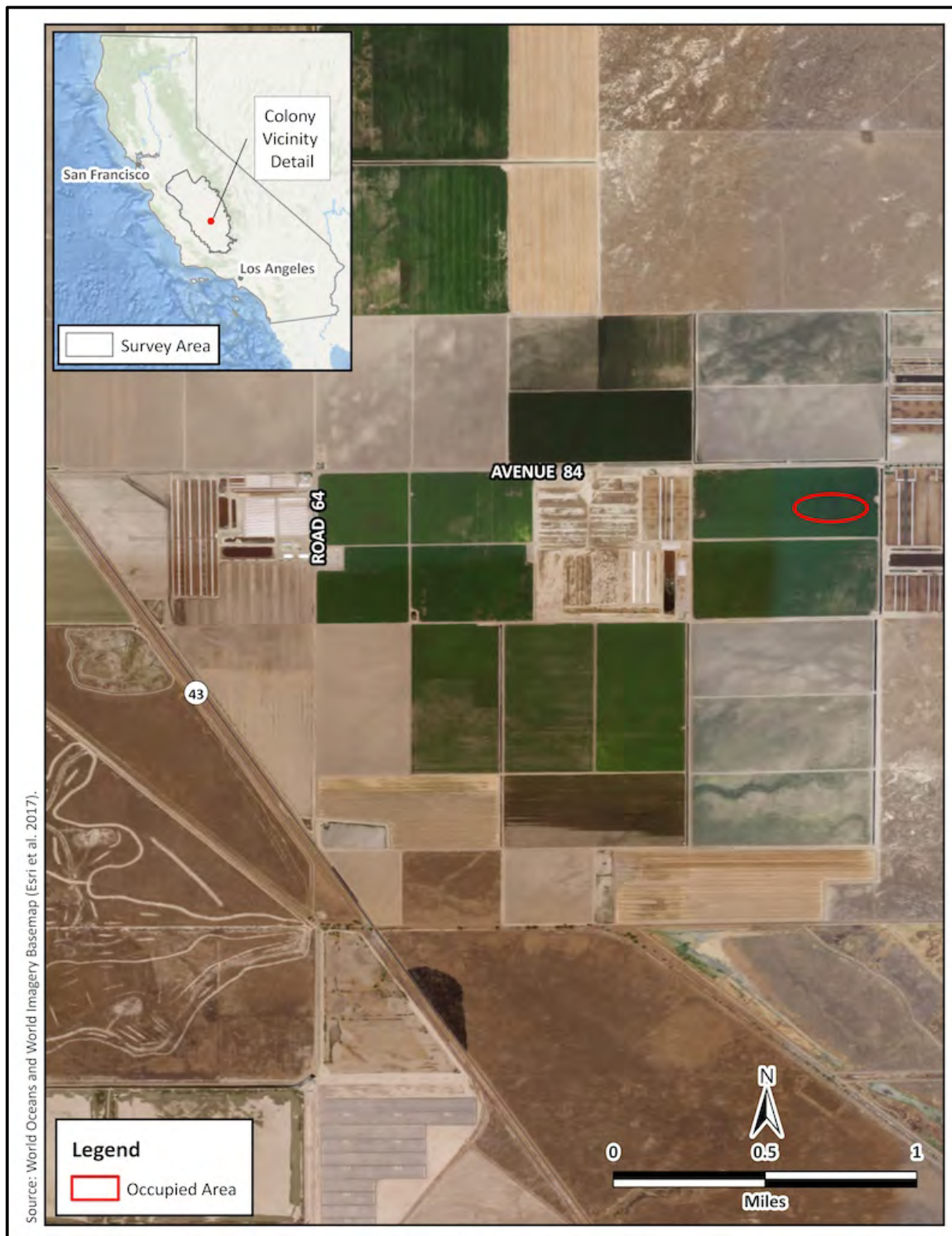


Figure 9. Deer Creek Dairy, Tulare County. Agricultural field planted with triticale.



Figure 10. Atwell Island Ton Tache Unit 4, Tulare County. Wetland.



Figure 11. Kern National Wildlife Refuge, Kern County. Wetland.



Figure 12. Tule Road, Kern County. Wetland.

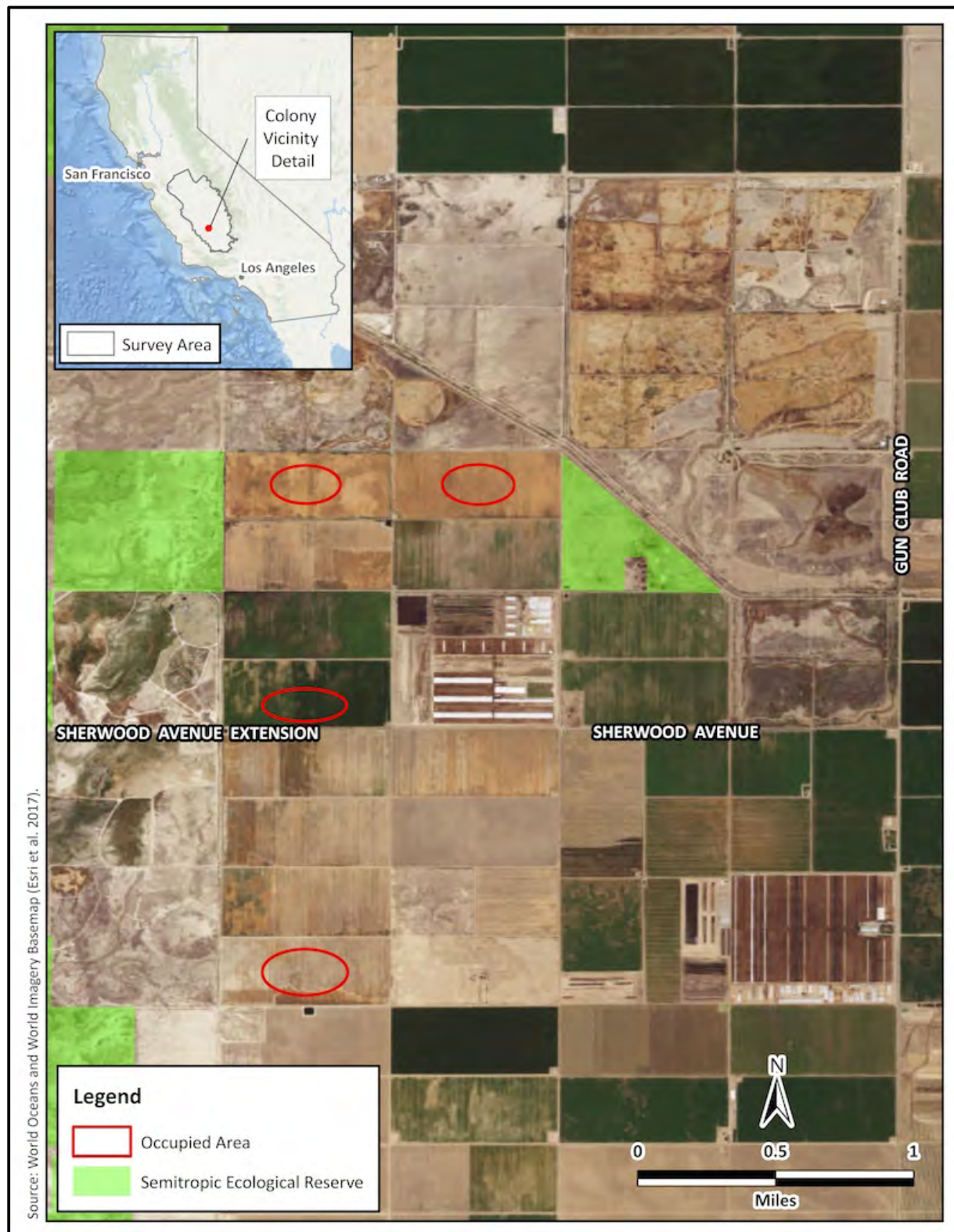


Figure 13. Poso, Kern County. Agricultural fields planted with triticale.

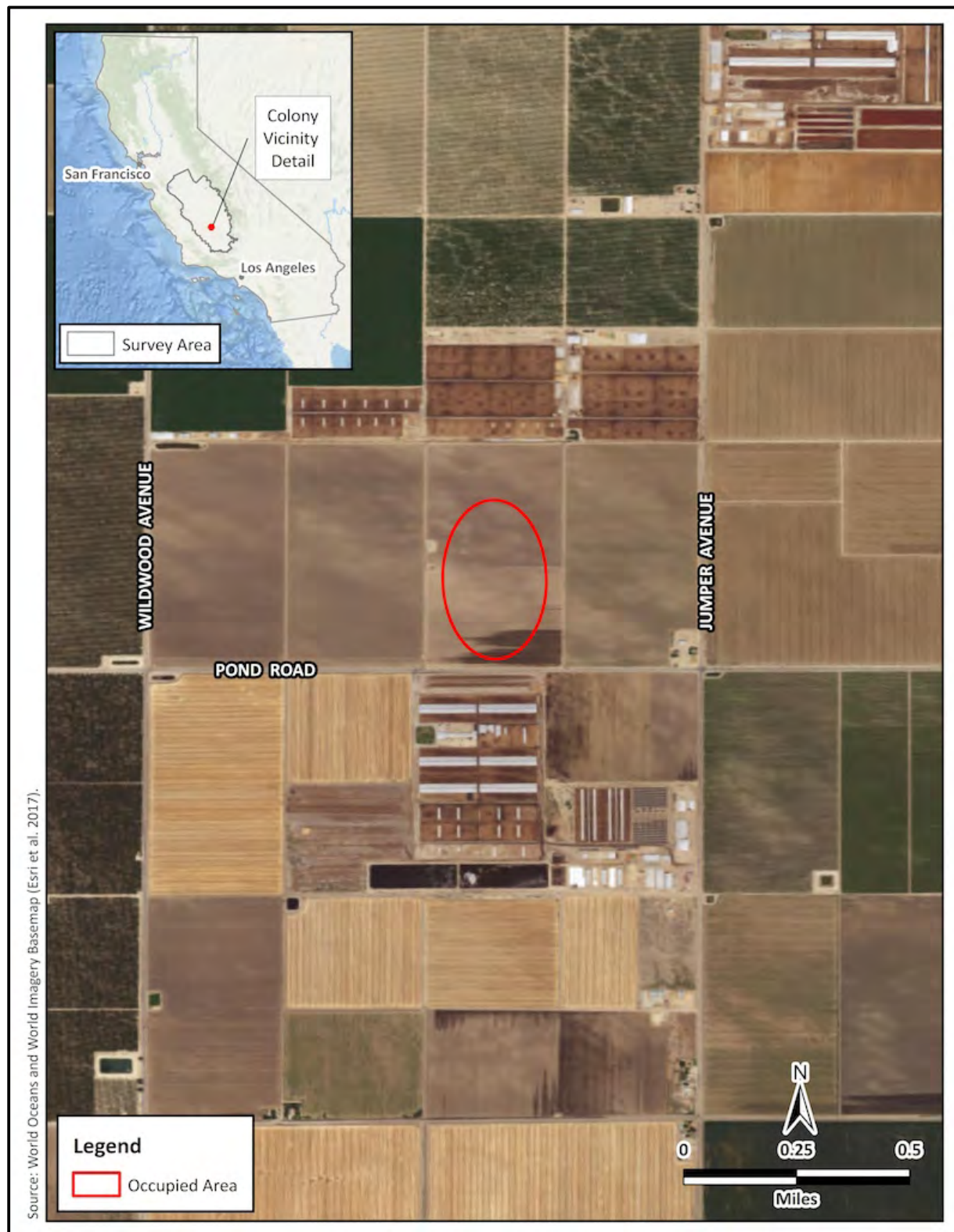


Figure 14. Pond Road, Kern County. Agricultural field planted with forage mix.

Discussion

Agricultural Impacts

Two or three tricolored blackbird colonies were adversely impacted by agricultural activities.

Road 14 and Avenue 15

Despite early colony detection and communication between the Natural Resources Conservation Service (NRCS) and the landowner, one of the largest tricolored blackbird colonies detected during the 2017 field season (Road 14 and Avenue 15) was essentially destroyed by grain harvest. The landowner was informed of silage-harvest-delay programs but moved forward with the harvest rather than receiving payment and delaying harvest. The landowner indicated post-harvest that he was unaware of the legal protected status of the tricolored blackbird. This breakdown in communication highlights the need for an improved process to prevent such destruction of tricolored blackbird colonies in the future.

During a 19 April 2017 field visit to the Road 14 and Avenue 15 site, we estimated 5,000 to 10,000 tricolored blackbird nests based on the area occupied. However, shortly after this visit, a large portion of the field containing the colony was harvested. Scott Frazer met with CDFW Warden Garrett Lenz on 27 April 2017 to assess the impact of the harvest on the colony. Mr. Frazer walked 200 feet into the unharvested portion of the field and documented three nests with eggs, two nests with nestlings, seven empty nests, one partial nest, two juvenile tricolored blackbirds, and one nest that had been destroyed by harvesting. Although the colony was quiet, the unharvested portion of the field remained at least partially occupied. Nevertheless, the reproductive success of this colony was minimal due to the harvest activities. All monitoring at this site ceased following this site visit due to the initiation of a CDFW law enforcement investigation. Consequently, the estimated number of tricolored blackbirds fledged from the unharvested portion of the field was not determined.

Cherokee Forebay

The Cherokee Forebay colony site was heavily grazed throughout the tricolored blackbird nesting period, which adversely impacted the nesting substrate and disrupted nesting activities. In addition, a silage field near the Cherokee Forebay colony that contained male tricolored blackbirds during an early season visit was harvested four to six weeks early, prior to colony establishment. Although the extent of the impact was not quantifiable, the minimal reproductive success of this colony is likely attributable to the grazing disturbance.

West of Lone Tree

During a 06 April 2017 field visit to the West of Lone Tree site, we found that a portion of the grain crops there had recently been harvested. Tricolored blackbirds at the site were behaving chaotically, consistent with behavior observed at colonies immediately following colony destruction by harvest. We did not confirm nesting at this site and had assumed the colony was disrupted or destroyed by harvest operations. However, Audubon California (2017) independently documented breeding about 0.1 miles north of this historical colony location. Therefore, we cannot confirm whether a colony was ever present at the historical location in 2017.

Nest Transects

With few exceptions, nest transects were not conducted during the 2017 field season due to extenuating circumstances. The vegetation at some sites (e.g., Pond Road) was determined to be so dense that conducting transect surveys would incidentally damage tricolored blackbird nests. Access to other sites (e.g., Poso and Cherokee Forebay) was not authorized. We did not enter asynchronous colonies (e.g., Fahey South) to avoid triggering premature fledging. And we did not enter wetland colonies (e.g., Marshall Levee Pond, Atwell Island Ton Tache Unit 4, Kern National Wildlife Refuge, and Tule Road) as they were not the focus of the contract. Nest surveys were conducted at three sites (Cornerstone, Deer Creek Dairy, and Road 14 and Avenue 15). However, these were not protocol level nest transects, and the results provided only anecdotal information on the reproductive success at these sites.

Field Types

Two of the largest tricolored blackbird colonies (Avenue 14 and Road 15 and Pond Road) were in agricultural fields planted with forage mix. More typically, the largest colonies in agricultural fields are in fields planted with triticale. While the Avenue 14 and Road 15 site was largely destroyed by harvest, the Pond Road colony was successful and had high reproductive success. This suggests that early breeding season reconnaissance surveys for tricolored blackbird colonies should not overlook fields planted with forage mix as potential tricolored blackbird nesting habitat.

Conservation Successes

The colonies at Fahey South, Pond Road, and Poso represent substantial conservation successes. These large colonies were untouched by farming operations for several months throughout the duration of the breeding season, and multiple cycles of breeding occurred, resulting in high reproductive success. These colonies serve as good examples of how communication and cooperation between regulators and landowners can result in a positive conservation outcome for tricolored blackbirds.

Conclusion

Monitoring of San Joaquin Valley tricolored blackbird colonies throughout the breeding season and communication between Tricolored Blackbird Working Group partners and landowners of silage fields resulted in conservation successes at most of the eight dairy-associated colonies. The large tricolored blackbird colony at Road 14 and Avenue 15 in Madera County, however, was largely destroyed by harvest despite early detection and communication between NRCS and the landowner.

Recommendations for Conservation

Early Colony Detection

Due to delays in contracting, tricolored blackbird surveys were not initiated until late March. However, tricolored blackbird colonies can become established well before late March, and large colonies can be overlooked in the incubation phase (Hamilton 2004). In addition, based on nest records, nesting colonies from 2000 to present have initiated earlier in the season than they did historically (Frazer 2016). To locate and monitor colonies that initiate early, we recommend that future contracts start at the beginning of March to minimize the potential for large colonies to go undetected, as early colony detection is key to their conservation.

Alternative Measure of Reproductive Success

We recommend that an alternative quantitative measure of reproductive success be developed in addition to or instead of current nest transect protocol surveys. During nest transect protocol surveys, the number of 7-9-day-old tricolored blackbird chicks is documented along a specified transect. The number of 7-9-day-old tricolored blackbird chicks detected is assumed to represent the number of tricolored blackbirds that will successfully fledge from a given area in the colony (Meese et al. 2014). However, fragile or patchy nest substrate, asynchronous colonies, and limited access to colonies on private lands can render nest transect surveys inadequate or infeasible. Transects in dense, intertwined nesting substrate can be difficult to walk and may cause inadvertent damage to nest structures. Transects in patchy nest substrate, where waking is less impeded, may not be representative of the entire colony. Asynchronous tricolored blackbird colonies may contain large numbers of 10-12-day-old tricolored blackbird chicks, which tend to jump from nests when approached by human observers. These “jumper” chicks may not survive once outside the immediate protection of the nest.

We propose exploring the use of an unmanned aerial vehicle (UAV) to capture aerial imagery of tricolored blackbird nesting colonies during the 2018 field season, then reviewing these images using software such as Timelapse Image Analyzer (Greenberg 2015) to determine the number of nests. We suggest conducting same-day walking nest transects in addition to aerial image analysis to ground truth the potential usefulness of UAV technology in determining the number

of nests. Similar methods are currently used with great success for colonial nesting seabirds (e.g., Hodgson et al. 2016), and UAV technology has also been used to count songbirds (Wilson et al. 2017). We recommend that the Tricolored Blackbird Working Group discuss this strategy and alternative strategies for quantitatively measuring reproductive success at problematic tricolored blackbird colonies. Accurate and reproducible measures of reproductive success across the range of colony types are critical for informing conservation based management decisions for the tricolored blackbird.

Landowner Education

To prevent the destruction of known tricolored blackbird colonies in silage fields, we propose that the Tricolored Blackbird Working Group in collaboration with CDFW draft a flyer or brochure on tricolored blackbird life history, breeding phenology, and legal protections under the California Endangered Species Act, other sections of the California Fish and Game Code, and the Migratory Bird Treaty Act. We propose that NRCS share this brochure with landowners when they initiate contact to discuss silage-harvest-delay and silage-buyout programs. This brochure would help educate landowners on tricolored blackbird colonies and their legal protection status and would help NRCS successfully implement silage-harvest-delay and silage-buyout programs. Preventing destruction of large colonies in silage fields is critical to the conservation of tricolored blackbirds in the San Joaquin Valley.

Timing of Water Deliveries

Lastly, the timing and quantity of water deliveries affect the suitability of ephemeral wetland habitats for nesting by tricolored blackbirds (Frazer 2016). For example, during the 2017 field season, the Atwell Ton Tache Unit 4 site hosted a vigorous tricolored blackbird colony with high reproductive success. However, due to water delivery issues, the wetland dried up and prevented subsequent breeding efforts. Likewise, the Tule Road tricolored blackbird colony occupied only a small portion of the historical colony area due to the lack of well-timed water deliveries. To help promote the success of tricolored blackbird nesting colonies at wetland sites, we recommend that ensuring adequate and well-timed water deliveries at known wetland colony sites be a focus of Tricolored Blackbird Working Group conservation efforts.

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STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

Amend Sections 1.05, 1.11, 1.18, 1.61, 1.74, 2.10, 2.25, 5.35, 5.41, 5.88,
Subsection (b) of Section 7.00, Subsection (b) of Section 7.50,
and Subsection (b) of Section 8.00; Repeal Section 1.60;
and Add Section 2.05,
Title 14, California Code of Regulations
Re: Freshwater Sport Fishing Regulations

- I. Date of Initial Statement of Reasons: June 2, 2017
- II. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: August 16, 2017
Location: Sacramento
 - (b) Discussion Hearing: Date: October 11, 2017
Location: Atascadero
 - (c) Adoption Hearing: Date: December 6, 2017
Location: San Diego

III. Description of Regulatory Action:

- (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

This California Department of Fish and Wildlife (Department) proposal combines Department and public requests for changes to Title 14, California Code of Regulations (CCR), for the 2017 Sport Fishing Regulations Review Cycle. This proposal will reduce foul-hooking of salmon, protect Shasta crayfish, protect salmon released above Shasta Dam, clarify regulations for artificial lures and bait, increase protection for Chinook Salmon and steelhead in the lower American River, increase bow fishing opportunities, update the sport fishing report card requirements, and make needed corrections to existing regulations. The proposed regulatory changes are needed to reduce public confusion and improve regulatory enforcement.

The Department is proposing the following changes to current regulations:

ROCK CREEK (SHASTA COUNTY) CLOSURE TO PROTECT SHASTA CRAYFISH

Shasta crayfish (*Pacifastacus fortis*) is listed as an Endangered Species pursuant to the California Endangered Species Act (Fish & G. Code, § 2050 et seq.)(Cal. Code Regs., tit. 14, § 670.5(B)) and the federal Endangered Species Act (16 U.S.C. § 1531 et seq.)(53 Fed.Reg. 38460-38465 (1988)). The current distribution for Shasta crayfish includes small and isolated spring fed areas in the Fall and Pit River drainages (Shasta County). Rock Creek, in the Hat Creek Drainage, was historically occupied by Shasta crayfish and was recently restored to provide refuge for and aid in the survival of the species. The Department is proposing to close Rock Creek to all fishing all year from Rock Creek spring downstream to Baum Lake. This proposal will aid in the protection of Shasta crayfish and its habitat.

Proposal: Add new subsection (b)(151.5) to Section 7.50, Special Fishing Regulations

Add Rock Creek, in the Hat Creek Drainage, to the Special Fishing Regulations with an all year fishing closure to protect Shasta crayfish.

CLARIFICATION OF NO TAKE OF SALMON IN THE SACRAMENTO AND MCCLOUD RIVERS AND TRIBUTARIES ABOVE SHASTA LAKE

The National Marine Fisheries Service (NMFS) and the US Bureau of Reclamation (BOR) are conducting feasibility studies for the reintroduction of winter-run and spring-run Chinook Salmon into the McCloud and Sacramento rivers. As part of a Fish Passage Pilot Project, federal agencies will be introducing an experimental release of Chinook Salmon into the Sacramento and McCloud drainages starting in 2017 or 2018 and continuing indefinitely. It is imperative that these rivers and their tributaries above Shasta Lake be closed to salmon fishing to reduce salmon loss and increase the success of the Fish Passage Pilot Project.

Proposal: Add new language to Section 7.00, District General Regulations, and to subsection (b)(115), McCloud River, in Section 7.50, Special Fishing Regulations.

Amend the Sierra District Regulations to clarify that all rivers and associated tributaries above Shasta Lake are closed to the take of salmon, and amend subsection (b)(115) to Section 7.50 to direct readers to the District General Regulations. These changes will protect Chinook Salmon when they are reintroduced into the upper Sacramento and McCloud rivers above the Shasta Lake.

AMERICAN RIVER (NIMBUS BASIN) FISHING CLOSURE

Under current regulations, the American River (in Sacramento County) from Nimbus Dam to the Hazel Avenue bridge piers is open to fishing all year (Section 7.50(b)(5)(A)), and from the Hazel Avenue bridge piers to the U.S. Geological

Survey gauging station cable crossing about 300 yards downstream from the Nimbus Hatchery fish weir is open to fishing January 1 through August 15 (Section 7.50(b)(5)(B)). The current request for closure is designed to protect Chinook Salmon and Central Valley steelhead trout, which will utilize this section of the river for both in-river spawning and rearing along with essential hatchery operations.

The BOR and the Department have completed a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Nimbus Hatchery Fish Passage Project (Project). The primary goal of the Project is to maintain a fully functional system of collecting adult Chinook Salmon and Central Valley steelhead trout sufficient to meet the hatchery's mitigation goals. Phase 1 of the Project extends the Nimbus Hatchery fish ladder 1500 feet (.30 miles) upstream into the Nimbus Basin. With the completion of the new fish ladder, Phase 2 of the Project will permanently remove the existing Nimbus Hatchery fish weir, and spawning gravel injections will be completed within the section of river associated with Section 7.50 (b)(5)(B). A gravel restoration and side channel creation project to create spawning and rearing habitat in the Nimbus Basin was completed in 2014.

However, the Project has the potential to affect Chinook Salmon and Central Valley steelhead trout holding, spawning, and rearing in this section of the lower American River. Under current hatchery operations, large numbers of adult Chinook Salmon and Central Valley steelhead trout hold below the existing fish weir located below the Hazel Avenue bridge before being routed to the fish ladder located at the south end of weir. Fish that enter the hatchery that are not ripe for spawning are released back into the river through the outfall, located approximately 100 feet below the existing fish ladder. As a result, current hatchery operations utilize a small portion of the river below the weir to cycle fish in and out of the hatchery. However, once the existing fish ladder is moved upstream into the Nimbus Basin, the length of river utilized for hatchery operations will increase by approximately 1,500 feet. Upon completion of the Project, holding, spawning, and rearing Chinook Salmon and Central Valley steelhead trout will distribute throughout the hatchery operations area. As a result, the entire section of river should be closed to fishing all year to ensure successful hatchery operations.

Consequently, if the area is not closed to fishing by the Fall of 2018, anglers will continue fishing in the Nimbus Basin downstream to the USGS gauging station and target holding and spawning Chinook Salmon and Central Valley steelhead trout. Although Section 2.35 states that fishing shall not take place within 250 feet of a fish ladder, this would have little effect in protecting salmon and steelhead under the new configuration. The new ladder entrance would be greater than 250 feet from where salmon are expected to hold until the ladder is opened to allow salmon and steelhead into the Nimbus Hatchery. The proposed

closure would also provide the American River Trout Hatchery and Nimbus Hatchery with greater protection from contamination by the New Zealand Mud Snail (NZMS), which have been documented adjacent to the hatchery in Section 7.50(b)(5)(B).

Proposal: Amend subsections (b)(5)(A) and (b)(5)(B) of Section 7.50, Special Fishing Regulations

Combine subsections 7.50(b)(5)(A) and 7.50(b)(5)(B) and close this section of river to fishing all year.

ARTIFICIAL LURE AND BAIT DEFINITION CHANGES

The purpose of the regulation change is to clarify that no scents or flavors shall be used on lures on waters where only artificial lures with barbless hooks may be used. After consulting with wildlife officers on this subject, it has become clear there is some subjectivity in interpreting the current regulation which has resulted in inconsistency and confusion. By clarifying this definition, law enforcement will have increased success enforcing this rule and the public will have a clearer description of this rule.

The definition of a lure (Section 1.60) would be removed from the Freshwater Sport Fishing Regulations and only “artificial lure” would be used. With this change, three substitutions in the current regulations would need to be made: (1) Section 1.05, Angling; (2) Section 1.61, Non-buoyant Lure; and (3) Section 2.10(b)(3), Hook and Weight Restrictions. In all three sections lure would be changed to artificial lure. In addition, the definition of artificial lure would be amended to clarify that only non-scented and non-flavored lures may be used. Lastly, there is currently no definition of bait in Title 14. A definition of bait is needed to help clarify when scents and flavors can be used.

Proposal: Repeal Section 1.60, Lure; Amend Sections 1.05, Angling; 1.11, Artificial Lure; 1.61, Non-buoyant lure; and 2.10, Hook and Weight Restrictions; and add Section 1.18, Bait

Amend multiples sections in Title 14 to align with the new definitions for artificial lure and bait.

ALLOW BOW AND ARROW FISHING FOR CATFISH

The bow and arrow fishing community has requested the opportunity to fish for catfish in certain waters in the state. Bowfishers have expressed that they often encounter catfish in their pursuit for carp and would like to be able to take catfish as well. This request was considered by Department law enforcement and regional biologists who determined that bowfishing could be allowed on waters with large carp populations and that are popular for bowfishing. These waters include the Sacramento San-Joaquin Delta, Lake Isabella in Kern County and Big Bear Lake in San Bernardino County. Allowing bowfishing for catfish on these waters will increase fishing opportunities for bowfishers.

Proposal: Amend Section 2.25, Bow and Arrow Fishing

Amend Section 2.25 to allow bowfishing for bullheads and catfish in the Sacramento-San Joaquin River Delta, Big Bear Lake in San Bernardino County, and Lake Isabella in Kern County.

REVISION OF MENDOCINO, SONOMA, AND MARIN COUNTIES' LOW FLOW CLOSURE TIME PERIOD TO ALIGN WITH THE ADULT STEELHEAD SEASON

Section 8.00(b) establishes a season for special low flow conditions for Mendocino, Sonoma, and Marin County coastal streams; however, the current end date extends the length of the low flow season past the adult steelhead fishing season on most coastal streams (except Russian River) which provides an unnecessary protection and may potentially confuse anglers. The current sport fishing regulations allow fishing in coastal streams of Mendocino, Sonoma, and Marin counties from the fourth Saturday in May through March 31, except for the Russian River which is open all year. Gear restrictions change from November 1 through March 31 to accommodate fishing for adult steelhead on all Mendocino, Sonoma, and Marin County coastal streams. There is no need for the season of special low flow conditions to extend beyond March 31, as most streams (except Russian River) are closed to any fishing from April 1 until the fourth Saturday in May, which is prior to the end of the current low flow season. The Russian River is the exception because it is open year round due to other sport fisheries such as American shad and smallmouth bass. For consistency, the Russian River should be included in this change, but it would result in the potential reduction of protected days under a low flow closure between April 1 and the fourth Saturday in May (52-57 days depending upon the calendar year). The loss of this additional protection on the Russian River is not likely to be significant as the bulk of the steelhead will have spawned and angler effort targeting steelhead will be low in the months of April and May. The steelhead population on the Russian River is also unlike other coastal streams because it is supplemented with hatchery steelhead. Additionally, the Russian River is a flow regulated stream and flows are likely to be higher in April and May than other coastal streams and less likely to be subject to a low flow closure due to water releases. Conforming the low flow closure season with the end of the adult steelhead fishing season on Mendocino, Sonoma, and Marin County coastal streams helps simplify regulations and reduces confusion between the fishing season and low flow closure season and it would not significantly impact the Russian River steelhead population in the event of low flow conditions in the months of April and May.

Proposal: Amend Subsection (b) of Section 8.00, Low-Flow Restrictions

Revise Section 8.00(b) to redefine the season of the Special Low Flow Conditions to coincide with the end of the adult steelhead fishing season on March 31.

CRAYFISH

In alignment with the proposal to close Rock Creek to fishing to protect Shasta crayfish, Section 5.35 will need to be amended to add Rock Creek to the list of waters where take of crayfish is prohibited. Rock Creek is a tributary to Baum Lake, which is an instream lake of Hat Creek in the Hat Creek Drainage.

Proposal: Amend Section 5.35, Crayfish

Amend Section 5.35 to add Rock Creek to the list of waters where fishing for crayfish is prohibited.

STEELHEAD REPORT AND RESTORATION CARD REQUIREMENTS

Department staff reassessed the fisheries management objectives of the Steelhead Report and Restoration Card and determined that the data being collected, location codes, and reporting instructions and requirements can be simplified. In order to accomplish this, verbiage within Section 5.88 must be changed.

Proposal: Amend Section 5.88, Steelhead Report and Restoration Card Requirements

Remove reference to “wild” steelhead because it is not legal to retain a wild steelhead, and remove the requirement to report the number of hours that were fished for steelhead.

SPORT FISHING REPORT CARD REQUIREMENTS

Section 1.74 establishes guidelines for report card regulations including reporting harvest authorized by a report card; however, this section does not include a mechanism for confirmation that data from a report card has been reported. This proposal requires report card holders who submit data online to write the provided confirmation number on their report card and retain the report card until for 90 days after the reporting deadline.

When a report card is lost, a licensee may wish to obtain a duplicate, or may simply need to fulfill the harvest reporting requirement before the reporting deadline. Section 1.74 does not currently provide guidelines for licensees who have lost their report card and need to report their harvest, but do not need to obtain a duplicate report card. This proposal updates procedures regarding lost report cards to provide guidelines for obtaining a duplicate report card, and also for reporting harvest from a lost report card without obtaining a duplicate report card.

Proposal: Amend Section 1.74, Sport Fishing Report Card Requirements

Amend Section 1.74 to update procedures for reporting online and for lost report cards.

RESTRICT LEADER LENGTH TO LESS THAN SIX FEET TO REDUCE POTENTIAL FOUL-HOOKING (SNAGGING) OF SALMON AND STEELHEAD

The Department and the California Fish and Game Commission (Commission) have struggled for years to eliminate and/or regulate snagging salmon. This has proven difficult given that some of the spawning aggregations, habitat, and creative snagging techniques that have evolved over time. Water operations, changes in angling ethics, and population growth likely have also contributed to this ongoing problem. After struggling with these issues statewide, the Commission directed the Department to find a solution.

In 2014, the Department formulated a snagging working group to help evaluate the issue through a structured decision making process. Both Department staff and angling stakeholders participated in multiple meetings. One action resulting from this effort was a directed study to assess the efficacy of a reduced leader length in relation to the “flossing” fishing technique based angling/snagging rig. Although this technique/rig is not the only gear that can be used to purposefully foul-hook salmon, it is currently legal and very effective when used in the right habitat (Feather, American, Sacramento, Yuba, and Klamath rivers) with high densities of spawning/migrating salmon. The results of the study showed a significant correlation with foul-hooking (82-94%) regardless of the leader length and a reduction in landing rates for the shortest leader.

Proposal: Add Section 2.05 to Title 14, Leader Length Restriction

Add the leader length restriction to Title 14, Chapter 2, Article 1, to reduce foul-hooking of salmon and steelhead in anadromous waters.

Updates to Authority and Reference Citations Based on Recent Legislation

Senate Bill 1473 (Stats. 2016, Ch. 546) made organizational changes to the Fish and Game Code that became effective January 1, 2017. The changes included moving the Commission’s exemptions from specified Administrative Procedure Act time frames from Section 202 to Section 265 of the Fish and Game Code, moving the Commission’s organization and meeting from Section 206 to Section 110 of the Fish and Game Code, moving the Commission’s effective date procedures from Section 215 to Section 270 of the Fish and Game Code, and moving the Commission’s authority to adopt emergency regulations from Section 240 to Section 399 of the Fish and Game Code. In accordance with these changes to the Fish and Game Code, sections 202, 206, 215, and 240 are removed from, and sections 110, 265, 270, and 399 are added to, the authority and reference citations for this rulemaking. Senate Bill 1473 also repealed subdivision (b) of Section 220 of the Fish and Game Code; therefore, Section 220 is removed from the list of authority and reference citations for this rulemaking.

Minor Editorial Corrections for Clarity

In addition to the above proposals, minor editorial corrections are proposed to correct typographical errors and to improve regulation clarity.

Benefits of the Proposed Regulations

It is the policy of this state to encourage the conservation, maintenance, and utilization of the living resources of the ocean and inland waters under the jurisdiction and influence of the state for the benefit of all the citizens of the State. In addition, it is the policy of this state to promote the development of local California fisheries in harmony with federal law respecting fishing and the conservation of the living resources of the ocean and inland waters under the jurisdiction and influence of the State. The objectives of this policy include, but are not limited to, the maintenance of sufficient populations of all species of aquatic organisms to ensure their continued existence and the maintenance of a sufficient resource to support a reasonable sport use. Adoption of scientifically-based trout and salmon seasons, size limits, and bag and possession limits provides for the maintenance of sufficient populations of trout and salmon to ensure their continued existence.

The benefits of the proposed regulations are concurrence with Federal law, sustainable management of California's trout and salmon resources, and promotion of businesses that rely on recreational sport fishing in California.

- (b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 200, 205, 219, 265, 270, 315, 316.5, 399, 1050, 1053.1, 1055.1, 7380 and 8491, Fish and Game Code.

Reference: Sections 110, 200, 205, 206, 255, 265, 270, 316.5, 399, 713, 1050, 1053.1, 1055.1, 7149.8, 7380, 7381, 7382, 8490 and 8491, Fish and Game Code.

- (c) Specific Technology or Equipment Required by Regulatory Change:

None.

- (d) Identification of Reports or Documents Supporting Regulation Change:

None.

- (e) Public Discussions of Proposed Regulations Prior to Notice Publication:

No public meetings are scheduled prior to the notice publication. The 45-day public notice comment period provides adequate time for review of the

proposed changes.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

Smith River Petition

Petition #2016-023; received by the Commission at its Oct 2016 meeting; at Dec 2016 meeting Commission granted petition for consideration in the 2017 rulemaking for the 2018-19 season.

Petitioner recommends that the Department ban the use of roe as bait for fishing for salmon and steelhead. Petitioner also recommends closing the middle and south forks of the Smith River to fishing in November and December to protect spawning salmon.

Department Response

The current Smith River fishing regulations provide for protection of salmon and steelhead. The Smith River special fishing regulations include limited harvest, seasonal closures, a permanent section closure, and restricted angling gear (Section 7.50(b)(180)). The proposed fishing regulation changes listed in the petition (2016-023) show a local concern for the sport salmon fishery, but are unlikely to achieve the desired outcome based on past and current fish monitoring data for the Smith River. For example, the salmon trends in the Smith River do not indicate a declining trend over time, but show a stable population with normal variability (USFS 1960, Moyle 2002, Larson 2014). Alternatively, local Pacific Oceans trends, which are likely a mix of Oregon and California stocks have shown declines over time and should not be an indicator of Smith River salmon status.

As noted in the petition, hooking mortality as described in the “1997/98 Smith River Survey Summary” report did indicate a 26% swallowing rate for bait and 0% for flies, but the following year 1998/99 Sparkman (2000) indicated 17% of fly caught fish swallowed the hook. While there is no doubt that fish may swallow a hook with any angling method used, the annual variability described in these studies leads to some uncertainty about targeting specific gear types and expectations. In addition, the angler surveys grouped steelhead and salmon together comparing hook swallowing, although steelhead represented the majority of the catch (70-83%) in all years (petitioner is concerned about salmon hook swallowing).

While the Department agrees there are salmon spawning above the “forks” of the Smith River, mainstem Middle and South fork access is mainly limited to shore anglers as drift boats face harsher drift/water

conditions and typical do not fish above the forks. The proposed area/seasonal closure would be targeting a specific user group with no substantial evidence to support the perceived protection for salmon during this time.

Striped Bass Petition

Petition #2016-003; received by the Commission at its Feb 2016 meeting; at April 2016 meeting Commission granted petition for consideration in the 2017 rulemaking for the 2018-19 season.

The petitioner requests a change to the bag, possession, and size limits for striped bass on the San Joaquin River between Friant Dam and Highway 140 in Fresno, Madera, and Merced counties. Petitioner recommends increasing the daily bag limit for striped bass to 10, with no size limit in the San Joaquin River.

Department Response

The Department does not support the proposal because it will not likely accomplish the overall intended purpose, increase juvenile salmon survival at a level of statistical significance, given striped bass life history (ability to recolonize) and lack of prey preference. The confounding part of the striped bass predation issue relative to the San Joaquin River and its tributaries is that, pending location, there can exist both resident and anadromous populations of striped bass. Though the resident population is reduced, in theory, with greater harvest, the anadromous population can overcome any reductions made to resident populations thereby negating any population reduction effects.

Spearfishing Petition

Petition #2016-006; received by the Commission at its Jun 2016 meeting; at Aug 2016 meeting Commission granted petition for consideration in the 2017 rulemaking for the 2018-19 season.

The petitioner requests that the Department make the freshwater spearfishing regulations the same as the freshwater bow and arrow fishing regulations.

Department Response

The Department does not support this proposal because of the safety issues associated with spearfishing as well as potential conflicts with other more common angling and recreational activities. In addition, extensive evaluations would need to be conducted to determine impacts to lakes and streams due to year-round spearfishing. Furthermore, with the current spearfishing regulations, there are already rules and regulations in place at lakes and rivers that are under the jurisdiction of federal, local,

and state agencies, and private organizations that do not permit the use of weapons upon those lands. Allowing the proposal would certainly convolute the new regulation (as it already has) and will not be consistent with what is already established by these organizations.

(b) No Change Alternative:

The no change alternative would leave existing regulations in place.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the proposed regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action:

The Department assessed the potential for significant statewide adverse economic impacts that might result from the proposed regulatory action, and made the following initial determinations relative to the required statutory categories:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action is not anticipated to have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because the expected impact of the proposed regulations on the amount of fishing activity is anticipated to be minimal relative to recreational angling effort statewide.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the

State's Environment:

The expected impact of the proposed regulations on the amount of fishing activity is anticipated to be minimal relative to recreational angling effort statewide. Therefore, the Commission does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing business or the expansion of businesses in California.

The Commission anticipates benefits to the health and welfare of California residents. Providing opportunities for a salmon and trout sport fishery encourages consumption of a nutritious food.

The Commission does not anticipate any non-monetary benefits to worker safety.

The Commission anticipates benefits to the environment by the sustainable management of California's sport fishing resources.

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

(e) Nondiscretionary Costs/Savings to Local Agencies:

None.

(f) Programs Mandated on Local Agencies or School Districts:

None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code:

None.

(h) Effect on Housing Costs:

None.

VII. Economic Impact Assessment:

The proposed regulations will revise and update inland sport fishing regulations starting in 2018. Currently, the seasons, size limits, and bag and possession limits for sport fishing are periodically reviewed by the California Department of Fish and Wildlife and the California Fish and Game Commission. This set of amendments will reduce foul-hooking of salmon, protect Shasta crayfish, protect salmon released above Shasta Dam, clarify regulations for artificial lures and bait, increase protection for Chinook Salmon and steelhead in the lower American River, increasing bow fishing opportunities, update the sport fishing report card requirements, and make needed corrections.

Inland sport fishing regulation's affected parties include recreational anglers, commercial passenger fishing vessels and a variety of businesses that support anglers. The economic impact of regulatory changes for sport fisheries are estimated by tracking resulting changes in fishing effort, angler trips and length of stay in the fishery areas. Distance traveled affects gas and other travel expenditures. Day trips and overnight trips involve different levels of spending for gas, food and accommodations at area businesses as well as different levels of sales tax impacts. Direct expenditures ripple through the economy, as receiving businesses buy intermediate goods from suppliers that then spend that revenue again. Business spending on wages is received by workers who then spend that income, some of which goes to local businesses. Recreational fisheries spending thus multiplies throughout the economy with the indirect and induced effects of the initial direct expenditure.

The adoption of scientifically-based regulations provides for the maintenance of sufficient populations of inland sport fish to ensure their continued existence and future sport fishing opportunities that in turn support businesses related to the fishery economy.

The most recent 2011 U.S. Fish and Wildlife national survey of fishing, hunting, and wildlife associated recreation in California reports about 1.35 million resident and nonresident inland sport fish anglers contributed about \$1.2 billion in trip and equipment expenditures to the State's economy. With the addition of the indirect and induced effects of this \$1.2 billion direct revenue contribution, the total economic benefit to California's economy is estimated to be about \$2.03 billion. This corresponds with about \$960 million in total wages to Californians and about 16,000 jobs in the State annually.

This regulatory action may impact businesses that provide services to sport fishermen but these effects are anticipated to range from none to small positive

impacts, depending on the regulations ultimately adopted by the Commission. Sport fishing business owners, boat owners, tackle store owners, boat manufacturers, vendors of food, bait, fuel and lodging, and others that provide goods or services to those that sport fish in California may be positively affected to some degree from increases to business that may result under the range of proposed regulations. These anticipated impacts may vary by geographic location. Additionally, economic impacts to these same businesses may result from a number of factors unrelated to the proposed changes to inland sport fishing regulations, including weather, fuel prices, and success rates in other recreational fisheries that compete for angler trips.

(a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State:

The cumulative effects of the changes statewide are estimated to be neutral to job elimination and potentially positive to job creation in California. No significant changes in fishing effort and sport fishing expenditures to businesses are expected as a direct result of the proposed regulation changes.

(b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State:

The cumulative effects of the changes statewide are expected to be neutral to business elimination and have potentially positive impacts to the creation of businesses in California. No significant changes in fishing effort and sport fishing expenditures to businesses are expected as a direct result of the proposed regulation changes.

(c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State:

The cumulative effects of the changes statewide are expected to be neutral to positive to the expansion of businesses currently doing business in California. No significant changes in fishing effort and inland sport fishing expenditures to businesses are expected as a direct result of the proposed regulation changes.

(d) Benefits of the Regulation to the Health and Welfare of California Residents:

The Commission anticipates benefits to the health and welfare of California residents. Trout and salmon are a nutritious food source and increasing inland sport fishery opportunities encourages consumption of this nutritious food. Sport fishing also contributes to increased mental

health of its practitioners as fishing is a hobby and form of relaxation for many. Sport fishing also provides opportunities for multi-generational family activities and promotes respect for California's environment by younger generations, the future stewards of California's natural resources.

(e) Benefits of the Regulation to Worker Safety:

The proposed regulations are not anticipated to impact worker safety conditions.

(f) Benefits of the Regulation to the State's Environment:

It is the policy of the state to encourage the conservation, maintenance, and utilization of the living resources of the inland waters under the jurisdiction and influence of the state for the benefit of all its citizens and to promote the development of local California fisheries. The objectives of this policy include, but are not limited to, the maintenance of sufficient populations of all species of aquatic organisms to ensure their continued existence and the maintenance of a sufficient resource to support a reasonable sport use, taking into consideration the necessity of regulating individual sport fishery bag limits in the quantity that is sufficient to provide a satisfying sport. Adoption of scientifically-based inland trout and salmon seasons, size limits, and bag and possession limits provides for the maintenance of sufficient populations of trout and salmon to ensure their continued existence.

Informative Digest/Policy Statement Overview

This California Department of Fish and Wildlife (Department) proposal combines Department and public requests for changes to Title 14, California Code of Regulations (CCR), for the 2017 Sport Fishing Regulations Review Cycle. This proposal will reduce foul-hooking of salmon, protect Shasta crayfish, protect salmon released above Shasta Dam, clarify regulations for artificial lures and bait, increase protection for Chinook Salmon and steelhead in the lower American River, increasing bow fishing opportunities, update the sport fishing report card requirements, and make needed corrections to existing regulations. The proposed regulatory changes are needed to reduce public confusion and improve regulatory enforcement.

The Department is proposing the following changes to current regulations:

ROCK CREEK (SHASTA COUNTY) CLOSURE TO PROTECT SHASTA CRAYFISH

Shasta crayfish (*Pacifastacus fortis*) is listed as an Endangered Species pursuant to the California Endangered Species Act (Fish & G. Code, § 2050 et seq.)(Cal. Code Regs., tit. 14, § 670.5(B)) and the federal Endangered Species Act (16 U.S.C. § 1531 et seq.)(53 Fed.Reg. 38460-38465 (1988)). The current distribution for Shasta crayfish includes small and isolated spring fed areas in the Fall and Pit River drainages (Shasta County). Rock Creek, in the Hat Creek Drainage, was historically occupied by Shasta crayfish and was recently restored to provide refuge for and aid in the survival of the species. The Department is proposing to close Rock Creek to all fishing all year from Rock Creek spring downstream to Baum Lake. The proposed closure will protect Shasta crayfish and its habitat.

Proposal: Add subsection (b)(151.5) to Section 7.50, Special Fishing Regulations

Add Rock Creek, in the Hat Creek Drainage, to the Special Fishing Regulations with an all year fishing closure to protect Shasta crayfish.

CLARIFICATION OF NO TAKE OF SALMON IN THE SACRAMENTO AND MCCLOUD RIVERS AND TRIBUTARIES ABOVE SHASTA LAKE

The National Marine Fisheries Service (NMFS) and the US Bureau of Reclamation (BOR) are conducting feasibility studies for the reintroduction of winter and spring-run Chinook Salmon into the McCloud and Sacramento rivers. As part of a Fish Passage Pilot Project, federal agencies will be introducing an experimental release of Chinook Salmon into the Sacramento and McCloud drainages starting in 2017 or 2018 and continuing indefinitely. It is imperative that these rivers and their tributaries above Shasta Lake are closed to salmon fishing to reduce salmon loss and increase the success of the Fish Passage Project.

Proposal: Add new language to Subsection (b) of Section 7.00, District General Regulations, and to subsection (b)(115), McCloud River, in Section 7.50, Special Fishing Regulations.

Amend the Sierra District Regulations to clarify that all rivers and associated tributaries above Shasta Lake are closed to the take of salmon, and amend subsection (b)(115) of Section 7.50 to direct readers to the District General Regulations. These changes will protect Chinook Salmon when they are reintroduced into the upper Sacramento and McCloud rivers above the Shasta Lake.

AMERICAN RIVER (NIMBUS BASIN) FISHING CLOSURE

Under current regulations, the American River (in Sacramento County) from Nimbus Dam to the Hazel Avenue bridge piers is open to fishing all year (Section 7.50 (b)(5)(A)), and from the Hazel Avenue bridge piers to the U.S. Geological Survey gauging station cable crossing about 300 yards downstream from the Nimbus Hatchery fish weir is open to fishing January 1 through August 15 (Section 7.50(b)(5)(B)). The current request for closure is designed to protect Chinook Salmon and Central Valley steelhead trout, which will utilize this section of the river for both in-river spawning and rearing along with essential hatchery operations.

The BOR and the Department have completed a joint EIS/EIR for the Nimbus Hatchery Fish Passage Project (Project). The primary goal of the Project is to maintain a fully functional system of collecting adult Chinook Salmon and Central Valley steelhead trout sufficient to meet the hatchery's mitigation goals. Phase 1 of the Project extends the Nimbus Hatchery fish ladder 1500 feet (.30 miles) upstream into the Nimbus Basin. With the completion of the new fish ladder, Phase 2 of the Project will permanently remove the existing Nimbus Hatchery fish weir, and spawning gravel injections will be completed within the section of river associated with section 7.50(b)(5)(B). A gravel restoration and side channel creation project to create spawning and rearing habitat in the Nimbus Basin was completed in 2014.

However, the Project has the potential to affect Chinook Salmon and Central Valley steelhead trout holding, spawning, and rearing in this section of the lower American River. Additionally, under current hatchery operations, large numbers of adult Chinook Salmon and Central Valley steelhead trout hold below the existing fish weir located below the Hazel Avenue bridge before being routed to the fish ladder located at the south end of weir. Fish that enter the hatchery that are not ripe for spawning are released back into the river through the outfall, located approximately 100 feet below the existing fish ladder. As a result, current hatchery operations utilize a small portion of the river below the weir to cycle fish in and out of the hatchery. However, once the existing fish ladder is moved upstream into the Nimbus Basin, the length of river utilized for hatchery operations will increase by approximately 1,500 feet. With completion of the Project, holding, spawning, and rearing Chinook Salmon and Central Valley steelhead trout will distribute throughout the hatchery operations area. As a result, the entire section of river should be close to fishing all year to ensure successful hatchery operations.

Consequently, if the regulations are not changed by the Fall of 2018, anglers will continue fishing in the Nimbus Basin downstream to the USGS gauging station and

target holding and spawning Chinook Salmon and Central Valley steelhead trout. Although Section 2.35 states that fishing shall not take place within 250 feet of a fish ladder, this would have little effect in protecting salmon and steelhead under the new configuration. The new ladder entrance would be greater than 250 feet from where salmon are expected to hold until the ladder is opened to allow salmon and steelhead into the Nimbus Hatchery. The regulation change would also provide the American River Trout Hatchery and Nimbus Hatchery with greater protection from contamination by the New Zealand Mud Snail (NZMS), which have been documented adjacent to the hatchery in Section 7.50(b)(5)(B).

Proposal: Amend subsections (b)(5)(A) and (b)(5)(B) of Section 7.50, Special Fishing Regulations

Combine subsections 7.50(b)(5)(A) and 7.50(b)(5)(B) and close this section of river to fishing all year.

ARTIFICIAL LURE AND BAIT DEFINITION CHANGES

The purpose of the regulation change is to clarify that no scents or flavors shall be used on lures on waters where only artificial lures with barbless hooks may be used. After consulting with wildlife officers on this subject, it has become clear there is some subjectivity in interpreting the current regulation which has resulted in inconsistency and confusion. By clarifying this definition, enforcement will have a lesser problem enforcing this rule and the public will have a clearer description of this rule.

The definition of a lure (Section 1.60) would be removed from the Freshwater Sport Fishing Regulations and only “artificial lure” would be used. With this change, three substitutions in the current regulations would need to be made: (1) Section 1.05 Angling; (2) Section 1.61, Non-buoyant Lure; and (3) Section 2.10(3), Hook and Weight Restrictions. In all three sections lure would be changed to artificial lure. In addition, the definition of artificial lure would be amended to clarify that only non-scented and non-flavored lures may be used. Lastly, there is currently no definition of bait in Title 14. A definition of bait is needed to help clarify when scents and flavors can be used.

Proposal: Repeal Section 1.60, Amend Section 1.11, Artificial Lure, and add Section 1.18, Bait

Amend the current definition of artificial lure and add a definition of bait.

ALLOW BOW AND ARROW FISHING FOR CATFISH

The bow and arrow fishing community has requested the opportunity to fish for catfish in certain waters in the state. Bowfishers have expressed that they often encounter catfish in their pursuit for carp and would like to be able to take catfish as well. This request was considered by CDFW law enforcement and regional biologists who determined that bowfishing for bullhead and catfish could be allowed on waters with large carp populations and that are popular for bowfishing. These waters include the Sacramento San-Joaquin Delta, Lake Isabella in Kern County and Big Bear Lake in San Bernardino

County. Allowing bowfishing for catfish on these waters will increase fishing opportunities for bowfishers.

Proposal: Amend Section 2.25, Bow and Arrow Fishing

Amend Section 2.25 to allow bowfishing for bullhead and catfish in the Delta, Big Bear Lake, and Lake Isabel.

REVISION OF MENDOCINO, SONOMA, AND MARIN COUNTIES LOW FLOW CLOSURE TIME PERIOD TO ALING WITH THE ADULT STEELHEAD SEASON

Section 8.00(b) established a season for special low flow conditions for Mendocino, Sonoma, and Marin County coastal streams; however, the current end date extends the length of the low flow season past the adult steelhead fishing season on most coastal stream (except Russian River) which provides an unnecessary protection and may potentially confuse anglers. The current sport fishing regulations provides fishing in coastal streams of Mendocino, Sonoma, and Marin counties from the fourth Saturday in May through March 31, except for the Russian River which is open all year. Gear restrictions change from November 1 through March 31, to accommodate fishing for adult steelhead on all Mendocino, Sonoma, and Marin County coastal streams. There is no need for the season of special low flow conditions to extend beyond March 31, as most streams (except Russian River) are closed to any fishing from April 1 until the fourth Saturday in May, which is prior to the end of the current low flow season. The Russian River is the exception because it is open year round due to other sport fisheries such as American shad and smallmouth bass. For consistency, the Russian River should be included in this change, but it would result in the potential reduction of protected days under a low flow closure between April 1 and the fourth Saturday in May (52-57 days depending upon the calendar year). The loss of this additional protection on the Russian River is not likely to be significant as the bulk of the steelhead will have spawned and angler effort targeting steelhead will be low in the months of April and May. The steelhead population on the Russian River is also unlike other coastal streams because it is supplemented with hatchery steelhead. Additionally, the Russian River is a flow regulated stream and flows are likely to be higher in April and May than other coastal streams and less likely to be subject to a low flow closure due to water releases. Conforming the low flow closure season with the end of the adult steelhead fishing season on Mendocino, Sonoma, and Marin County coastal streams helps simplify regulations and reduces confusion between the fishing season and low flow closure season and it would not significantly impact the Russian River steelhead population in the event of low flow conditions in the months of April and May.

Proposal: Amend Subsection (b) of Section 8.00, Low-Flow Restrictions

Revise Section 8.00 (b) to redefine the season of the Special Low Flow Conditions to coincide with the end of the adult steelhead fishing season on March 31.

CRAYFISH

In alignment with the proposal to close Rock Creek to fishing to protect Shasta crayfish, Section 5.35 would need to be amended to add Rock Creek to the list of waters where

take of crayfish is prohibited. Rock Creek is in the Hat Creek Drainage in Shasta County.

Proposal: Amend Section 5.35, Crayfish

Amend Section 5.35 to add Rock Creek to the list of waters where fishing for crayfish is prohibited.

STEELHEAD REPORT AND RESTORATION CARD REQUIREMENTS

Department staff reassessed the fisheries management objectives of the Steelhead Report and Restoration Card and determined that the data being collected, location codes, and reporting instructions and requirements can be simplified. In order to accomplish this, verbiage within Section 5.88 must be changed.

Proposal: Amend Section 5.88, Steelhead Report and Restoration Card Requirements

Remove reference to “wild” steelhead because it is not legal to retain a wild steelhead, and remove the requirement to report the number of hours that were fished for steelhead.

SPORT FISHING REPORT CARD REQUIREMENTS

CCR Section 1.74 establishes guidelines for report card regulations including reporting harvest authorized by a report card; however, this section does not include a mechanism for confirmation that data from a report card has been reported. This proposal requires report card holders who submit data online to write the provided confirmation number on their report card and retain the report card until for 90 days after the reporting deadline.

When a report card is lost, a licensee may wish to obtain a duplicate, or may simply need to fulfill the harvest reporting requirement before the reporting deadline. Section 1.74 does not currently provide guidelines for licensees who have lost their report card and need to report their harvest, but do not need to obtain a duplicate report card. This proposal updates procedures regarding lost report cards to provide guidelines for obtaining a duplicate report card, and also for reporting harvest from a lost report card without obtaining a duplicate report card.

Proposal: Amend Section 1.74, Sport Fishing Report Card Requirements

Amend Section 1.74 to update procedures for reporting online and for lost report cards.

RESTRICT LEADER LENGTH TO LESS THAN SIX FEET TO REDUCE POTENTIAL FOUL-HOOKING (SNAGGING) OF SALMON AND STEELHEAD

The Department and the Fish and Game Commission (Commission) have struggled for years to eliminate and/or regulate snagging salmon. This has proven difficult given some of the spawning aggregations, habitat, and creative snagging techniques that have evolved over time. Water operations, changes in angling ethics, and population growth likely have also contributed to this ongoing problem. After struggling with these issues statewide, the Commission directed the Department to find a solution.

In 2014, the Department formulated a snagging working group to help evaluate the issue through a structured decision making process. Department staff and angling stakeholders participated in multiple meetings. One action resulting from this effort was a directed study to assess the efficacy of a reduced leader length in relation to the “flossing” fishing techniques based angling/snagging rig. Although this technique/rig is not the only gear that can be used to purposefully foul-hook salmon, it is currently legal and very effective when used in the right habitat (Feather, American, Sacramento, Yuba, and Klamath rivers) with high densities of spawning/migrating salmon. The results of the study showed a significant correlation with foul-hooking (82-94%) regardless of the leader length and a reduction in landing rates for the shortest leader.

Proposal: Add Section 2.05 to Title 14, Leader Length Restriction

Add the leader length restriction to Title 14, Chapter 2, Article 1, to reduce foul-hooking of salmon and steelhead in anadromous waters.

Minor Editorial Corrections for Clarity

In addition to the above proposals, minor editorial corrections are proposed to correct typographical errors and to improve regulation clarity.

Benefits of the Proposed Regulations

It is the policy of this state to encourage the conservation, maintenance, and utilization of the living resources of the ocean and inland waters under the jurisdiction and influence of the state for the benefit of all the citizens of the State. In addition, it is the policy of this state to promote the development of local California fisheries in harmony with federal law respecting fishing and the conservation of the living resources of the ocean and inland waters under the jurisdiction and influence of the State. The objectives of this policy include, but are not limited to, the maintenance of sufficient populations of all species of aquatic organisms to ensure their continued existence and the maintenance of a sufficient resource to support a reasonable sport use. Adoption of scientifically-based trout and salmon seasons, size limits, and bag and possession limits provides for the maintenance of sufficient populations of trout and salmon to ensure their continued existence.

The benefits of the proposed regulations are concurrence with Federal law, sustainable management of California’s trout and salmon resources, and promotion of businesses that rely on recreational sport fishing in California.

Regulatory Language

Section 1.05, Title 14, CCR, is amended as follows:

§ 1.05. Angling.

Angling means take of fish by hook and line with the line held in the hand, or with the line attached to a pole or rod held in the hand or closely attended in such manner that the fish voluntarily takes the bait or artificial lure inside its mouth.

Note: Authority cited: Sections 200, ~~202~~, 205, ~~240~~, 219 and ~~220~~265, Fish and Game Code. Reference: Sections 2, 15, 200, ~~202~~, 205, ~~206~~, ~~215~~265 and ~~220~~270, Fish and Game Code.

Section 1.11, Title 14, CCR, is amended as follows:

§1.11. Artificial Lure

~~An artificial lure is a man-made lure or fly designed to attract fish. This definition does not include scented or flavored artificial baits.~~

Any manufactured or man-made non-scented/flavored (regardless if scent is added in the manufacturing process or added afterwards) device complete with hooks, intended to attract fish. Artificial lures include, but are not limited to; spoons, spinners, artificial flies, and plugs, made of metal, plastic, wood, or other non-edible materials.

Note:

Authority cited: Sections 200, 205, ~~240~~, ~~249~~ and 219, Fish and Game Code. Reference: Sections 203.1 and 5516, Fish and Game Code.

Section 1.18 is added to Title 14, CCR, as follows:

§1.18. Bait.

Any natural or manufactured product or device which is used to attract fish by the sense of taste or smell, including any product or device to which scents or flavored attractants have been added or externally applied. Bait includes, but is not limited to; scented and flavored paste, scented manufactured fish eggs, and traditional organic baits such as worms, grubs, crickets, leeches, stink baits, insects, crayfish, human food, fish, fish parts, and fish eggs.

Authority cited: Sections 200, 205, 219 and Fish and Game Code. Reference: Sections 203.1 and 205, Fish and Game Code.

Section 1.60 is repealed from Title 14, CCR, as follows:

~~§ 1.60. Lure.~~

~~A manufactured article or object equipped with one or more hooks designed to attract or catch fish.~~

~~Note: Authority cited: Sections 200, 202, 205, 210 and 220, Fish and Game Code.~~

~~Reference: Sections 200, 202, 205, 206, 209, 210, 215 and 220, Fish and Game Code.~~

Section 1.61, Title 14, CCR, is amended as follows:

§ 1.61. Non-Buoyant Artificial Lure.

Any artificial lure that sinks in freshwater.

~~Note: Authority cited: Sections 200, 202, 205, 210 and 220, Fish and Game Code.~~

~~Reference: Sections 200, 202, 205, 206, 209, 210, 215 and 220~~270, Fish and Game Code.

Section 1.74, Title 14, CCR, is amended as follows:

§1.74. Sport Fishing Report Card Requirements.

(a) Purpose. These regulations are designed to improve recreational fishing effort and catch information in some or all areas where the fisheries operate. Many of these species are of high commercial value, and therefore, additional enforcement mechanisms are needed to improve compliance with existing bag limits and other regulations, and to reduce the potential for poaching.

(b) Report card requirements apply to any person fishing for or taking the following species regardless of whether a sport fishing license is required:

(1) Salmon, in the anadromous waters of the Klamath, Trinity, and Smith river basins. Anadromous waters are defined in Section 1.04 ~~of these regulations.~~

(2) Steelhead trout.

(3) White sturgeon.

(4) Red abalone.

(5) California spiny lobster.

(c) General Report Card Requirements.

(1) Any person fishing for or taking any of the species identified in this Section shall have in his immediate possession a valid non-transferable report card issued by the department for the particular species. See special exemption regarding possession of report cards for lobster divers in Section 29.91 of these regulations.

(2) All entries made on any report card or tag shall be legible and in indelible ink.

(3) A report card holder fishing with a one, two, or ten-day sport fishing license, may replace the expired fishing license without purchasing a new report card so long as the report card is still valid.

(4) Report cards are not transferable and shall not be transferred to another person. No person shall possess any report card other than his own.

(5) A person may only obtain one abalone report card and one sturgeon report card per report card period.

(6) Any report card holder who fills in all available lines on his steelhead, salmon or lobster report card shall return or report the card to the department pursuant to subsection 1.74(e) prior to purchasing a second card.

(7) Data recording and tagging procedures vary between report cards and species. See specific regulations in sections 5.79, 5.87, 5.88, 27.92, 29.16, and 29.91 that apply in addition to the regulations of this Section.

(d) Report Card Return and Reporting Requirements

(1) Report card holders shall return or report their salmon, steelhead, sturgeon, or abalone report cards to the department pursuant to subsection 1.74(e) by January 31 of the following year.

(A) Any report card holder who fails to return or report his salmon, steelhead, sturgeon, or abalone report card to the department by the deadline may be restricted from obtaining the same card in a subsequent license year or may be subject to an additional fee for the issuance of the same card in a subsequent license year.

(2) Report card holders shall return or report their lobster report cards pursuant to subsection 1.74(e) by April 30 following the close of the lobster season for which the card was issued.

(A) Any report card holder who fails to return or report his or her lobster report card by April 30 following the close of the lobster season specified on the card shall be subject to a nonrefundable non-return fee specified in Section 701, in addition to the annual report card fee, for the issuance of a lobster report card in the subsequent fishing season.

(e) Report Card Return and Reporting Mechanisms:

(1) By mail or in person at the address specified on the card. A report card returned by mail shall be postmarked by the date applicable to that card as specified in subsection 1.74(d)(1), or 1.74(d)(2).

(2) Online through the department's license sales service website by the date applicable to that card as specified in subsection 1.74(d)(1) or 1.74(d)(2).

Report card holders reporting online will be provided a confirmation number upon successful submission. The report card holder must record the provided confirmation number in the space provided on the report card and retain the report card for 90 days after the reporting deadline. Report cards submitted online must be surrendered to the department upon demand.

(3) If a report card is submitted by mail and not received by the department, it is considered not returned unless the report card holder reports his or her report card as lost pursuant to subsection 1.74(f).

~~(f) Lost report cards.~~

~~(1) Any report card holder who loses his report card shall submit an affidavit, signed under penalty of perjury, in person to a department license sales office containing all of the following information:~~

~~(A) A statement containing the report card holder's full name confirming that the originally issued report card cannot be recovered.~~

~~(B) A statement containing the report card holder's best recollection of the prior catch records that were entered on the report card that was lost.~~

~~(C) A statement describing the factual circumstances surrounding the loss of the card.~~

~~(2) An affidavit for a lost report card shall be presented at a department license sales office, by the date applicable to that card specified in subsection 1.74(d)(1) or 1.74(d)(2) to be considered returned.~~

~~(3) Notwithstanding subsection 1.74(c)(5), any report card holder who loses his report card during the period for which it is valid may replace the lost report card by submitting an affidavit as described in subsection 1.74(f)(1) and payment of the report card fee and replacement processing fee specified in Section 701.~~

~~(A) Based on the information provided in the written affidavit for abalone and sturgeon report cards, the department shall issue only the number of tags that were reported unused on the previously issued report card.~~

(f) Lost report cards.

(1) Any report card holder who loses his report card shall submit an affidavit, signed under penalty of perjury, to a department license sales office containing all of the following information:

(A) The report card holder's full name and a statement confirming that the originally issued report card is lost and cannot be recovered.

(B) A statement containing the report card holder's best recollection of the prior catch that were entered on the report card that was lost.

(C) A statement describing the factual circumstances surrounding the loss of the report card.

(2) No Duplicate Requested or Available. Any report card holder who lost his or her report card and is not obtaining a duplicate report card shall ensure that the steps are completed:

(A) The report card holder shall submit an affidavit as described in subsection 1.74(f)(1). If the report card holder previously submitted the harvest report card data online, the report card holder must include the confirmation number for the harvest report on the affidavit.

(B) If the report card holder has not reported the data from the lost report card via the online site, department staff shall enter the harvest information from the affidavit.

(C) An affidavit for a lost report card shall be submitted to a department license sales office, by the harvest report submission deadline date applicable to that report card specified in subsection 1.74(d)(1) or 1.74(d)(2) to be considered returned.

(3) Duplicate Report Card Requested. Notwithstanding subsection 1.74(c)(5), any report card holder who loses his or her report card during the period for which it is valid may replace the lost original report card by completion of the following:

(A) Submitting an affidavit as described in subsection 1.74(f)(1).

(B) Submitting payment of the report card fee and the nonrefundable replacement processing fee specified in Section 701.

(C) Department staff shall enter the harvest information from the affidavit to the duplicate report card. Note: the original report card should not be reported. Instead, the data from the original will be reported on the duplicate report card.

(D) Based on the information provided on the affidavit for abalone and sturgeon report cards, department staff shall remove tags reported as used and issue only the number of tags that were reported unused on the lost original report card.

(E) Report card holders shall verify that the harvest information has been accurately transferred from the affidavit to his or her duplicate report card.

(F) The duplicate report card shall be reported pursuant to the requirements for the original report card as specified in subsection 1.74(d).

Note: Authority cited: Sections 200, 205, 1050, 1053.1, 1055.1 and 7380, Fish and Game Code. Reference: Sections 200, 205, ~~206~~, 713, 1050, 1053.1, 1055.1, 7149.8, 7380, 7381 and 7382, Fish and Game Code.

Subsection 2.05 is added to Section 2.00, Title 14, CCR, as follows:

§2.05. Leader Length Restriction

It shall be unlawful to use any configuration of fishing tackle in anadromous waters unless the distance between the terminal hook or terminal lure and any weight attached to the line or leader, whether fixed or sliding, is less than six feet. For purposes of this section, "weight" includes any product used to submerge the line or leader, including non-buoyant artificial flies or artificial lures, but does not include integrated or sinking fly fishing lines, lead core lines used while trolling from a boat, dropper weights used while trolling from a boat, or clipped weights used with downrigger systems.

Note: Authority cited: Sections 200, 205, and 219, Fish and Game Code. Reference: Sections 203.1 and 205, Fish and Game Code.

Section 2.10, Title 14, CCR, is amended as follows:

§ 2.10. Hook and Weight Restrictions.

(a) Definition of Gap: For the purposes of this section, "gap" means the distance measured from the point of a hook to the shank.

(b) Maximum Gaps and Gear Rigging for Rivers and Streams unless otherwise provided (does not apply to lakes and reservoirs, the Sacramento-San Joaquin Delta (see Section 1.71 for definition of the Delta), and the Colorado River.

1. No person shall use any single hook with a gap greater than 1 inch or any multiple hook with a gap greater than 3/4 inch.

2. It is unlawful to use any hook which is directly or indirectly attached closer than 18 inches to any weight exceeding 1/2 ounce.

3. It is unlawful to use any multiple hook or more than one single hook on non-buoyant artificial lures exceeding one ounce.

4. It is unlawful to use any weight directly attached below a hook.

(c) Maximum Gaps for the Sacramento-San Joaquin Delta (see Section 1.71 for definition of the Delta).

1. No person shall use any single hook with a gap greater than 1 inch or any multiple hook with a gap greater than 3/4 inch.

Note: Authority cited: Sections 200, ~~202~~, 205 and ~~220~~219, Fish and Game Code.

Reference: Sections 200, ~~202~~, and 205 and 220, Fish and Game Code.

Section 2.25, Title 14, CCR, is amended as follows:

§2.25. Bow and Arrow Fishing.

(a) Bow and arrow fishing is permitted only for the taking of carp, goldfish, western sucker, Sacramento blackfish, hardhead, Sacramento pike minnow and lamprey, all year, except in:

~~(a)(1)~~ Designated salmon spawning areas (See Fish and Game Code Section 1505).
~~(b)(2)~~ The Colorado River District where only carp, tilapia, goldfish and mullet may be taken.

~~(c)(3)~~ See bullfrogs (~~s~~Section 5.05).

~~(d)(4)~~ The East Fork of the Walker River between Bridgeport Dam and the Nevada State line where only carp may be taken.

(b) Bow and arrow fishing is permitted for bullheads and catfish in the following waters:

(1) Within the boundaries of the Sacramento-San Joaquin River Delta (See Section 1.71).

(2) Big Bear Lake in San Bernardino County.

(3) Lake Isabella in Kern County.

Note: Authority cited: Sections 200, ~~202~~, 205, ~~210~~, ~~219~~, ~~265~~ and ~~220~~275, Fish and Game Code. Reference: Sections 110, 200, ~~202~~, ~~203.1~~, ~~206~~, ~~207~~, ~~210~~, ~~217.5~~, ~~217.6~~, ~~219~~ and ~~220~~219, 255, 265 and 275, Fish and Game Code.

Section 5.35, Title 14, CCR, is amended as follows:

§5.35. Crayfish.

(a) Open season: All year, except for closures listed in subsection (d) of this Section.

(b) Limit: No limit.

(c) Methods of take: Crayfish may be taken only by hand, hook and line, dip net or with traps not over three feet in greatest dimension. Any other species taken shall be returned to the water immediately. Traps need not be closely attended.

(d) Closures for Protection of Shasta Crayfish: Rock Creek (in the Hat Creek Drainage in Shasta County), Fall River upstream of Spring Creek Bridge, Lava Creek, Tule River and all connected waters upstream of Little Tule River, Sucker Springs Creek, Crystal Lake, Rising River and Rising River Lake are closed to take and possession of crayfish. (See Section 4.30 for prohibition against crayfish use for bait in sections of the Pit River).

(e) The season closures in Chapter 3 (District Trout and Salmon Special Regulations) do not apply to crayfish fishing with methods other than hook and line (see sections 7.00 and 7.50(a)(~~23~~)).

Note: Authority cited: Sections 200, ~~202~~, 205, ~~215~~265, 270 and 8491, Fish and Game Code. Reference: Sections 110, 200, ~~202~~, 205, ~~206~~265, 8490 and 8491, Fish and Game Code.

Section 5.41, Title 14, CCR, is amended as follows:

§ 5.41. Landlocked Salmon.

(a) Open season: All year

(b) Daily bag limit: Five

(c) Possession limit: Ten

(d) Size limit: None

(e) See exceptions in Section 7.50(b) for Bucks Lake, Lake Pardee, New Bullards Bar Reservoir, upper Scotts Flat Reservoir, and Trinity Reservoir.

Note: Authority cited: Sections 200, ~~202, 205, 240, 219,~~ and 220, 255 and 265, Fish and Game Code. Reference: Sections 200, ~~202, 205, 240, 215,~~ and 220, 255 and 265, Fish and Game Code.

Section 5.88, Title 14, CCR, is amended as follows:

§ 5.88. Steelhead Report and Restoration Card Requirements for Inland Waters (FG 682, See Section 701).

(a) Steelhead Fishing Report and Restoration Card Required. All anglers must have a Steelhead Fishing Report and Restoration Card in their possession while fishing for or taking steelhead in anadromous waters, as defined in Section 1.04. Anglers must complete and return the card pursuant to regulations in this Section and in Section 1.74. For purposes of these regulations, a steelhead trout is defined as any rainbow trout greater than 16 inches in length found in anadromous waters.

(b) Prior to beginning fishing activity, the cardholder must record the month, day, and location code on the first available line on the report card.

(c) When a hatchery steelhead is retained, the cardholder must immediately ~~fill in a circle indicating whether the fish is a wild fish or a hatchery fish~~ mark the appropriate field.

(d) When the cardholder moves to another location code, or finishes fishing for the day, the angler must immediately record on the card the number of wild and hatchery fish steelhead that were released from that location—.

(e) In the event an angler fills in all lines and returns a Steelhead Fishing Report and Restoration Card, an additional card ~~may~~must be purchased to continue to fish for steelhead. See Section 1.74.

(f) The annual fee for the Steelhead Fishing Report and Restoration Card is specified in Section 7380 of the Fish and Game Code.

Note: Authority cited: Section 7380, Fish and Game Code. Reference: Sections 7380 and 7381, Fish and Game Code.

Section 7.00, Title 14, CCR, is amended as follows:

§7.00. District General Regulations.

Unless otherwise provided, waters shown as open to trout fishing in subsections (a) through (g) below, are open to fishing for other species. Gear restrictions listed in this section apply to the take of all species of fish unless otherwise noted. Every body of water listed in subsections (a) through (g) of Section 7.00 (below) is closed to all fishing, except during the open season as shown. Unless otherwise provided, waters closed to trout fishing are closed to fishing for all other species, except that these closures do not apply to fishing for amphibians (see Section 5.05), freshwater clams (see Section 5.20), crayfish (see Section 5.35), and lamprey (see Section 5.40), using legal fishing methods other than hook-and-line fishing, and saltwater clams, crabs, ghost shrimp, and blue mud shrimp (see Ocean Regulations Booklet Sections 29.20 to 29.87). Crabs may only

be taken using hoop nets or by hand, and Dungeness crab may only be taken within the North Coast District and Sonoma and Mendocino counties.

Daily bag and possession limits, unless otherwise provided, mean the total number of trout. Unless otherwise provided, no more than one daily bag limit may be possessed.

Coho (silver) salmon may not be taken in any of the waters of the State, except in Lake Oroville and Oroville-Thermalito Complex (Diversion Pool, Forebay, and Afterbay) and the Feather River from the Diversion Pool Dam to the Fish Barrier Dam. Incidentally hooked Coho (silver) salmon, except those in Lake Oroville and Oroville-Thermalito Complex (Diversion Pool, Forebay, and Afterbay) and the Feather River from the Diversion Pool Dam to the Fish Barrier Dam, must be immediately released unharmed to the waters where they are hooked. In waters where the bag limit for trout is zero, fish for which the bag limit is zero must be released unharmed, and should not be removed from the water.

These waters may also be subject to restrictions on fishing methods and gear (sections 2.00 through 2.45), fishing hours (section 3.00), and the use of bait (sections 4.00 through 4.30).

...[No changes to subsection (a)]

(b) Sierra District		
(1) <u>All rivers and associated tributaries above Lake Shasta.</u>	Closed to the take of salmon.	
(42) Anadromous waters of Tehama and Shasta counties not listed in the Special Regulations. (Section 7.50). (See subsections (b)(156) and (b)(156.5) of Section 7.50, regarding the Sacramento River.)	Last Saturday in Apr. through Nov. 15. Only artificial lures and barbless hooks may be used.	2 hatchery trout or hatchery steelhead*. 4 hatchery trout or hatchery steelhead* in possession. Closed to the take of salmon.
(23) All lakes and reservoirs except those in the Fall River Valley, those in Inyo and Mono counties and those listed by name in the Special Regulations.	All year.	5 trout per day. 10 trout in possession.
(34) All streams, lakes and reservoirs in Inyo and Mono counties, except those listed by name in the Special Regulations.	Last Saturday in Apr. through Nov. 15.	5 trout per day. 10 trout in possession.

(45) All streams, lakes and reservoirs in the Fall River Valley above the Pit No. 1 PG&E Diversion Dam on Fall River in Shasta County, except those listed by name in the Special Regulations.	Last Saturday in Apr. through Nov. 15.	2 trout
(56) All streams in Lassen and Modoc counties east of Highway 395 and north of Clarks Valley Road. Clarks Valley Road is defined as those portions of county routes 510, 512 and 506 running easterly from the town of Madeline to the Nevada border.	Saturday preceding Memorial Day through Nov. 15.	5 trout per day. 10 trout in possession.
(67) All other streams except those listed by name in the Special Regulations.	Last Saturday in Apr. through Nov. 15.	5 trout per day. 10 trout in possession.
(78) Mono County waters, when closed to trout fishing, are closed to all fishing, except for the unrestricted portions of Fish Slough which are open to fishing all year. Also, see Mono County waters listed in sections 5.00 and 7.50.		
<p>(89) SPECIAL BROOK TROUT BONUS BAG AND POSSESSION LIMIT:</p> <p>(A) IN SIERRA DISTRICT WATERS OF SISKIYOU, SHASTA AND TEHAMA COUNTIES, UP TO 10 BROOK TROUT PER DAY LESS THAN 8 INCHES TOTAL LENGTH MAY BE TAKEN AND POSSESSED IN ADDITION TO THE OTHER DAILY BAG AND POSSESSION LIMITS SPECIFIED FOR THE SIERRA DISTRICT.</p> <p>(B) IN THE SIERRA DISTRICT SOUTH OF INTERSTATE 80, UP TO 10 BROOK TROUT PER DAY LESS THAN 10 INCHES TOTAL LENGTH MAY BE TAKEN AND POSSESSED IN ADDITION TO THE OTHER DAILY BAG AND POSSESSION LIMITS SPECIFIED FOR THE SIERRA DISTRICT. THIS ALLOWANCE DOES NOT INCLUDE RED LAKE IN ALPINE COUNTY OR KIRMAN, LANE OR ROOSEVELT LAKES IN MONO COUNTY.</p>		

...[No changes to subsection (c) through (g)]

Note: Authority cited: Sections 200, ~~202~~, 205, ~~220~~265 and ~~240~~399, Fish and Game Code. Reference: Sections 110, 200, 205 and ~~206~~, Fish and Game Code.

Section 7.50, Title 14, CCR, is amended as follows:

§7.50. Alphabetical List of Waters with Special Fishing Regulations.

. . . [No changes to subsections (a) through (b)(4)]

Body of Water	Open Season and Special Regulations	Daily Bag and Possession Limit
(5) American River (Sacramento Co.)		
(A) From Nimbus Dam to the Hazel Avenue bridge piers. <u>U.S. Geological Survey gauging station cable crossing about 300 yards downstream from the Nimbus Hatchery fish rack site.</u>	Jan. 1 through July 15. <u>Closed to all fishing all year.</u>	2 hatchery trout or hatchery steelhead ^{**} . 4 hatchery trout or hatchery steelhead ^{**} in possession.
	July 16 through Dec. 31.	2 hatchery trout or hatchery steelhead ^{**} . 4 hatchery trout or hatchery steelhead ^{**} in possession. 2 Chinook salmon. 4 Chinook salmon in possession.
	Jan. 1 through July 15. Only barbless hooks may be used.	2 hatchery trout or hatchery steelhead ^{**} . 4 hatchery trout or hatchery steelhead ^{**} in possession.
	July 16 through Aug. 31. Only barbless hooks may be used.	2 hatchery trout or hatchery steelhead ^{**} . 4 hatchery trout or hatchery steelhead ^{**} in possession.

Hatchery fish rack site.		2 Chinook salmon. 4 Chinook salmon in possession.
	Jan. 1 through July 15. Only barbless hooks may be used.	2 hatchery trout or hatchery steelhead**. 4 hatchery trout or hatchery steelhead** in possession.
	July 16 through Oct. 31. Only barbless hooks may be used.	2 hatchery trout or hatchery steelhead**. 4 hatchery trout or hatchery steelhead** in possession. 2 Chinook Salmon. 4 Chinook Salmon in possession.
	Jan. 1 through July 15.	2 hatchery trout or hatchery steelhead**. 4 hatchery trout or hatchery steelhead** in possession.
	July 16 through Dec. 31.	2 hatchery trout or hatchery steelhead**. 4 hatchery trout or hatchery steelhead** in possession. 2 Chinook Salmon. 4 Chinook Salmon in possession.
	Jan. 1 through July 15.	2 hatchery trout or hatchery steelhead**. 4 hatchery trout or hatchery steelhead** in possession.
	July 16 through Dec. 16.	2 hatchery trout or hatchery steelhead**. 4 hatchery trout or hatchery steelhead** in possession.

		2 Chinook Salmon. 4 Chinook Salmon in possession.
	Dec. 17 through Dec. 31.	2 hatchery trout or hatchery steelhead**. 4 hatchery trout or hatchery steelhead** in possession.
. . . [No changes to subsections (b)(6) through (b)(14)]		
(15) Bear Creek and tributaries (Shasta and Siskiyou Cos.) between Pondosa <u>Ponderosa</u> Way bridge and confluence with Fall River.	Saturday preceding Memorial Day through Nov. 15	5 trout per day. 10 trout in possession.
. . . [No changes to subsections (b)(17) through (b)(22)]		
(23) Big Sur River (Monterey Co.).		
(A) Big Sur river and tributaries above the upstream end of the gorge pool at the boundary of Pfeiffer Big Sur State Park with <u>within</u> the Ventana Wilderness Area.	Fourth Saturday in May through Oct. 31. Only artificial lures with barbless hooks may be used.	0 trout.
(B) Big Sur river within Pfeiffer Big Sur State Park, east of the Highway 1 bridge, to its boundary with <u>within</u> the Ventana Wilderness Area.	Closed to fishing all year.	

... [No changes to subsections (b)(23.5) through (b)(26)]		
(26.5) Bridgeport Reservoir T ributaries (Mono Co.).		
All Bridgeport Reservoir tributaries except Swauger Creek, from Bridgeport Reservoir upstream to Highway 395, and Swauger Creek, from Bridgeport Reservoir upstream to the private property fence line above the Forest Service campground.	Last Saturday in April through the Friday preceding Memorial Day and Oct. 1 through Nov. 15. Minimum size limit: 18 inches total length. Only artificial lures with barbless hooks may be used.	1 trout.
(27) Brush Creek (Mendocino Co.). <u>Main stem below the Lawson bridge.</u> Also see Section 8.00(c).	<u>Fourth Saturday in May through Mar. 31. Only artificial lures with barbless hooks may be used from the fourth Saturday in May through Oct. 31. Only barbless hooks may be used from Nov. 1 through Mar. 31.</u>	<u>2 hatchery trout or hatchery steelhead**.</u> <u>4 hatchery trout or hatchery steelhead** in possession.</u>
Main stem below the Lawson bridge.	Fourth Saturday in May through Mar. 31. Only artificial lures with barbless hooks may be used from the fourth Saturday in May through Oct. 31. Only barbless hooks may be used from Nov. 1 through Mar. 31.	2 hatchery trout or hatchery steelhead**. 4 hatchery trout or hatchery steelhead** in possession.
... [No changes to subsections (b)(28) through (b)(36)]		

(37) Carmel River below Los Padres Dam- (Monterey Co.).		
(A) Carmel River tributaries below Los Padres Dam and main stem from Los Padres Dam to the bridge at Robles Del Rio/Esquiline roads (Rosie's Bridge).	Closed to all fishing all year.	
(B) Carmel River main stem below the bridge at Robles Del Rio/Esquiline roads (Rosie's Bridge). Also , <u>Also</u> see Section 8.00(c).	Dec. 1 through Mar. 7, but only on Sat., Sun., Wed., and opening and closing days. Only artificial lures with barbless hooks may be used.	2 hatchery trout or hatchery steelhead**. 4 hatchery trout or hatchery steelhead** in possession.
... [No changes to subsections (b)(38) through (b)(46)]		
(47) Cottoneva Creek (Mendocino Co.). Also see Section 8.00(b). Main stem below the confluence of South Fork Cottoneva Creek. <u>Also see Section 8.00(b).</u>	Fourth Saturday in May through Mar. 31. Only artificial lures with barbless hooks may be used from the fourth Saturday in May through Oct. 31. Only barbless hooks may be used from Nov. 1 through Mar. 31.	2 hatchery trout or hatchery steelhead**. 4 hatchery trout or hatchery steelhead** in possession.
... [No changes to subsections (b)(48) through (b)(51)]		
(52) Crooked Creek (Mono Co.).		
(A) Crooked Creek below the City of Los Angeles gauging station.	Closed to all fishing all year.	

(B) Crooked Creek and tributaries above the <u>City of Los Angeles</u> gauging station.	Last Saturday in April through Nov. 15. Only artificial lures with barbless hooks may be used.	0 trout.
. . . [No changes to subsection (b)(114)]		
(115) McCloud River and tributaries (Shasta and Siskiyou cos.).	<u>Also see Sierra District General Regulations (Section 7.00(b)).</u>	
(A) Moosehead Creek and all tributaries.	Closed to all fishing all year.	
(B) McKay Creek and all tributaries including Sheepheaven Spring.	Closed to all fishing all year.	
(C) Edson Creek and all tributaries, excluding Dry Creek.	Closed to all fishing all year.	
(D) Swamp Creek and all tributaries.	Last Saturday in Apr. through Nov. 15. Only artificial lures with barbless hooks may be used.	0 trout.
(E) McCloud River from McCloud Dam downstream to confluence of Ladybug Creek.	Last Saturday in Apr. through Nov. 15. Only artificial lures with barbless hooks may be used.	2 trout.

(F) McCloud River from confluence of Ladybug Creek downstream to lower boundary of the U.S. Forest Service loop (southern boundary of section 36, T38N, R3W).	Last Saturday in Apr. through Nov. 15. Only artificial lures with barbless hooks may be used.	0 trout.
(G) McCloud River from the lower boundary of the U.S. Forest Service loop (southern boundary of section 36, T38N, R3W) downstream to the upper boundary of the McCloud River Club (southern boundary of section 14, T37N, R3W).	Closed to all fishing all year.	
... [No changes to subsections (b)(115.2) through (b)(151)]		
<u>(151.5) Rock Creek in the Hat Creek Drainage (Shasta Co.) from Rock Creek spring (origin) downstream to Baum Lake.</u>	<u>Closed to all fishing all year.</u>	
... [No changes to subsections (b)(152) through (b)(169)]		
(170) San Luis Obispo Creek (San Luis Obispo Co.) from mouth to the	All year.	2 hatchery trout or hatchery steelhead**. 4 hatchery trout or hatchery steelhead** in possession.

first and most southwestern highway 1/101 bridge (the first bridge upstream from the lagoon).		
. . . [No changes to subsections (b)(170.1) through (b)(212)]		

* Wild Chinook Salmon are those not showing a healed adipose fin clip and not showing a healed left ventral fin clip.

** Hatchery trout or steelhead in anadromous waters are those showing a healed adipose fin clip (adipose fin is absent). Unless otherwise provided, all other trout and steelhead must be immediately released. Wild trout or steelhead are those not showing a healed adipose fin clip (adipose fin is present).

Note: Authority cited: Sections 200, 205, 265, 270, 315, 316.5 and 399, Fish and Game Code. Reference: Sections 200, 205, 265, 270 and 316.5, Fish and Game Code.

Subsection b of Section 8.00, Title 14, CCR, is amended as follows:

§ 8.00. Low-Flow Restrictions.

(b) Mendocino, Sonoma, and Marin County coastal streams: Stream Closures: Special Low Flow Conditions. From October 1 through ~~April 30~~March 31 as follows:

Any of the stream reaches listed in subsections (1) through (4) below shall be closed to all angling on Tuesday and Wednesday when the department determines that the flow on the previous Monday at the applicable designated gauging stations is less than the minimum flows set forth in subsections (1) through (4).

Any of the stream reaches listed in subsections (1) through (4) below shall be closed to all angling on Thursday and Friday when the department determines that the flow on the previous Wednesday at the applicable designated gauging stations is less than the minimum flows set forth in subsections (1) though (4).

Any of the stream reaches listed in subsections (1) through (4) below shall be closed to all angling from Saturday through Monday when the department determines that the flow on the previous Friday at the applicable designated gauging stations is less than the minimum flows set forth in subsections (1) through (4).

Notwithstanding this provision, the department may close or keep a stream reach closed to fishing when the minimum flow is exceeded on the scheduled flow determination day if the department is reasonably assured that the stream flow is likely to decrease below the minimum flow as specified in the corresponding subsections (b)(1) through (4) before or on the next flow-determination date.

In addition, the department may reopen a stream at any time during a closed period if the minimum flow as specified in the corresponding subsections (b)(1) through (4) is

exceeded and the department is reasonably assured that it will remain above the minimum flow until the next scheduled Monday, Wednesday, or Friday flow determination.

The department shall make information available to the public by a telephone recorded message updated, as necessary, no later than 1:00 p.m. each Monday, Wednesday, and Friday as to whether any stream will be open or closed to fishing. It shall be the responsibility of the angler to use the telephone number designated in the sport fishing regulations booklet to obtain information on the status of any stream.

THE NUMBER TO CALL FOR INFORMATION IS (707) 822-3164 for Mendocino County and (707) 944-5533 for Sonoma, Marin, and Napa counties.

(1) All streams tributary to the Pacific Ocean (and its bays) in Mendocino County, except for the Russian and Gualala rivers.

Minimum Flow: 200 cfs at the USGS gauging station on the main stem Navarro River near Navarro, CA.

(2) All streams tributary to the Pacific Ocean (and its bays) in Sonoma and Marin counties, except for the Russian River.

Minimum Flow: 150 cfs at the gauging station on the South Fork Gualala River near Sea Ranch (Sonoma County).

(3) Russian River main stem below the confluence of the East Branch Russian River (Mendocino and Sonoma counties), Laguna de Santa Rosa, and Santa Rosa Creek.

Minimum Flow: 300 cfs at the gauging station located on the main stem Russian River near Guerneville (Sonoma County).

(4) The Napa River (Napa County) between Trancas Avenue in Napa and Oakville Cross Bridge near Yountville. Minimum Flow: 15 cfs at the gauging station at the Oak Knoll Bridge on the main stem Napa River.

(c) South Central Coast Streams - Special Low Flow Closures: During December 1 through March 7 the following streams (subsections (1) through (7)) will be closed to fishing when the department determines that stream flows are inadequate to provide fish passage for migrating steelhead trout and salmon. Closed streams will be reopened when the department determines flows are adequate for fish passage.

(1) Upper Penitencia Ck. (Santa Clara Co.) and Lower Coyote Ck. below its confluence with Upper Penitencia Ck. (U. S. G. S. gauging station on lower Coyote Ck. above St. Highway 237 in Milpitas).

(2) Pescadero Creek and all anadromous reaches of San Mateo Co. coastal streams normally open for fishing, from Elliot Ck. through Milagro Ck., shall be closed to all fishing when the department determines that the Pescadero Ck. flows are impeding fish passage. (U. S. G. S. gauging station is on Pescadero Ck.)

(3) The San Lorenzo River and all its tributaries, as well as all anadromous reaches of coastal streams normally open for fishing in Santa Cruz Co. from the San Lorenzo R. on North through Wadell Ck., shall be closed to all fishing when the department determines that the San Lorenzo flows are impeding fish passage. (U. S. G. S. gauging station in Henry Cowell Redwood State Park).

(4) Aptos and Soquel Creeks (Santa Cruz Co.) shall be closed to all fishing when the department determines that the Soquel Ck. flows are impeding fish passage. (U. S. G. S. gauging station on Soquel Ck.).

(5) The Pajaro River and Uvas, Llagas, and Corralitos Creeks, (Santa Cruz, Monterey, & Santa Clara Co.) shall be closed to all fishing when the department determines that the Pajaro R. flows are impeding fish passage. (U. S. G. S. gauging station on the lower Pajaro River).

(6) The main stem of the Salinas River (Monterey Co.), below its confluence with the Arroyo Seco River shall be closed to all fishing when the department determines that the flows are impeding fish passage (U. S. G. S. Spreckels gauging station on the Salinas R.).

(7) The Arroyo Seco River (Monterey Co.) shall be closed to all fishing when the department determines that the flows are impeding fish passage. (Flows to be evaluated at U. S. G. S. Spreckels gauging station on the Salinas R. and the U. S. G. S. gauging station near Geenfield on the Arroyo Seco R.).

(8) The Carmel River main stem, and the adjacent waters of San Jose, Gibson, Malpaso, Soberanes Creeks that are West of Highway 1 (Monterey Co.), shall be closed to all fishing when the department determines that the flow at the U. S. G. S. gauging station near Carmel is less than 80 cfs.

(9) The Big Sur River main stem west of the Highway 1 bridge, all of Limekiln Ck and its tributaries, and the anadromous portions of all other Big Sur Coast streams West of Highway 1 in Monterey Co., from Granite Ck. south to Salmon Ck., shall be closed to all fishing when the department determines that the flow at the U. S. G. S. gauging station on the Big Sur River is less than 40 cfs.

The stream flow gauges referred to above in subsections (8) and (9) will be checked on Tuesday and Friday of each week. The decision as to whether these rivers will be open or closed to fishing will take place only on Tuesday and Friday of each week. In the event that river flow differs later in the week, the fishing status for each specific river will not change until the day following the next scheduled reading. It shall be the responsibility of the angler to use the telephone number designated in the sport fishing regulations booklet to obtain information on the status of any of the rivers or creeks listed above in subsections (1) through (9). THE NUMBER TO CALL FOR INFORMATION IS (831) 649-2886.

NOTE: Authority cited: Sections 200, ~~202~~, 205, ~~215~~ and ~~220~~ 265 and 270, Fish and Game Code. Reference: Sections 110, 200, ~~202~~, 205, ~~206~~ and ~~220~~ and 265, Fish and Game Code.

7. SPORT FISHING

Today's Item

Information ☐Action ☒

Authorization to publish notice of intent to change inland sport fishing regulations.

Summary of Previous/Future Actions

- | | |
|---------------------------------|---------------------------------|
| • Today's notice hearing | Aug 16, 2017; Sacramento |
| • Discussion hearing | Oct 11-12, 2017; Atascadero |
| • Adoption hearing | Dec 6-7, 2017; San Diego |

Background

DFW has combined DFW proposals and public requests (FGC petitions 2016-003, 2016-006 and 2016-023) for proposed changes to the 2018 inland sport fishing regulations. The draft initial statement of reasons (ISOR; Exhibit 1) identifies a number of proposed changes to current regulations:

- **Rock Creek (Shasta County) Closure to Protect Shasta Crayfish:** Add Rock Creek, in the Hat Creek Drainage, to the Special Fishing Regulations (Subsection 7.50(b) (151.5) with an all year fishing closure to protect Shasta crayfish.
- **Clarification of No Take of Salmon in the Sacramento and McCloud Rivers and Tributaries Above Shasta Lake:** Amend the Sierra District Regulations (Section 7.00) to clarify that all rivers and associated tributaries above Shasta Lake are closed to the take of salmon, and amend subsection 7.50(b)(115) to direct readers to the District General Regulations. The changes will protect Chinook Salmon when they are reintroduced into the upper Sacramento and McCloud rivers above Shasta Lake.
- **American River (Nimbus Basin) Fishing Closure:** The current request for closure is designed to protect Chinook Salmon and Central Valley steelhead trout, which will utilize this section of the river for both in-river spawning and rearing along with essential hatchery operations. This combines subsections 7.50(b)(5)(A) and 7.50(b)(5)(B) and closes this section of river to fishing all year.
- **Artificial Lure and Bait Definition Changes:** Amend multiple sections in Title 14 to align with the new definitions for artificial lure and bait.
- **Allow Bow and Arrow Fishing for Catfish:** The bow and arrow fishing community has requested the opportunity to fish for catfish in certain waters in the state. This request was considered by Department law enforcement and regional biologists who determined that bowfishing could be allowed on waters with large carp populations and that are popular for bowfishing. Amend Section 2.25 to allow bowfishing for bullheads and catfish in the Sacramento-San Joaquin River Delta, Big Bear Lake in San Bernardino County, and Lake Isabella in Kern County.
- **Revision of Mendocino, Sonoma and Marin Counties' Low Flow Closure Time Period to Align with the Adult Steelhead Season:** Revise Section 8.00(b) to redefine the season of the Special Low Flow Conditions to coincide with the end of the adult steelhead fishing season on March 31.

STAFF SUMMARY FOR AUGUST 16, 2017

- **Crayfish:** In alignment with the proposal to close Rock Creek to fishing to protect Shasta crayfish, Section 5.35 will need to be amended to add Rock Creek to the list of waters where take of crayfish is prohibited.
- **Steelhead Report and Restoration Card Requirements:** Amend Section 5.88 as DFW staff reassessed the fisheries management objectives of the Steelhead Report and Restoration Card and determined that the data being collected, location codes, and reporting instructions and requirements can be simplified.
- **Sport Fishing Report Card Requirements:** Amend Section 1.74 to update procedures regarding lost report cards, to provide guidelines for obtaining a duplicate report card, and reporting harvest from a lost report card without obtaining a duplicate report card.
- **Restrict Leader Length to Less Than Six Feet to Reduce Potential Foul-Hooking (Snagging) of Salmon and Steelhead:** Add the leader length restriction to Section 2.05, to reduce foul-hooking of salmon and steelhead in anadromous waters.
- **Updates to Authority and Reference Citations Based on Recent Legislation:** As necessary, non-substantive changes are made to the authority and reference sections as a result of changes to Fish and Game Code by Senate Bill 1473 (Statutes 2016; Chapter 546) which took effect on Jan 1, 2017.

California Environmental Quality Act

It is determined that there is no substantial evidence the sport fish project that is the subject of this proposed rulemaking could have a significant effect on the environment. Staff will file a draft negative declaration with the State Clearinghouse and provide the draft as an exhibit for the Oct discussion hearing.

Significant Public Comments (N/A)**Recommendation**

FGC staff: Approve the request to go to notice as recommended by DFW.

DFW: Approve as recommended in the ISOR.

Exhibits

1. ISOR for 1.05 et al.
2. DFW memo, received Jul 19, 2017

Motion/Direction

Moved by _____ and seconded by _____ that the Commission authorizes publication of a notice of its intent to amend sections 1.05, et al., repeal section 1.60, and add section 2.05, related to sport fishing regulations for the 2018 seasons.

FGC

From: dennis <[REDACTED]@[REDACTED].com>
Sent: Monday, September 11, 2017 8:46 AM
To: FGC
Subject: RE: petition

Every argument you show against my proposal could be said for archery. This is a direct denial of opportunity afforded other similar users. The only difference between divers and archers is we are in the water opposed to above it. That's it. Regional parks that do not allow weapons are already banning archers as well as divers. There are many lakes and waterways thruout the state that do not have a weapons ban in place that are under utilized. This is disgusting. You lost a lot of potential supporters with this one.

Dennis Haussler

[REDACTED]
[REDACTED]@ [REDACTED].com

FGC

From: ken Leiterman <[REDACTED]@yahoo.com>
Sent: Monday, September 18, 2017 3:18 PM
To: FGC
Subject: New regulations

I am not sure if I read this correctly. I am a big fan of not allowing leaders over 6ft. Everyone knows the guys with the long leaders are really just snagging fish. Adding weight to your flies and sent to your artificial floors is completely different and should be allowed.

Thank you.Ken Leiterman

Sent from my iPad

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FGC

From: Christopher M Loomis <Christopher.Loomis@humboldt.edu>
Sent: Wednesday, September 20, 2017 12:26 PM
To: FGC
Subject: Comments for proposed fish and game regulation changes

Dear Commission members,

I'm a fisheries graduate student and avid fisherman on the north coast (Humboldt County) and I'm concerned about several of the items proposed for adoption. I want what is best for our fishes, but I want to ensure that our regulations are effectively managing fish populations without imparting fishers in an unbalanced way. As I don't have the time or resources to attend the meeting in San Diego, I hope that my opinions can be heard though this email.

With regard to the proposed exclusion of added weight to artificial flies, I strongly disagree that this will have any benefits to how our fisheries are managed. Fly fishers represent a very small sub-set of the people targeting salmonids and the techniques employed by fly fishermen have very little impact on fish populations as evidenced by the persistent populations in fly fishing only sections of stream. If you compare the catch per unit effort of a fly fisher compared to someone trolling with conventional equipment, you will notice a difference of catch in orders of magnitude.

Typically, weights added to flies are very minimal and mostly added to impart various movements and color to the flies, i.e. a cone head added to a streamer fly both protects the fly from damage to the threaded knot and also makes the streamer swim slightly. Furthermore, if added weights like these are outlawed, hundreds of thousands of dollars worth of flies that are already in the boxes of fisherman and distributors alike will be made worthless since the fly cannot be adapted once they are tied. If the concern surrounds unconventional use of flies with weights for illicit means (eg snagging) then I urge you to consider a weight limit (eg 1/8 ounce) as this will still allow most conventional flies with bead heads and cones to be used normally while excluding unconventional use of heavily weighted flies.

Additionally, the proposition to restrict leader length will also have devastating effects to fly fishers. Casting a fly depends entirely on using the weight of the lines. To avoid disturbing fish, fly fishers use long leaders, typically greater than 9 ft. Additionally, leaders must be long enough to allow wet flies to sink to desired depths. If leaders are shortened, fish will be spooked or not reached. I understand that the primary impetus for this proposition is to reduce snagging, but a blanket restriction will greatly harm a user group that does not participate at all in these activities. I would advise restricting leader length to specific regions where snagging is prolific, such as the Klamath spit or below the Nimbus dam. Or alternatively, restrict leader lengths to conventional tackle only.

To summarize, fly fishing is a small subset of fishers that have minimal impacts on fish stocks as compared to other methods. Limiting the methods employed by fly fishers will have only marginal effects on the fishery while having devastating effects on the fishers. Thank you for your time and consideration

---Chris

FGC

From: Vince O'Malley <[REDACTED]@comcast.net>
Sent: Wednesday, September 20, 2017 10:22 AM
To: FGC
Subject: Proposed Tackle Prohibitions

I am advised that your Commission is considering a few rather radical proposals to change tackle rules for steelhead and trout anglers by, among other things, possibly limiting leader length to 3-5 ft. and eliminate the use of weighted flies and split shot. I would strongly urge that you not do so and further suggest that you consult with experienced fly fishers and guides for a fuller appreciation of what these prohibitions would actually accomplish.

I have fly fished various methods for more than fifty years. Implementation of the above rules would essentially negate nymph fishing in all but the most shallow runs and riffles. You would effectively destroy most nymphing, a particularly common and popular method of sport fishing.

If your goal is to install reasonable protection of trout and steelhead, as well as salmon, while still protecting sport fishing you might instead ban barbed hooks in all locations. And to further protect anadromous fish where they are most vulnerable you should ban all sport fishing at the mouth of rivers and their tidal estuaries. If you are not aware of the easy slaughter of fish in these particular areas you need only YouTube "Salmon Fishing the Mouth of the Klamath" where you will see dozens and dozens of anglers, shoulder to shoulder, as they hook and snag fish entering the river to spawn. Coincidentally, many of the hooked and snagged fish are steelhead which often run at the same time as the salmon.

I respectfully hope these few remarks and observations from a longtime angler are helpful.

Vincent J. O'Malley

Sent from my iPhone

FGC

From: jcmchatton <[REDACTED]@frontier.com>
Sent: Sunday, September 24, 2017 6:07 PM
To: FGC
Subject: No Scent allowed in artificial lures only waters

Who the he'll do you guys think you are banning scent in artificial lures only waters? We all own those waters and those fish. How many fish are you attributing to being harvested, due to the use of scents? Where's the data that suggests scent is a problem? You are little by little trying to take our rights as Americans to fish, to hunt, and to enjoy the outdoors. I am all about reasonable regulations to keep enough fish and game around for future generations, but banning scents for fishing is ridiculous! You have forgotten that you have chosen to serve the people; not your biased, self-serving agenda of taking fishing and hunting away from Americans that love the outdoors. Eventually, you are going to trigger a tipping point where the people you're supposed to be serving, are not going to put up with any more, the disservice and injustice you are heaping on us sportsmen and women. Think before you enact such ludicrous, innane laws.

John McHatton, Concerned Sportsman

Sent from my Verizon, Samsung Galaxy smartphone

FGC

From: bob hoppy <[REDACTED]@gmail.com>
Sent: Tuesday, September 26, 2017 11:55 PM
To: FGC
Subject: Proposed regulations.

I am very unhappy about the proposed closure of the nimbus basin. I have been fishing this area for many years and have seen many fish out of it. Especially this year. The amount of fish is very high. I pay for my fishing license like everyone one else. So I don't see why I should pay if you guys are making it worse for people to fish by closing down all of our spots . The nimbus basin is many anglers favorite fishing spot. And I think that it is very unfair to close it down and is just wrong. Have a public vote instead of a few people deciding for everyone. I have talked to many anglers about this and we are interested in protesting if necessary. Please consider this in your next meeting. Thank you.

Sent from my iPhone

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Section 265
Title 14, California Code of Regulations (CCR)
Re: Use of Dogs for Pursuit/Take of Mammals or for Dog Training

- I. Date of Initial Statement of Reasons: August 8, 2017
- II. Dates and Locations of Scheduled Hearings:
- (a) Notice Hearing: Date: April 26, 2017
Location: Van Nuys, CA
 - b) Discussion Hearings: Date: October 11, 2017
Location: Atascadero, CA
 - (c) Adoption Hearing: Date: December 6, 2017
Location: San Diego, CA
- III. Description of Regulatory Action:
- (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:
- Subsection 265(d)(1): Delete the provision prohibiting the use of treeing switches.
- The provision is no longer necessary and the amendment will eliminate the prohibition. This type of equipment might only be used when pursuing an animal that can climb, such as bear or bobcat. However, recent changes in legislation have greatly restricted the use of dogs and the pursuit of bear and bobcat with dogs is prohibited. The use of dogs is now limited to only wild pigs and deer, rendering the current prohibition on the use of treeing switches unnecessary.
- Subsection 265(d)(2): Delete the provision prohibiting the use global positioning system (GPS) equipped dog collars.
- Based on input from hunters, the use of GPS equipped collars on hunting dogs would provide multiple benefits. A prohibition on the use of GPS equipment increases the possibility that downed game (wild pigs and deer) may be lost to the hunter creating waste. GPS equipped collars would also aid in the retrieval of lost dogs. Because of the value in allowing GPS equipped dog collars, the Commission feels it is appropriate to eliminate the prohibition by deleting that regulatory language.

(b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 200, 203, 3960, 3960.2 and 3960.4, Fish and Game Code.

Reference: Sections 3960, 3960.2, and 3960.4, Fish and Game Code.

(c) Specific Technology or Equipment Required by Regulatory Change:

None.

(d) Identification of Reports or Documents Supporting Regulation Change:

None.

(e) Public Discussions of Proposed Regulations Prior to Notice Publication:

At the Fish and Game Commission's Wildlife Resources Committee (WRC) meeting held on September 9, 2015 in Fresno, California. The members of the WRC discussed the proposed changes to the regulation and concurred with the Department's recommendations to remove the prohibitions.

This regulation change proposal was originally adopted by the Fish and Game Commission at their April 14, 2016 meeting in Santa Rosa (noticed at their December 10, 2015 meeting in San Diego, discussed at their February 11, 2016 meeting in Sacramento). Following that action, the Fish and Game Commission's decision was challenged through litigation regarding CEQA. Opponents of the regulation change proposal claimed the CEQA analysis to support the change was deficient. In response to that claim, the Fish and Game Commission took action to rescind the adoption (Notice hearing Oct 19-20, 2016, Eureka; Discussion hearing Dec 7-8, 2016, San Diego; Originally scheduled adoption hearing Feb 8-9, 2017, Rohnert Park; Further discussion March 15, 2017, Teleconference; Further discussion April 13, 2017, Teleconference; Adoption hearing April 26-27, 2017, Van Nuys) and return the regulation to its original state.

At each of the Commission meetings mentioned above, including the WRC meeting, the Commission received input from the public on this proposed regulatory action. Additionally, multiple comment letters on the Commission action to rescind the prior adoption addressed the current proposed regulatory action.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

No alternatives were identified.

(b) No Change Alternative:

The no change alternative was considered and rejected because it would not eliminate the unnecessary regulation concerning the use of treeing switches. The no change alternative would also continue the regulation prohibiting the use of GPS equipped collars and therefore continue the problem of hunters unable to retrieve wounded game (wanton waste) or locating lost dogs.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the proposed regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will not have a significant negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made.

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Removing outdated prohibitions on treeing switches and GPS collars is not anticipated to affect current levels of hunting effort for species that can legally be pursued with dogs.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission anticipates benefits to the health and welfare of California residents. Hunting provides opportunities for multi-generational family activities and promotes respect for California's environment by the future

stewards of the State's resources. The Commission anticipates benefits to the State's environment in the sustainable management of natural resources.

The proposed action will not have significant impacts on jobs or business within California and does not provide benefits to worker safety.

(c) Cost Impacts on Representative Private Persons/Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

(e) Other Nondiscretionary Costs/Savings to Local Agencies:

None.

(f) Programs Mandated on Local Agencies or School Districts:

None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed under Part 7 (commencing with Section 17500) of Division 4:

None.

(h) Effect on Housing Costs:

None.

VII. Economic Impact Assessment

The proposed action will have no statewide economic or fiscal impact because the proposed action modifies the regulation regarding the use of electronic dog collars while hunting only for deer and wild pigs. The regulation eliminates unnecessary language prohibiting the use of treeing switches; and, permits GPS equipped collars, increasing the hunter's ability to find and retrieve downed wild pigs and deer as well as lost dogs. There are no costs to businesses or persons.

(a) Effects of the regulation on the creation or elimination of jobs within the State:

The regulation will not affect the creation or elimination of jobs because it is unlikely to cause an increase or decrease in hunting effort.

- (b) Effects of the regulation on the creation of new businesses or the elimination of existing businesses within the State:

The regulation will not create new businesses or eliminate businesses within the State because it is unlikely to cause an increase or decrease in hunting effort or in the manufacture and sale of GPS collars.

- (c) Effects of the regulation on the expansion of businesses currently doing business within the State:

The regulation will not affect the expansion of businesses currently doing business in the State because it is unlikely to cause an increase or decrease in hunting effort.

- (d) Benefits of the regulation to the health and welfare of California residents:

The Commission anticipates benefits to the health and welfare of California residents. Hunting provides opportunities for multi-generational family activities and promotes respect for California's environment by the future stewards of the State's resources.

- (e) Benefits of the regulation to worker safety.

The proposed regulation will not affect worker safety.

- (f) Benefits of the regulation to the State's environment:

It is the policy of the State to encourage the conservation, maintenance, and utilization of the living resources of the State. The Commission anticipates benefits to the State's environment in the sustainable management of natural resources.

INFORMATIVE DIGEST

(Policy Statement Overview)

Amend Section 265, Title 14, CCR, by deleting subsections (d)(1) and (d)(2). The current regulations prohibit the use of treeing switches and GPS collar equipment for dogs used in the taking of mammals. Recent changes to statutes have restricted the use of dogs by hunters to only the taking of wild pigs and deer. The prohibition on the use of treeing switches is therefore unnecessary. Allowing the use of GPS collar equipment will improve a hunter's ability to find and retrieve downed game and lost dogs.

Benefits of the regulations

The regulation eliminates unnecessary language regarding the prohibition on the use of treeing switches; and, permits GPS equipped collars increasing the hunter's ability to find and retrieve downed wild pigs and deer as well as lost dogs.

Consistency with State or Federal Regulations

The Fish and Game Commission, pursuant to Fish and Game Code Sections 200 and 203, has the sole authority to regulate hunting in California. Commission staff has searched the California Code of Regulations and has found the proposed changes pertaining to the use of dogs for hunting mammals to be consistent with the provisions of Title 14. Therefore, the Commission has determined that the proposed amendments are neither inconsistent nor incompatible with existing State regulations.

REGULATORY TEXT

Section 265, Title 14, CCR is amended to read:

§265. Use of Dogs for Pursuit/Take of Mammals or for Dog Training.

... [No changes to subsections (a) through (c)]

~~(d) Prohibition on Treeing Switches and Use of Global Positioning System Equipment.~~

~~(1) Treeing Switches. Electronic dog retrieval collars containing functioning treeing switches (devices consisting of a switch mechanism that results in a change in the transmitted signals when the dog raises its head to a treed animal) are prohibited on dogs used for the pursuit/take of mammals.~~

~~(2) Global Positioning System Equipment. Electronic dog retrieval collars employing the use of global positioning system equipment (devices that utilize satellite transmissions) are prohibited on dogs used for the pursuit/take of mammals.~~

Note:-Authority cited: Sections 200, 203, 3960, 3960.2 and 3960.4, Fish and Game Code. Reference: Sections 3960, 3960.2, and 3960.4, Fish and Game Code.

FGC

From: Pea Ce <pea-ce@live.com>
Sent: Wednesday, September 27, 2017 6:21 PM
To: FGC
Cc: Pea Ce
Subject: Public Comment-GPS Hound Collars--oppose
Attachments: fgc-GPS hound collars-PEACE-9-26-17.pdf

To: FGC

Attached are comments on the proposed amendment to Sec 265 to allow GPS collars on hounds to hunt mammals.

Please acknowledge receipt of this email.

Thank you,

Randall Cleveland

for the PEACE team



9-26-17

To: California Fish and Game Comm

Subject: GPS collars for mammal hound hunting

Nothing has changed.

The CA FGC and CDFW refuse to look at the facts and reality of allowing GPS collars on hounds. GPS collars do away with the "hunt" as houndsmen sit in their trucks watching a screen that follows the dogs chasing unsuspecting targeted and untargeted wildlife, disrupting ground nesters, maiming and wounding fawns that usually die, and so much more. This is NOT hunting and can't be called ethical. It's "dog hunting," and if dogs run into a bear, coyote, mountain lion, or even some of the smaller wildlife species, dogs themselves may be severely injured and die. And this is what houndsmen are all about—irresponsibly releasing dogs into the wild to "see what they can do" that will be made worse by allowing GPS collars on hounds to hunt mammals.

Instead of listening to the public, both FGC and DFW have been unduly and erroneously brainwashed by houndsmen with irrelevant and unsubstantiated claims. At least dog safety claims seem to have been recognized for what they were--bogus. GPS collars cannot ensure dog safety. It's been stated repeatedly: When a dog is miles from its handler and immediate intervention is called for, it simply cannot happen physically. GPS collars will allow dogs to roam even further from handlers making interventions even more difficult. So GPS is contradictory to the houndsmen's crocodile-tear claims of dog/pet safety.

Another reason stated for allowing GPS collars is dog retrieval. Dog retrieval may be facilitated, but there are many other, less-invasive and less-damaging measures that can accomplish the same level of retrieval and not impact wildlife. As stated in other comment submissions: Neither the FGC nor the CDFW is, or should be, in the business of domestic animal welfare, especially when wildlife welfare should be the top priority. Domestic animal retrieval concerns rest solely on dog owners.

The real issues are not only impacts to wildlife, targeted and untargeted, but also a disregard for any sense of "Fair Chase" and "Ethical Hunting" concepts that GPS collars represent. The FGC and DFW need to reset their moral compass and look at what they are considering. GPS collars should NOT be approved as they thoughtlessly were before. A pack of technologically equipped dogs that are let go with a "Go GET 'EM!" to chase extremely terrorized animals, under no control of the houndsmen is the opposite of Fair Chase and Ethical Hunting and should be illegal in California.

Historically, hounding never used high technology, but more importantly, hounds were trained to stay with their handlers—either via command or tether—and handlers stayed or kept up with their dogs. Radio collars blew any claims of the "heritage and tradition" façade out of the fair-chase waters. Now, in spite of the fact that except for nine southern states, **no other state in the continental U.S. even allows hound hunting of deer**, the CA FGC diminishes ethics and fair chase even further by adding GPS collars to the already-uneven playing field. Deer drives are common where deer hounding is allowed with GPS collars—like shooting fish in a barrel.

All of this runs contrary to the will of the people. The times are changing and currently, more than ever, wildlife is cherished and revered by almost all citizens of the United States. Californians value their wildlife resources and want them protected, unlike other states that ravage both wildlife and land. When the public even hears that deer hound hunting is allowed, their first reaction is usually disgust, followed by anger. Yet the FGC and the CDFW keep their blinders in place.

Unfortunately, due to an out-dated, good ol' boy, head-in-the-sand mentality, California still allows killing of the best and the healthiest wildlife species—both for trophy and so-called "sport." Riding around in pick ups or ATV's with high tech, electronic scoping, scent attractants, distress and mating calls to draw every species imaginable, tree stands, forage planting that works around illegal baiting, and on the list goes, takes hunting out of any kind of historical ethical or fair chase concepts. As the public becomes more educated, they are becoming outraged.

Allowing GPS hound collars to hunt deer is an embarrassment. For the longer chases, deer cannot outrun dogs due to lung capacity differences. GPS will allow for deer drives that are common in southern states. Those who do the killing are called "stands" and wait at the end of a deer drive. Dogs with GPS collars start at the other end, and as the chase shifts directions, houndsmen call the changing-direction coordinates to the stands. When the deer, one or more, come into sight, it's akin to a canned hunt—illegal in California—but GPS will provide the "wink-wink" go ahead.

Because many, if not most staff and commissioners of both the FGC and CDFW are reported to engage in wildlife hunting or fishing with the goal to kill the biggest and best and probably use some form of high technology to do so, and because agencies appear to have bought into spurious dog safety claims, in spite of evidence to the contrary, there may be a built-in bias. If agency staff members so partake, they should remove or recuse themselves from any decision-making or planned environmental "analysis" in order to keep some semblance of neutrality in tact.

When bear hound hunting was finally banned via legislation because neither the FGC nor the CDFW would protect wildlife as they should, almost every houndsman who testified and signed petitions to oppose SB 1221 vowed that he or she was pulling up stakes and leaving the state—for good! When hounding of bobcats was banned, more said they were leaving. True to form, with their idle threats, they either never intended to leave or went back on their word, or maybe it was all fake declarations and blustering in the first place. Regardless, whether they use hounds or not, they need to keep control of their dogs the old fashioned way, keep up with them, and practice the real traditions of "Fair Chase" and "Ethical Hunting" instead of just playing lip service to those concepts.

We urge the FGC to KEEP THE BAN ON TREEING SWITCHES AND GPS COLLARS IN PLACE and increase the fines for violations.

Thank you,
/s/

Randall Cleveland—For the PEACE Team



PLACER GROUP
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PUBLIC INTEREST COALITION



[sent via email: fgc@fgc.ca.gov]
California Fish and Game Commission
P.O. Box 944209
Sacramento, CA 94244

September 28, 2017

Ladies and Gentlemen:

RE: Proposed Amendments to Section 265—Use of Dogs—GPS collars, Treeing Switches

Thank you for the opportunity to comment on the proposed amendment to Section 265, Use of Dogs for Pursuit/Take of mammals or for Dog Training. If approved, the proposed amendments would lift the current prohibition of the use of GPS collars and/or treeing switches (GPS) on dogs (“hounds” or “dogs”) in the pursuit/take of mammals hound training activities. As of this writing, the morning of the comment deadline for inclusion in the “Meeting Binder” for Fish and Game Commission (FGC) members, there are no “Meeting Documents” posted; thus more comments will be submitted after agency documents are made public.

As an aside, in a good faith effort, we took the word of the commission that the functional equivalent of the California Environmental Quality Act (CEQA) would be followed, and that a Draft Environmental Document (DED) would be prepared. We are disappointed to learn that is not the case. It appears that what was called a “briefing document” that was contained in a memo, somehow caused the FGC to change its course and not proceed with a DED. We also submit that interpretation of the motions and votes taken on April 26, 2017, were possibly not conducted or interpreted properly.

Similar to the earlier FGC’s October 8, 2015, meeting confusion, a report of the WRC meeting contained a number of items. For the record, Commissioner Williams stated that the vote needed to be clarified (It was not “...support to delete the prohibition on the use of GPS collars for hounds”). Executive Director Mastrup agreed that the motion was not as previously read, but rather the vote was for support for discussing in consideration of deleting the prohibition. He stated it was a process and that the WRC was recommending that the FGC approve working on a Rulemaking to consider deleting the prohibition on the use of GPS collars. The same is true with the vote on April 26, 2017. The perception of the public was that the FGC was, as stated, “going to do it right,” which meant comply with CEQA. PIC urges the FGC to stop the process until a valid DED can be prepared to study of all negative impacts of GPS collars and tree switches and be circulated for public review. Only then can a responsible decision be made.

The FGC’s stated Mission is to ensure the long-term sustainability of CA’s fish and wildlife resources. Keeping that Mission in mind, we urge the FGC to **not** approve or proceed with the proposal until or unless its many probable, potential, significant negative impacts to wildlife—both targeted and non-targeted—are fully understood. We respectfully urge the lead agency (LA) to prepare and circulate a DED, address negative impacts that will be created with

allowance of GPS collars and treeing switches if the ban is lifted, as required by the California Environmental Quality Act (CEQA), and to use the words of a FGC commissioner, stated at more than one meeting, "...to do it right this time."

Because the current proposed amendment is almost identical to the first Section 265 amendment to allow GPS collars and treeing switches (adopted in April of 2016), we incorporate by reference our submitted comment letters, including but not limited to those dated on or about January 27, 2016, from Public Interest Coalition (PIC); March 31, 2016 (PIC); November 22, 2016 (PIC and Sierra Club [SC]) March 31, 2017; April 13, 2017, (PIC and SC), both of which are in the FGC Staff Summary for April 26-27-2016, Agenda Item 13, Use of Dogs; and any others which were submitted but omitted from the meeting documents or the "Binder." We also incorporate by reference our oral comments made to the FGC, as well as all other comments submitted by others in opposition to the proposed amendment to allow GPS collars and/or treeing/tip switches, whether they were oral comments spoken at any of the FGC meetings, written and included in online FGC's documents, or submitted in writing but omitted from the FGC online documents.

As before, another grave concern is that the current ISOR fails to describe and analyze the whole of the action. These points are described in detail in our comment letter of March 31, 2016, and, as stated above, are included in the record by reference. Our arguments as to why a DED must be prepared are valid and compelling. We urge the preparation and circulation of the DED as soon as possible.

I. ISOR Inadequacies

Although the Initial Statement of Reasons (ISOR) of August 8, 2017, provides minimal information, a number of the "Reasons" stated are neither substantial nor compelling and do not provide a "Factual Basis" to justify that the proposed amendments to Section 265, Title 14, CCR are "Reasonably Necessary."

[ISOR] III. Description of Regulatory Action.

(a)—Subsection 265(d)(1): There is no evidence presented as to the nexus between the current ban of treeing switches and the claim that the ban is no longer necessary. If anything, the exact opposite is true: Deer and pigs do not climb trees; therefore, there is no need for houndsmen or women (hounders) to use treeing switches when hunting either game animal. In fact, logic dictates that because it is illegal to hound hunt tree-climbing game species (bear and bobcat), as well as being completely illegal to hunt or tree mountain lions, it follows that, if allowed, the use of treeing switches could become an incentive to use as a "work around" of the regulations that prohibit the activity. When hounds "accidentally" tree one of the prohibited game animals, with GPS it is simply a matter of transmitting the hound locations to nearby bear or bobcat hunters, for example. "...no longer necessary" is akin to claiming Wildlife Officers are no longer necessary because mountain lions cannot be hunted. We submit that the lead agency must analyze the increased potential, opportunities, and incentives, created by the use of treeing switches, for hounders to inform bear/bobcat hunters (via cell, radio, or other electronic devices) to inform them of the GPS coordinates of the treed game.

Subsection 265(d)(2): The very first sentence, "*Based on input from hunters, the use of GPS equipped collars on hunting dogs would provide multiple benefits,*" epitomizes the fallacy of the amendment. It is akin to stating, "Based on input from hunters, baiting of game would provide multiple benefits." Fish and Game regulations should be first and foremost for the benefit and/or welfare of wildlife. Hunter benefit is secondary, and regulations must adhere to the Fish and Game's (FGC) reason for existence: wildlife conservation.

The second sentence is equally deceptive. The existing prohibition on the use of GPS equipment does not increase the possibility of downed game loss. Radio telemetry is still allowed to follow tracking dogs, but more importantly, hounds should be able to follow a blood trail to downed game regardless of the technological equipment they're wearing. GPS collars will not increase any hounds' scent receptors—following the scent of a blood trail is not a function of GPS.

Third, GPS collars may aid in the retrieval of lost dogs, but so does radio telemetry, micro chips, solid and certified training of both dogs and handlers, abidance of laws that dogs shall be under control of the handlers at all times,¹ keeping dogs on tethers or leads and following the hunting ethics for hounders to keep up with their dogs. We sympathize with lost dogs, but no one should be allowed to release dogs that cannot be kept under control. We submit that the “lost dog” argument is an excuse to simply release any dogs into the wild, trained or not, and “see what happens.” The responsibility for dog retrieval and welfare lies solely with the hounder, owner, or handler and not with the FGC. We submit that the lead agency must analyze impacts created by this proposed amendment allowing GPS collars especially from increased releases of untrained dogs by irresponsible hounders as well as impacts from increases of both in-state and out-of-state numbers of hound-hunters that are foreseeable due to the nearest nine mainland states that allow deer-hound hunting all being located in the deep south—over 1,000 miles away.

(d) The fact that the ISOR provides no reports or documents to support the regulation change is puzzling, especially in light of the compelling testimony and written comments submitted over the past two years on the same, previously proposed and reversed amendment. Based on the “None” entry, we must conclude the lead agency has no evidence to support the proposed regulation change.²

In the previously referenced WRC meeting, when the GPS collar issue was briefly discussed, it was noted that rescinding the GPS prohibition was also attempted back in 2010. However, the reasons for its being dropped, that should have been discussed, were not mentioned. The 2010 ISOR states, *“The current regulation was put in place before GPS technology was fully developed for collars on dogs. This regulation was intended to assure that hunters did not simply rely on the tip switch and GPS to tell them that their dogs had treed or cornered an animal.”* We submit that the reasons for the regulation that bans GPS collars and treeing switches are still valid. Hunters or houndsmen are ethically obligated to stay closely behind their dogs, but allowing GPS collars will make that obligation optional. This is just one of many reasons why GPS collars must remain prohibited.

If dropping the prohibition back in 2010 indicated that it was not warranted, and the same conditions exist today, without substantial evidence to the contrary, dropping the prohibition on GPS use cannot be justified and has no merit. For a better understanding of the issues, we urge the lead agency to provide the staff summaries, related documents, and minutes of the FGC hearings from those 2010 meetings and include them in the DED.

(e) A very incorrect perception is presented in this section. Proposed changes to allow GPS collars were discussed at the WRC meeting on September 9, 2015, in Fresno, CA, with two hounders expressing their desire to use GPS collars. There was no GPS collar item on the

¹ CA FGC § 3008

² The meeting documents or staff reports related to this issue for the April 26, 2017, FGC meeting contain a memo from CDFW to FGC that also contains what was referenced as a “Briefing paper.” The memo clearly states that CEQA issues raised led to the development of the briefing paper that is intended to assist the FGC. However, it also clearly states: **“This document is not intended to be a substitute for an environmental document.”** [bold added] Our comment letter of April 13, 2017, which is incorporated by reference, pointed out the errors, omissions, and misleading or incomplete statements and conclusions. In it we concluded that as such, the briefing paper potentially skews the FGC’s decision-making abilities.

agenda, and the ISOR statement that reads, “*The members of the WRC...concurred with the Department’s recommendations to remove the prohibitions,*” is extremely misleading because there were no Department recommendations. [underline added] Transcripts can be provided upon request to show that hounder “wants” dominated the short discussion and caught the Department seemingly by surprise.

The then Chief of DFW’s Wildlife Branch chimed in with, “We can bring it together as a recommendation, run it up through our shop, and it comes over to the Commission...and something we can support it departmentally.” The then Executive Director of the FGC followed up with, “And it doesn’t prevent another short ways. Your staff can put it on the table. The Dept would then be in a position of commenting on it. There’s more than one way to solve this problem if the Commission is interested.... So I will make a note that WRC’s is recommending considering deleting the prohibition on GPS.”

To the public, the appearance is that the proposal gained traction, not by its merits and wildlife conservation benefits, but rather via a bias in the form of an arbitrary prioritization of hound-induced, wildlife-disruptive activities to favor one group of consumptive wildlife users over non-consumptive users and mainstream, fair chase, ethical hunters.

Unfortunately, based on such apparent misleading or non-factual ISOR statements made to justify the regulation changes as “*Reasonably Necessary*,” a tone is set that questions the validity of the ISOR, but more importantly, further erodes the FGC and DFW’s credibility, which exacerbates lack-of-trust issues.

“Initially a “hook and bullet” organization with a goal of sustainable hunting and fishing, interviewees described DFG’s expanded role to now include habitat protection, stewardship and additional regulatory responsibilities. Constituencies have expanded to include preservationists, recreationalists and other non-consumptive users. Interviewees and respondents opined that the organization has not evolved quickly enough to meet the expectations of all users, **which has fostered mistrust of DFG and F&GC.**”³ [bold added]

[ISOR] IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change: In comments submitted by multiple groups and/or citizens, numerous reasonable alternatives have been suggested, including but not limited to: micro-chipping, recall/training certification of both the hounder or handler and the dogs before releasing, requiring tethers/leads/leashes for dogs that are not solid or are in training, following the law that requires dogs being under control at all times,⁴ keeping up with the dogs, etc. These are in addition to radio telemetry that is not only currently allowed but also in some terrain is considered more reliable than GPS. Hacking of GPS waypoint info is discussed further in this document (DED section, II, C7).

(b) No Change Alternative: As described above, if ever the ban on treeing switches was warranted and necessary, it is now—especially with the ban on hound hunting of bears and bobcats. Deer and pigs do not climb trees so it is a fair argument and logical to conclude that treeing switches could and would serve to inform bear and bobcat hunters that the hounds have treed an animal. This has been the common use of treeing switches in states that allow them and would occur in CA.

(c) Consideration of Alternatives: We submit that the lead agency’s statement, “*in view of information currently possessed,*” suggests that the multitude of written and oral comments submitted over the past two years, as well as Staff Summaries on the almost identical previously

³ From Expanded DFG Mission, Strategic Vision, “Barriers to Implementation report”.
<https://www.wildlife.ca.gov/Strategic-Vision-Stakeholder-Advisory-Group>

⁴ CA FGC § 3008

proposed amendment, have been overlooked. The alternatives proposed are not only reasonable, in many states they are the law of the land—Texas, Montana, Colorado and others allow tracking but only with dogs under complete control via leashes, leads, or tethers.

The purpose for any natural resources agency's regulations are expected to have wildlife conservation as a goal. "*Less burdensome*" or "*more cost effective to affected private persons*" is not the lead agency's mission. In fact to put private persons' consumption of wildlife above conservation on the grounds of "*burden*" or "*cost*" would appear to completely disregard the lead agency's mandate.

[ISOR] V. Mitigation Measures Required by Regulatory Action

We completely disagree with the statement that the GPS "*...proposed regulatory action will not have a significant negative impact on the environment; therefore no mitigation measures are needed.*" With CEQA, impacts to wildlife are considered Biological, and this GPS proposal will create havoc via the release of untrained dogs, an influx of out-of-state" hounders bringing their hounds which may or may/not be trained, and the excessive range of GPS signals under certain conditions (some advertise over 9-10 miles). Regardless, a pack of dogs with GPS collars will be able to run miles through wildlife habitat, which in turn can and does change migratory wildlife patterns, forces wildlife to flee from familiar surroundings into areas where it will be more vulnerable to predation; exposes fawns, ground nesting birds, and other young wildlife to being severely or lethally wounded by hounds. (Evidence cited in previously submitted comments) Even without a physical altercation, vulnerable wildlife species can succumb to capture myopathy. Because GPS will allow more dogs to roam farther, any diseases they carry—such as Parvo, Distemper, etc—will also be increased and will expose more vulnerable species as well.

The mitigation measures required for these significant negative impacts should include annual or biennial renewable certification of both hounder or handler and dogs as proof of their possessing minimal skills in pursuing wildlife, obeying obedience commands, current vaccinations, etc.

[ISOR] VI. Impact of Regulatory Action

(a) Because it is reasonable to assume that if the proposed amendments are adopted, there may be an adverse economic impact due to increased numbers of trained and untrained releases of dogs, which can result in reduced deer hunting efforts. Currently, a number of deer hunters are not pleased with hound interference with their activities. Dogs disrupt wildlife habitat, cause deer to move to other locations, or disturb deer hunt/take opportunities for mainstream hunters.

(b) It is grossly naïve to anticipate benefits to residents when the vast majority of Californians are opposed to killing wildlife for sport or trophy; wildlife rehabbers are appalled at the severe and fatal injuries inflicted by hounds on vulnerable wildlife; and with the exception of fishing, ongoing declines in hunt-to-kill licenses purchased, coupled with ongoing increases in non-consumptive activities (hiking, wildlife watching, photographing, etc.), will continue. GPS will not reverse these ever-increasing trends, and due to negative fair chase and hunting ethics issues created with the use of GPS collars, it is reasonable to assume that GPS dog collar use will incur the wrath of even more Californians. Again the ISOR's statement of benefits of the GPS amendment has no nexus to "*benefits to health and welfare of California residents*" nor will it provide "*family activities*" or "*respect for California's environment by the future stewards.*"

(c) The FGC needs to be informed of the costs to rural private persons caused by big game in their fear flights when being chased by GPS-collared hounds, with handlers no where near, as they literally crash through and break down fencing; and/or the cost to nonprofits and private licensed wildlife rehabbers who attend to the injuries of vulnerable wildlife species that

have been severely or fatally injured by a pack of dogs with GPS collars—again with no hounder or hunters in sight.

[ISOR] VII. Economic Impact Assessment

Contrary to the introductory statement, there will be an economic impact to the state for Wildlife Officers to enforce poaching laws. A few hounders maintain they are opposed to poaching as much as anyone else, but that is not the point. Even though all hunters are not poachers, all poachers are hunters, and they will be using “work arounds” to utilize one of the greatest poaching gifts ever delivered to them, if this proposed amendment is approved. Again, the ISOR is misleading in stating that the GPS dog collars will be used only for deer and wild pigs, since once they’re allowed, they will most likely be used for non-game animals.

Regardless, poachers will claim they are only hunting raccoons, or foxes, etc., or even deer or wild pigs, as the hounds range for miles. If the hounds accidentally tree a prohibited species, and Wildlife Officers receive a tip, the costs for catching, citing, and prosecuting GPS collared hound activities that pursue, tree, wound or fatally injure both targeted and non-targeted wildlife will be exceptionally high. The claim that there will be no enforcement is bad enough, but even then, the cost to the environment with the loss and disturbance of wildlife should be an economic consideration.

Retrieving downed and wild pigs and deer can be accomplished with hounds on leads following a blood trail. Claiming that GPS collars will increase the hunter’s abilities to find and retrieve can be equally accomplished in many other ways and reduce the opportunities for poaching activities.

(d) This is a repeat of VI (b) addressed above.

(f) There is no nexus between GPS collar allowance and use to “*sustainable management of natural resources*.” Although consumptives repeatedly claim that they are part of “management” of wildlife, many studies, policies and CA regulatory agency’s own documents state that hunting is NOT a management tool.

II. Areas that must be analyzed in a Draft Environmental Document (DED)

For the DED to be a satisfactory, comprehensive analysis, all impacts must be scrutinized in order to judge the proposed amendment on its merits or lack thereof. The lead agency must conduct research to determine impacts of the proposed Sec 265 amendments in order to comply with the CEQA and/or its “functional equivalent.” The SC and PIC remain gravely concerned that the 265 proposal to allow GPS collars will increase hounding activities and lead to an egregious proliferation of wildlife disturbances, including but not limited to severe and/or lethal mauling injuries of targeted and non-targeted species; an unacceptable increase in the numbers of untrained hounds released in wildlife habitat and associated subsequent negative impacts; treeing of bears and bobcats by hounds resulting in killing of those two species in those trees by hunters or poachers who are informed of the GPS coordinates of the treed animals via cell or radio communication with hound handlers (a “work around” to avoid compliance with SB 1221 that bans hound hunting of bear and bobcat); unethical and non-fair chase activities (“deer drives”) as practiced by the nine “Deep South” states of the U.S.⁵

Based on testimony of numerous hounders over the past almost two years at FGC meetings, a fair argument can be made that GPS collars will result in more dogs being released.

⁵ Dogs chase deer to waiting hunters who are kept informed of the hounds’ GPS coordinates/locations via cell phone or radio communication with the houndsmen/handlers. As the direction of the hounds shifts to follow the deer, the waiting hunters move accordingly in order to kill the deer when they emerge from the woods.

Studies previously cited (in comments submitted by reference) have repeatedly shown that free-ranging canines have direct, negative impacts on wildlife.⁶

Furthermore, because there is a reasonable possibility that GPS collars will result in longer-distance ranges of hounds from their handlers, that in turn will mean increased significant impacts associated with trespassing and interference with other users (hikers, photographers, bikers, equestrians, mainstream hunters, dog walkers, etc.). The significant impacts from these GPS-induced activities, and other negative impacts, have the potential to significantly disrupt and reduce wildlife populations of game and non-game animals alike.

Because deer hound hunting is banned in every state of the U.S. on the mainland, except for the previously mentioned nine Deep South states, the potential exists for significant negative impacts created via increased numbers of out-of-state houndsmen coming to California (rather than travel hundreds of miles to the southern states) and wreak havoc with both targeted and untargeted wildlife species.

Below are specific areas that must be analyzed in a DED:

A. Acknowledge adverse dog impacts in wildlife habitat.

In preparing the DED, the LA must acknowledge the voluminous research that verifies adverse impacts to wildlife created by any dogs in wildlife habitat, but especially by dogs that are running loose. These impacts include but are not limited to disruption of sensitive species, ground nesters, migration patterns and routes, mortal or injurious altercations, abandonment of new born animals, etc. A list of supporting studies which identify known dog-related negative impacts to wildlife will be provided when the LA circulates the notice.

B. Acknowledge the apparent lack of data as to how many hunters use dogs as well as how many dogs are utilized in each hunt and/or trained to hunt mammals.

If the LA has no record or requirement for hound hunting reporting (how many hunters use dogs to hunt mammals; how many dogs are released, retrieved, become involved with “on track” pursuits of targeted game and/or crippled animals, non-targeted, etc.), then it follows that an ISOR prepared by the LA cannot adequately analyze significant or even potential impacts from GPS collars. Without accurate data of at least the basic conditions, the functional equivalent CEQA analysis of the GPS collar impacts will be compromised—if not useless. Proper studies must be conducted that include who/which species or types of hunts used hounds to hunt mammals; how many dogs are used in mammal hunting for each hunt; to what extent are dogs trained or certified; what are handler/hounder training, skills, or certifications; how many cross-scenting incidents occurred; were there non-targeted wildlife or domestic animals altercations; or other types of incidents that impact wildlife.

Just as deer hunters are required to report results of their efforts, or they may be subject to repercussions when applying the following year, hound hunters should be held to similar standards of reporting in order for the LA to not only grasp the significance of the impacts, but also, with proper questions, have the information needed to regulate mammal hound hunting activities.

⁶ “Bad Dog” A [new study](https://sierraclub.org/sierra/bad-dog?utm_source=greenlife&utm_medium=email&utm_campaign=newsletter) published in the journal *Biological Conservation* found that dogs are a known or potential danger to at least 188 different animals, including birds, reptiles, and amphibians as well as mammals—and they’ve already contributed to 11 extinctions.... You can do your part by ensuring that your dog is vaccinated, neutered, and on a leash when visiting the great outdoors. “For the most part, dogs that are leashed and hiking with their owners have relatively mild impacts on wildlife,” according to Arielle Parsons of the North Carolina Museum of Natural Sciences, the lead author of a [study](https://sierraclub.org/sierra/bad-dog?utm_source=greenlife&utm_medium=email&utm_campaign=newsletter) published last fall that looked at the effects of dogs in protected areas in eastern North America. “They will still enjoy their walk but won’t be putting wildlife at undue risk of stress or predation.” [https://sierraclub.org/sierra/bad-dog?](https://sierraclub.org/sierra/bad-dog?utm_source=greenlife&utm_medium=email&utm_campaign=newsletter)

[https://sierraclub.org/sierra/bad-dog?](https://sierraclub.org/sierra/bad-dog?utm_source=greenlife&utm_medium=email&utm_campaign=newsletter)
suppress=true&utm_source=greenlife&utm_medium=email&utm_campaign=newsletter

C. Identify increased adverse impacts that GPS collar use and treeing switches may create with regard to wildlife and habitat.

Given that the proposed reg amendment's focus is GPS collars and not hound hunting per se, it is incumbent upon the LA to research, analyze, and/or determine to what extent GPS collars will result in more dogs (greater numbers) being released and **what or how those GPS collar-induced increases may cumulatively impact targeted and/or un-targeted wildlife. The LA must evaluate the new opportunities for poaching that GPS collars will create, their impact on wildlife, the degree to which potential poaching increases will impact wildlife officers' enforcement capacities, and additional CDFW costs of investigation.** To this end, the LA should determine and analyze:

1. Increased impacts (such as those stated above) to targeted and non-targeted animals from the **number of dogs** allowed in each type of dog hunting activity—different game and non-game species—and/or different limits of both the numbers of hunters in hunting party and/or dogs per hunter. The LA should analyze the impacts of those increased numbers of released dogs if GPS is allowed.

NOTE: In the GPS collar discussions, disingenuous attempts to minimize such impacts were made with statements that only one dog per deer hunter is allowed. The critical error of omission is that there can be many hunters in a deer hunting party, each with their hound/dog, and there may be no limits to the number of NON-hunters in a party with dogs in “training.” To what degree will GPS collar allowance (hunting or training) increase the number of dogs released into wildlife habitat?

2. In order to provide valid comparative data as to the use of GPS collars and their impacts, the LA should track how many mammal-hunting hounds **are released**, including but not limited to no use of high-tech collars, to use radio telemetry collars, GPS collars; etc. The LA must have comparative data on hound releases before meaningful conclusions can be drawn.

3a. The LA should identify potential adverse impacts that could occur from unlimited numbers of GPS collared dogs being released to hunt different species of mammals, within the same hunting party, and/or cumulatively with other mammal hound hunting activities, or training activities in close proximity or adjacent areas. If no hound hunting “registration” or records are required from houndsmen who release dogs, and therefore if the LA has no way to document the numbers of released mammal hunting/training dogs, then at the very least, the LA must study GPS collared hound/dog impacts on wildlife in light of the very real possibility that the use of GPS collars will create impacts from those additional dog releases that must be analyzed. The LA should consider a condition of the GPS collar reg amendment to require more detailed hound registration, release, reporting, and monitoring records.

3b. California, along with nine other states (all located in the deep South), are the only states on the U.S. mainland that allow deer hound hunting. Therefore, the LA needs to analyze the potential wide array of adverse impacts from increases of out-of-state and/or foreign hound hunters (when guides are hired or dogs are “rented”) in order to use GPS collars when hound hunting deer. If the data indicates an increase in hound hunting by out-of-state hound hunters, adverse impacts must be analyzed.

4a. If the LA cannot determine the number of GPS collared dogs being released to hunt mammals or for training purposes due to a lack of records, then it should immediately take steps to obtain the data on an annual basis, implement required hound-use registration and reporting protocol for all dogs used in mammal hunting or in training. Such records will allow data to be gathered and studies to be conducted (or provide the data for others to pursue such research) to ascertain the actual numbers of released trained and untrained dogs (see suggested minimal requirements in Mitigation Measures, section F).

4b. Because dog impacts to wildlife is so well documented, many areas with known wildlife populations or seasonal migratory species, will not allow any dogs—on leash, trained, or otherwise. The LA needs to analyze (a) how many additional untrained dogs may be freely released in wildlife habitat solely because of a reliance on GPS collars; and (b) the potential impacts that such releases of freely roaming, untrained dogs will create, including but not limited to spreading of diseases, mauling/injuring/killing both targeted and non-targeted wildlife, domestic pets, etc.

5a. The LA should determine the adverse impacts to targeted and non-targeted wildlife if/when hounders using GPS collars are not required, or are unable, to remain, in either control of their dog(s) or in close proximity to them. Related, the LA should identify and define what constitutes “in control” of hounds for compliance of CA FG Code 3008. When hounds are ranging 2 to 5, or more, miles from the hounders or handlers, the LA must conduct a realistic analysis of exactly what level of control is present or absent. In FGC testimony (April 14, 2016), hounders admitted noncompliance with the law, with statements such as “...can’t keep up with them like I used to....” Or “I’m disabled, on oxygen 24/7, with GPS collars it will make it a lot easier for me....” The LA needs to analyze how many citations have been issued over the years for violation of Code 3008 when such testimony validates that such violations may be rampant.

5b. The LA needs to examine the likelihood and subsequent impacts that GPS collars may create by being an incentive to release untrained dogs that will not be controllable and will range many miles. Information should include (a) How dogs with GPS collars that range miles from the hounder or handler are able to avoid altercations with targeted/non-targeted wildlife; (b) how such dogs will be retrieved if/when they have ranged miles into inaccessible, rugged, remote or roadless areas or are trespassing on properties where they are not welcome. Again, this analysis must be in light of the dogs being miles from the hounder/handlers.

In public testimony, hounders claimed the use of GPS collars will allow for “timely intervention.” The LA must analyze the veracity of such claims and determine how “timely intervention” can ever be realistically accomplished under the conditions described above—dogs ranging many miles away, in rough terrain, roadless, etc. Related to the above, (c) the LA needs to address how GPS collar use will exacerbate impacts of serious or lethal injuries to dogs when immediate intervention or dog retrieval is impossible in rough, thick brush-laden landscapes with no passable roadways.

One of primary arguments used in favor of dropping the ban on GPS collars was “dog safety and welfare,” specifically when immediate intervention is required and can mean the difference between serious injuries or death—such as altercations or mauling/attacks from other wildlife apex predators or other dog packs. Please analyze and identify how GPS collars will or can facilitate rapid physical movement of hounder/handlers to travel miles over remote, rugged or roadless terrain to intervene when seconds count. Please assess the lack of care and responsibility of any dog owner to release a dog and allow hi/her to become not only out of range for control but also to become exposed to such known risks.

A similar argument was made regarding intervention to stop hound trespassing (risk of being shot for harassing livestock) or crossing roadways (possibilities of being hit by vehicles). Please analyze and identify how GPS collars will or can facilitate rapid physical movement of hounder/handlers to travel miles in minutes or seconds needed to catch/control dogs that may be trespassing or on roadways. If hounds cross roads and trespass on to private property, please identify how hounders can physically intervene in timely manners, especially with livestock/pasture fencing where their vehicles cannot proceed.

6. Because of the known impacts that dogs have on wildlife, many areas ban dogs altogether to prevent disruptions of vulnerable wildlife—including but not limited to, stress, abandonment of young, etc. With GPS collars, there is a common sense likelihood that increased

numbers of both trained and non-trained dogs will be released to free roam and may enter public or private wildlife-protected areas. The LA should assess impacts to targeted and non-targeted wildlife of the anticipated increased numbers of free roaming GPS collared dogs that will encroach into such protected refuge-type areas where dogs are banned. In addition to the increased releases of dog impacts, the likelihood of intrusions of greater numbers of hounders into wildlife refuge areas and resultant impacts (disturbances) should be analyzed as well.

7. The LA must identify and assess the ease and vulnerability for GPS coordinates to be shared with others outside the hound hunting party and/or to be hacked. Most hounders, along with consumptives and non-consumptives, are opposed to poaching. Yet, GPS collars will facilitate the very poaching activities that they abhor and the laws were enacted to prohibit, such as hound hunting of bear/bobcat.

For example, if a bear/bobcat is accidentally treed by hounds in training or while deer-hounding, the GPS coordinates may be either intentionally called/texted or otherwise communicated to bear/bobcat hunters in the area, or, the coordinates may be obtained via hacking the GPS collar system. While such GPS hacking is known to have occurred on wildlife preserves, the LA needs to assess potential impacts from hacking GPS collars and/or creating loopholes to find treed animals, remove hounds from the scenes, and allow treed animals to be shot.

Since deer and pigs do not climb trees, the most obvious reason to allow tip switches is to know whether the dogs have treed an animal(s)—which is exactly what poachers are looking for.

D. Identify and Analyze “Fair Chase” and “Ethical Hunting” concepts as they apply to GPS collar use.

The LA needs to examine Fair Chase and Ethical Hunting concepts that GPS collars will compromise. The already mind-boggling array of technological gadgets has eroded and diminished adherence to Fair Chase and Ethical hunting. With the use of electronic communication devices (2-way radios, cell phones, etc.) to guide hunters to game, artificial lighting, electronic light intensifying devices (night vision optics), sights with built-in electronic range-finding capabilities (including pinpoint laser scopes and “smart rifles”), drones/unmanned aerial vehicles (UAVs), thermal imaging equipment, electronic game calls, scent attractants, trail cameras/timers/motion tracking devices that transmit images and other information to the hunter, etc., it follows that any semblance of fair chase or ethical hunting is unrecognizable from bygone eras and is creating an ever-growing negative image of hunters as far as the general public is concerned. The desire to kill, especially for a “trophy,” has trumped respected hunting practices as defined in Boone and Crockett Club’s hunting ethics.

The LA should examine the degree to which GPS collars will both exacerbate and be perceived as unfair chase and unethical hunting and will further increase public disdain of hound hunting and spill over into other wildlife killing practices.

The LA should (1) confirm that every other state in the United States mainland, except for nine in the Deep South, have banned deer hound hunting; (2) examine the reasons for 39 states having banned deer-hound hunting; (3) assess the impacts from “deer-drive” hunting opportunities that GPS collars easily create. As one example: GPS collared hounds begin the deer chase from one end of a deer-drive area. As the pursuit directions change, hounders relay GPS coordinates to the “stands”—hunters waiting at other end of the deer-drive area for the deer in order for them to re-locate accordingly and shoot exhausted deer as they emerge. The LA should study deer drives with GPS collars in the context of “fair chase” and hunting ethics and recommend that they be declared illegal in California.

E. Identify, Clarify, and Correct Misleading information.

At FGC meeting discussions regarding the GPS collar issue, statements in staff reports and public comments have been misleading and/or blatantly incorrect. Of particular concern were statements included in a “Memorandum” to the FGC Executive Director from CDFW Director, referred to as a “briefing paper” (aka “briefing document”) contained in the FGC staff report for the April 26, 2017, meeting.

The memo clearly states that the briefing paper is “just additional information” and is not intended to be a substitute for an environmental document. However, during the discussions, there was an inference that the briefing paper was, or could be, part of the CEQA review process. With our understanding of the CEQA process, because some of what was contained in the memo and briefing paper was incorrect and unsupported by any environmental review, that therefore it does not suffice as being part of the CEQA process. In a number of written comments and public testimonies, the FGC was informed of such discrepancies and false information; yet it still appeared in the April 26 staff report. We urge the LA to address any erroneous or misleading statements that were generated from the meeting or posted materials related to the following:

1. The LA should identify the reasons for implementing the prohibition on the use of treeing switches and GPS collars in 1994 and evaluate the worthiness of those reasons to keep the prohibition in place for all these years.

2. The LA should clarify the reasons for dropping Sec 265(d) by listening to the WRC meeting in 2015 and subsequent FGC meetings to ascertain actual reasons for their recommendations to drop the Sec 265(d) prohibitions. Unless we missed a FGC meeting discussion, we submit that reasons for dropping Section 265 were never stated as “to simplify and make more understandable the regulations in questions.” Nor were there ever any discussions about Sec 265(d)—the ban— being “unnecessary.”

From our April 13, 2017, letter: The legislative regulatory changes were adopted to protect bears, bobcats, and mountain lions from the ravages of hound hunting advantages, which GPS collars will simply exacerbate and provide a loophole to enforcement of those very regulations. Instead of “appeared to have rendered the prohibitions...largely unnecessary...,” the GPS collar prohibition is even more necessary now to ensure compliance with the regulations. In none of the WRC discussion was an “unnecessary” argument ever suggested. To the contrary, early on our arguments pointed out that because hound hunting is banned for bears and bobcats that climb trees, that treeing switches must be banned both for enforcement purposes, misuse or abuse, and to deter the increase of treed bear/bobcat poaching opportunities. The briefing paper moves from the purpose of treeing switches into GPS collar attributes (lost dogs, trespass enforcement), and does not present compelling arguments to support the allowance of treeing switches.

We urge the LA to either debunk those and other erroneous statements in the briefing paper and/or analyze the actual meeting proceedings, documents, and contexts where those statements were claimed to have been made.

3. The LA needs to clarify exactly how many dogs may be allowed in a deer or other permitted species hunt, especially in a hunting party and/or training sessions. As stated previously, the “one dog per hunter” creates a misleading, innocuous image, but omitted is the number of hunters and/or others who may be training or NOT hunting (carrying no firearms) who may also bring dogs into wildlife habitat and can increase the dog “pack” to a substantial and unacceptable number. Additionally, the LA must evaluate the impacts of “three dogs per hunter” to pursue wild pigs when a hunting party contains 4, 5, or 6 hunters—18 dogs will create significant impacts to all wildlife and habitat. What are the cumulative impacts when one hound-hunting party sweeps a specific wildlife habitat on one day, a different party the next, and so on for every day in a row for an entire hunting season?

4. The LA needs to address the erroneous statement that GPS collars (deer and pigs) would allow the hunter to find crippled game more efficiently. Assuming hounders curtail shooting when the dogs are upon the targeted wildlife, then it follows that “crippled” game refers to animals crippled by an errant attempt to kill (wounding via firearm discharge) when the dogs are being held a safe distance away. The dogs would not be released until AFTER the shot is taken. Bow hunters often do not track wounded deer immediately. If “crippled” game means releasing dogs to find any game “crippled” by means other than injuries inflicted by the hunting party, then this is a disingenuous use of GPS and will create more mayhem and mauling of crippled animals when “found” by hounds. Unless the handler/hunter is closely following the dogs, and has them under control, which is less likely with GPS collars, the LA should examine “crippled game” claims, especially since tracking a blood trail would create less disruption to wildlife if dogs were leashed or tethered—as is required in at least one other state.

5. Related to what has been stated multiple times and must be addressed: (1) Since a stated reason for allowing GPS collars is dog safety and welfare, then the LA needs to verify that is a regulatory mandate of the FGC. (2) Dog safety includes keeping them under control and staying with them. Locating lost dogs is not dependent on GPS collars. The LA must evaluate the multitude of alternatives to locate dogs, lost or otherwise and analyze reduced risks for lost dogs when using reliable alternatives to GPS collars, including, but not limited to microchipping, recall/training certification before releasing, handler certification, and requiring tethers/leads/leashes for dogs that are not trained or certified. (3) The current law requires dogs to be “under control.” The LA should study dog retrieval, safety, welfare, etc., if that one regulation was followed and enforced, and report on the subsequent likelihood of few-to-no lost dogs without GPS collars.

6. The LA should refute the briefing paper’s unsubstantiated statement that suggests GPS tracking will be an aid to enforcement for tracking trespass (“...by using data from the dog’s GPS collar as evidence...during hunter trespass investigations”). Unless a property owner observes and reports trespassing, it is unlikely that any action will be taken. If a trespassing complaint is made to CDFW, in addition to valuable wildlife officers’ time involved in searching GPS points on a track, wading through old track logs, and possibly requiring “probable cause,” this most often becomes a civil matter or a local law enforcement issue. If a Search Warrant is required, it is reasonable and foreseeable to conclude that the cost to CDFW will prohibit such an investigation, will result in an infraction, or, most likely, no charges will be filed (no prosecution will ensue).

Another most misleading statement made to exalt the use of GPS collars on dogs is the claim of gathering GPS collar data as evidence for code enforcement. At its April 14, 2016, meeting, the FGC may have been unduly influenced by a hounder’s erroneous information and exaggerated claims that GPS collars would be an enforcement tool in that it would leave a trail—a breadcrumb trail of all the waypoints of the poacher. As stated in our oral testimony at a FGC Tele Conference meeting (April 18, 2017, Agenda item 7, public comment), it is a well-known fact that because GPS tracking device records can be deleted (units turned off, factory resets for permanent deletion, etc.) if/when a poacher does not want tracking data saved. This renders the GPS dog tracking collar useless for trespassing or poaching waypoint discovery, or any other type of investigation.

As a part of the CEQA functional equivalent analysis, the LA should report on how many hound-hunting trespassing or poaching complaints have been investigated by CDFW wildlife officers over the years. The final prosecutorial disposition of each of those cases should be analyzed to support or negate the GPS collar trespassing or poaching waypoint evidence claims.

7. The LA should validate the following questionable or erroneous statement from the briefing paper: “Since the Fish and Game Commission banned the use of dogs for pursuing big-

game species except for deer (during the general season only) and wild pigs, dogs fitted with GPS collars would be **used primarily to find wounded animals.**”

The use of dogs fitted with GPS collars would not and are not used **primarily** to “find wounded animals.” GPS dog collars are used primarily to hunt and pursue mammals—with deer chased to exhaustion—or other game for the hunter to take (aka “kill”). If GPS collar-fitted dogs were primarily used to **find wounded animals**, then it follows that hunters would seldom release any dogs until they had discharged their firearms. Only then would they know if they had a clean kill or a wounded animal that needed to be blood-trail tracked. The LA needs to verify as accurate or not this statement from the briefing paper. As alluded to before: If the primary use of GPS collars is to find wounded animals, then there is no need for them to roam freely and tethering or leashes should be required for that activity to reduce impacts to other wildlife.

8. The LA should clarify potentially misleading information and validate the intent of the briefing paper in light of statements made by Counsel at the April 26, 2017 meeting:

[The staff report—aka, “briefing paper”] “...provided a general background document that analyzed the potential effects related to the breadth of effects that could be contemplated in a CEQA analysis. Strictly speaking since it was looking at the various forms of the regulation, it wasn’t necessarily a CEQA document, but you could think of it almost like an Initial Study...”

The innuendo or potential take-home message to the FGC and public was that the staff’s briefing paper (“effects that **could be** contemplated” [emphasis added] and considered “almost like an Initial Study”) was to give it undo and undeserved credibility as a legitimate CEQA document. We strongly disagree for reasons which include:

The briefing paper was neither a CEQA analysis nor did it come close to complying with CEQA as an Initial Study. Rather, the briefing paper was an opinion-driven document with unacceptable, incorrect information. We submit that to the degree that the FGC’s votes relied on incorrect statements, that the need for a true, impartial, and accurate analysis is even more apparent and critical. If the LA includes any aspects of the briefing paper in the environmental analysis, it must verify all as to accuracy.

Another statement was made to the effect that “That background document [briefing paper] essentially didn’t find any connection to the impacts, any potential impacts, related to this potential regulation which is just changing the GPS collars and the treeing switches, and the staff summary points that out. And so as this is currently proposed, this would be relying on a common sense exemption for CEQA, which is concluding that there is no potential impacts.”

This statement may be accurate if it solely referred to reinstating the ban on GPS collars. However, because the motion to ban GPS collars was followed by motions to both delay ban implementation, and to go to notice to allow GPS collars, it may have mislead the FGC and the public. In referring to the delay in implementation and going to notice to allow GPS collars, the briefing paper gave an impression that the LA was not required to analyze any data for “connection to impacts.” Testimonies and written comments presented many legitimate arguments of the impacts, supported by studies that identified numerous impacts which would occur with GPS collars, both in motions to delay implementation and to go to notice to allow them. As public trust agencies, (1) the LA must be precise and clear, especially with all the twists and turns this issue has taken, along with misleading and erroneous statements. CEQA requires good faith efforts to respond to potential impacts via genuine, impartial, in-depth analysis. The LA needs to adhere to the mandates of CEQA, take heed of both facts and studies that have been submitted by the public, and without prejudice examine any and all potential impacts of the GPS collar proposal.

F. Analyze Alternatives and Mitigation Measures to eliminate the need for GPS collars.

Under CEQA, a project may not be approved as submitted if feasible alternatives or mitigation measures (MM) are able to substantially lessen the significant environmental effects of the project. The LA should examine the following MM and/or alternatives to determine if benefits outweigh the negative impacts of GPS collars, and therefore keep them banned.

1. Dogs released in wildlife habitat must be CDFW registered, micro chipped, local jurisdiction licensed, fully vaccinated, and certified as having met specific obedience standards for compliance with codes and regulations related to "...[dogs] must be under control at all times." Houndsmen (hounders), handlers, trainers, etc., must be certified to meet dog handling standards.

2. As a further condition for the use of GPS collars, in addition to hounder certification, the LA should analyze the benefits of requiring hound-hunting permits with stipulations that all the above-mentioned MM conditions be met before any dog may be released in wildlife habitat. In addition, the posting of surety bonds should be required for proof of dog retrieval. For example, if four dogs meet the registration requirements and are GPS collar eligible, then when the hound hunting season is over, those four registered dogs must be positively identified and accounted for. Otherwise, the bond is forfeited to the LA to reimburse costs to Animal Control agencies, rescue nonprofits that care for and rehabilitate hounds that are never retrieved, wildlife care nonprofits that incur expenses in caring for wildlife with dog- or hound-induced mauling injuries, and CDFW for administration expenses.

3. The LA should examine other state's banning of GPS collar use and their requirements for hounds to be tethered/leashed whenever they are tracking.

4. The LA should assess an additional requirement with the use of GPS collars: No hound hunting or training shall occur within 50 miles of any wildlife refuge or sanctuary, public or private, or within 50 miles of any known wildlife (all species) migratory route areas, with possibly broader buffers from migratory routes of listed species.

5. The LA should analyze and compare of releasing GPS collared dogs (to chase wildlife) to life wildlife "coursing," most of which is illegal in CA.

Thank you for reading this far and considering our views,



Marilyn Jasper, Chair

Cc Mike Yuan, Acting Executive Director
 Director Bonham, CDFW

FGC

From: Kathy lynch <lynch@lynchlobby.com>
Sent: Friday, September 22, 2017 11:36 AM
To: FGC
Cc: Kathy Lynch
Subject: Comment Letter on Repeal of Regulations Prohibiting Treeing Switches and GPS Collars for Dogs -- California Sportsman's Lobby
Attachments: CSL to FGC_Dogs__9-19-17.doc

Attached please find a comment letter on Repeal of Regulations Prohibiting Treeing Switches and GPS Collars for Dogs from the California Sportsman's Lobby (CSL) for the FGC meeting on October 11-12. Thank you.

Lynch & Associates
1127 11th Street, Suite 610
Sacramento, CA 95814
Tel: (916) 443-0202
Fax: (916) 443-7353
Cell: (916) 838-6600
E-Mail: lynch@lynchlobby.com



The California
Sportsman's Lobby, Inc.

September 22, 2017

VIA E-Mail

Ms. Valerie Termini, Executive Director
Fish and Game Commissioners
California Fish and Game Commission
1416 Ninth Street, Room 1320
Sacramento, CA 95814

Re: Comments on Repeal of Regulations Prohibiting Treeing Switches and GPS Collars for Dogs (Item 7, Fish and Game Commission October 11-12, 2017 Meeting Agenda)

Dear Ms. Termini and Commissioners:

The California Sportsman's Lobby is a nonprofit organization of sportsman's clubs and individuals dedicated to preserving outdoor recreation in California. Our principal activities are to monitor legislation that might negatively impact hunting, fishing and other recreation, and to oppose unwise changes in the laws relating to these activities.

The California Sportsman's Lobby (CSL) promotes the conservation, enhancement, scientific management, and wise use of all our natural resources; CSL seeks an end of activities needlessly destructive to natural resources; CSL endeavors to educate and encourage the public generally, and the youth specifically, to an understanding of the advantages and importance of the conservation, enhancement, and wise use of all our natural resources; and CSL works to secure more and better outdoor opportunities for all citizens, regardless of race, creed, or color as essential to the physical and spiritual well being of all the people.

This is to notify you of the support of the California Sportsmen's Lobby (CSL) for the repeal of regulations that currently prohibit the use of treeing switches and Global Positioning System (GPS) collars for dogs while hunting mammals.

The **Informative Digest/Policy Statement Overview** published by the commission in its [Notice of Proposed Changes in Regulations](#) notes that dogs are now used for hunting wild pigs and deer, not for hunting bear and bobcats, thus making the prohibition on treeing switches unnecessary. Allowing the use of GPS collars on dogs will also help in finding downed game and recovering dogs that are lost.

CSL supports the repeal of the ban on treeing switches and GPS dog collars as proposed by the commission. The banning of treeing switches is now pointless and allowing the use of GPS collars while hunting is both humane and consistent with good wildlife management practices.

Sincerely,

Randy Walker
President, California Sportsman's Lobby

cc: California Sportsman's Lobby

FGC

From: Kathy lynch <lynch@lynchlobby.com>
Sent: Friday, September 22, 2017 11:39 AM
To: FGC
Cc: Kathy Lynch
Subject: Comment Letter on Repeal of Regulations Prohibiting Treeing Switches and GPS Collars for Dogs -- Outdoor Sportsmen's Coalition of California
Attachments: OSCC to FGC_Dogs_9-19-17.docx

Attached please find a comment letter on Repeal of Regulations Prohibiting Treeing Switches and GPS Collars for Dogs from the [Outdoor Sportsmen's Coalition of California \(OSCC\)](#) for the FGC meeting on October 11-12. Thank you.

Lynch & Associates
1127 11th Street, Suite 610
Sacramento, CA 95814
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Cell: (916) 838-6600
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Dedicated to Preserving Your Rights To Hunt and Fish In the State of California

September 22, 2017

VIA E-Mail

Ms. Valerie Termini, Executive Director
Fish and Game Commissioners
California Fish and Game Commission
1416 Ninth Street, Room 1320
Sacramento, CA 95814

Re: Comments on Repeal of Regulations Prohibiting Treeing Switches and GPS Collars for Dogs (Item 7, Fish and Game Commission October 11-12, 2017 Meeting Agenda)

Dear Ms. Termini and Commissioners:

The Outdoor Sportsmen's Coalition of California is a nonprofit organization of sportsman's clubs and individuals dedicated to preserving outdoor recreation in California. Our principal activities are to monitor legislation that might negatively impact hunting, fishing and other recreation, and to oppose unwise changes in laws and regulations relating to these activities.

The Outdoor Sportsmen's Coalition of California (OSCC) promotes the conservation enhancement, scientific management, and wise use of all our natural resources; OSCC seeks to end activities needlessly destructive to natural resources; OSCC endeavors to educate and encourage the public generally, and the youth specifically, to an understanding of the advantages and importance of the conservation and enhancement of our natural resources.

OSCC works to enhance outdoor opportunities for all citizens. With several thousand members located throughout California, we stay in contact with our membership via newsletters and the internet so they can be involved as they see fit.

This is to notify you of the support of the Outdoor Sportsmen's Coalition of California (OSCC) for the proposed repeal of regulations which prohibit the use of treeing switches and Global Positioning System (GPS) collars for dogs while hunting mammals.

As the commission stated in its [*Informative Digest/Policy Statement Overview*](#) for this proposed repeal, dogs are now used for hunting wild pigs and deer (no longer for bear and bobcats), thus making the prohibition on treeing switches unnecessary since these mammals do not climb trees. Allowing the use of GPS dog collars will also improve a hunter's ability to find and recover downed game and lost dogs.

For the above reasons, OSCC supports the adoption of the proposed regulations by the commission. The banning of treeing switches is unnecessary and allowing the use of GPS collars while hunting is both humane and consistent with good wildlife management practices.

Sincerely,

A handwritten signature in black ink, appearing to read 'Keith Ringgenberg', with a large, stylized loop at the end.

Keith Ringgenberg
President, Outdoor Sportsmen's Coalition

cc: Outdoor Sportsmen's Coalition of California

FGC

From: Kathy lynch <lynch@lynchlobby.com>
Sent: Friday, September 22, 2017 11:59 AM
To: FGC
Cc: Kathy Lynch
Subject: Comment Letter on Repeal of Regulations Prohibiting Treeing Switches and GPS Collars for Dogs -- SCI CA Coalition
Attachments: SCI Letter to FGC_Dogs_9-19-17.docx

Attached please find a comment letter on Repeal of Regulations Prohibiting Treeing Switches and GPS Collars for Dogs from the [SCI CA Coalition](#) for the FGC meeting on October 11-12. Thank you.

Lynch & Associates
1127 11th Street, Suite 610
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Safari Club International

A NON-PROFIT ORGANIZATION • DEDICATED TO CONSERVING WILDLIFE AND PRESERVING HUNTING



SCI CA Coalition

September 22, 2017

VIA E-Mail

Ms. Valerie Termini, Executive Director
Fish and Game Commissioners
California Fish and Game Commission
1416 Ninth Street, Room 1320
Sacramento, CA 95814

Re: Comments on Repeal of Regulations Prohibiting Treeing Switches and GPS Collars for Dogs (Item 7, Fish and Game Commission October 11-12, 2017 Meeting Agenda)

Dear Ms. Termini and Commissioners:

This is to notify you of the support of the SCI CA Coalition (SCI) for the proposed repeal of regulations previously adopted by the commission which prohibit the use of treeing switches and Global Positioning System (GPS) collars for dogs while hunting mammals.

There is no scientific or other credible wildlife management reason to continue to ban the use of them.

As the commission has correctly pointed out in its [*Informative Digest/Policy Statement Overview*](#) for this proposal, the use of dogs to take game mammals is currently limited to wild pigs and deer, thus making the prohibition on treeing switches unnecessary as these species do not climb trees. Permitting the use of GPS dog collars will improve a hunter's ability to find and retrieve downed game and lost dogs.

GPS collars are a valuable and humane aid in the recovery of missing dogs which, if not found, can wonder for days and travel several miles. Without such collars, these dogs may unnecessarily suffer or even perish before they can be recovered.

Accordingly, SCI supports the adoption of the proposed regulations by the commission. The banning of treeing switches is no longer relevant to its original intended purpose, and allowing the use of GPS collars while hunting is both humane and consistent with good wildlife management practices.

Sincerely,

Lisa C. McNamee
Co-Legislative Coordinator
SCI CA Coalition

Don Giottonini
Co-Legislative Coordinator
SCI CA Coalition

cc: SCI CA Coalition

Memorandum

2017 MAY 26 AM 11:26

Date: May 18, 2017

To: Valerie Termini
Executive Director
Fish and Game Commission

From: Charlton H. Bonham
Director



Subject: **Agenda Item for the June 21-22, 2017, Fish and Game Commission Meeting
Request for Notice Authorization to Add Section 42, Title 14, California Code of
Regulations (CCR), and Amend sections 43, 651 and 703, Title 14, CCR, RE:
Commercial Use and Possession of Native Rattlesnakes for Biomedical and
Therapeutic Purposes**

Attached, please find the Initial Statement of Reasons to add Section 42 and subsection (a)(2) of Section 703 to Title 14, CCR and to amend subsection (c) of Section 43 and subsection (a) of Section 651, Title 14, CCR.

The Fish and Game Commission (Commission) received a petition in 2015 (Petition No. 2015-004) to amend existing regulations or adopt new regulations that would allow for the commercial use of native rattlesnakes to develop antivenom, vaccines, and other therapeutic agents. The Commission approved the petition request at its February 11, 2016 meeting in Sacramento and forwarded it to the Department of Fish and Wildlife (Department) for evaluation.

Department staff met with the petitioners during 2016 to gather additional information. The petitioners had initially proposed using "nuisance" snakes collected by rattlesnake removal businesses for this purpose, as well as raising the possession limit on native rattlesnakes for aversion trainers. However, those proposals would have required additional public outreach and scoping of affected businesses that would have greatly delayed the development of the new regulations. Therefore, with the petitioners' consent, the Department narrowed the scope of the regulatory proposal to address only commercialized use of native rattlesnakes for venom extraction in conjunction with research and development of biomedical and therapeutic agents. In addition, the Department added propagation of native rattlesnakes at the request of the petitioners.

The Commission has the statutory authority to adopt regulations for the commercial use of native reptiles pursuant to Fish and Game Code Section 5061. The current regulatory proposal would authorize limited commercial use of native rattlesnakes for the purposes of developing biomedical and therapeutic products that will benefit humans and domestic animals.

Valerie Termini, Executive Director
Fish and Game Commission
May 18, 2017
Page 2

It establishes a new Commercial Native Rattlesnake Permit Application (Form DFW 1044) and a new Commercial Native Rattlesnake Record (Form DFW 1044A) issued by the Department.

If you have any questions regarding this item, please contact T.O. Smith, Chief, Wildlife Branch, by telephone at (916) 445-3555 or by e-mail at Timothy.Smith@wildlife.ca.gov. The public notice should identify Laura Patterson, Senior Environmental Scientist in the Nongame Wildlife Program, as the Department's point of contact for this rulemaking. Ms. Patterson can be reached at (916) 341-6981 or by e-mail at Laura.Patterson@wildlife.ca.gov.

Attachments

ec: Stafford Lehr, Deputy Director
Wildlife and Fisheries Division
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STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

Add Section 42 and subsection (a)(2) of Section 703, and
Amend subsection (c) of Section 43 and subsection (a) of Section 651,
Title 14, California Code of Regulations
Re: Commercial Use and Possession of Native Rattlesnakes
for Biomedical and Therapeutic Purposes

- I. Date of Initial Statement of Reasons: April 12, 2017
- II. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: June 21, 2017
Location: Smith River
 - (b) Discussion and Adoption Hearing: Date: October 11, 2017
Location: Atascadero
- III. Description of Regulatory Action:
 - (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

The Fish and Game Commission (Commission) received a petition in 2015 to amend existing regulations or adopt new regulations that would allow for the commercial use of native rattlesnakes to develop antivenom, vaccines, and other therapeutic agents. The Commission approved the petition request at its February 11, 2016 meeting in Sacramento and forwarded it to the Department of Fish and Wildlife (Department) for evaluation.

Department staff met with the petitioners during 2016 to gather additional information. The petitioners had initially proposed using “nuisance” snakes collected by rattlesnake removal businesses for this purpose, as well as raising the possession limit on native rattlesnakes for aversion trainers. However, those proposals would have required additional public outreach and scoping of affected businesses that would have greatly delayed the development of the new regulations. Therefore, with the petitioners’ consent, the Department narrowed the scope of the regulatory proposal to address only commercialized use of native rattlesnakes for venom extraction in conjunction with research and development of biomedical and therapeutic agents. In addition, the Department added propagation of native rattlesnakes at the request of the petitioners.

The Commission has the statutory authority to adopt regulations for the commercial use of native reptiles pursuant to Fish and Game Code Section 5061. Currently, there are only two authorized commercial activities in California: captive propagation and sale of three species of snakes, which is allowed under Section 43, and wild collection and sale of native reptiles by Biological Supply Houses, which is allowed under Section 651.

According to the California Poison Control System, over 300 rattlesnake bites are reported in the state each year. According to the National Institutes of Health, approximately 7,000-8,000 people receive venomous bites in the United States and about 5 people die. While exact numbers are unavailable, it has been estimated that well over 100,000 domesticated animals are bitten annually in the United States by venomous snakes, sometimes resulting in death. Rattlesnake bites are known to cause serious tissue, muscle, liver, and neurological damage. The composition of rattlesnake venom differs by species, and in some cases by location within the species. For example, Southern Pacific Rattlesnake (*Crotalus oreganus helleri*) venom has unique properties that differ across its range. Antivenom and vaccines that are derived from different species of rattlesnakes than the species that inflicted the bite are less effective, and sometimes not effective at all, in treatment of the bite. The currently available rattlesnake vaccine for domestic animals is derived from Western Diamondback Rattlesnake (*Crotalus atrox*) venom. A study in the American Journal of Veterinary Medicine (Cates et al. 2015) found this vaccine improved survival rate and survival time after envenomation from Western Diamondback Rattlesnakes. However, while it may offer some limited protection against Northern Pacific Rattlesnake (*Crotalus oreganus oreganus*) venom, it did not provide significant protection against Southern Pacific Rattlesnake venom.

Amendments to existing commercially authorized activities pursuant to Sections 43 and 651 are impractical. Section 43 pertains to the production of captive born reptiles for the purpose of selling them in the pet trade and has no application to the commercialization of rattlesnake venom or products derived from venom. Section 651 is restricted to the sale of native reptiles and amphibians collected from the wild to scientific and educational institutions by owners of biological supply houses that have been issued a permit from the Department. Therefore, to advance public and domestic animal health and safety, a new regulation is being proposed (Section 42) to address the need for regionally specific antivenom, vaccines, and other venom-derived therapeutic agents, that are effective against the bites from native rattlesnakes and provide other biomedical benefits. This new regulation would authorize commercial development of these products by California businesses under a permit issued by the Department.

Existing Regulations

The text of Section 42 was repealed in January 2002, but the title and note are still listed in Title 14, California Code of Regulations (CCR). Section 43 contains

regulations for the captive propagation of native reptiles and sale of three species of native snakes for the pet trade. Section 651 regulations specify the wild collection and sale of native reptiles by Biological Supply Houses.

Proposed Regulations

The proposed new Section 42 regulation will allow California businesses to develop and sell regionally specific antivenom, vaccines, and other therapeutic agents derived from native rattlesnake venom. These products would benefit livestock, pet, and eventually, human health. The new permit will allow:

1. Businesses to maintain live native rattlesnake species for the purposes of venom extraction and the development and sale of therapeutic products derived from native rattlesnake venom, or
2. Businesses to develop and sell therapeutic products derived from commercially obtained native rattlesnake venom.

In addition, it is necessary to make minor amendments to sections 43, 651, and 703 to provide consistency and clarity with the proposed Section 42.

Section 42

Subsection (a) of Section 42 details the activities allowed under a commercial native rattlesnake permit issued by the Department. This subsection is necessary to provide the context for the purpose of the regulation and to specify the activities that would be authorized under a permit issued pursuant to the regulation.

Subsection (b) of Section 42 specifies that this regulation does not supersede any other federal, state, or local laws regulating or prohibiting possession of native rattlesnakes or the activities authorized under a commercial native rattlesnake permit. This subsection is necessary to ensure consistency with other laws and to clarify that this regulation does not supplant existing or future restrictions on the possession and use of native rattlesnakes by other jurisdictions.

Subsection (c) of Section 42 lists the species of native rattlesnakes that may be used under this regulation. This subsection is necessary to make it explicit that all currently recognized species of native rattlesnakes, their subspecies and taxonomic successors, are allowed to be used for the purposes of this regulation with the exception of the Red Diamond Rattlesnake (*Crotalus ruber*), which is a California Species of Special Concern.

Subsection (d) of Section 42 specifies requirements for the permit application, fees associated with the application, duration of permit, and qualification requirements. The proposed regulation establishes a new Commercial Native

Rattlesnake Application (Form DFW 1044 (New 4/2017)), which is incorporated by reference herein. A separate permit is proposed for each facility housing native rattlesnake species or creating products from venom extracted from native rattlesnake species. The qualification requirements differ depending on whether the applicant plans to house live native rattlesnakes in their facility as follows:

1. If the applicant proposes to house live native rattlesnake species for the purposes of developing therapeutic products from venom, minimum experience and animal husbandry qualifications are proposed. A resume demonstrating a minimum of 1,000 hours experience with captive husbandry of snakes and 200 hours working directly with captive rattlesnakes or other venomous snakes within five years of the date of application is required. The Department believes these are the minimum amounts of time necessary for individuals to obtain the skills needed to competently, and safely handle native rattlesnakes. In addition, an original, signed letter of reference is required as documentation that the experience requirements have been met. A statement of purpose for maintaining native rattlesnakes and a Written Emergency Action Plan are also required. Proof of minimum age (18 years) is also required.
2. If the applicant proposes only to develop therapeutic products from venom, the animal husbandry and Emergency Action Plan requirements no longer apply. A resume and an original, signed letter of reference documenting the applicant's experience are required. A statement of purpose for the planned use of the venom and proof of minimum age (18 years) are also required.

This subsection is necessary to establish the permitting system under which the activities will be authorized and to inform potential applicants of the application process, minimum qualifications, and fees involved in obtaining and maintaining a permit issued pursuant to this section. The information required in DFW 1044 is consistent with the information required in Form DFW 391b. Personal and business information is necessary for the Department to be able to contact the applicant and to undertake inspections of the facilities. The number of each species of native rattlesnake and how they were acquired are necessary to determine if the proposed plan for commercial use is consistent with the terms of Section 42. Fees were calculated based on presumed staff time necessary to undertake application review, renewal, and issuance, as well as facility inspections. Minimum qualifications for working with native rattlesnakes or their venom are consistent with subsection 671.1(c)(1).

Subsection (e) of Section 42 describes the general conditions associated with possessing a permit pursuant to this Section, including agreeing to random inspections, ability to transfer or exchange rattlesnakes among permittees, prohibition of release into the wild, and conditions under which applications will be denied or permits will be revoked. The prohibitions and requirements in this subsection are consistent with existing prohibitions and requirements in subsections 40(e), 43(a) and 43(k). This subsection is necessary to inform

potential applicants of the terms and conditions associated with possessing a permit pursuant to this section.

Subsection (f) of Section 42 describes the humane care and treatment that permittees must provide to native rattlesnakes possessed under this regulation. This subsection specifies requirements for enclosure size, substrate, and cleanliness; appropriate food and water; pest control; and observation and handling. This subsection will align the new regulations with the existing requirements in subsection 43(g). This subsection is necessary to ensure native rattlesnakes are properly cared for, reducing suffering and the need to collect from wild populations. This subsection is also necessary to inform applicants of the minimum care and treatment standards required to obtain and maintain a permit pursuant to this regulation and for consistency with the requirements of subsection 43(g).

Subsection (g) of Section 42 describes the requirement for each facility to maintain an Emergency Action Plan and the minimum contents of that plan in the event a bite, escape, or emergency evacuation. The requirements in this subsection are similar to those in subsection 671.1(c)(3)(I). This subsection is necessary because permitted facilities may be housing large numbers of venomous snakes which may result in a public health and safety issue. The Emergency Action Plan will prepare the permittee and its employees in responses to accidental escapes and bites and ensure appropriate equipment is stored on site. It will also ensure appropriate agencies are notified in a timely manner of an escape or any serious injury or death of a person bitten by a native rattlesnake possessed under a commercial native rattlesnake permit.

Subsection (h) of Section 42 describes the records a permittee must maintain while operating under a permit pursuant to this section and the duration the records must be kept and made available to the Department. The requirements in this subsection are consistent with existing reporting requirements in subsections 43(h) and 43(i). This subsection is necessary to ensure that the permittee is complying with the terms of the permit and regulation. The proposed regulation establishes a new Commercial Native Rattlesnake Record (Form DFW 1044A (New 4/2017)), which is incorporated by reference herein. The information required in DFW 1044A is similar to the information required Forms DFW 391c, 391d, 391e.

Subsection (i) of Section 42 describes the annual reporting requirements under the regulation. This subsection is necessary to inform applicants that the records maintained under subsection (h) must be submitted to the Department on an annual basis.

Subsection (j) of Section 42 describes the terms of shipping live native rattlesnakes under the authority of this regulation and clarifies that this regulation

does not supersede any federal, state, local, or shipping entity's rules regarding shipment of live rattlesnakes. This subsection is necessary to ensure proper notification to postal workers, documentation to law enforcement that the native rattlesnakes are being shipped legally under the authority of this regulation, and to ensure this regulation does not conflict with any other jurisdiction's rules or regulations regarding shipping native rattlesnakes.

Subsection (c) of Section 43

Subsection (c) of Section 43 restricts the sale, possession, transportation, importation, exportation, and propagation of native reptiles for commercial purposes to subsection 40(f) and the regulations contained within Section 43. To ensure consistency with the new regulations, this subsection needs to be amended to allow an exception for entities permitted through Section 42.

Subsection (a) of Section 651

Subsection (a) of Section 651 limits the sale of native reptiles and amphibians to scientific or educational institutions to biological supply houses that operate under a permit issued by the Department. Confusion regarding whether these institutions can also develop commercial products from the native reptiles and amphibians requires the addition of clarifying language proposed in this amendment. The proposed language explicitly states that persons who hold a valid commercial native rattlesnake permit issued by the Department and commercial developers of biomedical or therapeutic agents shall be considered scientific and educational institutions for the purposes of this Section.

Subsection (a)(2) of Section 703

Subsection (a)(2) of Section 703 provides the forms and fees associated with the Commercial Native Rattlesnake Permit.

- (b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Section 5061, Fish and Game Code. Section 597, Penal Code. Sections 11503 and 11506, Government Code.

Reference: Sections 5060 and 5061, Fish and Game Code. Section 597, Penal Code. Sections 11503 and 11506, Government Code.

- (c) Specific Technology or Equipment Required by Regulatory Change:

None.

(d) Identification of Reports or Documents Supporting Regulation Change:

Cates, C.C., E.V. Valore, G.W. Lawson, and J.G. McCabe. 2015. Comparison of the protective effect of a commercially available western diamondback rattlesnake toxoid vaccine for dogs against envenomation of mice with western diamondback rattlesnake (*Crotalus atrox*), northern Pacific rattlesnake (*Crotalus oreganus oreganus*), and southern Pacific rattlesnake (*Crotalus oreganus helleri*) venom. American Journal of Veterinary Research 76(3):272-279.

(e) Public Discussions of Proposed Regulations Prior to Notice Publication:

No public meetings are being held prior to the notice publication. The 45-day comment period provides adequate time for review of the proposed amendments.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

The Department evaluated amending Section 43 “Captive Propagation and Commercialization of Native Reptiles” to include native rattlesnakes in subsection (c). This alternative was rejected due to the desire to maintain a narrow scope on the allowable commercial use of native rattlesnakes in the new regulation (i.e., solely for the development and sale of therapeutic products). Because the original purpose of Section 43 was to authorize propagation of select species for the pet trade, it is necessary to keep commercial use of native rattlesnakes in a separate section to avoid confusion and the unintended creation of a commercial market for native rattlesnakes.

(b) No Change Alternative:

Under the no change alternative, no commercial production of antivenom, vaccines, or other biomedical and therapeutic agents derived from native rattlesnakes could legally occur in California.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the proposed regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action is not expected to have a significant effect on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. It establishes the ability for California companies to compete with out-of-state companies in the development and sale of pharmaceutical products derived from native rattlesnakes.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission does not anticipate significant impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses or the expansion of businesses in California due to the limited number of anticipated permit applications.

The Commission anticipates benefits to the health and welfare of California residents through the development of improved therapeutic agents to treat rattlesnake bites in pets and domestic livestock.

The Commission does not anticipate any non-monetary benefits to worker safety.

(c) Cost Impacts on a Representative Private Person or Business:

The Commission estimates that a representative private person or business would necessarily incur \$815 in permitting and inspection costs in the first year and \$113 in annual costs in reasonable compliance with

the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The Commission anticipates revenue to recover the Department's administrative costs from initial inspections and permit fees for the first year from each business and annual renewal fees thereafter. The proposed action will not affect any other State Agency.

- (e) Nondiscretionary Costs/Savings to Local Agencies:

None

- (f) Programs Mandated on Local Agencies or School Districts:

None.

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code:

None.

- (h) Effect on Housing Costs:

None.

VII. Economic Impact Assessment:

- (a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State:

Due to the limited number of expected applicants, the regulation has the potential to create a small number of jobs in the State. The proposed regulation should not eliminate any jobs.

- (b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State:

The regulation is expected to provide new business opportunities within the State.

- (c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State:

None.

- (d) Benefits of the Regulation to the Health and Welfare of California Residents:

Allowing for limited collection and possession of native rattlesnakes as described in Section 42 is expected to result in more effective and cheaper antivenom and vaccines as well as other therapeutic agents.

- (e) Benefits of the Regulation to Worker Safety:

None.

- (f) Benefits of the Regulation to the State's Environment:

None.

- (g) Other Benefits of the Regulation:

None.

Informative Digest/Policy Statement Overview

The Fish and Game Commission (Commission) received a petition in 2015 to amend existing regulations or adopt new regulations that would allow for the commercial use of native rattlesnakes to develop antivenom, vaccines, and other therapeutic agents. The Commission approved the petition request at its February 11, 2016 meeting in Sacramento and forwarded it to the Department of Fish and Wildlife (Department) for evaluation. Department staff met with the petitioners during 2016 to gather additional information. The petitioners had initially proposed using “nuisance” snakes collected by rattlesnake removal businesses for this purpose, as well as raising the possession limit on native rattlesnakes for aversion trainers. However, those proposals would have required additional public outreach and scoping of affected businesses that would have greatly delayed the development of the new regulations. Therefore, with the petitioners’ consent, the Department narrowed the scope of the regulatory proposal to address only commercialized use of native rattlesnakes for venom extraction in conjunction with research and development of biomedical and therapeutic agents. In addition, the Department added propagation of native rattlesnakes at the request of the petitioners.

The Commission has the statutory authority to adopt regulations for the commercial use of native reptiles pursuant to Fish and Game Code Section 5061. Currently, there are only two authorized commercial activities in California: captive propagation and sale of three species of snakes, which is allowed under Section 43, and wild collection and sale of native reptiles by Biological Supply Houses, which is allowed under Section 651.

Venom from rattlesnakes differs by species, and in some cases by location within the species. For example, Southern Pacific Rattlesnake (*Crotalus oreganus helleri*) venom has unique properties that differ across its range. Antivenom and vaccines that are derived from different species of rattlesnakes than the species that inflicted the bite are less effective, and sometimes not effective at all, in treatment of the bite. Currently, the only way antivenom, vaccines, and therapeutic agents can be derived from native rattlesnakes in California is through non-commercial research and development through a valid Scientific Collecting Permit pursuant to Section 650. However, Biological Supply Houses can collect native rattlesnakes and sell them to out-of-state scientific and educational facilities that develop and sell these products.

Existing Regulations

The text of Section 42 was repealed in January 2002, but the title and note are still listed in Title 14, Code of Regulations (CCR). Section 43 contains regulations for the captive propagation of native reptiles and sale of three species of native snakes. Section 651 regulations specify the wild collection and sale of native reptiles by Biological Supply Houses.

Proposed Regulations

The proposed Section 42 regulation will allow California businesses to develop and sell regionally specific antivenom, vaccines, and therapeutic agents derived from native

rattlesnake venom that would benefit human, pet, and livestock health. The new permit is structured to allow for:

1. Businesses which seek to maintain live native rattlesnake species for venom extraction and develop and sell therapeutic products from the native rattlesnake venom, or
2. Businesses which only intend to develop and sell therapeutic products from the native rattlesnake venom.

In addition, it is necessary to make minor amendments to Sections 43, 651, and 703 to provide consistency and clarity with the proposed Section 42.

Subsection (a) of Section 42 details the activities that the activities that allowed with a commercial native rattlesnake permit issued by the Department.

Subsection (b) of Section 42 specifies that this regulation does not supersede any other federal, state, or local laws regulating or prohibiting possession of native rattlesnakes or the activities authorized under a commercial native rattlesnake permit.

Subsection (c) of Section 42 lists the species of native rattlesnakes that may be used under this regulation.

Subsection (d) of Section 42 specifies regulations for the permit application, fees, duration of permit, and qualification requirements, such as minimum qualifications, letter of reference, statement of purpose, an emergency action plan, an initial inspection and minimum age. A separate permit is proposed for each facility housing native rattlesnake species or creating products from venom extracted from native rattlesnake species. The proposed regulation establishes a new Commercial Native Rattlesnake Application (Form DFW 1044 (New 4/2017)), which is incorporated by reference herein.

Subsection (e) of Section 42 describes the general conditions associated with possessing a permit pursuant to this section, including agreeing to random inspections, ability to transfer or exchange rattlesnakes among permittees, prohibition of release into the wild, and conditions under which applications will be denied or permits will be revoked.

Subsection (f) of Section 42 describes the humane care and treatment that permittees must provide to native rattlesnakes possessed under this regulation. It includes requirements on enclosure size, substrate, and cleanliness; appropriate food and water; pest control; and observation and handling.

Subsection (g) of Section 42 describes the requirement for each facility to maintain an Emergency Action Plan and the minimum contents of that plan in the event of a bite, escape, or emergency evacuation.

Subsection (h) of Section 42 describes the records a permittee must maintain while operating under a permit pursuant to this section and the duration the records must be kept and made available to the department. The proposed regulation establishes a new Commercial Native Rattlesnake Record (Form DFW 1044A (New 4/2017)), which is incorporated by reference herein.

Subsection (i) of Section 42 describes the annual reporting requirements under the regulation.

Subsection (j) of Section 42 describes the terms of shipping live native rattlesnakes under the authority of this regulation and clarifies that this regulation does not supersede any federal, state, local, or shipping entity's rules regarding shipment of live rattlesnakes.

Subsection (c) of Section 43 restricts the sale, possession, transportation, importation, exportation, and propagation of native reptiles for commercial purposes except as provided in subsection 40(f) and the species identified within Section 43. To ensure consistency with the new regulation, this amendment adds an exception for entities permitted through Section 42.

Subsection (a) of Section 651 limits the sale of native reptiles and amphibians to scientific or educational institutions to biological supply houses that operate under a permit issued by the Department. This proposed amendment states that persons who hold a valid commercial native rattlesnake permit issued by the department and commercial developers of biomedical or therapeutic agents shall be considered scientific and educational institutions for the purposes of this section.

Subsection (a)(2) of Section 703 specifies the forms and fees associated with the Commercial Native Rattlesnake Permit.

Benefits of the regulations

Allowing for limited collection and possession of native rattlesnakes as described in Section 42 is expected to result in more effective and cheaper antivenom and vaccines as well as other therapeutic agents.

Consistency with State and Federal Regulations

Article IV, section 20 of the State Constitution specifies that the Legislature may delegate to the Fish and Game Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to regulate commercial take of native reptiles (Fish & Game Code, §5061). The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Commission has searched the California Code of Regulations and finds no other state agency regulations pertaining to native rattlesnakes. Further, the Commission has determined that the proposed regulations are neither incompatible nor

inconsistent with existing federal regulations.

Regulatory Language

Add Section 42, to Title 14, CCR:

Section 42. ~~Protected Reptiles~~ Commercial Use and Possession of Native Rattlesnakes for Biomedical and Therapeutic Purposes.

(a) Except as otherwise provided in these regulations, it shall be unlawful for persons without a valid commercial native rattlesnake permit issued by the department to:

(1) possess, purchase, propagate, exchange, or transport native rattlesnakes for commercialized venom extraction; or

(2) sell, import, or export native rattlesnake venom or products derived from native rattlesnake venom for commercial purposes.

(b) Consistency with Federal, State, and Local Laws.

A permit issued pursuant to this section does not supersede any federal, state, or local law regulating or prohibiting native rattlesnakes or the activities authorized in a commercial native rattlesnake permit.

(c) Authorized Native Rattlesnake Species.

A commercial native rattlesnake permit may be issued pursuant to this section for the following native rattlesnake species, including their subspecies and taxonomic successors:

(1) Western diamond-backed rattlesnake (*Crotalus atrox*),

(2) Mohave rattlesnake (*Crotalus scutulatus*),

(3) Western rattlesnake (*Crotalus oreganus*),

(4) Speckled rattlesnake (*Crotalus mitchellii*),

(5) Sidewinder (*Crotalus cerastes*), and

(6) Panamint rattlesnake (*Crotalus stephensi*).

(d) Permit Application and Fees.

(1) Application form 2018 COMMERCIAL RATTLESNAKE PERMIT APPLICATION (DFW 1044 (NEW 4/2017)) for a permit shall be completed in its entirety and submitted with the permit and nonrefundable inspection fees as specified in Section 703.

Application forms are available on the department's website at www.wildlife.ca.gov.

(2) Duration of Permit. Permits issued under this section shall be valid from January 1 through December 31 each year, or if issued after the beginning of that term, for the remainder thereof. Applications for renewal must be received by the department no later than November 1.

(3) Permitted facilities. A person shall obtain a separate commercial native rattlesnake permit for each facility housing native rattlesnake species or creating products from venom extracted from native rattlesnake species described in subsection (c) for purposes described in subsection (a).

(4) Qualifications. The following information and documents shall accompany an application for each new permit or renewal unless specified as exempt or as specifically required:

(A) For an application that proposes housing live native rattlesnake species and will develop products derived from venom extracted from native rattlesnake species:

1. A resume that provides the dates and description of an applicant's or their employee's experience working with venomous snakes and husbandry of captive snakes, demonstrating the following qualifications:
 - a. Possess a minimum of 1000 hours experience with captive husbandry of snakes within five (5) years of the date of application; and
 - b. Possess a minimum of 200 hours of experience working with captive rattlesnakes or other venomous snakes within five (5) years of the date of application.
2. A letter of reference from an expert in venomous snake captive husbandry and research, dated within five (5) years of the date of application, on letterhead stationery with an original signature signed in ink by the owner or operator of a facility where the applicant or their employee gained his/her experience. The letter shall provide the printed name of the owner or operator and detailed information regarding the quality and extent of the applicant's or their employee's knowledge and experience related to the permit requested.
3. A statement of purpose describing in detail the planned uses for the species.
4. A written Emergency Action Plan as specified in subsection (g).
5. An initial inspection is required for new permits prior to the permit being issued.
6. Proof that the applicant is at least 18 years of age at the time of application.

(B) For an application that does not propose housing live native rattlesnakes and will only develop products derived from venom extracted from native rattlesnake species:

1. A resume that provides the dates and description of an applicant's or their employee's experience researching and creating products from venom extracted from rattlesnake species.
2. A letter of reference from an expert in venomous snake research, dated within five (5) years of the date of application, on letterhead stationery with an original signature signed in ink by the owner or operator of a facility where the applicant or their employee gained his/her experience. The letter shall provide the printed name of the owner or operator and detailed information regarding the quality and extent of the applicant's or their employee's knowledge and experience related to the permit requested
3. A statement of purpose describing in detail the planned uses for the venom.
4. Proof that the applicant is at least 18 years of age at the time of application.

(e) General Conditions.

(1) Inspections. The department may enter the facilities of any permittee where native rattlesnakes are housed, or reasonably may be housed, at any reasonable hour to inspect the animals and their enclosures and to inspect, audit or copy records required by this section.

(A) The department may deny the issuance of, or immediately suspend, the permit of a permittee who refuses to allow inspection of a facility, permit, book, or other record required to be kept by the permittee. A refusal to allow inspection may be inferred if, after reasonable attempts by the department, the permittee does not make the facility, permit, book, or other record available for inspection. The department may reinstate a

permit suspended pursuant to this subsection if the permittee allows the department to inspect the facility, permit, book, or other record.

(2) Native rattlesnakes possessed pursuant to this section may be transferred to or exchanged with a person with a valid commercial native rattlesnake permit. The receiving permittee may be charged only to recover actual transportation and shipping costs.

(3) Native rattlesnakes which have been in captivity, including wild-caught and captive-bred individuals or offspring, shall not be released into the wild.

(4) Denial. The department shall deny a commercial native rattlesnake permit initial application or renewal application for any applicant who fails to comply with any provision in this regulation, and may deny an initial application or renewal application for any applicant who violates the Fish and Game Code, Title 14 regulations, any term or condition of a commercial native rattlesnake permit, or any other state or federal statute or regulation pertaining to wildlife or animal cruelty. Within 30 calendar days of a denial, an applicant may submit a written request for a hearing before the commission to show cause why his/her permit should be issued.

(5) Revocation. Any permit issued pursuant to these regulations may be suspended or revoked at any time by the department as described below.

(A) For a permittee who has been convicted in a court of competent jurisdiction of violating the Fish and Game Code, Title 14 regulations, or any other state or federal statute or regulation pertaining to wildlife or animal cruelty, the suspension or revocation shall take effect when the permittee receives a notice of suspension or revocation. The permittee may submit a written request to the commission for a hearing to show cause why his/her permit should be reinstated.

(B) For a permittee who has violated the Fish and Game Code, Title 14 regulations, any term or condition of a commercial native rattlesnake permit, or any other state or federal statute or regulation pertaining to wildlife or animal cruelty, but has not been convicted of any such violation, the suspension or revocation shall not take effect unless 15 calendar days have passed from the date the permittee receives an accusation sent pursuant to Government Code Section 11503, and the permittee has not submitted to the commission a notice of defense described in Government Code Section 11506. If a permittee submits a timely notice of defense, the suspension or revocation shall take effect if, after a commission hearing, the commission finds by a preponderance of evidence that the department's suspension or revocation is warranted.

(f) Humane Care and Treatment. Permitted facilities that house live native rattlesnakes shall comply with the following provisions:

(1) Enclosures. The perimeter of the enclosure for snakes 33 inches in length or less shall be 1.5 times the length of the snake. The perimeter of the enclosure for snakes more than 33 inches in length shall be 1.25 times the length of the snake. The perimeter shall be measured on the inside of the top edge of the enclosure. Snakes may be kept in smaller cages or containers for 31 calendar days from the date of birth or hatching and while being transported. All enclosures shall be adequately ventilated. The substrate shall facilitate the ability to maintain a clean and healthy environment for each animal.

(2) Food. Food shall be wholesome, palatable and free from contamination and shall be

supplied in sufficient quantity and nutritive value to maintain the animal in good health.

(3) Water. Potable water shall be accessible to the animals at all times or provided as often as necessary for the health and comfort of the animal. All water receptacles shall be clean and sanitary.

(4) Cleaning of enclosures. Excrement shall be removed from enclosures as often as necessary to maintain animals in a healthy condition.

(5) Disinfection of enclosures. All enclosures shall be disinfected after an animal with an infectious or transmissible disease is removed from an enclosure.

(6) Pest control. Programs of disease prevention and parasite control, euthanasia and adequate veterinary care shall be established and maintained by the permittee.

(7) Observation. Animals shall be observed at least twice a week by the permittee or once a week if the animals are in hibernation. Sick, diseased, stressed, or injured animals shall be provided with care consistent with standards and procedures used by veterinarians or humanely destroyed.

(8) Handling. Animals shall be handled carefully so as not to cause unnecessary discomfort, behavioral stress, or physical harm to the animal.

(g) Emergency Action Plan.

(1) Every commercial native rattlesnake permittee that houses live native rattlesnakes shall have a written Emergency Action Plan readily available, posted in a conspicuous place, and shall submit a copy to the department with the initial permit and renewal application. The Emergency Action Plan shall be titled, with a revision date, updated annually and include, but is not limited to the following:

(A) List of the re-capture equipment available;

(B) Description of humane lethal dispatch methods and a list of qualified personnel who are trained to carry out the methods;

(C) List of medical supplies/first aid kits and where they are located;

(D) Description of mobile transport cages and equipment on hand;

(E) List of emergency telephone numbers that includes the local department regional office, 911, and animal control agencies; and

(F) Written plan of action for emergencies to include but not be limited to rattlesnake bites, escape of rattlesnakes, and emergency facility evacuations.

(2) Permittees are responsible for the capture, and for the costs incurred by the department related to capture or elimination of the threat, of an escaped rattlesnake or the use of humane lethal force required to capture a rattlesnake that escapes.

(3) Any incident involving a rattlesnake held under a commercial native rattlesnake permit that results in serious injury or death to a person shall be reported immediately to the nearest department regional office. If the department determines that serious injury or death has occurred as a result of contact with a rattlesnake, the permit may be reviewed and subject to change by the department. Additional conditions to the permit may be added at any time to provide for public health and safety.

(4) Permittees shall immediately report by telephone the escape of a rattlesnake possessed pursuant to this section to the nearest department regional office and the nearest law enforcement agency of the city or county in which the rattlesnake escaped.

(h) Records. As specified in Section 703 COMMERCIAL NATIVE RATTLESNAKE PERMIT RECORD DFW 1044 (NEW 4/2017)) forms are available on the department's

website at www.wildlife.ca.gov. Every permittee that houses live native rattlesnakes shall keep accurate accounting records for three (3) years from most recent issuance or renewal of the permit in which all of the following shall be recorded:

(1) The complete scientific name and number of all native rattlesnakes purchased, propagated, transferred, exchanged, died and possessed.

(2) The person from whom the native rattlesnakes were purchased, exchanged or transferred.

(3) The date that the native rattlesnakes were purchased, exchanged, transferred, propagated or died.

(4) All required records shall be legible and in the English language and maintained within the State of California.

(i) Annual Reporting Requirement. No permit shall be renewed unless the permittee submits the record specified in Section 703, on or before December 31 of each year.

The permittee must submit the record even if there is zero activity to report, or the permittee is not going to renew the permit.

(j) Shipments. All deliveries or shipments of live native rattlesnakes taken under authority of this section shall have a legible copy of the valid permit attached to the outside of the shipping container, which shall be conspicuously labeled: "Live Rattlesnakes - Handle With Care". This subsection does not supersede any federal, state, or local law or regulation or shipper's requirements concerning shipment of live rattlesnakes.

Note: Authority cited: Sections ~~200, 202, 205, 210, 219 and 220~~5061, Fish and Game Code. Penal Code 597. Government Code Sections 11503 and 11506. Reference: Sections ~~200-202, 205, 206, 210, 215, 219 and 220~~5060 and 5061, Fish and Game Code. Penal Code 597. Government Code Sections 11503 and 11506.

Subsection (c) of Section 43, Title 14, CCR, is amended to read as follows:

§ 43. Captive Propagation and Commercialization of Native Reptiles.

... No proposed changes to subsections (a) and (b)

(c) Propagation and Possession for Commercial Purposes. Native reptiles may not be sold, possessed, transported, imported, exported or propagated for commercial purposes, except as provided in ~~Section 40(f), and except~~sections 40(f) and 42 and as follows:

... No proposed changes to subsections (c)(1), (c)(2), and (d) through (k)

Note: Authority cited: Sections 200, ~~202, 205, 220, 265,~~ 5061 and 6896, Fish and Game Code. Reference: Sections 200, ~~202, 205, 220, 265,~~ 5061 and 6896, Fish and Game Code.

Subsection (a) of Section 651, Title 14, CCR, is amended to read as follows:

§ 651. Commercial Take of Native Reptiles and Amphibians for Scientific or Educational Institutions.

(a) Native reptiles and amphibians may be sold to scientific or educational institutions only by owners of biological supply houses who have been issued a permit by the department for such purposes. Persons who hold a valid commercial native rattlesnake permit pursuant to Section 42 or commercial developers of biomedical and therapeutic agents shall be considered scientific and educational institutions for the purposes of this section.

... No proposed changes to subsections (a)(1), (a)(2), (a)(3), and (b) through (i)

Note: Authority cited: Sections 1002, 5061, 6851 and 6896, Fish and Game Code.
Reference: Sections 1002, 5050, 5060, 5061, 6850, 6852, ~~6854~~ 6854, 6855, 6895 and 6896, Fish and Game Code.

Subsection (a)(2) of Section 703, Title 14, CCR is added as follows:

§ 703. Miscellaneous Applications, Tags, Seals, Licenses, Permits, and Fees.

(a) Applications, Forms and Fees for January 1 through December 31 (Calendar Year).

...No proposed changes to subsection (a)(1))

(2) Commercial Permit for Native Rattlesnakes

(A) 2018 Commercial Native Rattlesnake Permit Application, DFW 1044 (NEW 4/2017), incorporated by reference herein.

<u>1.</u>	<u>Commercial Native Rattlesnake Permit Fee (New)</u>	<u>\$ 208.50</u>
<u>2.</u>	<u>Commercial Native Rattlesnake Permit Fee (Renewal)</u>	<u>\$ 113.00</u>
<u>3.</u>	<u>Fee for one initial inspection per facility</u>	<u>\$ 606.50</u>

(B) Commercial Native Rattlesnake Permit Record, DFW 1044A (NEW 4/2017), incorporated by reference herein.

...No proposed changes to subsections (a)(3) and (b)

Note: Authority cited: Sections 713, 1002, 1050, 1053, 1745, 2118, 2120, 2122, 2150, ~~2150.2 and 2157~~, 2157 and 5060, Fish and Game Code. Reference: Sections 395, 396, 398, 713, 1050, 1053, 1745, 2116, 2116.5, 2117, 2118, 2120, 2125, 2150, 2150.2, 2150.4, 2151, 2157, 2190, 2193, 2271, 3005.5, 3007, 3503, 3503.5, 3511, 3513, 3950, 5060, 5061, 10500, 12000 and 12002, Fish and Game Code; and Title 50, Code of Federal Regulations, Parts 21.29 and 21.30.

Comparison of the protective effect of a commercially available western diamondback rattlesnake toxoid vaccine for dogs against envenomation of mice with western diamondback rattlesnake (*Crotalus atrox*), northern Pacific rattlesnake (*Crotalus oreganus oreganus*), and southern Pacific rattlesnake (*Crotalus oreganus helleri*) venom

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OBJECTIVE

To evaluate effectiveness of a commercially available toxoid manufactured from western diamondback (WD) rattlesnake (*Crotalus atrox*) venom against envenomation of mice with WD, northern Pacific (NP) rattlesnake (*Crotalus oreganus oreganus*), and southern Pacific (SP) rattlesnake (*Crotalus oreganus helleri*) venom.

ANIMALS

90 specific pathogen-free female mice.

PROCEDURES

Mice were allocated into 3 cohorts (30 mice/cohort). Mice received SC injections of *C atrox* toxoid (CAT) vaccine (n = 15/group) or adjuvant (15/group) at day 0 and again at 4 weeks. At 8 weeks, mice were challenge-exposed with 1 of 3 venoms. Survival until 48 hours was evaluated by use of log-rank analysis of survival curves and the z test for proportions.

RESULTS

6 of 15 WD-challenged CAT-vaccinated mice, 3 of 15 NP-challenged CAT-vaccinated mice, and 0 of 15 SP-challenged CAT-vaccinated mice survived until 48 hours. All adjuvant-only vaccinates survived ≤ 21 hours. Mean survival time of CAT vaccinates was longer than that of adjuvant-only vaccinates for all venoms (1,311 vs 368 minutes for WD, 842 vs 284 minutes for NP, and 697 vs 585 minutes for SP). Results of the z test indicated a significantly increased survival rate for vaccinates exposed to WD rattlesnake venom but not for vaccinates exposed to NP or SP rattlesnake venom. Log-rank analysis revealed a significant difference between survival curves of vaccinated versus unvaccinated mice exposed to NP but not WD or SP venom.

CONCLUSIONS AND CLINICAL RELEVANCE

CAT vaccination improved survival rate and survival time after challenge exposure with WD rattlesnake venom and may offer limited protection against NP rattlesnake venom but did not provide significant cross-protection against SP rattlesnake venom. (*Am J Vet Res* 2015;76:272–279)

In 2011, 5,700 incidents of snake envenomation in humans were reported by the American Association of Poison Control Hotlines.¹ The true number of envenomations likely is higher because reporting is not mandatory, many snakebites go unreported, some snake-bite victims do not seek treatment, and some treating physicians do not consult with a poison control center.^{2,3} Although the incidence of rattlesnake envenomation in the pet population has not been quantified, it is thought to exceed that for humans (> 150,000 bites/y by 1 estimate⁴) because of a high

rate of outdoor exposure, unreported or unnoticed incidents, and a presumed limited-threat judgment for bitten animals.^{4,5}

A conditionally licensed WD rattlesnake (*Crotalus atrox*) toxoid vaccine is available for administration to dogs and horses at risk for snakebite and is intended to aid in the reduction of morbidity and deaths attributable to rattlesnake envenomation.^{6,7} The authors are not aware of any data on evaluation of the effectiveness of the CAT vaccine in scientific journals.⁸ Manufacturer data and advertisements suggest this CAT vaccine is efficacious against bites from WD rattlesnakes and also provides cross-protection against envenomation from other rattlesnake species.^{9,a} However, analysis of snake venom reveals it to be a complex milieu of peptides and proteins, and venom from related species and subspecies of rattlesnakes can differ markedly in composition.^{10–13} A vaccine that

ABBREVIATIONS

ADE	Antibody-dependent enhancement
CAT	<i>Crotalus atrox</i> toxoid
NP	Northern Pacific
OD	Optical density
SP	Southern Pacific
WD	Western diamondback

comprises venom from a single species might provide only limited protection against envenomation by other species of rattlesnakes. In California, companion animals are not typically exposed to WD rattlesnakes because these rattlesnakes are found only in sparsely populated areas in the southeast region of the state. Rather, pets are much more likely to encounter NP rattlesnakes (*Crotalus oreganus oreganus*) and SP rattlesnakes (*Crotalus oreganus helleri*), which inhabit heavily populated and traversed regions of central and coastal California. Therefore, we hypothesized that the CAT vaccine might provide limited cross-protection against 2 important species of rattlesnakes found in California. The purpose of the study reported here was to use rattlesnake envenomation of mice to evaluate the comparative effectiveness of the CAT vaccine against the venom of WD, NP, and SP rattlesnakes.

Materials and Methods

ANIMALS

Ninety specific pathogen-free outbred female Swiss Webster mice (4 to 6 weeks old) were obtained from a commercial source. Mice were allowed to acclimate for 72 hours. Mice were housed in groups (5 mice/cage) on corn cob bedding with cotton nesting material in individually ventilated cages in an Association for Assessment and Accreditation of Laboratory Animal Care International-accredited biocontainment facility. All mice were fed standard laboratory rodent chow and provided with ad libitum access to reverse-osmosis-purified acidified water. The room was maintained at 20° to 21°C with relative humidity of 30% to 70%, 10 to 15 air changes/h, and a photoperiod of 12 hours of light to 12 hours of darkness. Use of the mice in this study was approved by the Institutional Animal Care and Use Committee of the University of California-Los Angeles.

EXPERIMENTAL PROCEDURES

A randomized, blinded, placebo-controlled study was conducted. On the basis of an a priori power analysis (power = 0.8, 0% censoring, and 50-to-50 ratio of control mice to experimental mice), the 90 mice were randomly selected by an individual unaffiliated with the study and assigned to treatment and control groups (45 mice/group). Treatment mice received an injection (0.2 mL, SC) of CAT vaccine^b at day 0 and again at 4 weeks. Control mice received an injection (0.2 mL, SC) of pharmaceutical-grade aluminum hydroxide adjuvant^c at day 0 and again at 4 weeks. Four weeks after administration of the second injection of CAT vaccine or adjuvant, mice were challenge-exposed with rattlesnake venom.

VENOM

The Society for the Study of Amphibians and Reptiles classification of the western rattlesnake (*Crotalus oreganus*) was used for the present study. The NP and SP rattlesnakes are 2 of 5 recognized subspecies of western rattlesnake, and the WD rattlesnake is a mono-

typic species with no recognized subspecies. Lyophilized WD rattlesnake venom was obtained.^d The venom was collected from WD rattlesnakes throughout the range of these rattlesnakes within the United States. Venom of NP and SP rattlesnakes was collected from various regions throughout northern and southern California¹⁴⁻¹⁶ (**Figure 1**). Samples of NP rattlesnake venom were collected at Sanger (Fresno County), Sutter Butte (Sutter County), Lake Berryessa (Napa County), Vacaville (Solano County), Johnsondale (Tulare County), and Modesto (Stanislaus County). Samples of SP rattlesnake venom were collected at Rasnow Peak, Hidden Valley, Santa Rosa Valley, Carlisle Canyon, Lake Sherwood, and Oak Park (Ventura County); Acton, Castaic, Leona Valley, Topanga Canyon, Malibu Canyon, and Griffith Park (Los Angeles County); Oak Hills, Phelan, Devil's Canyon, and Big Bear (San Bernardino County); Idyllwild-Pine Cove and Garner Valley (Riverside County); and De Luz (San Diego County). Venom samples were processed in accordance with a standardized protocol. The final lyophilized venom product contained equal parts (vol/vol) from each sample location. In preliminary experiments, the LD₅₀ was estimated for each venom on the basis of the animal-sparing up-and-down LD₅₀ testing paradigm.¹⁷⁻²⁶ Those LD₅₀ values then were used in the study as follows: WD rattlesnake venom, 2.8 mg/kg; NP rattlesnake venom, 1.7 mg/kg; and SP rattlesnake venom, 1.5 mg/kg. These LD₅₀ values are similar to those published previously.²⁷⁻³¹



Figure 1—Map of the distribution for WD rattlesnakes (*Crotalus atrox*; black-shaded area), NP rattlesnakes (*Crotalus oreganus oreganus*; light gray-shaded area), and SP rattlesnakes (*Crotalus oreganus helleri*; dark gray-shaded area) in California and locations for collection of venom samples (circles). The range of each of the rattlesnakes was obtained from previously published information.¹⁴⁻¹⁶ Notice that major metropolitan population centers are located exclusively in the ranges of NP and SP rattlesnakes.

Table 1—Summary of survival data for mice inoculated with CAT vaccine or adjuvant only at 0 and 4 weeks and challenge-exposed 4 weeks later with venom of WD rattlesnakes (*Crotalus atrox*), NP rattlesnakes (*Crotalus oreganus oreganus*), and SP rattlesnakes (*Crotalus oreganus helleri*).

Variable	WD rattlesnake venom		NP rattlesnake venom		SP rattlesnake venom	
	Vaccine	Adjuvant only	Vaccine	Adjuvant only	Vaccine	Adjuvant only
No. of mice injected with venom	15	15	15	15	15	15
No. of mice that survived to 48 h after venom injection	6	0	3	0	0	0
Survival time (min)						
Mean	1,311	368	842	284	697	585
Minimum	121	238	82	160	295	114
Maximum*	2,880	422	2,880	401	1,440	1,269
P value†						
z test for proportions		0.006		0.068		—
Log-rank analysis		0.146		0.010		0.166

*An endpoint of 2,880 min (ie, 48 hours) for survival was determined prior to the study (ie, surviving mice were euthanized at 48 hours after venom injection). Despite the fact some mice were expected to live > 48 hours after venom injection, survival time was limited in this manner to avoid effects on reported mean survival times in surviving mice and is in accordance with commonly accepted practices for survival studies.²³ †Values were significant at $P \leq 0.05$.

— = Not applicable because there were no surviving mice in either of these groups.

VENOM CHALLENGE EXPOSURE

Three cohorts (30 mice/cohort [15 treated mice and 15 control mice]) were challenge-exposed with 1 of the 3 venoms at 4 weeks after the second injection of CAT vaccine or adjuvant. Venom was administered to each mouse via IP injection at twice the calculated LD₅₀. For injection, lyophilized venom was reconstituted in sterile water to create a stock solution of 5 mg/mL, which was then diluted as needed to provide the dose for administration. Mice were closely monitored for 48 hours after venom administration.

Before venom administration, body weight and baseline core body temperature were recorded. Temperature was obtained with a 1.5-cm-long thermistor probe inserted via the rectum into the colon; temperature was recorded once per hour for up to 10 hours and thereafter as needed. An observer who was unaware of the venom administered or vaccination status of the mice assessed their condition and determined when a mouse would be euthanized. Mice were euthanized by gradual-fill CO₂ inhalation when they became nonresponsive to stimuli, were in marked respiratory distress (agonal breathing or intermittent gasping), or had a prolonged period of moribundity (severely limited response to stimuli and core body temperature < 70% of the baseline core temperature for > 2 hours). Surviving mice were euthanized 48 hours after venom administration, and a postmortem blood sample was obtained via cardiocentesis.

ANTIBODY TITERS

Blood samples were collected from the retro-orbital venous sinus of isoflurane-anesthetized mice 1 week before venom challenge exposure (ie, 3 weeks after the second injection of CAT vaccine or adjuvant) for use in determination of 2 sets of serum antibody titers. First, to verify that mice generated antibodies against the CAT vaccine, serial serum antibody titers of 3 randomly selected vaccinated mice were compared with serial serum an-

tibody titers of 3 randomly selected adjuvant-only control mice. Second, to compare specificity of antibodies generated, dilutions (1:8,000) of serum obtained from 8 randomly selected vaccinated mice were tested against each of the 3 venoms. To generate serial titers and evaluate antibody specificity, 96-well ELISA plates were coated (100 μ L/well) with reconstituted venom diluted in 0.1M carbonate buffer (1 μ g/mL). Plates were sealed with acetate and incubated overnight at 22°C. After incubation, wells were washed (PBS solution with 0.05% Tween20) and then blocked by incubating on a plate shaker for 15 minutes at 22°C. Diluted serial serum samples were then applied to wells in triplicate. Plates were incubated on a plate shaker for 30 minutes at 22°C. Wells then were washed and horseradish peroxidase-conjugated goat anti-mouse IgG was added; plates were incubated on a plate shaker for 30 minutes at 22°C. Wells were then washed, and the chromogenic substrate tetramethylbenzidine was added. After incubation on a plate shaker for 10 minutes, the reaction was stopped by the addition of 2N sulfuric acid; plates then were immediately evaluated to determine the OD at 450 nm by use of an automated ELISA reader. The OD was used as an indicator of the presence of antivenom IgG as well as for comparisons of relative reactivity between venom types and general assessment of interindividual variation.

STATISTICAL ANALYSIS

Mean survival time in minutes and Kaplan-Meier survival curves were generated for the 3 venoms and saline (0.9% NaCl) solution control samples. A z test of proportions was used to compare survival rates of vaccinated versus control mice for all venoms. Log-rank analysis was used to compare Kaplan-Meier survival curves of vaccinated versus control mice for all venoms. Multilevel, mixed-effects linear regression modeling^c was used to compare specificity of an antibody

titer of 1:8,000 for all venoms. Significance for all tests was set at $P \leq 0.05$.

Results

SURVIVAL RATE AND SURVIVAL TIME

Both survival rate and survival time were analyzed (Table 1). For mice vaccinated with CAT vaccine, 6 of 15 mice challenge-exposed with WD rattlesnake venom, 3 of 15 mice challenge-exposed with NP rattlesnake venom, and 0 of 15 mice challenge-exposed with SP rattlesnake venom were alive at 48 hours after venom injection, whereas adjuvant-only control mice survived ≤ 21 hours after injection of any of the 3 rattlesnake venoms. Mean survival time of vaccinated mice was longer than that of adjuvant-only control mice for all venoms (1,311 vs 368 minutes for WD rattlesnake venom, 842 vs 284 minutes for NP rattlesnake venom, and 697 vs 585 minutes for SP rattlesnake venom). Survival analysis for individual venom revealed that results of the z test for proportions were significant ($P = 0.01$) only for WD rattlesnake venom. Log-rank analysis of survival curves revealed significant ($P = 0.01$) differences only for NP rattlesnake venom (Figure 2). Maximum survival time was greatest for vaccinated mice, compared with survival time for adjuvant-only control mice, for all venoms. Notably, minimum survival time was greater for control mice than for vaccinated mice for both WD and NP rattlesnake venoms. This was evident on the Kaplan-Meier survival curve for WD rattlesnake venom as an initial increase in death of vaccinated mice, compared with that of control mice, at early time points (< 300 minutes after venom injection). Because of this finding, a log-rank analysis for WD rattlesnake venom that excluded early time points was conducted ($n = 7$ mice) and revealed a significant ($P = 0.004$) effect.

Student t test analysis of prestudy mean body weight and baseline core body temperature revealed that these variables did not differ significantly among any of the groups ($P = 0.08$ to 0.67 ; data not shown). No morbidity or deaths were associated with receiving the vaccine or adjuvant alone.

ANTIBODY TITERS

Antibody titers against all 3 rattlesnake venoms for the 3 vaccinated and 3 control mice were plotted (Figure 3). Dilutions tested were 1:4,000, 1:8,000, 1:16,000, 1:32,000, 1:64,000, and 1:128,000. Mice vaccinated with CAT developed measurable antibody titers against all 3 venoms, whereas mice receiving only adjuvant had no evidence of reactive serum antibodies against any venom. The OD for a 1:8,000 dilution of serum obtained from 8 additional randomly selected vaccinated mice tested against all 3 venoms was plotted (Figure 4). Comparison of OD for the various venoms suggested a decreasing reactivity as follows: the reactivity of WD rattlesnake venom was greater than that of NP rattlesnake venom, and the reactivity of NP rattlesnake venom was greater than that of SP rattlesnake venom. Analysis of a multilevel mixed-effects linear regression model with venom as

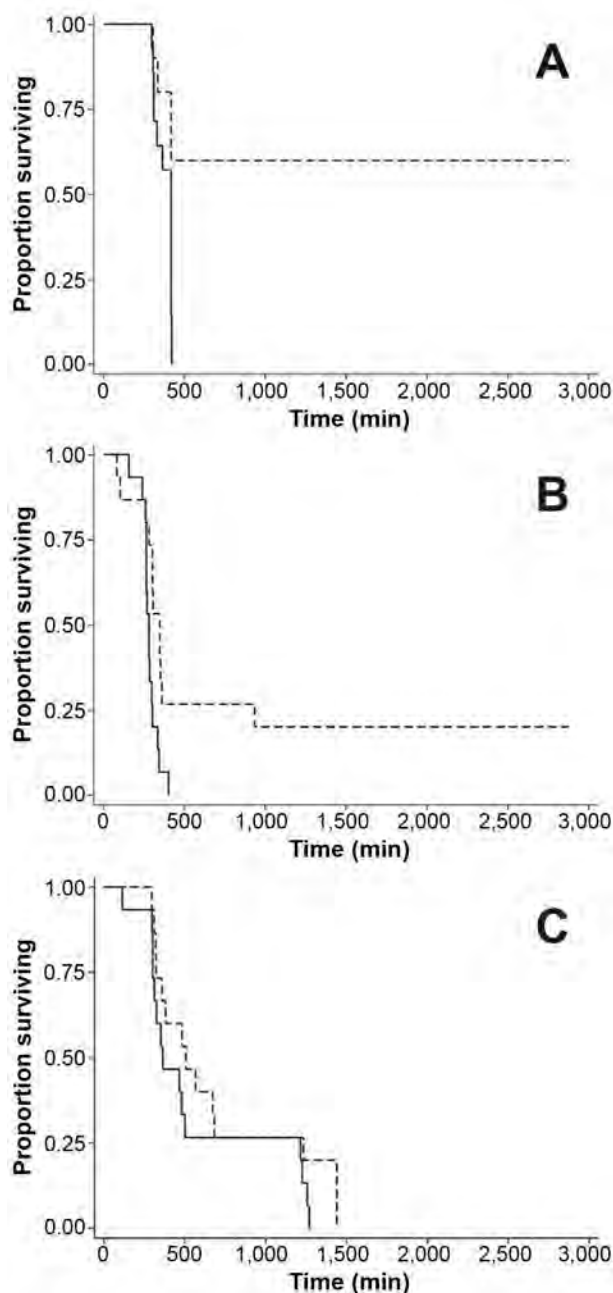


Figure 2—Kaplan-Meier survival curves for vaccinated mice (dashed lines) and adjuvant-only control mice (solid lines) after challenge exposure with WD rattlesnake venom (A), NP rattlesnake venom (B), and SP rattlesnake venom (C). There were 15 mice in each group. Time of challenge exposure (injection of venom) was designated as time 0. There was a significant ($P = 0.01$; log-rank analysis) difference in survival curves of vaccinated versus adjuvant-only mice after injection of only NP rattlesnake venom. In panel A, notice the possible early death phenomenon attributable to ADE of WD rattlesnake venom.

the sole categorical predictor revealed significant ($P \leq 0.001$) differences in OD for each venom. Interindividual variation was also evident because the majority (6/8) of the mice had titers with OD values approaching or exceeding 1.0, whereas the remainder (2/8) had OD values < 0.5 .

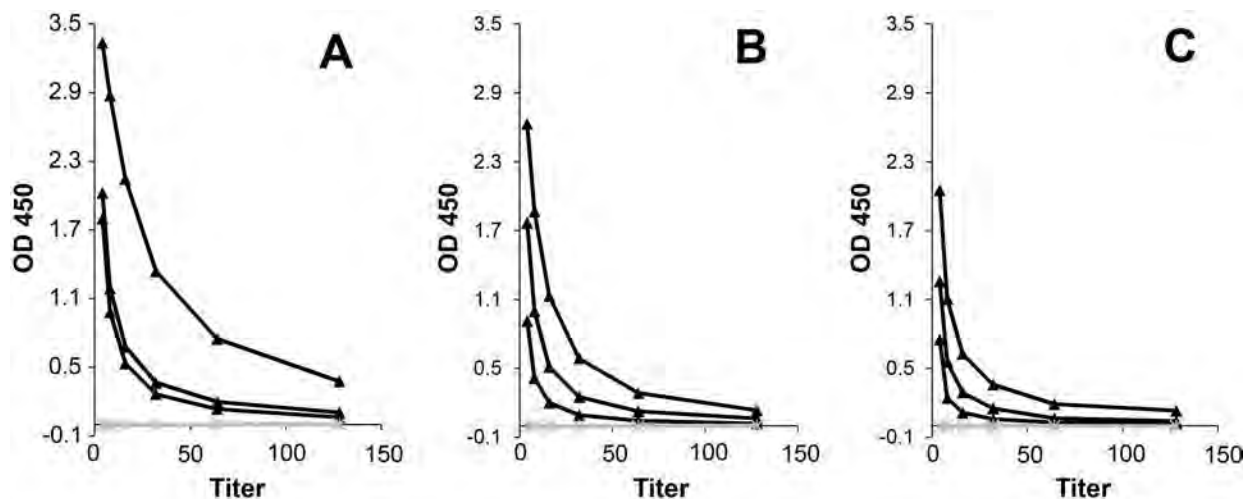


Figure 3—Serial serum dilution antibody titers for 3 vaccinated mice (black symbols) and 3 adjuvant-only control mice (gray symbols) against venom of WD rattlesnakes (A), NP rattlesnakes (B), and SP rattlesnakes (C) as determined by OD measured at 450 nm (OD 450). Each black symbol represents results for 1 mouse; the gray symbol represents results for 3 mice. Notice that the antibody response of vaccinated mice was greater than that of the control mice for all venoms. There was a pattern that specificity (ie, increased OD 450) was greater against venom of WD rattlesnakes than against venom of NP or SP rattlesnakes. The x-axis represents a dilution factor of 1:1,000. Dilutions tested were 1:4,000, 1:8,000, 1:16,000, 1:32,000, 1:64,000, and 1:128,000.

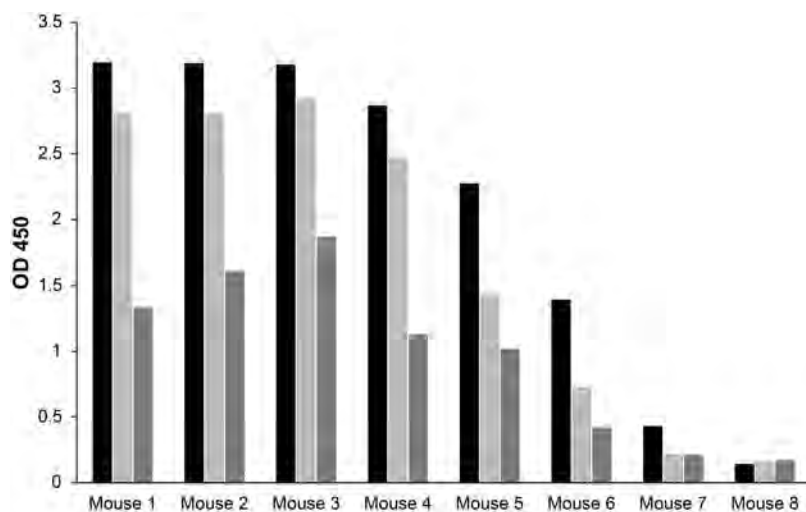


Figure 4—Single serum dilution (1:8,000) antibody titers for 8 randomly selected mice against venom of WD rattlesnakes (black bars), NP rattlesnakes (light gray bars), and SP rattlesnakes (dark gray bars). Notice the marked interindividual differences as well as differences in specificity among venoms (WD rattlesnake > NP rattlesnake > SP rattlesnakes venom). There was a significant ($P \leq 0.001$; multilevel mixed-effects linear regression) difference in OD 450 among venoms.

Discussion

In the present study, survival analysis after rattlesnake envenomation of mice was conducted in a randomized, blinded, placebo-controlled study to evaluate the comparative effectiveness of CAT vaccine against 3 rattlesnake venoms. The data reported included evaluation of survival rate (whether a mouse died ≤ 48 hours after venom injection) as well as evaluation of survival time (number of minutes a mouse survived after venom injection, up to 48 hours). Survival time is an important consideration in light of the

fact a venom vaccine may be useful if it extends the course of the envenomation, thereby allowing additional time to seek primary medical treatments such as antivenin and intensive care. In addition, antibody titers of vaccinated and adjuvant-only control mice were compared as well as specificity of the antibodies generated against each of the 3 venoms. Overall, results of the challenge-exposure experiment indicated that CAT vaccination resulted in a significant increase in survival rate and survival time against injection with WD rattlesnake venom; equivocal results after injection of NP rattlesnake venom, which would likely require a greater number of mice to verify a difference; and no significant improvement in survival measures after injection of SP rattlesnake venom. Analysis of antibody titers revealed a clearly measurable antibody response in vaccinated mice, compared with that in

adjuvant-only control mice, against all 3 venoms. The antibodies were most reactive against WD rattlesnake venom, with significantly less reactivity against venoms of the 2 other rattlesnake species.

Analysis of the data for the present study indicated that administration of CAT vaccine conferred an increase in survival rate and survival time in vaccinated versus control mice challenge-exposed with WD rattlesnake venom. Mean survival time was greater in vaccinated than in control mice, and survival rate improved significantly ($P = 0.01$; z test for proportions). Unexpectedly, results for log-rank analysis of

survival curves did not reveal significant differences. This result was particularly surprising because challenge exposure with NP rattlesnake venom had a significant effect, as determined by use of log-rank analysis, despite the fact there were only half as many survivors as for challenge exposure with WD rattlesnake venom. Notably, minimum survival time was greater for control versus vaccinated mice for both WD and NP rattlesnake venom (Table 1). This was also evident on the Kaplan-Meier survival curve for WD rattlesnake venom as an initial increase in death of vaccinated versus adjuvant-only control mice at early time points (< 300 minutes after venom injection; Figure 2). The early deaths may have sufficiently altered early time points of the curve of vaccinated mice after injection of WD rattlesnake venom such that statistical modeling resulted in a curve for vaccinated mice that was indiscernible from the curve for the control mice, despite the clear difference at later time points ($P = 0.004$ for log-rank analysis after 300 minutes). We propose that the early deaths could have been attributable to 1 factor or a combination of factors, such as genetic predisposition to venom sensitivity, injection near or into a vascular bed that hastened systemic exposure to venom, or an antibody-mediated early death phenomenon that has been observed in a laboratory setting when testing vaccines against viruses and bacterial toxins.³²⁻³⁹

Use of the vaccine may afford limited cross-protection against NP rattlesnake venom; however, the data are not entirely conclusive. Mean survival rate of vaccinated mice significantly ($P = 0.01$; log-rank analysis of survival curves) exceeded that of adjuvant-only control mice, which suggested a protective effect. However, results of the z test for proportions of survival time did not reveal significant ($P = 0.07$) differences. However, it is plausible that testing a larger population of mice may have allowed us to detect a more subtle effect by use of the z test of proportions.

The vaccine did not provide significant protection against SP rattlesnake venom, although the mice with the greatest survival time were in the vaccinated group. The CAT vaccine may have been less effective against SP rattlesnake venom because of the divergent molecular composition of that venom. For example, 1 population of SP rattlesnakes can produce Mojave toxin, a unique and powerful neurotoxin, which to date has not been found in WD or NP rattlesnake venoms.^{15,40}

In addition to survival analysis, antibody titers were measured in a number of mice to verify an antibody response against the CAT vaccine (Figure 3). Compared with control mice, vaccinated mice had a variably robust antibody response, and initial titers suggested that the antibodies were more specific for WD rattlesnake venom than for the NP or SP rattlesnake venoms. On the basis of this observation, sera from 8 randomly selected vaccinated mice were evaluated for antibody specificity against each of the 3 venoms evaluated in the study (Figure 4). Linear regression analy-

sis revealed significantly increased OD against WD rattlesnake venom, as compared with results against SP or NP rattlesnake venoms. The analysis indicated that antibodies generated by mice were most specific against the venom of manufacture (ie, WD rattlesnake venom), compared with specificity against the other 2 genetically distinct venoms. It should be emphasized that antibody titers were measured only to verify that mice generated an antibody response against the vaccine and to evaluate the specificity of that antibody response. The magnitude of the murine antibody response and how it may relate to survival of vaccinated dogs and horses (or the ability of clinicians to provide a prognosis for survival of vaccinated animals) in real-life situations were beyond the scope of the present study.

The present study had several potential confounders. First, on the basis of a previous manufacturer-designed study,^a mice in the present study were injected with a vaccine dose of 0.2 mL, which could be from 50- to 1,500-fold as high (by volume) as manufacturer-recommended doses for dogs and horses.^{6,7} Potentially, this could have resulted in a more robust antibody response and more enhanced protective benefit than typically would be afforded to companion animals. On the other hand, it should be mentioned that mice were challenge-exposed with an extremely high (twice the LD_{50}) dose of venom administered via the IP route commonly used in venom studies on mice. In most naturally occurring scenarios, companion animals receive SC or IM injection of venom, which results in slower and less immediately severe systemic effects⁴¹ than were seen in the mice of the study reported here. In light of this, findings for the present study should be considered with the caveat that, in theory, the vaccine may improve survival rate and survival time, but these improvements remain to be definitively verified in practice settings for the specific species and situations of interest. Finally, it should be mentioned that we evaluated survival rate and survival time but did not directly assess morbidity. In actual envenomations, local effects such as severe necrosis, hemorrhage, and inflammation can cause substantial morbidity, which potentially can lead to severe incapacitation and death.⁴²⁻⁴⁵ It remains to be determined whether vaccination has substantial effects to prevent or reduce important local sequelae after snake envenomation. Despite these drawbacks, there are a number of reasons investigators should use the described method of envenomation of mice, including that it is a well-accepted technique for venom analysis and antivenin evaluation, adheres to the concept of replacement in research (ie, use of mice instead of dogs or horses), and has been used in experiments conducted by the manufacturer to obtain USDA licensing for the CAT vaccine.

Data from the rattlesnake envenomation of mice reported here indicated that administration of the CAT vaccine resulted in a significant increase in survival

rate and survival time after injection of WD rattlesnake venom, equivocal results after injection of NP rattlesnake venom (possibly requiring a greater number of animals to confirm a difference), and no significant improvement in survival variables after injection of SP rattlesnake venom. Analysis of antibody titers confirmed a measurable antibody response in vaccinated versus adjuvant-only control mice and confirmed that specificity of the antibody response was significantly greater against the venom of manufacture. Overall, results of the present study suggested that vaccination with the CAT vaccine may provide limited cross-protection against NP rattlesnake venom but no significant cross-protection against SP rattlesnake venom. Future studies should include more in-depth analysis of antibody titers, testing of alternative vaccination strategies involving other venoms, and investigation into early deaths seen in some of the vaccinated mice. Such studies will be useful in validating results of the present study and providing increased insight into the real-world effectiveness of a rattlesnake venom vaccine.

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BEFORE THE FISH AND GAME COMMISSION

**Petition to List the
Cascades Frog (*Rana cascadae*)
As Endangered or Threatened Under the
California Endangered Species Act**



Photo by Tierra Curry, Center for Biological Diversity

Submitted To: California Fish and Game Commission
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Submitted By: Center for Biological Diversity

Date: March 1, 2017

EXECUTIVE SUMMARY

The Center for Biological Diversity is petitioning the California Fish and Game Commission to list the Cascades frog (*Rana cascadae*) as an endangered or threatened species under the California Endangered Species Act.

The Cascades frog is a medium sized frog that inhabits lakes, ponds, wet meadows, and streams at moderate to high elevations in the Cascades Range. In California, Cascades frogs historically ranged from the Shasta-Trinity region to the Modoc Plateau, south through the Lassen National Forest to the upper Feather River. Once considered widespread and abundant in the northern mountains of California, Cascades frogs are now extirpated from most of their former range in the state. The Cascades frog currently persists in California in mountainous areas from the Klamath-Trinity region and the Cascades Mountain axis in the vicinity of Mount Shasta, southward to the headwater tributaries of the Feather River, at altitudes from 230 to 2500 meters.

Cascades frog numbers and populations have been declining precipitously in California since about 1970. In the southern Cascades/Lassen area, Cascades frog populations have declined greatly and gone from being abundant historically to very rare. Cascades frogs have disappeared from more than 95 percent of historical localities in the Lassen area, and are still declining in this region. The species appears to be extirpated from Lassen Volcanic National Park. Despite multiple extensive surveys, only 12 remaining sites in the Lassen area support Cascades frogs, all of them with low numbers of frogs. Population viability at these sites is a concern because each of these populations is slowly declining. Half of the remaining Lassen area populations are at risk of extirpation while the others are likely to continue declining. Without active management, some of the remaining populations may disappear within 10 years and the rest will be at risk of extirpation.

In the Klamath Mountains, Cascades frogs are still widespread and relatively abundant; however, there have been some recent extirpations in this region. At most sites recently surveyed in the Klamath Mountains, frog populations have been small, and frog abundance at some previously robust Klamath populations has clearly declined. Populations in the eastern portion of the region in the Castle Crags Wilderness and the Klamath National Forest may be particularly at risk owing to low population numbers and more sites where frogs have recently disappeared.

Major threats to Cascades frogs include nonnative fish that have been introduced to formerly fishless lakes, and pathogens. Introduced trout predate upon and compete with Cascades frogs. Cascades frogs are susceptible to a particularly virulent strain of *Batrachochytrium dendrobatidis*, a fungal pathogen that causes the disease chytridiomycosis in amphibians. Remaining Cascades frog populations in California are also threatened by pesticides, climate change, fire suppression, habitat loss from vegetation management and timber harvest, livestock grazing, impacts from recreational activities, and reduced viability due to small population sizes.

NOTICE OF PETITION

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Petitioner Center for Biological Diversity formally requests that the California Fish and Game Commission list the Cascades frog (*Rana cascadae*) as an endangered species under the California Endangered Species Act ("CESA"), Fish and Game Code §§ 2050 et seq. Petitioner alternatively requests that the Commission list the Cascades frog as a threatened species under CESA. This petition sets in motion a specific administrative process as defined by Fish and Game Code §§ 2070-2079, placing mandatory response requirements on the Commission and very specific time constraints upon those responses.

Petitioner Center for Biological Diversity is a national nonprofit organization with more than 1.2 million members and online activists dedicated to the protection of endangered species and wild places, through science, policy, education, citizen activism and environmental law.

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NATURAL HISTORY AND STATUS OF CASCADES FROG

NATURAL HISTORY

Description

The Cascades frog (*Rana cascadae*) is a medium-sized member of the “true frog” family, Ranidae. Cascades frogs are brown, copper, tan, or olive green and spotted on the back with a yellowish to cream underside, dark mottling around the groin, and a cream-colored stripe extending from the jaw to the shoulders. Adult Cascades frogs grow to from 1.75 to 3 inches in length, with females being larger than males (Stebbins 2003; Nafis 2013). Cascades frog tadpoles have oval bodies with dorsal eyes, and grow to about 5 centimeters in length. Tadpoles are dark brown with copper and pinkish speckling, golden coloring on the sides and a finely speckled tail (Nafis 2013). Cascades frog eggs are black above, white below, and spaced out in a gelatinous mass (Nafis 2013).

Taxonomy

The Cascades frog is a morphologically (Slater 1939; Dunlap 1955) and genetically (Case 1976, 1978; Green 1986a, 1986b) distinct species. Published data on genetic variation within *R. cascadae* (Case 1976, 1978; Monsen and Blouin 2003, 2004) indicate some potentially significant within-species variation. Genetic evidence indicates that California’s populations of Cascades frogs differ significantly from and have been isolated from Oregon and Washington populations for approximately 2 million years (Monsen and Blouin 2003). This physical separation occurs over a known faunal break across Oregon and California’s border that causes a similar biogeographical pattern in numerous taxa (Steinhoff et al. 1983; Brown et al. 1997; Demboski and Cook 2001; Janzen et al. 2002; Monsen and Blouin 2003), including several amphibians (Daugherty et al. 1983; Good 1989; Good and Wake 1992; Howard et al. 1993; Nielson et al. 2001; Monsen and Blouin 2003). California’s Cascade frogs were most likely separated, and never experienced secondary contact, during the last glacial maximum (Monsen and Blouin 2003). This has led to a 3.2 percent difference in mtDNA loci between frog populations in California and Oregon as well as substantial divergence in the nuclear genome (Monsen and Blouin 2003).

There are two disjunct populations of Cascades frogs in California – in the southern Cascades, which comprise about 40 percent of their California range, and in the Klamath Mountains, which comprise about 60 percent (Pope et al. 2014). The exact degree of isolation between these two populations is unknown (Pope et al. 2014).

Cascades frog populations typically occur in a meta-population structure, but genetic studies indicate high degrees of isolation for some local populations in relatively small geographic scales (Monsen and Blouin 2004; Pope et al. 2014). Population exchange likely drops after a distance of just 6.2 miles (10 km) between populations (Pope et al. 2014).

Range in California

The Cascades frog, as its name suggests, is distributed along the length of the Cascades Range. Cascades frogs historically occupied moderate and high elevation (about 400–2,500 m) lentic habitats throughout the Cascade Range, from northern Washington State within 15 miles of British Columbia to the northern edge of California's Sierra Nevada (Dunlap and Storm 1951; Dunlap 1955; Dumas 1966; Bury 1973a; Hayes and Cliff 1982; Nussbaum et al. 1983; Fellers and Drost 1993; Jennings and Hayes 1994; Blaustein et al. 1995; Stebbins 2003; Pearl and Adams 2005; Pope et al. 2014).

In California, Cascades frogs historically ranged from the Shasta-Trinity region to the Modoc Plateau, south through the Lassen National Forest to the upper Feather River (Jennings and Hayes 1994). Once considered widespread and abundant in the northern mountains of California, Cascades frogs are now extirpated from most of their range in the state (Pearl and Adams 2005). In California, the Cascades frog currently occurs in mountainous areas from the Klamath-Trinity region and the Cascades Mountain axis in the vicinity of Mount Shasta southward to the headwater tributaries of the Feather River, and has a known altitudinal range from 230 to approximately 2500 m (Jennings and Hayes 1994).

Life History

Cascades frogs are long-living, late-maturing amphibians (Pope et al. 2014). Male frogs reach maturity between 3 and 4 years of age while female frogs mature between 4 and 5 years of age (Pope et al. 2014). Cascades frogs can live from 5 to 10 years (Pope et al. 2014; NatureServe 2015). These frogs are diurnal, active during the day (Stebbins 1985).

Cascades frogs breed shortly after spring snowmelt (Nussbaum et al. 1983; Stebbins 1985; Briggs 1987; Olson 1988; Garwood and Welsh 2007; Nafis 2013). Depending on the location, that could be anytime between March to mid-August (Stebbins 1985). Males appear first and form chorusing groups when melting ice and snow creates open water along the edges of water bodies (Briggs 1987; Garwood and Welsh 2007). Cascades frogs call from above or below water's surface (Stebbins 1985). Males do not defend territories, but male-male interactions may produce a regular spacing pattern in the breeding habitat (Olson 1988). Females are highly cryptic during breeding, swimming primarily underwater to breeding sites and leaving the site as soon as breeding is complete (Olson 1992).

Oviposition occurs between April and July, depending on seasonal conditions and elevation. Eggs are laid in a mass of 300-800 eggs. Egg masses are often laid communally in pond and lake habitats (Garwood et al. 2007; Garwood 2009; Pope and Larson 2010). In the southern Cascades, more than 90 percent of the egg masses found in pond habitats were clumped, whereas more than 80 percent of the egg masses found in meadow pools were singletons (Pope and Larson 2010). A small percentage of egg masses in the southern portion of the southern Cascades have been found in small, low-gradient channels with slow flow (Pope 2008b). Egg masses are usually found at the surface in shallow water with emergent vegetation, but have been found in deep water (2 m) and free-floating in lakes (Garwood et al. 2007, Pope and Larson 2010). They can also be attached to emergent vegetation, wood, boulders, or the shoreline (Pope and Larson 2010).

Length of embryonic development appears highly temperature-dependent as shown by both laboratory and field studies (Syte 1975; Olson 1988; Blouin and Brown 2000), but generally takes about 3 weeks in both the Klamath Mountains and southern Cascades (Garwood and Larson, no date). Consistently cold water conditions (2 to 10 °C), such as found in some springs, may delay hatching by a few days but eggs generally are laid in shallow open-water locations where the sun quickly warms the water surrounding the egg mass to temperatures above 13 °C that are more optimal for development. In the high-elevation habitats in California, larvae usually hatch in early to mid-July and metamorphose into frogs in September. However, some larvae do not successfully complete metamorphosis prior to the onset of winter (Garwood and Welsh 2007). No larvae have been observed to survive the winter (Garwood 2009). In the southern Cascades, larvae usually hatch in June and metamorphose in late August (Pope and Larson 2010).

Tadpoles can tolerate a wide range of water temperatures. They tend to aggregate in the warmest areas of ponds and lakes during the day (Brattstrom 1963; Wollmuth et al. 1987; Pope, no date); this generally consists of wind-protected, gently sloping, shallow near-shore areas (O'Hara 1981; Olson 1992; Welsh et al. 2006) where temperatures can warm to more than 20 °C on a sunny afternoon but drop to near freezing at night. In shallow meadow breeding pools in the southern Cascades, daytime water temperatures have been measured at 38 °C. This seems to be above their temperature tolerance as the tadpoles appeared highly stressed (Pope and Larson, no date).

Tadpoles and metamorphs are known to discriminate between kin and nonkin and preferentially associate with kin in laboratory and field experiments (Blaustein and O'Hara 1982a, 1982b, 1987; Blaustein et al. 1984; O'Hara and Blaustein 1981, 1985). Kin association can influence growth, predator avoidance, and other factors (Hokit and Blaustein 1994, 1995, 1997). Tadpoles are sensitive to visual and physical disturbances of the water and have an explosive escape response when startled (Hews and Blaustein 1985). Tadpoles occasionally become stranded at sites with short hydroperiods and desiccate as the water evaporates (Syte 1975; O'Hara 1981; Garwood 2009; Pope et al. 2011). Tadpoles will develop over 2 to 4 months depending on water temperature (Nafis 2013; Pope et al. 2014). Newly metamorphosed frogs tend to stay near their natal ponds (Garwood 2009).

Adult Cascades frogs display a high degree of site fidelity (Briggs and Storm 1970; Blaustein and Olson 1992; Olson 1992; Garwood 2009). At Deep Creek Basin in the Trinity Alps Wilderness, Garwood (2009) found that adults commonly move among unique breeding, feeding, and overwintering habitats following a consistent annual pattern. At other sites where breeding, feeding, and overwintering habitat occur at the same site, frogs may remain at the same water body throughout the year (Pope 2008a).

Survival rates of adult Cascades frogs in the Trinity Alps Wilderness were found to be between 68 and 93 percent (Pope 2008b; Pope et al. 2014).

Postmetamorphic Cascades frogs are generalist predators, primarily of aquatic and terrestrial insects and spiders (Joseph et al. 2011; Larson 2012). In the Trinity Alps Wilderness, Larson (2012) identified insects from 102 different families in the stomach contents of frogs. Only rarely were larval aquatic insects found in stomach contents, suggesting that most foraging is terrestrial or on the surface of the water (Larson 2012).

In the Klamath Mountains, five prey categories were most important in Cascades frogs diet: Acrididae (grasshoppers), Aranae (spiders), Formicidae (ants), insect larvae, and Tipulidae (crane flies) (Larson 2012).

Joseph et al. (2011) found that the diet of Cascades frogs varied in lakes with fish versus those without; in lakes with fish, the frogs ate more terrestrial insects such as grasshoppers, and in lakes without fish they ate more adult aquatic insects such as caddisflies. Joseph et al. (2011) concluded that introduced trout may influence native amphibians indirectly through competition for food resources. Although their diet primarily consists of invertebrates, Cascades frogs occasionally prey upon larvae and recently metamorphosed Pacific chorus frogs and conspecifics (Pope et al. 2014).

Habitat Requirements

Cascades frogs inhabit a range of mostly lentic aquatic habitats, including large lakes, ponds, wet meadows, and flowing streams, depending on life stage and season (Jennings and Hayes 1994; Pope et al. 2014). This frog occurs at 230-2500m of elevation – most often at elevations greater than 600m (Nafis 2013). Cascades frogs generally are closely associated with water, but can sometimes move between drainages by crossing over high mountain ridges.

Reproduction occurs in shallow, still-water habitats first to form by snowmelt early in the spring such as shallow alcoves of lakes, ponds, potholes, flooded meadows, and sometimes slow-moving streams. Adults and breeding can also sometimes occur in anthropogenic wetland habitats (Quinn et al. 2001). Eggs are laid in open shallow water or among submerged vegetation. Breeding sites must contain water long enough for egg and tadpole development, which takes about three to four months, depending on water temperature (Pope and Larson 2010; Pope et al. 2014). Tadpoles can tolerate a wide range of temperatures and tend to congregate in warmer areas of their ponds or lakes during the day (Brattstrom 1963; Wollmuth et al. 1987; Pope et al. 2014; Pope, no date); however, observed behaviors in southern Cascades pools with temperatures around 38°C or higher seem to be indicative of high stress levels and a thermal tolerance threshold (Pope et al. 2014; Pope and Larson, no date).

Newly metamorphosed frogs stay near their natal ponds (Garwood 2009). Non-breeding adult frogs occupy a wider array of aquatic habitat, often with open, sunny areas along shorelines which have basking and foraging opportunities (Brown 1977; Fellers and Drost 1993; Bury and Major 1997, 2000; Garwood 2009; Pope et al. 2011; Pope et al. 2014). In the summer months, Cascades frogs may utilize streams more often (Garwood 2009; Pope et al. 2011; Pope et al. 2014). Cascades frogs are less likely to occupy wetland sites that are farther away from lakes, and population sizes are typically smaller at such sites (Cole and North 2014). Cascades frogs maintain site fidelity, where adults will move among unique breeding, feeding and overwintering habitats following a consistent annual pattern (Garwood 2009; Pope et al. 2014).

Overwintering habitat is considered to be almost as restrictive as breeding habitat (Garwood 2009; Pope et al. 2014). Cascades frogs likely hibernate in mud at the bottom of ponds, spring-water saturated ground, and aquatic sites that do not freeze solid in the winter, such as deep ponds and springs, similar to the mountain yellow-legged frog in the Sierra Nevada (Bradford 1983; Briggs 1987; Pope et al. 2014).

Natural Mortality

Cascades frogs are susceptible to a variety of stochastic environmental events. Breeding occurs soon after thaw, so eggs can be vulnerable to late freezes (Pope and Larson 2010; Pope et al. 2014). In some ephemeral habitats that dry out during the summer, larvae may desiccate before metamorphosis (Pope et al. 2011). Tadpoles can occasionally become stranded and die when all the water evaporates from sites with short hydroperiods (Syte 1975; O'Hara 1981; Garwood 2009; Pope et al. 2011; Pope et al. 2014). Survival of juvenile and adults may also be affected by unusually long winters with heavy snowfall if the frogs do not have enough energy stored to last until the thaw (Pope et al. 2014). Briggs and Storm (1970) estimated a relatively high mortality rate for adults (about 45 percent) in the central Oregon Cascades and suggested that most adult mortality occurred during overwintering.

Natural predators of Cascades frogs include: garter snakes (Garwood and Welsh 2007; Pope et al. 2008); birds such as American dippers (Garwood and Welsh 2007), American robins (Briggs and Storm 1970) and Clark's nutcrackers (Garwood 2006); mammals such as river otters (Pope et al. 2014); other amphibians including rough-skinned newts (Peterson and Blaustein 1991); aquatic insects including diving beetles, giant water bugs, and dragonfly naiads (Peterson and Blaustein 1991; Nauman and Dettlaff 1999; Garwood and Wheeler 2007); and predatory leeches, which are potential predators of eggs and larvae (Stead and Pope 2010).

Predatory leeches such as *Haemopsis marmorata* and *Erpobdella punctata* in the Lassen region may also contribute to the decline of Cascades frogs (Stead and Pope 2010). Glossiphoniidae and Erpobdellidae leeches are known to prey on Cascades frog eggs in Oregon (Chivers et al. 2001; Stead and Pope 2010), and *H. marmorata* is known to eat tadpoles (Riggs and Ulner 1983; Stead and Pope 2010). The proliferation of leech species correlates with the dramatic declines seen in Cascades frogs in the Lassen region of California and may be the cause through direct predation, behavioral alterations which reduces fitness, displacement to less optimal habitats, and the spread of disease (Stead and Pope 2010). It is unknown which leech species are native to the Lassen region (Stead and Pope 2010).

CHANGES IN DISTRIBUTION AND ABUNDANCE

In California, surveys suggest that the Cascades frog is rare to nonexistent in most Californian portions of the historical range (Pearl and Adams 2005). Pope et al. (2014) conducted a comprehensive review on the status of Cascades frogs in California, and found that although the species remains "fairly widespread" in the Klamath Mountains it has become extremely rare in the southern Cascades. See Figure 1 below from Pope et al. (2014) showing the recent and historical distribution of the Cascades frog in California.

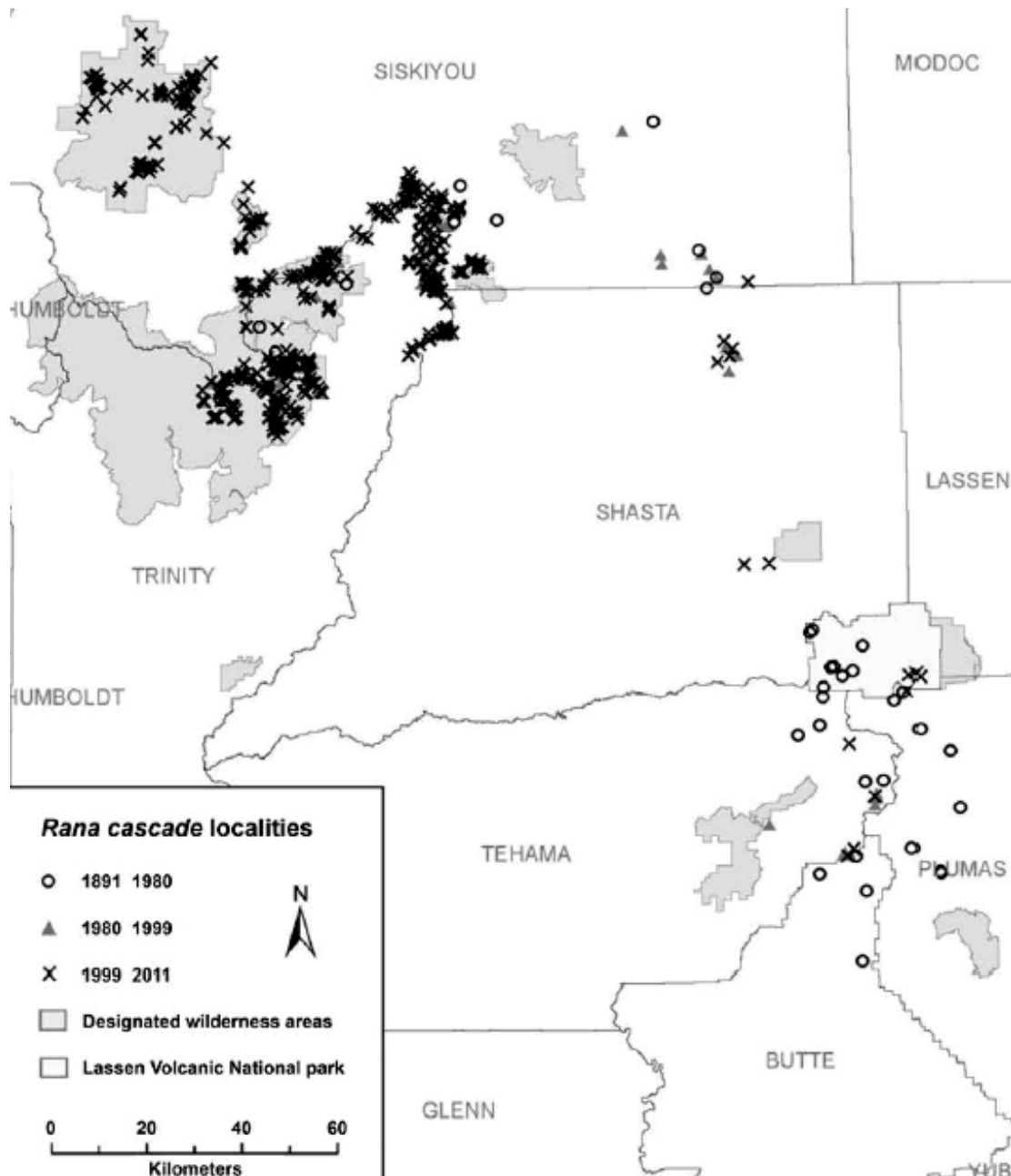


Figure 1: Recent and historical distribution of the Cascades frog (*Rana cascadae*) in California. This map contains known localities up to 2011. The sites in Trinity and Siskiyou Counties are in the Klamath Mountains and the sites in Shasta, Tehama, Butte, and Plumas Counties are in the southern Cascade Range. The southernmost grouping of points around Lassen Volcanic National Park is considered the Lassen region (from Pope et al. 2014).

Southern Cascade Range/Lassen Region

Historic accounts and museum records indicate that the frog was previously abundant in the Mount Lassen area, but have declined greatly and are now very rare (Fellers et al. 2008). For example, Borrel (1924, as cited in Pope et al. 2014) described Cascades frogs as abundant at Lake Helen; and Grinnell et al. (1930) implied that the species was abundant in 1925 at Emerald Lake, recording “one frog for nearly every meter around

the lake.” There were no surveys for Cascades frogs in the southern Cascades before 1980, but collection data indicate that they were widespread and abundant, especially in and around the Lassen Volcanic National Park and the northwestern and southern portions of Lassen National Forest, encompassing portions of the Pit River and most of the headwater tributaries of Hat, Deer, Mill, Battle, and Butte creeks, and upper North Fork and West Branch Feather River (Pope et al. 2014). Declines in these populations were not noted until the 1970s (Pope et al. 2014).

By the 1990s, surveys of Lassen Volcanic National Park sites that historically had frogs found few or no frogs. A 1991 survey located no Cascades frogs at 16 historic localities, and found that the frog occupied only 2 percent of the suitable sites surveyed (1 of 50 sites) (Fellers and Drost 1993). Jennings and Hayes (1994) estimated that the species had disappeared from about 99 percent of its historical range in the Lassen region. Davidson et al. (2002) reevaluated these data, and found that only 3 percent (1 of 32 sites) of historical Cascades frog sites (defined as pre-1990) was still occupied in the early 1990s. Since 1991, four large-scale surveys have been conducted to evaluate the occurrence of aquatic-breeding amphibians throughout the Lassen region (Fellers 1998; Koo et al. 2004; Welsch and Pope 2004; Stead et al. 2005). These data were analyzed by Fellers et al. (2008) and show that the situation has worsened significantly.

From 1993 to 2007, Fellers et al. (2008) conducted 1,873 amphibian surveys at 856 sites within Lassen Volcanic National Park and Lassen National Forest, California. These surveys encompassed all Cascades frog habitats: ponds, lakes, meadows, and streams on those lands. They found Cascades frogs at only 6 sites during 14 years of surveys, and obtained one report of a single frog at one additional locality. These occupied sites represented less than 1 percent of the historically suitable habitat within the Lassen region. Fellers et al. (2008) found no evidence of reproduction in most of the populations, and reproduction at all but one of the other sites remained lower than the annual reproductive output of one breeding pair for greater than 12 years.

Despite extensive surveys, only 12 remaining sites harboring Cascades frogs have been documented in the Lassen area since 1993, all with low numbers, ranging from 5 individuals at Colby Creek to 150 at Carter Meadow in Lassen National Forest (Pope et al. 2014). Each population was found to be slowly declining over a four year mark-recapture study (2008-2011); researchers concluded that about half are at risk of extirpation while the others are likely to continue declining (Pope et al. 2014). No remaining populations have been found in from Lassen Volcanic National Park since 2008 despite multiple resurveys of the most recent known locations and additional extensive surveys of appropriate meadow habitat (Pope et al. 2014) The species appears to be extirpated from Lassen Volcanic National Park (Pope et al. 2014), but 3 populations have been found to the south on private land and 3 populations to the north near Lassen National Forest (Pope and Larson, no date).

Klamath Mountains

In the Klamath Mountains, Cascades frogs were known from about 25 localities in and around Shasta-Trinity National Forest in the 1970s, and few populations had been recorded in Klamath National Forest (Pope et al. 2014). Available data provide no evidence for or against the decline of Cascades frogs on the Shasta-Trinity NF through the 1970s (Pope et al. 2014). Up to the mid-1990s, Cascades frogs seemed common in appropriate habitat in the Klamath Mountains (Jennings and Hayes 1994). Davidson et

al. (2002) estimated that 77 percent (20 of 26) historical Cascades frog sites (defined as pre-1990) associated with the Shasta-Trinity National Forest were still occupied in the early 1990s. Systematic surveys were carried out in wilderness areas of the Cascades frog range in the Klamath Mountains from 1999-2002. Abundance data as well as occupancy data were collected for all mapped lakes, ponds, and wet meadows in the Trinity Alps Wilderness, Russian Wilderness, Marble Mountains Wilderness, Siskiyou Wilderness, Red Buttes Wilderness, Castle Crags Wilderness, and parts of the Shasta-Trinity and Klamath National Forests outside of wilderness areas (Welsh and Pope 2004; Welsh et al. 2006). Those results are summarized below in Table 1.

Table 1: Summary of Cascades Frogs Population Data in Klamath Mountains, California (Data from Welsh and Pope 2004, cited in Pope et al. 2014, p. 15).

Wilderness Area	Occupied (%)	n (sites) =	Reproducing (%)	n (sites) =
Trinity Alps	58.7	223/380	30.5	116/380
Russian	31	17/54	5.5	3/54
Marble Mountains	32	80/250	11	28/250
Castle Crags	19	3/16	-	-
Shasta-Trinity	100	15/15	-	-

Of 380 water bodies surveyed in the Trinity Alps Wilderness by Welsh and Pope (2004), 58.7 percent (n = 223) were found to support at least one individual of any life stage of Cascades frogs. Evidence of reproduction (egg masses or larvae) was recorded at 30.5 percent (n = 116) of the sites. Approximately 250 water bodies were searched in the Marble Mountains and 54 water bodies were searched in the Russian Wilderness. Cascades frogs were recorded from 32 percent of the water bodies in the Marble Mountains (n = 80) and at 31 percent of water bodies in the Russian Wilderness (n = 17). However, evidence of reproduction (egg masses or tadpoles) was found at even fewer sites: only 11 percent of sites in the Marble Mountains (n = 28) and at only 5.5 percent of sites in the Russian Wilderness (n = 3). Cascades frogs were also detected at 3 of 16 water bodies in Castle Crags Wilderness, three sites on the Klamath National Forest outside of a wilderness area and 15 sites on the Shasta-Trinity National Forest outside of a wilderness area (Welsh and Pope 2004). No Cascades frogs were found in the Siskiyou or Red Buttes wilderness areas (Welsh and Pope 2004).

In 2008, 112 sites in the Klamath Mountains where Cascades frogs were previously found were re-surveyed, and 79 percent were found to still support frog populations (Piovia-Scott et al. 2011; Pope et al. 2014). No major declines were noted, but the abundances of some previously robust populations seemed low (Pope et al. 2014). At the majority of sites surveyed since 1999, abundances of Cascades frogs have appeared low (Welsh et al. 2006). Of 695 water bodies searched from 1999 to 2001 in the Trinity Alps, Marble Mountains, and Russian Wildernesses, the maximum number of adults seen at a water body was 32 and the mean number of adults encountered at sites with Cascades frogs was only 4 (Welsh and Pope 2004). Since then, 8 frog populations in the Trinity Alps Wilderness were studied for 9 years using mark-recapture techniques (Garwood, no date; Pope 2008a). While adult numbers were less than 25 in five of these populations, three populations appeared fairly robust. Two headwater lakes were

estimated to support more than 500 adult frogs in 2010 (Pope and Piovia-Scott, 2010). Only one other site in the Trinity Alps is thought to have comparable numbers (Pope et al. 2014).

Overall, Cascades frogs have not seen the dramatic declines in the Klamath Mountains that has been noted in the southern Cascades, but small populations and some extirpations are cause for concern (Pope et al. 2014).

Population Trends

In the southern Cascades/Lassen area, Cascades frog populations have declined greatly and gone from being abundant historically to very rare. The species appears to be extirpated from Lassen Volcanic National Park. Despite multiple extensive surveys, only 12 remaining sites in the Lassen area support Cascades frogs, all of them with low numbers of frogs. Population viability at these sites is a concern because each of these populations is slowly declining. Half of the remaining Lassen area populations are at risk of extirpation while the others are likely to continue declining. Pope et al. (2014) concluded that without active management, some of the remaining populations may disappear within 10 years and the rest will be at risk of extirpation.

In the Klamath Mountains, Cascades frogs are still widespread and fairly abundant. However, there have been some recent extirpations. At most sites recently surveyed in the Klamath Mountains, frog populations have been small and frog abundance at some previously robust populations has clearly declined. Populations in the eastern portion of the region in the Castle Crags Wilderness and the Klamath National Forest may be particularly at risk owing to low population numbers and more sites where frogs have recently disappeared.

Documented Range Contraction

Severe range contractions have been documented in the southern end of the Cascades frog's range (Fellers and Drost 1993; Jennings and Hayes 1994a). Jennings and Hayes (1994a) and Fellers and Drost (1993) estimate that Cascades frogs are extirpated from about 99 percent of their southernmost population clusters in Mount Lassen and surrounding areas, and 50 percent of their total historical distribution in California. Since that time, further range contractions have occurred (Fellers et al. 2008). The historic range of the Cascades frog might have once included much lower altitudes (Leonard et al. 1993).

THREAT FACTORS

Airborne Contaminants

Agrochemicals are a threat to Cascades frog survival, and pollution from pesticides and other agrochemicals has likely contributed to Cascades frog population declines seen in some regions (Davidson et al. 2002; Davidson 2004; Fellers et al. 2004). In California, the transport of agrochemical pollution from the Central Valley to the Sierra Nevada and southern Cascades has been well documented (Aston and Seiber 1997; Datta et al. 1998; McConnell et al. 1998; Lenoir et al. 1999; Davidson et al. 2002; Davidson 2004; Hageman et al. 2006; Bradford et al. 2010; Pope et al. 2014). An annual average of 168 million pounds of pesticides was used between 1998 and 2014 in agricultural areas in

California (primarily in the Central Valley) (CDPR 2017). Where Cascades frogs had mostly disappeared in the Lassen region, about four times as much agricultural land use can be found upwind compared to where frog populations are still present (Pope et al. 2014). However, no significant pattern was found in pesticide concentrations compared between Cascades frog populations in the Klamath Mountains and Southern Cascades (Davidson et al. 2012; Pope et al. 2014). Regardless, Chlorpyrifos, Dacthal, and Endosulfans, banned organochlorines, and polycyclic aromatic hydrocarbons (PCBs) were found in frog tissues collected within the range of the Cascades frog (Davidson et al. 2012; Pope et al. 2014).

Paulk and Wagner (2004) found that glyphosate and malathion significantly affect Cascades frog larval mortality and development at levels below EPA-recommended maximum levels for surface water. In addition to impaired growth and development, deformities, and behavioral alterations that have been documented in amphibians as a result to pesticide exposure, these chemicals may be interacting with other environmental stressors to exacerbate the impacts of disease and invasive species (Davidson et al. 2007; Blaustein et al. 2011; Pope et al. 2014). Pesticides could be weakening frogs' immune systems and facilitating chytrid outbreaks (Bradford et al. 2011; Bruhl et al. 2011).

Fertilizers such as urea likely pose a threat; in laboratory studies, juvenile Cascades frogs were unable to sense and avoid toxic levels (Hatch et al. 2001). Nitrites can affect behavior and metamorphosis of frog larvae (Marco and Blaustein 1999).

The risk factor to Cascades frogs in California from airborne contaminants is thought to be low, but complex interactions may exist between contaminants and other stressors that have not been thoroughly examined (Pope et al. 2014). Such indirect effects would likely be strongest in low- to mid-elevation habitats downwind of agricultural areas (Pope et al. 2014).

Climate Change

Climate change is a major threat to Cascades frogs. Higher average temperatures, varying precipitation patterns, and alterations in disturbance regimes such as fire are already affecting many wildlife species across North America, including Cascades frogs (Root et al. 2003; Parmesan 2006; Chen et al. 2011; Case et al. 2015). As ectothermic animals, all aspects of amphibians' life history are strongly influenced by the external environment, particularly temperature and moisture.

Most climate change research that analyzes the impacts on wildlife species have focused on physiological sensitivities, projected range shifts, and changes in phenology (Parmesan and Yohe 2003; Chen et al. 2011; Pinsky et al. 2013; Case et al. 2015), but Case et al. (2015) argue that more emphasis should be placed on ecosystem responses to climate change, thus better understanding how species dependent on those ecosystems may be impacted. Case et al. (2015) determined that out of the four taxonomic groups and 195 species they studied in the Pacific Northwest, amphibians and reptiles were on average the most sensitive to climate change, largely due to the fact that 90 percent of the 20 amphibians and reptiles studied were identified as having at least one highly sensitive habitat upon which they depended. Among studied amphibians was the Cascades frog, which had a sensitivity score of 77 (out of a

potential range of 14-100, with a higher number indicating a higher sensitivity) and an average confidence in that score of 4 out of 5 (Case et al. 2015). For context, the overall average sensitivity score for reptiles and amphibians was 76 (Case et al. 2015). Similar to the other studied amphibians of the Pacific Northwest, Cascades frogs depend on seasonal wetlands which are sensitive to climate-driven changes in hydrology (Case et al. 2015).

Numerous studies have documented climate-associated shifts in amphibian phenology, range, and pathogen-host interactions (Corn 2005; Blaustein et al. 2010; Li et al. 2013), with emerging evidence for climate change-related population declines (Lowe 2012; Rohr and Palmer 2013). Li et al. (2013) reported the results of 14 long-term studies of the effects of climate change on amphibian timing of breeding in the temperate zone of the U.S. and Europe. This meta-analysis indicated that more than half of studied populations (28 of 44 populations of 31 species) showed earlier breeding dates, while 13 showed no change, and 3 populations showed later breeding dates, where spring-breeding species tended to breed earlier and autumn-breeding species tended to breed later. Several studies indicate that shifts in timing of breeding can have fitness and population-level consequences. For example, amphibians that emerge earlier in the spring can be vulnerable to winter freeze events or desiccation if they arrive at breeding sites prior to spring rains (Li et al. 2013).

Climate-associated shifts in amphibian ranges can be particularly problematic for restricted range and high-elevation species that have specific habitat requirements and limited options for movement (Li et al. 2013). As greenhouse gas emissions continue to grow, studies project high turnover of amphibian species as habitats become climatically unsuitable. For example, Lawler et al. (2014) projected 50 percent or greater climate-induced turnover of amphibian species in many regions of the U.S. by the later part of the century.

Cascades frogs thrive in montane wetland habitats, where habitat diversity and life histories of wetland species are adapted to and sorted by coarse hydrologic gradients (Ryan et al. 2014; Lee et al. 2015). Because these habitats are naturally variable, they are extremely vulnerable to climate change (Ryan et al. 2014; Lee et al. 2015). Specifically, “hydrologically intermediate ponds” - which hold water in most years but may occasionally dry up during droughts – provide the best habitat for Cascades frogs and will become less available to them as the distribution and composition of montane wetlands in the Pacific Northwest are significantly altered by climate change (Ryan et al. 2014; Lawler et al. 2014; Lee et al. 2015).

Most of the factors that determine the condition of montane wetlands – snowpack volume, runoff, direct precipitation, and evapotranspiration – are projected to change in the western U.S. over the next century (Hamlet et al. 2005; IPCC 2007; Ryan et al. 2014). Snowpack has become a particular concern in recent years, and it is estimated to have declined by more than 50 percent over the last half century (Hamlet et al. 2005; Mote et al. 2005; Ryan et al. 2014). Climate projections indicate a significant reduction in the range of snow-dominated landscapes in most of the western U.S., with the exception of regions with much higher elevations such as the Rockies (Klos et al. 2014). Additionally, snowmelt runoff and peak water availability is occurring earlier in the spring, and soil moisture is receding (Hamlet et al. 2007; Ryan et al. 2014). As temperatures continue to increase in all seasons and summer precipitation decreases, mountain

snowpack will continue to decrease while evapotranspiration and soil-moisture stress increases in late summer months (Lee et al. 2015). Projections of climate impacts on wetlands in the Pacific Northwest show that many ephemeral wetlands will likely disappear, and more than half of the intermediate montane wetlands will become ephemeral wetlands by the 2080s (Lee et al. 2015).

In the Cascades Range, wetland drawdown is occurring earlier and faster, water availability is greatly reduced, complete drying is occurring more often, and summers have longer dry periods (Ryan et al. 2014). These changes, and the changes likely to happen in the future explained above, will reduce habitat availability and recruitment, and cause declines or extinctions in some regions for wetland-reliant amphibians and their invertebrate prey (Walls et al. 2013; Ryan et al. 2014; Lee et al. 2015). In addition to the direct loss of breeding grounds through wetland drying, Cascades frogs may experience a decrease in larval densities, a change in size at metamorphosis, and reduced recruitment success through an increase in water temperatures and changes in timing of water availability, especially since Cascades frog tadpoles metamorphose within a single summer (Smith 1987; Semlitsch et al. 1988; Walls et al. 2013; Lawler et al. 2014; Lee et al. 2015). Cole and North (2014) found that the number of pools and the distance to the nearest lake are among the most important environmental factors that determine the presence of Cascades frogs.

Climate change has also been implicated in stimulating the emergence of infectious amphibian diseases at the local and global scale. Increases in climate variability and extreme weather events resulting from climate change appear to provide an advantage to pathogens such as chytridio-mycosis (chytrid fungus), which is driving amphibian declines worldwide (Li et al. 2013; Raffel et al. 2013). Raffel et al. (2013) found a causal link between increased temperature variability and chytrid-induced mortality in frogs, which in the context of other studies linking chytrid outbreaks to temperature shifts, provides compelling evidence for a climate-change role in amphibian mortality from chytrid fungus (Li et al. 2013). Several recent studies indicate a role of climate change in amphibian population declines, in combination with other stressors (Lowe 2012; Rohr and Palmer 2013).

For all these reasons, climate change threatens the survival of Cascades frogs, which were found to be at the highest risk of climate-induced declines among three common northwest amphibians (Lawler et al. 2014). Scientists are especially concerned about the adaptability of this species in the face of climate impacts because the loss of high elevation, intermediate wetlands will force the frogs to move to larger, deeper lakes that likely have introduced predators, a factor known to decrease the abundance and survival rates of the Cascades frog (Ryan et al. 2014). Climate impacts are likely to also interact with other threats such as disease and pollution (Lee et al. 2015).

The current drought in parts of the Pacific Northwest provides an analog for what is predicted under climate change projections. Already, scientists have observed near complete reproductive failure at monitored Cascades frog sites due to ponds drying early, and many of these ponds are ones that do not usually dry at all. Even dead adults have been observed (Dr. Maureen Ryan, personal communication).

The risk factor to Cascades frogs in California from climate change is potentially high, particularly for populations that breed in ephemeral waters (Pope et al. 2014). More

frequent weather extremes could increase in the probability of Cascades frog extirpations (Pope et al. 2014). This risk is greatest in the southern Cascades where the species is already rare and, therefore, highly susceptible to environmental stochasticity (Pope et al. 2014).

Disease

Batrachochytrium dendrobatidis (Bd) is a fungal pathogen that causes the disease chytridiomycosis in amphibians. The rate of infection and mortality it has caused in amphibians worldwide has been described as ‘the most spectacular loss of vertebrate biodiversity due to disease in recorded history’ (Skerratt et al. 2007; Piovia-Scott et al. 2015). Adult amphibians infected with chytrid exhibit symptoms such as lethargy and reluctance to flee, skin abnormalities, loss of righting reflex, and extended back legs (Fellers et al. 2001). In tadpoles infected with chytrid fungus, jaw sheaths and tooth rows are abnormally formed or lack pigment, and this type of deformity likely inhibits tadpole foraging ability (Fellers et al. 2001). The effect of Bd on individual species, however, is considerably variable and often dependent on other environmental factors, including temperature, other environmental stressors such as predation pressures, pesticide exposure, and UV-B radiation (Pope et al. 2014; Piovia-Scott et al. 2015). Also, the virulence of different Bd strains may vary (Berger et al. 2005; Retallick and Miera 2007; Fisher et al. 2009; Farrer et al. 2011; Gahl et al. 2012; Piovia-Scott et al. 2015).

Cascades frogs are susceptible to Bd (Garcia et al. 2006; Piovia-Scott et al. 2015), and Bd occurs throughout the species’ range (Adams et al. 2010; Piovia-Scott et al. 2011; Piovia-Scott et al. 2015). Bd exposure experiments resulted in significant mortality rates for Cascades frog metamorphs (Garcia et al. 2006), however declines in Cascades frogs in nature due to Bd are not universal (Piovia-Scott et al. 2011; Pope et al. 2011; Pope et al. 2014). The reasons why some populations infected with Bd dramatically suffer while others remain stable are not well known (Pope et al. 2014).

The decline of Cascades frog populations in parts of California is thought to be due to a particularly virulent strain of Bd (Fellers et al. 2008; Pope et al. 2014; Piovia-Scott et al. 2015). At Section Line Lake in the Klamath Mountains, where Cascades frogs were found to be infected with this viral strain, juvenile frog abundance decreased by more than 99 percent between 2009 and 2012. Whereas hundreds of juvenile frogs were observed at Section Line Lake in 2010, juvenile frog numbers dwindled to only 2 seen in 2012 (Piovia-Scott et al. 2015). Adult frogs began to decline at Section Line Lake three years following the collapse of juvenile abundance (Piovia-Scott et al. 2015). For this population, there was no evidence for other causes of decline such as predation or desiccation, and the high overwintering mortality is consistent with other declines associated with Bd infection (Piovia-Scott et al. 2015).

Regardless of the variation of susceptibility to Bd observed in Cascades frogs, the significant decline in Cascades frog populations in the southern portion of their range due to Bd and the prevalence of the disease throughout the species’ range is cause for concern (Pope et al. 2014), especially given the finding that larger populations of Cascades frogs likely increase their resistance to the disease (Knapp et al. 2011; Pope et al. 2014). Efforts to increase Cascades frog population sizes, by removing predatory trout, for example, are crucial to ensuring their survival in light of the spread of Bd (Pope et al. 2014).

Chytrid was detected at 64 percent of sites surveyed in the Klamath Mountains of California and Cascades frogs were often infected (Piovia-Scott et al. 2011). While Cascades frogs have experienced increased mortality from exposure to the fungus in laboratory experiments (Garcia et al. 2006; Piovia-Scott et al. 2011), the current impact on wild frogs is unclear as many infected frogs appear asymptomatic (Gaulke et al. 2011) and many extant populations appear to be coexisting with the pathogen (Piovia-Scott et al. 2011).

Other infectious diseases present challenges to Cascades frog survival as well. *Saprolegnia ferax*, a species of water mold that commonly infects fish, can spread to amphibians, and has caused die-offs of Cascades frogs in Oregon (Blaustein et al. 1994; Kiesecker and Blaustein 1997; Pope et al. 2014). Romansic et al. (2007) found that juvenile Cascades frogs exposed to *Saprolegnia* had significantly greater rates of mortality than unexposed controls. Prevalence of *Saprolegnia* has increased due to movement of hatchery-raised fish (Blaustein et al. 1994; Bucciarelli et al. 2014), and because *Saprolegnia* strains have also been found to vary in virulence, introduced fish may transmit a strain more virulent to amphibians (Bucciarelli et al. 2014). The spread of *S. ferax* is especially concerning when combined with UV-B radiation (Kiesecker and Blaustein 1995; Pope et al. 2014), which is becoming more of an issue for Cascades frogs as climate change reduces the depth of wetlands and increases their exposure to the sun. Increased mortality has been documented in toad embryos from *Saprolegnia* infection during El Nino/Southern Oscillation events which decreased winter precipitation and snowpack, thus increasing exposure to UV-B radiation (Kiesecker et al. 2001; Bucciarelli et al. 2014).

Antifungal drugs such as itraconazole and terbinafine hydrochloride have been used to treat Bd diseased frogs with some success (Berger et al. 2010; Bowerman et al. 2010). Among the most promising treatments is application of anti-Bd bacteria such as *Janthinobacterium lividum* to the skin of frogs to help protect them from the disease (Harris et al. 2009). Hardy et al. (2015) found some success with treatment of Bd in wild-caught Cascades frogs from the Cascades Mountains with the antifungal drug itraconazole. Bd prevalence was low at the time of treatment and did not differ between treated frogs and controls immediately following treatment, but following release, Bd prevalence gradually increased in controls but not in treated frogs, with noticeable differences 3 weeks after treatment and strong differences 5 weeks after treatment (Hardy et al. 2015). Recaptures of frogs from this population the next year suggested that over-winter survival was higher for treated frogs. The itraconazole treatment did appear to reduce frog growth rates: treated frogs weighed 22 percent less than control frogs 3 weeks after treatment and were 9 percent shorter than control frogs 5 weeks after treatment (Hardy et al. 2015). Hardy et al. (2015) concluded that itraconazole treatment can be effective against Bd infection in wild amphibians, and that the beneficial effects on survivorship may outweigh the detrimental effects on growth. Though these results are encouraging, attempting to treat entire wild populations would be highly resource intensive.

The risk factor to Cascades frogs in California from disease is high, since *Chytridiomycosis* is present in Cascades frog populations across the range in California (Pope et al. 2014). Although extant populations appear to be coexisting with the pathogen in the short term, it appears that Bd is significantly reducing juvenile frog

survival in many populations (Pope et al. 2014). Reduced recruitment resulting from the disease increases extinction risk for the Cascades frog (Pope et al. 2014).

Fire Suppression

Fire-suppression activities in California may negatively affect Cascades frogs. The effects of fire suppression activities on amphibians have not been well studied, so most evidence is anecdotal (Pilliod et al. 2003). Fire-suppression impacts have the potential to be strong in the southern Cascades. Pope et al. (2014) concluded that the risk of negative impacts to Cascades frogs from fire-suppression activities is potentially high for Lassen National Forest populations, primarily because so few populations and animals remain. However, in the Klamath Mountains the Cascades frog primarily occurs within subalpine aquatic habitats with long fire return intervals and in wilderness areas where fire suppression activities are less than in areas where they are closer to the wildland-urban interface. Fire suppression activities do occur regularly in the frog's lower elevation forested habitats outside of wilderness areas, and potential direct impacts include water drafting from ponds and streams, application of fire retardant, and construction of fuel breaks. These activities could also produce changes in aquatic and riparian habitats via sedimentation changes, alteration in down woody debris, and reduction (producing both positive and negative effects) in amounts of vegetation associated with the habitat.

Only anecdotal evidence is available specific to Cascades frogs for any of these activities. In June 2008, northern California was struck by a severe dry lightning storm that started more than 2,700 fires. With dry conditions and heavy fuel loads, several strikes turned into major fires, including those in the Marble Mountains Wilderness, Trinity Alps Wilderness, and Lassen National Forest. In the Marble Mountains and Trinity Alps, no known Cascades frog populations were harmed because fire suppression activities occurred in lower elevations and wilderness edges, and the fires only patchily burned inside the areas where the majority of the frog populations are found. On the Lassen National Forest, fires got close to two southern populations of Cascades frogs and a fire line was placed on the ridge above one meadow population. In the following 3 years, no noticeable damage occurred to the frog population or its habitat from the fire suppression activities that occurred in the area. Fire crews and other fire personnel attempt to minimize impacts to aquatic and semiaquatic species and their habitats, but inadvertent impacts can occur. During the severe 1987–1991 drought in California, fire suppression personnel in the Sierra Nevada were forced to take water from locations where aquatic amphibians and reptiles had often concentrated.

The construction of fire lines or firebreaks by firefighters using hand tools or machinery such as bulldozers may be extensive and result in habitat changes similar to those associated with road and road construction. Fire line or firebreak restoration features, such as water bars and revegetation, may mitigate erosion rates and roadlike effects (Pilliod et al. 2003). Sedimentation may be the most detrimental roadlike effect of firelining on amphibians, as unpaved roads are responsible for greater increases in sediment mobility and erosion than either logging or fire per se (Rieman and Clayton 1997). Mechanized equipment is not a permitted activity in wilderness areas for fire suppression.

Application of retardant has become an important wildlife issue (Pilliod et al. 2003). In large wildfires, large amounts of ammonia-based fire retardants and surfactant-based fire-suppressant foams are dropped from air tankers and sprayed from fire engines to slow or stop the spread of fire. Some fire-suppressant cocktails are toxic or hazardous to aquatic organisms (Buhl and Hamilton 2000, Gaikowski et al. 1996, MacDonald et al. 1996). Concerns regarding the effects of aerial application of fire retardant on aquatic systems and threatened, endangered, or candidate species were addressed in the Forest Service Chief's Record of Decision (USDA 2011). This directs tanker pilots to avoid aerial application of retardant or foam within 91 m of waterways. A "waterway" is considered to be any body of water including lakes, rivers, streams, and ponds irrespective of whether they contain aquatic life. This is considered binding direction, subject to qualifications and exceptions only as noted in the Decision Notice. However, accidental contamination of aquatic habitats can and has occurred, especially from aerial applications (Minshall and Brock 1991). For example, during fire-suppression activities, a direct "hit" of fire-retardant was dropped adjacent to the Buck's Lake Wilderness in a small mountain yellow-legged frog breeding pond. No studies occurred to determine the effects, but there was a noticeable decline in the tadpoles within this pond (Hopkins, pers. comm. 2007, as cited in Pope et al. 2014).

Successful forest fire suppression over the past century has resulted in dense forests with very high fuel loads. The Forest Service initiated a program of active management to reduce fuel loading in an effort to reduce the intensity and extent of wildfires. Catastrophic fire can produce some of the most intensive and extensive changes in watershed condition of any disturbance (Kattelman 1996). In addition, dense forests reduce snowpack on forested slopes and take up water for transpiration, resulting in reduced water yields downslope (Kattelman 1996). These indirect large-scale effects of fire suppression can affect Cascades frog habitats by decreasing water input, altering peak flows, and increasing sediment yield.

The risk factor to Cascades frogs in California from fire suppression is unlikely to be high where frog habitat occurs in wilderness and high-elevation areas with sparse vegetation, where fire-suppression activities are rarely conducted and mechanized equipment is not used (Pope et al. 2014). However, the risk is potentially high for Lassen National Forest frog populations primarily because so few populations and animals remain (Pope et al. 2014).

Habitat Loss and Alteration

Activities such as vegetation and fuels management, water development and diversion, and mining, as well as impacts from roads, have the potential to degrade or destroy suitable habitat within the California range of the Cascades frog. Most of these factors pose relatively low or moderate risk for Cascades frogs (Pope et al. 2014).

Vegetation management on national forest lands outside of wilderness areas, such as timber harvest, fuels management, salvage logging, and prescribed fire, pose a risk to Cascades frogs (Pope et al. 2014). Changes in vegetation, shade, and woody debris can alter breeding, active-season, refuge, and overwintering habitat quality for Cascades frogs; and changes in vegetation can also influence soil stability, erosion, and sediment loading to aquatic habitats (Pope et al. 2014). The effects of controlled burns for fuel reduction on Cascades frogs are poorly understood (Pilliod et al. 2003). Cascades frogs are thought to be losing suitable habitat in Lassen Volcanic National Park in part due to

fire suppression and drought, which has increased the natural invasion of shrubs and trees into open meadows, so that former open frog breeding sites are now clogged with vegetation (Fellers and Drost 1993). Some of the Cascades frog range is on granitic soils, so improperly implemented prescribed burning could be risky because erosion rates of burned areas on such soils can be 66 times as great as in undisturbed watersheds, and can elevate annual sediment yields for 10 years or more (Megahan et al. 1995). Prescribed fire could benefit Cascades frogs if it reduced the risk of future high-intensity wildfire or reduced encroachment of woody vegetation into meadows that provide aquatic habitat for frogs.

Water developments, such as dams and diversions, can radically change aquatic habitats and are a prominent component of the landscape in the Sierra Nevada Forest Planning Area (Harris et al. 1987, Moyle and Randall 1998) and Klamath Mountains. Dams can raise the levels of existing lakes or ponds or flood meadow habitat, eliminating or in some cases creating Cascades frog habitat. Diversions may alter the hydrology and water retention at a site potentially affecting frog breeding. Although most major water development and diversions occur at lower elevations (Moyle and Randall 1998), some water developments for hydroelectric power generation and water storage also exist in higher elevation areas that overlap with the Cascades frog range (Pope et al. 2014). Major water projects within the southern Cascades that overlap with the Cascades frog's range are limited in the Pit River system and North Fork Feather River (e.g., Lake Almanor, Butt Valley Reservoir). Smaller water projects are located within the West Branch Feather River watershed (e.g., Snag Lake and Philbrook Lake). Major water projects within the Klamath Mountains include Shasta Dam on the upper Sacramento River and Trinity Dam on the and upper Trinity River. About 15 small lakes and meadow systems in the known historical range of the Cascades frog in California have some form of hydrological development. The majority of these consist of small dam structures to raise the water level of an existing water body (e.g., Gumboot Lake). Although existing dams and water diversions are not a widespread risk for Cascades frogs, local impacts from dams and diversions can be significant and permanent (Pope et al. 2014).

Suction-dredge gold mining of streams and rivers increases suspended sediment, rearranges stream substrate, changes stream geomorphology, and can directly trap or kill aquatic organisms including Cascades frogs (CDFG 2011). Since 2009, all California instream suction dredge mining has been suspended with the passage of SB 670. The legacy effects of historic hydraulic mining include alteration of stream geomorphology and release of pollutants such as acid, cadmium, mercury, and asbestos in waterways (Larson 1996). Although hydraulic mining has long been banned, legacy effects on water quality may still be apparent in portions of the mid-elevation Pit and Feather River systems within the range of Cascades frogs (Pope et al. 2014).

Although most populations of Cascades frogs are not likely to be affected by roads directly, indirect effects to their habitats and dispersal ability may be significant (Pope et al. 2014). Roads can alter soil density, temperature, soil water content, light, dust, surface-waterflow, pattern of runoff, and sedimentation (Trombulak and Frissell 2000). Roads may also serve as barriers to frog movement. Six major highways (Interstate 5 and Highways 32, 36, 44, 89, and 299) partly or completely fragment portions of the Cascades frog range in California. Roughly 62 percent of the Cascades frog range occurs on national forest lands that contain a total of 115 km of paved roads, 258 km of gravel roads, 1,714 km of dirt roads, and 300 km of trails (USDA 2001b). Road crossings

of water courses may block in-channel migrations and dispersal events because culverts are too steep, become blocked by debris, or become disconnected from the streambed. Barriers or partial barriers as a result of fragmentation may have a strong effect on populations of Cascades frog if they operate as metapopulations (Bradford 1991). Barriers, such as roads, could prevent recolonization of locations where extirpations have occurred. Risks to Cascades frogs from roads associated with population isolation and habitat alteration are expected to be moderate on private lands and on the Lassen and Klamath national forests, and low in Lassen Volcanic National Park and wilderness areas in the Klamath Mountains (Pope et al. 2014).

Introduced Fish

Cascades frogs are threatened by introduction of fish into historically fishless habitats (Knapp and Matthews 2000; Knapp 2005; Welsh et al. 2006). Cascades frogs have suffered population declines as a result of non-native fish stocking due to high levels of predation and competition (Knapp et al. 2003; Welsh et al. 2006; Morgan et al. 2007; Piovia-Scott et al. 2011; Hartman et al. 2013; Cole and North 2014; Pope et al. 2014). Because most montane species are unable to adapt to the presence of nonnative fish (Knapp et al. 2001; Ryan et al. 2014), fish introduction often leads to a direct loss of range in amphibian species, and this is true of the Cascades frog.

Nonnative trout and other salmonids occupy 95 percent of large mountain lakes and 60 percent of smaller ponds and lakes in the western U.S. that were formerly fishless (Bahls 1992; Ryan et al. 2014). The widespread introductions of these species have had severe consequences on ecosystem functions and native species assemblages (Bradford 1989; Knapp and Matthews 2000; Knapp et al. 2001; Schindler et al. 2001; Knapp 2005; Welsh et al. 2006; Ryan et al. 2014; Pope et al. 2014). The impacts that introduced trout have on amphibians are particularly severe (Pilliod and Peterson 2001; Vredenburg 2004; Hartel et al. 2007; Hartman et al. 2013). The stocking of predatory fishes has contributed to the endangered status of two other high elevation Ranid frogs in California, the mountain yellow-legged frog (*Rana muscosa*) and Sierra Nevada yellow-legged frog (*Rana sierrae*) (Ryan et al. 2014).

Introduced fishes alter amphibian assemblages through multiple mechanisms. Introduced fish and native species compete for resources such as invertebrate prey (Finlay and Vredenburg 2007; ICF Jones and Stokes 2010; Bucciarelli et al. 2014). Adult Cascades frogs that co-occurred with introduced trout were found to have smaller proportions of aquatic invertebrate prey in their stomachs than frogs that live in areas without trout (Joseph et al. 2011; Bucciarelli et al. 2014). Introduced fish may also prey directly upon native amphibians, driving population declines (Simons 1998; Finlay and Vredenburg 2007; ICF Jones and Stokes 2010; Bucciarelli et al. 2014). Where trout were present Cascades frog tadpoles were most often found in shallow, vegetated areas that serve as a refuge from the fish (Hartman et al. 2013). In some cases, the presence of nonnative fish has also allowed for the increase in prevalence of other predators. For example, in the Klamath Mountains, the Pacific coast aquatic garter snake was able to expand its range as a result of more prey availability (introduced fish) thus facilitating opportunities to also prey upon Cascades frogs, exacerbating their declines (ICF Jones and Stokes 2010).

In the Klamath-Siskiyou region of northwestern California, Welsh et al. (2006) found that Cascades frog distribution negatively correlates with fish distribution, and that larvae occurred 3.7 times more frequently in lakes without trout. Garwood and Welsch (2007) found summer Cascades frog densities to be 6.3 times higher in a stream lacking trout than at a similar stream with high densities of brook trout. Pope (2008a) found that within three years of fish removals from three lakes, Cascades frog densities increased by a factor of 13.6. In addition, the survival of young adult frogs increased from 59 to 94 percent, and realized population growth and recruitment rates at the fish-removal lakes were more than twice as high as the rates for fish-free reference lakes and lakes that contained fish (Pope 2008a).

In a species assemblage study of the Klamath Mountains, nonnative trout had an exclusively negative correlation with Cascades frog occupancy (Cole and North 2014). This study determined that nonnative trout presence was one of the most important factors in determining Cascades frog distribution (Cole and North 2014). At higher elevations where trout were absent, assemblages were dominated by Cascades frogs (Cole and North 2014). In the context of climate change, the frog's inability to co-exist with nonnative fish, which now occupy the majority of large ponds, lakes, and streams within the species range, is especially troubling. As higher elevation, intermediate wetlands dry up due to a lack of snowpack in the western U.S., Cascades frogs will be forced to move to areas likely occupied by fish. The shallow refuges that protect tadpoles from fish will likely also dry up, forcing the species into deeper waters with predators that it has no defenses from (Ryan et al. 2014; Pope et al. 2014).

The declines of Cascades frog populations as well as two other native amphibians in California led to a successful lawsuit that ruled that the California Department of Fish and Wildlife must consider the impacts of fish stocking on the environment and native ecosystems (Knapp and Matthews 2000; Vredenburg 2004; Welsh et al. 2006; Hartman et al. 2013). The resulting Environmental Impact Statement (ICF Jones and Stokes 2010) concluded that the impacts of nonnative trout on Cascades frogs were "potentially significant." There are 175 trout stocking locations within the range of the Cascades frog in California (ICF Jones and Stokes 2010). Although new stocking has since ceased in areas known to support Cascades frogs (ICF Jones and Stokes 2010; Pope et al. 2014), many populations of stocked fish are likely self-sustaining (Pope et al. 2014). The majority of large and deep lakes in the Klamath Mountains and southern Cascades support nonnative populations of brook trout (*Salvelinus fontinalis*) or rainbow trout (*Oncorhynchus mykiss*) (Welsh et al. 2006; Pope et al. 2014).

Fish removal and the restoration and protection of wetlands that do not already contain fish are likely the most important actions needed to recover and protect Cascades frogs throughout their range (Cole and North 2014), especially when faced with other, less manageable, threats such as climate change and disease (Ryan et al. 2014). Previous fish removals have resulted in the rapid recolonization of native amphibians and invertebrates (Drake and Naiman 2000; Knapp et al. 2005; Ryan et al. 2014), including the Cascades frog (Pope 2008a; Pope et al. 2014). Survival, recruitment, and population densities of Cascades frog all rapidly increased when fish were removed from lakes in the Klamath Mountains (Pope et al. 2014).

The risk factor to Cascades frogs in California from introduced fish and other predators is high and widespread, since introduced fish are found over most of the California range

of the species and are known to affect presence and densities of Cascades frogs (Pope et al. 2014). Fish introductions across most of its California range coupled with evidence of a fish effect in the Klamath Mountains strongly implicates fish as a contributor to frog declines in the southern Cascades (Pope et al. 2014). Risks associated with the interactive effects of fish and other stressors, such as climate change and disease, may also be high (Pope et al. 2014).

Livestock Grazing

Livestock grazing has been considered the most widespread influence on native ecosystems of western North America (Fleischner 1994; Kattlemann 1996). Seasonal grazing of sheep and cattle across the mountains of California has occurred since the early 1800s and continues today, except in national parks (Fleischner 1994; Menke et al. 1996). Researchers have found widespread negative impacts from livestock grazing, including loss of native species, changes in species composition, alteration of hydrology including lowered water tables, soil deterioration, degradation of fish and aquatic insect habitat, and changes in ecosystem structure and function (Kauffman and Krueger 1984; Fleischner 1994; Belsky et al. 1999; Flenniken et al. 2001). The negative impacts of livestock grazing on high elevation wetland ecosystems and Ranid frog habitat include reducing vegetative cover, creating excess nitrogen pollution, increasing siltation of breeding ponds, and altering the local hydrology through erosion (Jennings 1988, 1996; Jennings and Hayes 1994). Where historical grazing has resulted in channel incision and lowered water tables, Cascades frogs may be affected by less available breeding habitat and shorter hydroperiods (Pope et al. 2011), but these long-term effects are difficult to quantify. Short-term direct impacts such as trampling and local water quality degradation are also a concern, especially in the southern Cascades where populations are small (Pope et al. 2014).

Although livestock distribution and numbers on public lands have been reduced dramatically compared to historical numbers, livestock grazing currently still occurs throughout much of the range of the Cascades frog. One recently discovered occupied Cascades frog site in Childs Meadow includes a portion of the Lassen National Forest that is currently grazed, but exclusion fencing is planned for around the breeding pool (Foote, pers. comm. 2012, as cited in Pope et al. 2014). Meadow sites occupied by Cascades frogs on private lands both north and south of Lassen Volcanic National Park in the southern Cascades are still grazed by livestock. Much of the Cascades frog range in the Klamath Mountains is still grazed, although portions of the wilderness areas are inaccessible by cattle or are not permitted for grazing.

Minimal data exists on the impacts of livestock grazing on Cascades frogs. A research team in the Sierra Nevada recently assessed the short-term impacts of grazing on Yosemite toads (*Anaxyrus canorus*) through a 5-year exclosure experiment over nine meadows (Allen-Diaz et al. 2010; Lind et al. 2011; Roche et al. 2012). The researchers did not detect differences between grazed and ungrazed meadows in survival or abundance of Yosemite toads and saw no improvement in toad breeding habitat quality after cattle were removed from meadows (Lind et al. 2011; Roche et al. 2012). However, these studies had major limitations and the U.S. Fish and Wildlife Service commented extensively on why conclusions about grazing impacts should not be drawn based on the results (USFWS 2014, pages 24290-24291). Also, although Yosemite toads breed in aquatic habitats within meadows similar to those of Cascades frogs, they differ in that after breeding and metamorphosis, toads leave aquatic habitats and move into nearby

upland habitats (Liang 2010), so conclusions about lack of impacts to toads may not be assumed for Cascades frogs.

The risk factor to Cascades frogs in California from livestock grazing is thought to be low, because livestock use has not been permitted for more than 10 years in most breeding habitats on public lands in the Lassen region where sensitive frog populations occur, livestock numbers have been reduced on other public lands across the range, and recent studies have not found significant evidence of direct effects on meadow-associated amphibian population numbers (Pope et al. 2014). However, livestock grazing is still fairly widespread throughout the California range of the Cascades frog, and even minimal effects such as trampling of a couple of adult frogs could be harmful to population persistence of some small populations in the southern Cascades (Pope et al. 2014). Legacy effects from grazing to riparian and wet meadow habitats are likely extensive, especially in the southern Cascades and eastern Klamath Mountains, and some montane meadows in northern California have become too degraded and desiccated to support appropriate habitats for Cascades frogs (Pope et al. 2014).

Recreational Activities

The geographic range of the Cascades frog in California occurs primarily on public lands with about 5 percent on national park land and 62 percent on national forest lands (USDA 2001). About half of the range on national forest lands occurs within designated wilderness areas where recreational use is limited to non-motorized and dispersed activities such as hiking, backpacking, fishing, and camping. Outside the wilderness areas and national parks, recreational activities can include motorized activities such as off-highway vehicle use that have the potential for greater impact. About 33 percent of the historical range of the Cascades frog in California lies on private lands with restricted public recreation (owned by timber companies), but some private lands with camps and lodges support heavy recreational use.

To date, no studies have specifically examined the impacts of recreational activities on Cascades frogs. However, some information exists on the effects of selected recreational activities on the aquatic habitats also used by Cascades frogs. The mid to high mountain lakes, streams, ponds, and wet meadows inhabited by Cascades frogs receive a disproportionate amount of recreational use through trail networks, campsites, angling opportunities, and swimming. Establishment of trails and camps has been shown to disturb vegetation and soil structure, resulting in changes in habitat structure and microclimate (Garton et al. 1977; Boyle and Samson 1985; Knight and Cole 1991). Anglers often create shoreline trails for access to fishing spots even at remote wilderness lakes. These activities that occur near high-elevation meadows, ponds, lakes and streams can result in increases in pool sediments, modification of pool mudflats, erosion, bank trampling, and vegetation disturbance (Bronmark and Hansson 2002). Generally, studies have found that recreation impacts can happen rapidly even with light use, whereas recovery occurs only after lengthy periods of no use (Cole and Marion 1988).

Studies examining the effects of recreational packstock (usually horses and mules used to assist travel into the backcountry) grazing on alpine meadow habitat have found significant changes in meadow structure resulting from horse and mule grazing (Olson-Rutz et al. 1996a, 1996b; Moore et al. 2000; Cole et al. 2004). These changes in meadow condition may affect breeding habitat of Cascades frogs. Cascades frogs

typically breed in small potholes in meadows or fens, and shallow areas of ponds and lakes. These shallows are especially prone to damage by trampling of hikers, packstock, or off-highway vehicles. Recreational activities may also result in direct mortality to Cascades frogs through trampling (see Bartelt 1998).

Recreational activities that reduce habitat quality or frequently disturb normal basking and feeding behaviors of Cascades frogs can increase the glucocorticoid stress hormones in the frogs. Long-term physiological effects of glucocorticoid exposure include the suppression of growth, reproduction, and immune system components (Moore and Jessop 2003). Stress hormones in amphibians are also elevated by exposure to *Bd* and cause increases in metabolic rates which are energetically costly (Peterson 2012; Wack et al. 2012). The interactive effects of *Bd* and environmental stress on amphibians are currently being studied and initial results suggest that stressed Australian green treefrogs (*Litoria caerulea*) experience lower energy stores and lower survival when exposed to *Bd* compared to unstressed frogs (Peterson 2012).

The risk factor to Cascades frogs in California from recreational activities is assumed to be low to moderate, since recreational use through most of the range of the Cascades frog is light and dispersed (Pope et al. 2014). However in high-use areas, such as lakes outside of wilderness areas with road access, recreational activities likely have measurable impacts to frogs and their habitats (Pope et al. 2014). Recreational impacts also act synergistically with other stressors to increase stress, which reduces the health and resilience of Cascades frogs (Pope et al. 2014).

Small Population Sizes

Montane habitats tend to promote strong genetic isolation among frog populations (Monsen and Blouin 2004), and small population sizes of already declining populations, such as in the Lassen area of California, reduces the species' long-term viability (Fellers et al. 2008). Cascades frogs are particularly vulnerable, and they exhibit extreme genetic isolation in relatively small geographic scales compared to other anurans, with reduced gene flow at distances starting at just 10 km (Monsen and Blouin 2004). This species spends over half the year in hibernation and given the limited amount of time that they are active, combined with their ephemeral habitat, it is not surprising long distance gene flow is rare in this species (Monsen and Blouin 2004). These population dynamics make Cascades frogs vulnerable to not only genetic isolation (ODFW 2016) but also to chance events where local extirpations have a low likelihood of recolonization (Pope et al. 2014). For example, the recolonization of one historic Cascades frog site in Oregon was reported to have taken 12 years despite the presence of a population within 2 km (Blaustein et al. 1994; Pope et al. 2014). Adult frogs rarely move more than a couple miles (Monsen and Blouin 2004), and isolated sites are less likely to support Cascades frogs for the long term (Pope et al. 2014). Therefore, population recovery and habitat connectivity are important factors in ensuring the long term viability of Cascades frogs. Young and Clarke (2000) observed that the small size of, and lack of connectivity between, the current populations of the Cascades frog in the Lassen area greatly reduces their long-term viability, potentially leading to a genetic bottleneck.

INADEQUACY OF EXISTING REGULATORY MECHANISMS

There are no existing regulatory mechanisms that provide adequate protection for the Cascades frog in California.

Federal Regulatory Mechanisms

The Cascades frog is not currently protected under the federal Endangered Species Act (ESA). The Center for Biological Diversity petitioned for federal ESA listing for the Cascades frog in 2012 (CBD 2012). In 2015 the U.S. Fish and Wildlife Service found that the petition presented substantial information indicating that the petitioned action may be warranted, and initiated a status review of the species (USFWS 2015). However, according to the USFWS Listing Workplan, the agency will not make a 12-month finding on the petition until 2022 at the earliest (USFWS 2016). Other federal regulatory mechanisms that could potentially provide some form of protection for the Cascades frog include occurrence on federally protected land, or consideration under the National Environmental Policy Act. There are no federal Habitat Conservation Plans in California that cover the Cascades frog (USFWS 2017).

Occurrence in National Forests and National Parks

Populations of Cascades frogs in California occur in National Parks, National Forests and other federal lands, where their habitat is mostly protected from development. However, this does not necessarily protect Cascades frogs from harmful management activities or ensure their long-term survival. Adams et al. (2013) noted that amphibian declines are occurring on federally protected lands where management policies are designed to protect natural resources, with some of the greatest rates of declines occurring on National Park Service lands. Even on federal lands that are protected for ecological values, foothill yellow-legged frogs are not protected from threats such as drifting pesticides or impacts from nonnative predators. For example, although nonnative fish stocking has been halted in California where Cascades frogs occur (ICF Jones and Stokes 2010), there do not appear to be any current efforts to remove invasive fish that have already established self-sustaining populations within Cascades frog habitat on federal lands.

Within the range of the Cascades frog in California, management of National Forest lands fall under the direction of different land and resource management plans developed for the Lassen National Forest, Shasta-Trinity National Forest, and Klamath National Forest. Although management direction for aquatic areas differs slightly among the forests, all three forest plans include direction specific for management and protection of aquatic and riparian-dependent species, including habitat for the Cascades frog (Pope et al. 2014). In areas of national forest lands that are designated “multiple-use” management areas (e.g., most non-wilderness areas), riparian and aquatic ecosystems are supposed to receive special consideration through the designation of riparian management zones. Riparian management zones are land area allocations designated around all water bodies and fluvial systems to ensure riparian-dependent resources receive primary emphasis and serve to help maintain the integrity of aquatic ecosystems. In general, only activities that contribute to the maintenance or restoration of riparian-driven objectives and goals are permitted. However, these plans do not preclude timber harvest, road building, cattle grazing and other activities that have the potential to degrade Cascades frog habitat.

The Forest Service adopted the Sierra Nevada Forest Plan Amendment in 2001 after more than a decade of scientific study, to direct the management of 11.5 million acres of California's national forest lands in the Sierra. The Sierra Nevada Forest Plan Amendment represented a shift in Forest Service management to ecosystem management principles. The Sierra Nevada Plan's primary emphasis is on terrestrial species, but it also contains an Aquatic Conservation Strategy focused on reducing some threats to amphibians, including the Cascades frog. Some of these measures include changes to livestock grazing and exotic fish stocking practices. Yet at the same time, the plan contains proposed management activities (such as fire and fuels management) that may increase risk of habitat degradation for Cascades frogs. In addition, the Sierra Nevada Forest Plan Amendment has been under attack since its adoption, with ongoing efforts by legislators and industry to increase the amount of logging allowed, limit protections for forests, water quality and wildlife, and to weaken forest monitoring requirements by reducing the management indicator species lists that are tracked across Sierra Nevada national forests.

The Sierra Nevada Forest Plan Amendment also committed the Forest Service to complete a conservation assessment for the Cascades frog in cooperation with other federal agencies, state agencies, universities, and research scientists (USDA 2001a). The conservation assessment (Pope et al. 2014) was published in 2014. It is important to note that Conservation Assessments provide only management recommendations, not mandated habitat protections. The conservation assessment is envisioned to be the first of a three-phase process that also includes a conservation strategy and a conservation agreement. However, this process is moving far too slowly to provide prompt protection for Cascades frogs. The Conservation Assessment alone took more than a decade to produce.

The Pacific Southwest Region (Region 5) of the Forest Service includes the Cascades frog on its Sensitive Species List (USDA 1998). Forest Service policy is that "sensitive species" must receive special management emphasis to ensure their viability and to preclude trends toward endangerment that would result in the need for federal listing. Sensitive species cannot be affected without an analysis of significance of adverse effects on the populations, their habitat, and on the viability of the species in the area covered by the forest land and resource management plan. However, this designation as a "sensitive species" translates into little protection for individual frogs, frog populations or frog habitat. The designation merely requires that the impacts to the species be considered, but does not prevent agency actions, such as logging, road building, fire suppression, recreational activities, or cattle grazing, that could harm the species or its habitat. All Forest Service planned, funded, executed, or permitted programs and activities are reviewed under NEPA for possible effects on sensitive species, through a Biological Assessment and Evaluation. Yet the Forest Service can conclude in a Biological Evaluation that even though individual frogs or frog populations will be harmed or destroyed by an action, it can still carry out this action.

The one National Park within the California range of the Cascades frog, Lassen Volcanic National Park, has guiding principles, management goals and a management plan that are beneficial for protecting aquatic ecosystems and maintaining park ecosystems and native wildlife (NPS, 1999, 2006). The Resource Management Plan for Lassen Volcanic National Park (NPS 1999) recognizes that Cascades frog populations have declined in the park and provides management guidance relevant to Cascades frog conservation:

1. Maintain, rehabilitate, and perpetuate water and aquatic systems to preserve their inherent natural integrity.
2. Populations of endangered, threatened, and other species of concern are protected from population decline and are monitored sufficiently to detect significant changes in population trends.
3. The health of Lassen region ecosystems, of which park lands are only a part, will be preserved as a result of cooperative work among federal, state, and private entities.
4. Exotic animal species that have the potential to substantially disrupt native animal populations or plant communities are eliminated or controlled.
5. Extirpated animal species are, to the extent feasible, restored in accordance with NPS policy.

However, the Cascades frog is now extirpated from Lassen Volcanic National Park.

Fish stocking began in Lassen Volcanic National Park prior to the establishment of the park in 1916; a gradual phase-out was initiated in 1968; and fish stocking was discontinued at all sites within the park by 1992 (Stead et al. 2005). Because of the long history of stocking, it is unclear which park lakes and streams naturally contained fish, and what species of fish are native to each system. As of 2004, 16 percent (9 of 57) of the park's lakes still supported introduced trout fish (Stead et al. 2005).

National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C.4321-4370a) requires federal agencies to consider the environmental impacts of their actions. The NEPA process requires these agencies to describe a proposed action, consider alternatives, identify and disclose potential environmental impacts of each alternative, and involve the public in the decision-making process. Most actions taken by the federal agencies such as the U.S. Forest Service and National Park Service that could affect the Cascades frog are subject to the NEPA process. NEPA does not, however, prohibit these agencies from choosing alternatives that will negatively affect individual frogs, populations of Cascades frogs, or potential Cascades frog habitat. De facto evidence of NEPA's inability to protect the Cascades frog is that the species has declined precipitously in spite of the existence of NEPA for more than 45 years.

State Regulatory Mechanisms

The state of California lists the Cascades frog as a "Species of Special Concern" (CDFW 2017a). However this status is an administrative designation which merely reflects the fact that the species is suffering population declines, but it does not afford any substantive or legal protection. There are no state Natural Community Conservation Plans in California that cover the Cascades frog (CDFW 2017b). Other state regulatory mechanisms that could potentially provide some form of protection for the Cascades frog include a state aquatic biodiversity strategy, and consideration under the California Environmental Quality Act.

Aquatic Biodiversity Strategy

The California Department of Fish and Wildlife has initiated a conservation strategy for maintaining aquatic biodiversity in high-elevation wilderness ecosystems. This strategy is aimed to protect and enhance native amphibian species while attempting to optimize recreational trout fishing opportunities (Garwood and Welch 2007). Starting in 1999, the

Department began implementing this conservation strategy in the Sierra Nevada Mountains through watershed-based management plans, but these plans are focused on mountain (and Sierra) yellow-legged frogs, not Cascades frogs (Garwood and Welsch 2007). Garwood and Welsch (2007) concluded that important differences between the ecology of Cascades frogs and mountain yellow-frogs make these watershed plans inadequate to fully protect Cascades frogs.

California Environmental Quality Act

The environmental review process under the California Environmental Quality Act ("CEQA", California Public Resources Code §§ 21000-21177) requires state agencies, local governments and special districts to evaluate and disclose impacts from "projects" in the state. CEQA declares that it is the policy of the state to prevent "the elimination of fish or wildlife species due to man's activities, ensure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities" (California Public Resources Code, section 21001(c)). The CEQA process is triggered when discretionary activities of state agencies may have a significant effect on the environment. When the CEQA process is triggered, it requires full disclosure of the potential environmental impacts of proposed projects. The operative document for major projects is usually the Environmental Impact Report.

Under CEQA, Species of Special Concern must be considered during the environmental review process, with an analysis of the project impacts on the species, only if they meet the criteria of sensitivity under Section 15380 of the CEQA Guidelines. However, project impacts to Cascades frogs would not need to be analyzed if project proponents are able to claim insignificant impacts to non-listed species, if the project does not have population-level or regional effects or impacts a small proportion of the species' range.

Theoretically, besides ensuring environmental protection through procedural and informational means, CEQA also has substantive mandates for environmental protection. The most important of these is the provision requiring public agencies to deny approval of a project with significant adverse effects when feasible alternatives or feasible mitigation measures can substantially lessen such effects. In practice, however, this substantive mandate is rarely implemented, particularly with regard to instream projects, water diversions, mining permits, grazing permits and projects causing pollution and sedimentation that have the potential to impact habitat for Cascades frogs. If significant impacts remain after all mitigation measures and alternatives deemed feasible by a lead agency have been adopted, a lead agency is allowed under CEQA to approve a project despite environmental impacts if it finds that social or economic factors outweigh the environmental costs. It is important to note that CEQA is not, nor was it ever intended to be, a habitat protection mechanism.

Summary: There are no existing federal or state regulatory mechanisms that adequately protect Cascades frog populations or habitat. Without state listing, significant conservation efforts for the Cascades frog, reintroduction of the species at unoccupied historic sites, and implementation of frog habitat enhancement methods are unlikely to occur.

RECOMMENDED MANAGEMENT AND RECOVERY ACTIONS

Invasive Fish Removal: Begin trout removal in former and current high montane habitats for Cascades frogs in the Klamath Mountains and Lassen area, to increase the amount of fishless habitat available. Continue current state policy to not stock fish in waters supporting Cascades frogs.

Investigate Treatments for Disease: Experimentally research effectiveness of techniques to reduce mortality of juvenile frogs caused by Bd, such as bioaugmentation of anti-Bd skin microbes or the use of antifungal drugs. Determine the feasibility of treating wild populations.

Modify Fuel Management and Livestock Grazing: Determine the effects of vegetation and fuels management and livestock grazing on Cascades frogs and their habitat in Shasta-Trinity, Klamath and Lassen National Forests. Modify vegetation management practices and grazing leases to protect and restore frog habitat.

Habitat Restoration: Determine the effectiveness of restoration and habitat enhancement measures, such as modifying breeding pools, removing livestock from breeding habitats, thinning riparian vegetation in occupied streams to improve basking habitat, or thinning lodgepole pines adjacent to breeding pools in meadow habitats in the southern Cascades. Test methods and monitor Cascades frog populations pre- and post-treatments. Prioritize sites for targeted restoration actions and monitor their effects on frog populations.

Restrict Pesticide Use: Determine where and which pesticide uses should be restricted to prevent exposure and harm to Cascades frogs.

Reduce Recreational Impacts: In Shasta-Trinity, Klamath and Lassen National Forests, and Lassen Volcanic National Park, encourage diffuse recreation and limit camping at lakes inhabited by Cascades frogs, to reduce potential impacts of recreational activities on frogs.

Consider a Captive Breeding Program: Begin a captive breeding program for eventual reintroduction of Cascades frogs if local populations are extirpated.

Reintroduction: Explore reintroduction of Cascades frogs into appropriate habitat within the historical range of the species. Investigate the feasibility and options for translocation or reintroduction of captive raised frogs to historically occupied habitats, particularly in Lassen Volcanic National Park.

Monitoring: Institute a long-term, rangewide program to monitor remaining Cascades frog populations in California.

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State of California
Department of Fish and Wildlife

Memorandum

Date: July 21, 2017

To: Ms. Valerie Termini
Executive Director
California Fish and Game Commission

From: Charlton H. Bonham
Director



Subject: **Evaluation of the Petition to List Cascades Frog (*Rana cascadae*) as Endangered or Threatened under the California Endangered Species Act**

The California Department of Fish and Wildlife (Department) has completed its evaluation of the Petition to list Cascades Frog as an endangered or threatened species (Petition) under the California Endangered Species Act, Fish and Game Code section 2050 et seq. The California Fish and Game Commission (Commission) received the Petition from the Center for Biological Diversity on March 1, 2017. Pursuant to Fish and Game Code section 2073, the Commission referred the Petition to the Department on March 6, 2017. On June 6, 2017, in accordance with Fish and Game Code section 2073.5, subdivision (b), the Department requested a 30-day extension to further analyze the Petition and complete its evaluation report. The Commission approved the request at its June 21st meeting, extending the due date to July 5, 2017.

The Department completed the attached Petition evaluation report pursuant to Fish and Game Code section 2073.5. (See also Cal. Code Regs., tit. 14, § 670.1, subd. (d)(1).). The Department's evaluation report delineates the categories of information required in a petition, evaluates the sufficiency of the available scientific information regarding each of the Petition components, and incorporates additional relevant information that the Department possessed or received during the review period. Based upon the information contained in the petition and other relevant information in the Department's possession, the Department has determined that there is sufficient scientific information available at this time to indicate that the petitioned action may be warranted. The Department recommends that the Petition be accepted and considered.

If you have any questions or need additional information, please contact Ms. Kari Lewis, Acting Wildlife Branch Chief, at (916) 445-3789 or by email at Kari.Lewis@wildlife.ca.gov or Mr. Kevin Shaffer, Fisheries Branch Chief, at (916) 327-8841 or by email at Kevin.Shaffer@wildlife.ca.gov.

Ms. Valerie Termini, Executive Director
Fish and Game Commission
July 21 2017
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Attachment

ec: **California Department of Fish and Wildlife**

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**State of California
Natural Resources Agency
Department of Fish and Wildlife**

REPORT TO THE FISH AND GAME COMMISSION

**EVALUATION OF THE PETITION FROM THE CENTER FOR BIOLOGICAL DIVERSITY
TO LIST THE CASCADES FROG (*RANA CASCADAE*) AS ENDANGERED OR
THREATENED UNDER THE CALIFORNIA ENDANGERED SPECIES ACT**



**Prepared by
California Department of Fish and Wildlife**

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I. Executive Summary

The Center for Biological Diversity (CBD) submitted a petition (Petition) to the Fish and Game Commission (Commission) to list the Cascades Frog (*Rana cascadae*) as endangered or threatened pursuant to the California Endangered Species Act (CESA), Fish and Game Code Section 2050 et seq.

The Commission referred the Petition to the Department of Fish and Wildlife (Department) in accordance with Fish and Game Code Section 2073. (Cal. Reg. Notice Register 2017, No. 13-Z, p. 479.) Pursuant to Fish and Game Code Section 2073.5 and Section 670.1 of Title 14 of the California Code of Regulations, the Department has prepared this evaluation report for the Petition (Petition Evaluation). The Petition Evaluation is an evaluation of the scientific information discussed and cited in the Petition in relation to other relevant and available scientific information possessed by the Department during the evaluation period. The Department's recommendation as to whether to make Cascades Frog a candidate for listing under CESA is based on an assessment of whether the scientific information in the Petition is sufficient under the criteria prescribed by CESA to consider listing Cascades Frog as endangered or threatened.

After reviewing the Petition and other relevant information, the Department makes the following findings:

- Population Trend. The Petition contains sufficient information to indicate that the overall trend in California populations of Cascades Frogs is declining, with the most precipitous declines occurring in the southern portion of the species' range.
- Range. The Petition contains a sufficient description of the Cascades Frog's range in California, including evidence suggesting range contractions in the Lassen and Mount Shasta regions.
- Distribution. The Petition contains a sufficient description of the historical and recent distribution of Cascades Frogs' populations in California, which indicate declines across the species' range, with the most extensive losses occurring in the southern portion.
- Abundance. The Petition contains a sufficient description of what was known about historical and recent abundance of Cascades Frogs' populations, which indicate declines across the species' range, with the most extensive reductions in population size occurring in the southern portion.
- Life History. The Petition contains a sufficient description of the life history of Cascades Frogs based on the scientific information available for the species, which indicates some aspects may render it particularly vulnerable to natural and anthropogenic impacts.
- Kind of Habitat Necessary for Survival. The Petition contains a sufficient description of the types and conditions of habitats required for Cascades Frog survival, including the fact that it is a highly aquatic species with specialized needs.

- Factors Affecting the Ability to Survive and Reproduce. The Petition contains sufficient information to suggest that Cascades Frogs are adversely affected by historical habitat damage and a number of on-going and future threats such as habitat loss, climate change, disease, and introduced fish, that act together in threatening the species' continued survival.
- Degree and Immediacy of Threat. The Petition contains sufficient information to indicate impacts from some of the primary threats to the long-term survival of Cascades Frogs will continue or potentially worsen in the future.
- Impacts of Existing Management. The Petition contains sufficient information to suggest that existing regulatory mechanisms and management efforts do not adequately protect Cascades Frogs from impacts that threaten their long-term survival.
- Suggestions for Future Management. The Petition contains sufficient scientific information on additional management actions that may aid in maintaining and increasing self-sustaining populations of Cascades Frogs in California.
- Availability and Sources of Information. The Petition contains a 17-page bibliography of literature cited, the majority of which were provided to the Department.
- A Detailed Distribution Map. The Petition contains a sufficiently detailed map of the historical and contemporary distribution of Cascades Frogs in California.

In completing its Petition Evaluation, the Department has determined the Petition provides sufficient scientific information to indicate that the petitioned action may be warranted. Therefore, the Department recommends the Commission accept the Petition for further consideration under CESA.

II. Introduction

A. Candidacy Evaluation

CESA sets forth a two-step process for listing a species as threatened or endangered. First, the Commission determines whether to designate a species as a candidate for listing by determining whether the petition provides "sufficient information to indicate that the petitioned action may be warranted." (Fish & G. Code, § 2074.2, subd. (e)(2).) If the petition is accepted for consideration, the second step requires the Department to produce within 12 months of the Commission's acceptance of the petition a peer reviewed report based upon the best scientific information available that indicates whether the petitioned action is warranted. (Fish & G. Code, § 2074.6.) The Commission, based on that report and other information in the administrative record, then determines whether or not the petitioned action to list the species as threatened or endangered is warranted. (Fish & G. Code, § 2075.5.)

A petition to list a species under CESA must include “information regarding the population trend, range, distribution, abundance, and life history of a species, the factors affecting the ability of the population to survive and reproduce, the degree and immediacy of the threat, the impact of existing management efforts, suggestions for future management, and the availability and sources of information. The petition shall also include information regarding the kind of habitat necessary for species survival, a detailed distribution map, and other factors the petitioner deems relevant.” (Fish & G. Code, § 2072.3; see also Cal. Code Regs., tit. 14, § 670.1, subd. (d)(1).) The range of a species for the Department’s petition evaluation and recommendation is the species’ California range. (*Cal. Forestry Assn. v. Cal. Fish and Game Com.* (2007) 156 Cal. App. 4th 1535, 1551.)

Within 10 days of receipt of a petition, the Commission must refer the petition to the Department for evaluation. (Fish & G. Code, § 2073.) The Commission must also publish notice of receipt of the petition in the California Regulatory Notice Register. (Fish & G. Code, § 2073.3.) Within 90 days of receipt of the petition, the Department must evaluate the petition on its face and in relation to other relevant information and submit to the Commission a written evaluation report with one of the following recommendations:

- Based upon the information contained in the petition, there is not sufficient information to indicate that the petitioned action may be warranted, and the petition should be rejected; or
- Based upon the information contained in the petition, there is sufficient information to indicate that the petitioned action may be warranted, and the petition should be accepted and considered.

(Fish & G. Code, § 2073.5, subds. (a)(1), (a)(2).) The Department’s candidacy recommendation to the Commission is based on an evaluation of whether or not the petition provides sufficient scientific information relevant to the petition components set forth in Fish and Game Code Section 2072.3 and the California Code of Regulations, Title 14, Section 670.1, subdivision (d)(1).

In *Center for Biological Diversity v. California Fish and Game Commission* (2008) 166 Cal.App.4th 597, the California Court of Appeals addressed the parameters of the Commission’s determination of whether a petitioned action should be accepted for consideration pursuant to Fish and Game Code Section 2074.2, subdivision (e), resulting in the species being listed as a candidate species. The court began its discussion by describing the standard for accepting a petition for consideration previously set forth in *Natural Resources Defense Council v. California Fish and Game Commission* (1994) 28 Cal.App.4th 1104:

As we explained in *Natural Resources Defense Council* [citation], “the term ‘sufficient information’ in section 2074.2 means that amount of information, when considered with the Department’s written report and the comments received, that would lead a reasonable person to conclude the petitioned action may be warranted.” The phrase “may be warranted” “is appropriately characterized as a ‘substantial possibility that listing could occur.’” [Citation.] “Substantial possibility,”

in turn, means something more than the one-sided “reasonable possibility” test for an environmental impact report but does not require that listing be more likely than not. [Citation.]

(*Center for Biological Diversity, supra*, 166 Cal.App.4th at pp. 609-10.) The court acknowledged that “the Commission is the finder of fact in the first instance in evaluating the information in the record.” (*Id.* at p. 611.) However, the court clarified:

[T]he standard, at this threshold in the listing process, requires only that a substantial possibility of listing could be found by an objective, reasonable person. The Commission is not free to choose between conflicting inferences on subordinate issues and thereafter rely upon those choices in assessing how a reasonable person would view the listing decision. Its decision turns not on rationally based doubt about listing, but on the absence of any substantial possibility that the species could be listed after the requisite review of the status of the species by the Department under [Fish and Game Code] section 2074.6.

(*Ibid.*)

B. Petition History

On March 1, 2017, CBD submitted the Petition to the Commission to list Cascades Frog as endangered or threatened under CESA. On March 6, 2017, the Commission referred the Petition to the Department for evaluation. The Department requested of the Commission, and was granted, a 30-day extension to the 90-day Petition evaluation period. This Petition Evaluation report was submitted to the Commission on July 25, 2017.

The Department evaluated the scientific information presented in the Petition as well as other relevant information the Department possessed at the time of review. The Department did not receive any information from the public during the Petition Evaluation period pursuant to Fish and Game Code Section 2073.4. Pursuant to Fish and Game Code Section 2072.3 and Section 670.1, subdivision (d)(1), of Title 14 of the California Code of Regulations, the Department evaluated whether the Petition includes sufficient scientific information regarding each of the following petition components to indicate that the petitioned action may be warranted:

- Population trend;
- Range;
- Distribution;
- Abundance;
- Life history;
- Kind of habitat necessary for survival;

- Factors affecting ability to survive and reproduce;
- Degree and immediacy of threat;
- Impacts of existing management;
- Suggestions for future management;
- Availability and sources of information; and
- A detailed distribution map.

C. Overview of Cascades Frog Ecology

The Cascades Frog (*Rana cascadae*) is a medium-sized member of the “true frog” family Ranidae. Females are larger than males and can grow to over 8 cm (3.1 in) in length (Garwood and Welsh 2007). The species’ typical dorsal (top) coloration is brown, tan, or drab-green with well-defined inky black spots, a cream-colored jaw stripe, and strong dorsolateral folds (Thomson et al. 2016). Their sides are mottled and fade into a cream or buff ventral (bottom) coloration, usually with yellowish (sometimes reddish) areas posteriorly and on the undersides of their legs (Slater 1939, Thomson et al. 2016). California populations are genetically distinct from populations in Oregon and Washington (Monsen and Blouin 2003).

Within California, Cascades Frogs range from the Klamath-Trinity region, along the Cascades Range axis in the vicinity of Mt. Shasta, southward to the headwater tributaries of the Feather River (Jennings and Hayes 1994). The historical elevation range of Cascades Frogs in California was from approximately 230 to 2500 m (750 to 8200 ft), although extant populations appear to be restricted to sites above 1220 m (4000 ft) (Garwood and Welsh 2007). There are two disjunct populations recognized in California: the Southern Cascades, which comprises about 40% of their California range, and Klamath Mountains, which comprises about 60% (Pope et al. 2014); however, they do not appear to form distinct genetic units (Chang and Shaffer 2010).

Cascades Frogs inhabit a variety of mostly lentic (still water) habitats such as large lakes, ponds, wet meadows, and streams (Jennings and Hayes 1994, Pope et al. 2014). Adult Cascades Frogs demonstrate a high degree of site fidelity (Olson 1992), and at a site in the Trinity Alps, they were often observed moving from different breeding, feeding, and overwintering habitats in a consistent pattern year after year (Garwood 2009). They are diurnal (active during the day) and are typically found close to water, often in open, sunny areas along shorelines that provide basking and foraging opportunities, but they can move between basins by crossing over mountain ridges (Brown 1997, Garwood 2009, Pope et al. 2014, Welsh et al. 2006).

Breeding occurs shortly after snowmelt as surface water becomes available, and eggs are typically deposited in shallow lake alcoves, ponds, potholes, flooded meadows, and sometimes

slow-moving streams and anthropogenic (human-made) wetland habitats (Garwood et al. 2007, Pope 2008b, Pope and Larson 2010, Quinn et al. 2001). Cascades Frogs are explosive breeders, with all egg laying taking place at a site over a period of 3 to 14 days (Briggs 1987, Garwood 2009, Nussbaum et al. 1983, Olson 1988, Syse 1975). For breeding to be successful, sites cannot freeze over after eggs are deposited and must possess water long enough to support egg and larval development, which can take three to four months depending on temperature (Pope and Larson 2010, Pope et al. 2014, Pope et al. 2011). Larvae (tadpoles) can tolerate a wide range of temperatures and tend to aggregate in warmer areas (Pope n.d., Wollmuth et al. 1987); however, some shallow sites may exceed their critical thermal threshold (Pope et al. 2014, Pope and Larson n.d.). Larvae that do not metamorphose prior to winter probably do not survive (Garwood 2009). Adults and juveniles likely hibernate in mud at the bottom of ponds, spring-fed saturated ground, and deep ponds and springs (Briggs 1987, Pope et al. 2014) and require sites that do not freeze solid to survive. Annual adult survival is generally relatively high, although substantial mortality can occur during prolonged winters with heavy snow if individuals do not possess the energy reserves to last the duration of the season (Briggs and Storm 1970, Pope 2008b, Pope et al. 2014).

Juvenile and adult Cascades Frogs are generalist predators, primarily consuming aquatic and terrestrial invertebrates (Joseph et al. 2011, Larson 2012) but occasionally preying on larvae or recently metamorphosed Pacific treefrogs or conspecifics (i.e., cannibalism) (Pope et al. 2014). The most common Cascades Frog prey items in one study included grasshoppers, spiders, ants, crane flies, and insect larvae (Larson 2012). Aquatic invertebrates are consumed less at sites with non-native fish, which may compete for the same prey (Joseph et al. 2011). Non-native fish may also prey on Cascades Frogs, at least their young life stages. Welsh et al (2006) reported that Cascades Frog larvae were 3.7 times (CL: 1.8-5.6) less likely to be found in lakes with fish than those without, and Pope (2008a) reported an increase in survival of young frogs from 59% to 94% and an increase in frog density by a factor of 13.6 due to increased recruitment within 3 years of removing non-native fish from 3 lakes.

Natural predators on Cascades Frogs include: gartersnakes, American dippers, American robins, Clark's nutcrackers, river otters, rough-skinned newts, diving beetles, giant water bugs, dragonfly naiads, and predatory leeches (Briggs and Storm 1970, Garwood 2006, Garwood and Welsh 2007, Garwood and Wheeler 2007, Nauman and Dettlaff 1999, Peterson and Blaustein 1991, Pope et al. 2008, Stead and Pope 2010).

III. Sufficiency of Scientific Information to Indicate the Petitioned Action May Be Warranted

The order in which the petition components are evaluated below more closely reflects the order that they were provided in the Petition. This differs from their sequence in Fish and Game Code section 2072.3 and Section 670.1, subdivision (d)(1), of Title 14 of the California Code of Regulations, as well as in the Executive Summary and Introduction of this Petition Evaluation.

A. Range

1. Scientific Information in the Petition

The Petition provides the following information on the Cascades Frog's range on pages 4 and 5. However, for purposes of this Petition Evaluation, "range" is limited to the species' California range. (*Cal. Forestry Assn. v. Cal. Fish and Game Com.*, *supra*, 156 Cal. App. 4th at p. 1551.)

The Cascades Frog's range extends along the length the Cascade Range, from approximately 24 km (15 mi) south of the border with British Columbia in northern Washington, to the northern edge of the Sierra Nevada in California (Pearl and Adams 2005). Within California, the species' range extends from the Klamath-Trinity region, along the Cascades' axis in the vicinity of Mt. Shasta, southward to the headwater tributaries of the Feather River at elevations from approximately 230 to 2500 m (750 to 8200 ft) (Jennings and Hayes 1994). There are two disjunct populations: the Southern Cascades, which comprise about 40% of their California range, and Klamath Mountains, which comprise about 60% (Pope et al. 2014).

2. Other Relevant Scientific Information

Figure 1 shows the presumed range of Cascades Frogs in California (Thomson et al. 2016). The range of the Southern Cascades population encompasses parts of Butte, Lassen, Plumas, Shasta, and Tehama counties. The range of the Klamath Mountains population encompasses parts of Shasta, Siskiyou, and Trinity counties. The total area of the Cascades Frog range in California (gray area in Figure 1) is 321,346 ha (794,062 ac) in the Southern Cascades and 715,730 ha (1,768,600 ac) in the Klamath Mountains, but the species is patchily distributed within these areas.

In addition, there is a recent sighting of a Cascades Frog on private land approximately 500 m (1640 ft) outside of the range boundary depicted in Figure 1 (CDFW 2017a). While this distance represents a minimal extension, it suggests that, where suitable habitat exists in close proximity to the existing recognized range, the species may be present. For example, there are a few clusters of suitable habitat that have not been sufficiently surveyed that, if occupied, could slightly expand the species' range in the vicinity of the Shasta-Trinity and Lassen national forests (J. Garwood pers. comm.).

3. Sufficiency of the Petition with regard to Range

The Department concludes the Petition contains a sufficient description of the Cascades Frog's range in California, including evidence suggesting range contractions in the Lassen and Mount Shasta regions.

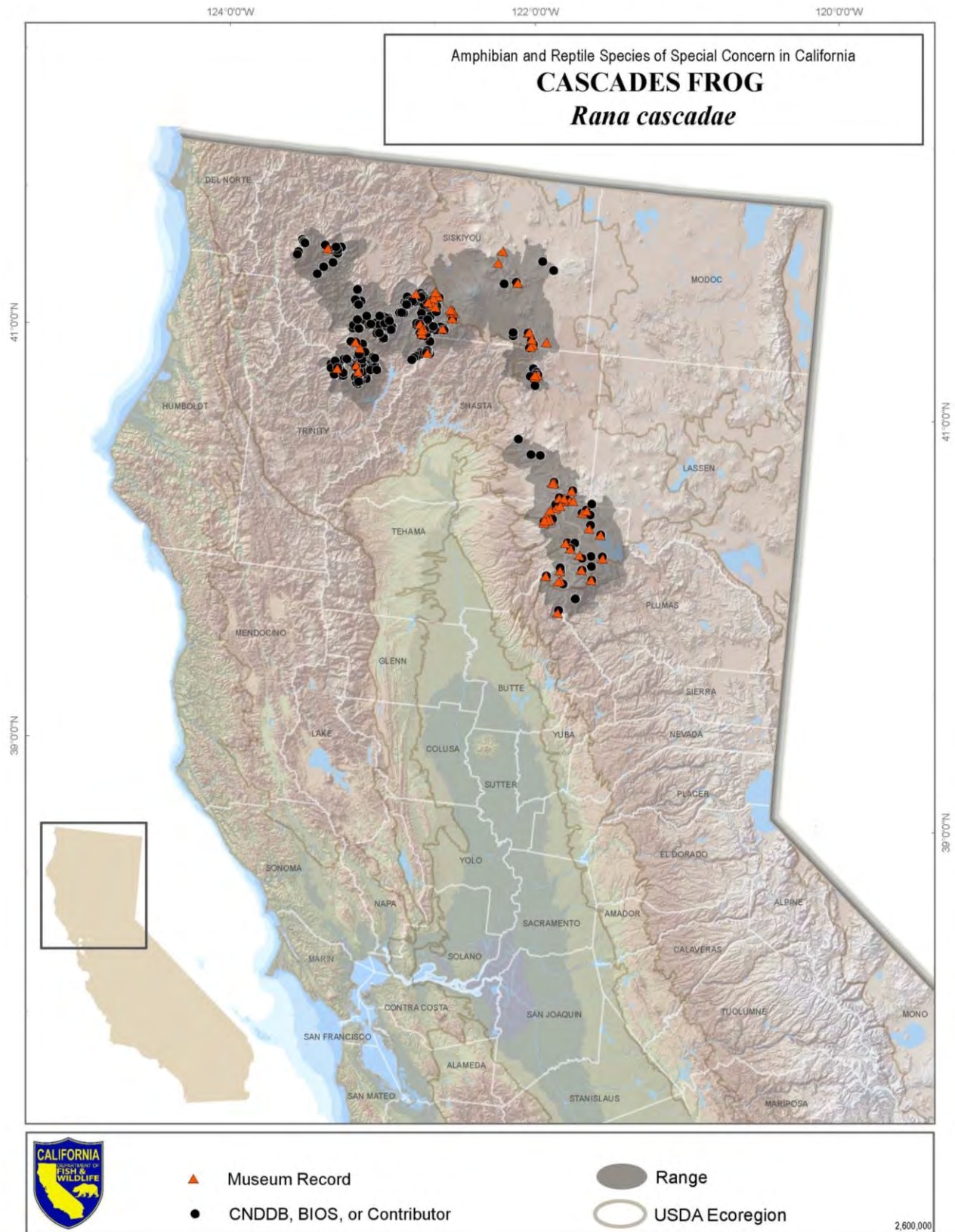


Figure 1. Cascades Frog range in California (Thomson et al. 2016)

B. Life History

1. Scientific Information in the Petition

The Petition contains the following information on the Cascades Frog's life history on pages 4 to 8, including species description, taxonomy, life cycle, diet, movements, and sources of mortality.

Cascades Frogs are brown, copper, tan, or olive colored with a spotted back and yellowish to cream underside, dark mottling around the groin, and a cream-colored stripe extending from the jaw to the shoulders. Adults grow to 4.4-7.6 cm (1.75-3 in) in length, and females are larger than males (Stebbins 2003). Cascades Frog larvae are dark brown with copper and pinkish speckling, golden coloring on the sides, and a finely speckled tail (Nafis 2013). Their bodies are oval, their eyes are dorsally located (as opposed to on the sides of their head), and they grow to approximately 5 cm (2 in) in length. Cascades Frog eggs are black above, white below, and widely spaced within a gelatinous mass containing 300-800 eggs (Nafis 2013).

The Cascades Frog is a medium-sized member of the family Ranidae, the "true frogs." It is morphologically (Dunlap 1955, Slater 1939) and genetically (Case 1978; Green 1986a, 1986b) distinct from other Ranids. Populations in California have been isolated from Oregon and Washington populations for approximately 2 million years and differ significantly genetically (Monsen and Blouin 2003). The extent of genetic differentiation between the Southern Cascades and Klamath Mountains populations in California is unknown (Pope et al. 2014). The species typically exhibits a metapopulation structure, but high degrees of genetic isolation have been observed in some local populations over relatively small distances (Monsen and Blouin 2004, Pope et al. 2014). Gene flow likely drops over a distance of 10 km (6.2 mi) between populations (Pope et al. 2014).

Cascades Frogs are relatively long-lived, and late-maturing (Pope et al. 2014). Males attain sexual maturity between 3 and 4 years of age, while females mature between 4 and 5 years of age, and lifespan is typically 5 to 10 years (Ibid.). Cascades Frogs are active during the day (Stebbins 1985).

Cascades Frog reproduction is triggered by spring snowmelt, which can occur from March to mid-August (Stebbins 1985) depending on location, seasonal conditions, and elevation. Males enter the breeding sites first after ice and snow thaw, opening up surface water along the shoreline, and form chorusing groups (Briggs 1987, Garwood and Welsh 2007). Calling occurs above and below the surface (Stebbins 1985). It appears that males do not defend territories, but their interactions may result in regular spacing across breeding habitat (Olson 1988). Females are rarely seen during breeding; they primarily swim underwater to oviposition sites and leave after breeding is complete (Olson 1992).

Egg masses are typically laid communally in pond and lake habitats but singly in meadow pools (Garwood et al. 2007, Pope and Larson 2010), and a small portion have been found in small low-gradient streams with slow flows (Pope 2008b). They are usually deposited near the surface in shallow water attached to emergent vegetation, wood, boulders, or the shoreline, but they have also been found 2 m (6.6 ft) deep and free-floating (Garwood et al. 2007, Pope and Larson

2010). Because breeding occurs soon after open water habitat becomes available, egg masses may be vulnerable to late freezes (Pope and Larson 2010, Pope et al. 2011).

The duration of embryonic development (i.e., time to hatching) is temperature-dependent but typically takes around three weeks in California (Blouin and Brown 2000, Garwood and Larson n.d., Syte 1975). In spring-fed sites with consistently cold water (2 to 10 °C [35 to 50 °F]), hatching may be delayed slightly, but since egg masses are usually laid in shallow open water, sun exposure rapidly increases temperatures to above 13 °C (55 °F), which are better for development. Larvae are able to tolerate a wide range of water temperatures and tend to aggregate in the warmest areas of ponds and lakes during the day (Pope n.d., Wollmuth et al. 1987). These areas are typically near shore, gently sloping, and protected from the wind (O'Hara 1981, Olson 1992) where temperatures can reach over 20 °C (68 °F) during the day and drop to near freezing at night. Larvae have also been observed in shallow pools as warm as 38 °C (100 °F), but they appeared highly stressed (Pope and Larson n.d.).

Larval development is also temperature-dependent and can take from 2 to 4 months to metamorphosis (Pope et al. 2014). At sites with short hydroperiods, larvae can become stranded and desiccate prior to metamorphosis (Garwood 2009, O'Hara 1981, Pope et al. 2011, Syte 1975). Larvae that fail to metamorphose prior to the onset of winter do not apparently survive overwintering (Garwood 2009). Larvae and metamorphs (individuals transitioning from larvae to frog) preferentially associate with kin over non-kin (Blaustein and O'Hara 1982a, 1982b, 1987; Blaustein et al. 1984; O'Hara and Blaustein 1981, 1985). This kind of kin association can affect growth, predator avoidance, and other factors (Hokit and Blaustein 1994, 1995, 1997). Garwood (2009) found that newly metamorphosed frogs tended to remain near their natal ponds.

Adult Cascades Frogs demonstrate a high degree of site fidelity (Olson 1992), and at a site in the Trinity Alps, they were often observed moving from different breeding, feeding, and overwintering habitats in a consistent pattern year after year (Garwood 2009). In other areas that can support all habitat needs, they may remain at the waterbody year-round (Pope 2008a).

Adult Cascades Frog survival varies by location. Survival rates in the Trinity Alps were estimated between 68 and 93% (Pope 2008b, Pope et al. 2014), but Briggs and Storm (1970) reported survival at around 55% from a site in central Oregon. In the latter study, it appeared most of the mortality occurred over winter. This can occur during unusually long winters with heavy snowfall if individuals do not possess sufficient energy stores to survive the protracted season (Pope et al. 2014).

Juvenile and adult Cascades Frogs are generalist predators, primarily consuming aquatic and terrestrial invertebrates (Joseph et al. 2011, Larson 2012) but occasionally preying on larvae or recently metamorphosed Pacific Treefrogs (*Pseudacris regilla*) or conspecifics (Pope et al. 2014). The extent to which aquatic prey are consumed appears to be influenced by the presence of fish; in fishless lakes, more aquatic invertebrates were eaten, whereas in lakes with fish, more terrestrial species were eaten (Joseph et al. 2011). Larson (2012) recorded invertebrates from 102 families in Cascades Frog stomach contents with 5 groups among the

most important diet components: grasshoppers (Acridiidae), spiders (Aranae), ants (Formicidae), crane flies (Tupilidae), and insect larvae.

Natural predators of Cascades Frog include: gartersnakes (*Thamnophis* spp.) (Garwood and Welsh 2007, Pope et al. 2008); birds such as American dippers (*Cinclus mexicanus*) (Garwood and Welsh 2007), American robins (*Turdus migratorius*) (Briggs and Storm 1970), and Clark's nutcrackers (*Nucifraga columbiana*) (Garwood 2006); mammals such as river otters (*Lontra canadensis*) (Pope et al. 2014); other amphibians such as Rough-skinned Newts (*Taricha granulosa*) (Peterson and Blaustein 1991); aquatic insects such as diving beetles (Dytiscidae), giant water bugs (Belostomatidae), and dragonfly naiads (Odonata) (Garwood and Wheeler 2007, Nauman and Dettlaff 1999); and predatory leeches (Hirudinida) (Stead and Pope 2010). Predatory leeches have been implicated as a potential contributor to dramatic declines in Cascades Frogs in the Lassen region (Ibid.).

2. Other Relevant Scientific Information

Cascades Frogs have prominent dorsolateral folds, and their dorsal black spots are often described as “inky” with sharply defined edges (Stebbins 2003, Thomson et al. 2016). Jennings and Hayes (1994) note that numerous specimens from eastern Siskiyou and Shasta counties were previously misidentified as Oregon Spotted Frogs (*Rana pretiosa*). The last verified Oregon Spotted Frog in California was from a 1918 museum collection; the species is considered likely extirpated in the state (USFWS 2014, 2016a), so future misidentifications are not likely to occur.

Preliminary data indicate Southern Cascades and Klamath Mountains populations of Cascades Frogs are not separate genetic units (Chang and Shaffer 2010). Instead, populations from southeastern Siskiyou County and Shasta counties appear to form one group, while the rest form another (Ibid.). This suggests that populations from southern portion of the range (Plumas and Tehama counties) are more closely related to those in Trinity Alps than they are to those in Shasta County (i.e., their nearest neighbor), although the authors noted that the southern-most populations may also form a separate group (Ibid.). They cautioned that these results are preliminary and may change with a larger dataset (Ibid.).

In addition, a second genetic study at the University of Wisconsin-Madison is currently exploring if any broad- and fine-scale patterns of Cascades Frog genetic structure occurs throughout isolated populations of California and its entire range (Bennett Hardy pers. comm.). This study is using more advanced sequencing techniques and single nucleotide polymorphism datasets. The Department was involved with providing tissues to this study from the Klamath Mountains region in 2016.

Cascades Frogs are considered explosive breeders (Syte 1975). The typical oviposition period for a particular site lasts between 3 to 14 days (Briggs 1987, Garwood 2009, Olson 1988), and mature females are thought to produce a maximum of one clutch of eggs per year (Syte 1975). This life history strategy makes the species particularly vulnerable to late freezes, which can eliminate an entire cohort.

The species does not appear to possess a bet-hedging strategy where some individuals breed early and some later when conditions may be more favorable.

Cascades Frog dispersal appears to be limited, which has implications for gene flow among extant populations and recolonization of extirpated populations. Garwood (2009) measured Cascades Frog dispersal in the Klamath Mountains and found significant differences in patch connectivity within a basin relative to between basins. Garwood (2009) found on average 51% of juvenile Cascades Frogs dispersed from their natal patches within an individual basin, and only 1% dispersed over mountain passes to colonize adjacent basins. The study indicated habitats occurring in close proximity, but in separate adjacent basins, should be recognized as essential for gene flow given the low dispersal rates between basins.

3. Sufficiency of the Petition with regard to Life History

The Department concludes the Petition contains a sufficient description of the life history of Cascades Frogs based on the scientific information available for the species, which indicates some aspects may render it particularly vulnerable to natural and anthropogenic impacts.

C. Kind of Habitat Necessary for Survival

1. Scientific Information in the Petition

The Petition contains the following information on Cascades Frog habitat use and requirements on page 7.

Cascades Frogs inhabit a variety of mostly lentic habitats such as large lakes, ponds, wet meadows, and streams at mid- to high-elevations (Jennings and Hayes 1994, Pope et al. 2014). They are typically found close to water, often in open, sunny areas along shorelines that provide basking and foraging opportunities, but can occasionally move between basins by crossing over mountain ridges (Brown 1997, Garwood 2009, Pope et al. 2014, Welsh et al. 2006). Cascades Frogs are less likely to occupy wetlands that are farther away from lakes, and their abundance is often lower at these sites as well (Cole and North 2014).

Breeding occurs in areas that are first to become available after snowmelt such as shallow lake alcoves, ponds, potholes, flooded meadows, and sometimes slow-moving streams and anthropogenic (human-made) wetland habitats. For breeding to be successful, sites must possess water long enough to support egg and larval development, which can take three to four months depending on temperature (Pope and Larson 2010, Pope et al. 2014). As previously mentioned, while larvae can tolerate a wide range of temperatures and will select for warmer areas, some shallow sites may exceed their critical thermal threshold (Pope and Larson n.d., Pope et al. 2014).

Cascades Frogs require overwintering sites that do not freeze solid. They likely hibernate in mud at the bottom of ponds, spring-fed saturated ground, and deep ponds and springs (Briggs 1987, Pope et al. 2014).

2. Other Relevant Scientific Information

The effect of non-native fish presence on Cascades Frogs is discussed in more detail below in Section F-1, but it is worth briefly noting here as it relates to habitat quality and its ability to sustain healthy populations of Cascades Frogs. Welsh et al. (2006) found that Cascades Frog larvae were 3.7 times more likely to be found in fishless lakes than lakes with fish. Garwood and Welsh (2007) reported Cascades Frog densities were 6.3 times greater in a fishless meadow than one with trout. Pope (2008a) observed an increase in survival of young frogs from 59% to 94% and an increase in frog density by a factor of 13.6 due to increased recruitment within 3 years of removing non-native fish from 3 lakes.

3. Sufficiency of the Petition with regard to Kind of Habitat Necessary for Survival

The Department concludes the Petition contains a sufficient description of the types and conditions of habitats required for Cascades Frog survival, including the fact that it is a highly aquatic species with specialized needs.

D. Distribution and Abundance

1. Scientific Information in the Petition

The Petition contains the following information on the changes in Cascades Frog distribution and abundance in California on pages 8 through 12. Pope et al. (2014) conducted comprehensive reviews on the status of Cascades Frogs in California, and found that the species has become extremely rare in the Southern Cascades but remains “fairly widespread” in the Klamath Mountains. The Petition separates the discussion of Cascades Frog distribution and abundance in California by these two regions.

Southern Cascades

There were no formal surveys for Cascades Frogs in the Southern Cascades prior to 1980, but data from historical museum collections suggest the species was widespread and abundant, particularly in the vicinity of Lassen Volcanic National Park and the northwestern and southern portions of the Lassen National Forest (Pope et al. 2014). This area covered portions of the Pit River and most of the headwater tributaries of Hat, Deer, Mill, Battle, and Butte creeks, and upper North Fork and West Branch Feather River (Ibid.). Declines in the Southern Cascades populations were not recognized until the 1970s (Ibid.).

By the 1990s, Cascades Frogs had apparently disappeared from a large portion of formerly occupied sites. Fellers and Drost (1993) failed to detect the species at 16 historical localities, and only detected them at 1 of 50 sites (2%) surveyed. Jennings and Hayes (1994) estimated the species had been lost from approximately 99% of its historical range in the Lassen region. From 1993 to 2007, Fellers et al. (2008) conducted 1,873 amphibian surveys at 856 sites, encompassing all Cascades Frog habitats, within Lassen Volcanic National Park and Lassen National Forest. Cascades Frogs were found at only 6 sites over the 14 years of surveys, and a

III.D.1. Information in the Petition (continued)

single frog was reported from an additional site (Ibid.). There was no evidence of reproduction at most sites, and reproduction in all but one remained lower than the annual reproductive output of one breeding pair for over 12 years (Ibid.). Three populations have been found to the south on private land and three to the north near Lassen National Forest (Pope and Larson n.d.).

In total, 12 sites have been documented to support Cascades Frogs in the Southern Cascades region since 1993 (Pope et al. 2014). Abundance estimates range from 5 individuals at Colby Creek to 150 individuals at Carter Meadow (Ibid.). Data from a mark-recapture study conducted between 2008 and 2011 indicated each population is slowly declining, and about half are at risk of extirpation, while the others are likely to continue declining (Ibid.). Cascades Frogs have not been detected in Lassen Volcanic National Park since 2008, in spite of multiple surveys of known occupied sites and suitable meadow habitats (Ibid.). The species appears to be extirpated from the park.

Klamath Mountains

By the 1970s, Cascades Frogs had been recorded from approximately 25 locations in the Shasta-Trinity National Forest, but few populations had been recorded from the Klamath National Forest, and there was no evidence of declines (Pope et al. 2014). Jennings and Hayes (1994) reported that the species seemed common in appropriate habitat in the Klamath Mountains region.

Between 1999 and 2002, occupancy and abundance data were collected for all mapped lakes, ponds, and wet meadows in the Trinity Alps Wilderness, Russian Wilderness, Marble Mountains Wilderness, Siskiyou Wilderness, Red Buttes Wilderness, Castle Crag Wilderness, and parts of the Shasta-Trinity and Klamath National Forests outside of wilderness areas (Welsh and Pope 2004). No Cascades frogs were found in the Siskiyou or Red Buttes wilderness areas (Ibid.). Occupancy (i.e., at least one of any life stage) and evidence of reproduction (i.e., observation of at least one egg mass or larvae) data from the remaining areas are summarized in Table 1.

Table 1. Summary of Cascades Frogs Population Data in the Klamath Mountains (from Welsh and Pope 2004, cited in Pope et al. 2014)

Wilderness Area	Occupied (%)	n (sites)	Reproducing (%)	n (sites)
Trinity Alps	58.7	223/380	30.5	116/380
Russian	31	17/54	5.5	3/54
Marble Mountains	32	80/250	11	28/250
Castle Crag	19	3/16	-	-
Shasta-Trinity	100	15/15	-	-

In 2008, 112 previously occupied sites in the Klamath Mountains were re-surveyed, and 79% were found to still support Cascades Frogs (Piovia-Scott et al. 2011, Pope et al. 2014). While no

III.D.1. Information in the Petition (continued)

significant declines were noted, the abundances of some previously robust populations appeared low (Pope et al. 2014).

Of the 695 water bodies surveyed between 1999 to 2001 in the Trinity Alps, Russian, and Marble Mountain wilderness areas, the maximum number of adult Cascades Frogs seen at a water body was 32, and the mean number of adults encountered at occupied sites was only 4 (Welsh and Pope 2004). Since that survey effort, a 9-year mark-recapture study was conducted on 8 of these populations. At 5 of the sites, adult abundance was fewer than 25 individuals, while the other 3 appeared relatively robust (Garwood n.d., Pope 2008a). Pope and Piovita-Scott (2010) estimated two headwater lakes supported more than 500 Cascades Frogs in 2010; only one other site in the Trinity Alps is believed to support similar numbers (Pope et al. 2014).

The Cascades Frog populations in the Klamath Mountains have not experienced the same dramatic declines as those in the Southern Cascades, but low abundance and some extirpations are cause for concern (Pope et al. 2014).

2. Other Relevant Scientific Information

As previously noted in the Range section (A.2), a limited number of potentially suitable habitats that have not been surveyed occur slightly outside of the known range, which have the potential to slightly expand the distribution and potential abundance of this species if present (J. Garwood pers. comm.).

Aside from the observations denoted on the distribution map provided in the Petition on page 9 and those in Figure 1, little is known about the distribution and abundance of Cascades Frogs in the Mount Shasta region, which is located in the northeastern portion of the species' range in California.

3. Sufficiency of the Petition with regard to Distribution and Abundance

The Department concludes the Petition contains a sufficient description of what was known about historical and recent Cascades Frog distribution and abundance to indicate that both have declined across the species' range in California, to some extent, with the most precipitous declines occurring in the southern portion.

E. Population Trend

1. Scientific Information in the Petition

The Petition contains the following information on Cascades Frog population trends in California on page 12.

Cascades Frog populations have declined significantly in the Southern Cascades region. The species appears to be extirpated from Lassen Volcanic National Park, where it was once considered abundant. After several intensive survey efforts, it appears that only 12 sites continue to support the species, all with low numbers that are slowly declining. Pope et al.

III.E.1. Information in the Petition (continued)

(2014) determined that without active management, some of these populations will disappear within 10 years, and the remainders are at risk of extirpation.

Cascades Frogs are still widespread and relatively abundant in the Klamath Mountains region. Some recent extirpations have been documented, and some previously robust populations have declined. These instances are more common in the eastern portion of the region in the Castle Crags Wilderness and Klamath National Forest where population sizes are generally small.

Overall, the Cascades Frog's range has contracted at the southern end. Fellers and Drost (1993) and Jennings and Hayes (1994) estimated that the species had been extirpated from around 99% of the populations surrounding Mount Lassen and 50% of their total historical distribution in California. More recently, Fellers et al. (2008) noted that the range has contracted further.

2. Other Relevant Scientific Information

A long-term population monitoring study sponsored, in part, by the Department has been ongoing since 2003 in the Klamath Mountains (J. Garwood pers. obs.). Overall captures of adult and juvenile Cascades Frogs have decreased steadily through the duration of the study (Figure 2), indicating the population is in steady decline. In addition, annual Cascades Frog egg mass counts have ranged from 46 to 82 masses annually across 8 to 14 patches. The number of egg masses produced does not appear to be in steady decline, but the number of patches used for breeding within the population has steadily declined from 14 to 9 indicating patch-level extinctions.

3. Sufficiency of the Petition with regard to Population Trend

The Department concludes the Petition contains sufficient information to indicate that the overall trend in California populations of Cascades Frogs is declining, with the most precipitous declines occurring in the southern portion of the species' range.

F. Factors Affecting the Ability to Survive and Reproduce and Degree and Immediacy of Threat

1. Scientific Information in the Petition

The Petition contains the following information on threats affecting the ability of Cascades Frogs to survive and their degree and immediacy on pages 12 through 25. These include airborne contaminants, climate change, disease, fire suppression, habitat loss and alteration, introduced fish, livestock grazing, recreational activities, and small population sizes.

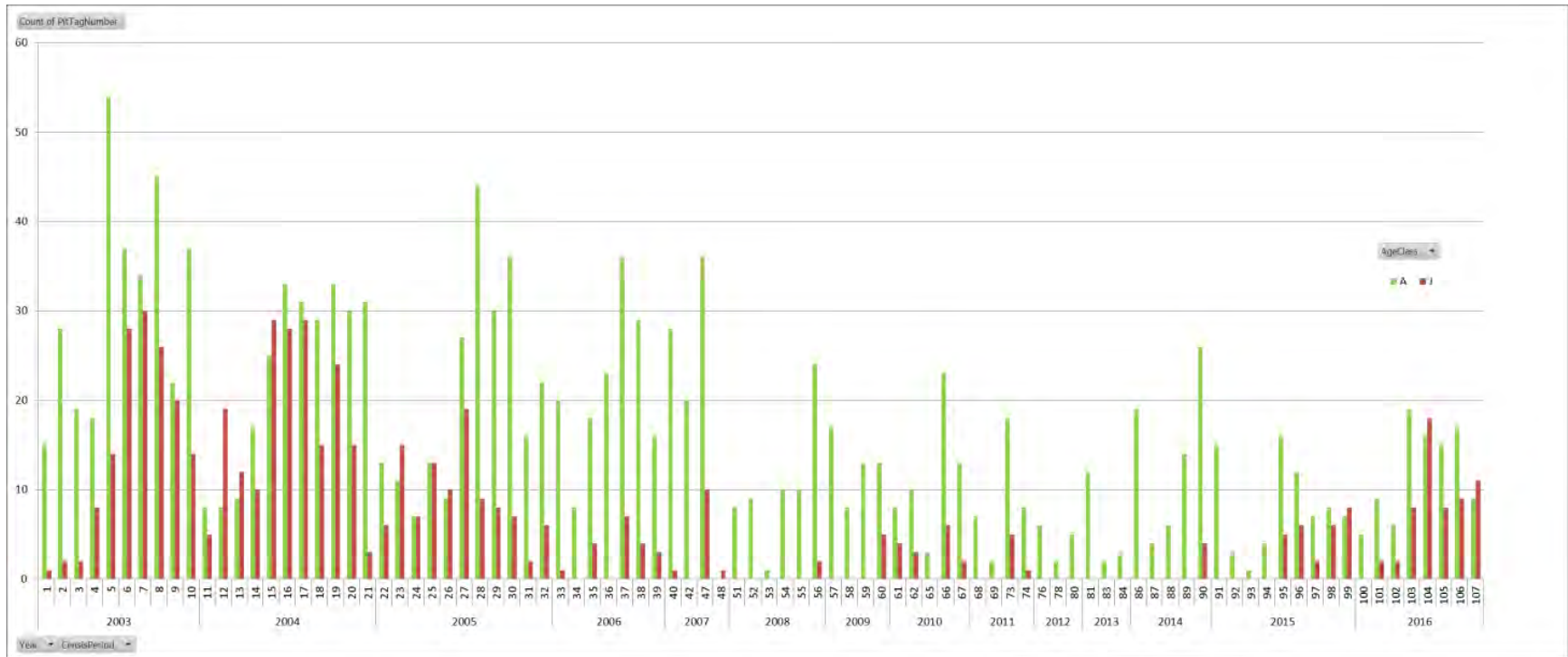


Figure 2. Captures of uniquely marked Cascades Frogs separated by age class, census period, and year across three habitat patches in Echo Lake Basin from 2003 to 2016, Klamath Mountains, CA. Green bars represent adult Cascades Frogs and red bars represent juveniles (J. Garwood pers. obs.).

III.F.1. Information in the Petition (continued)

Airborne Contaminants

Deposition of airborne agrochemical pollution from the Central Valley into the Sierra Nevada and southern Cascades is well-documented (Aston and Seiber 1997, Bradford et al. 2010, Datta et al. 1998, Davidson 2004, Davidson et al. 2002, Hageman et al. 2006, LeNoir et al. 1999, McConnell et al. 1998) and has likely contributed to declines in Cascades Frog populations in some regions (Davidson 2004, Davidson et al. 2002). On average, 62.7 million kg (168 million lbs) of pesticides were applied each year to agricultural lands (primarily in the Central Valley) between 1998 and 2014 (CDPR 2017). In the Lassen region, approximately four times more agriculture land was located upwind of extirpated Cascades Frog population sites than extant ones (Davidson et al. 2002). Chlorpyrifos, dacthal, and endosulfans, banned organochlorines, and polycyclic aromatic hydrocarbons (PCBs) were found in Cascades Frog tissues, but there was no significant pattern in pesticide concentrations between Southern Cascades and Klamath Mountains Cascades Frog populations (Davidson et al. 2012).

Paulk and Wagner (2004) reported that glyphosate and Malathion significantly adversely affected Cascades Frog larval survival and development at concentrations below the EPA-recommended maximum levels for surface water. Hatch et al. (2001) reported that juvenile Cascades Frogs were not able to sense or avoid toxic levels of fertilizers such as urea, and Marco and Blaustein (1999) reported that nitrites can affect Cascades Frog larval behavior and metamorphosis. In addition to the direct effects agricultural chemicals can have on amphibians, they may be interacting with other stressors in the environment, resulting in increased vulnerability to predators and disease, including weakening immune systems and facilitating chytridiomycosis (see “Disease” below) outbreaks (Blaustein et al. 2011, Bradford et al. 2011, Brühl et al. 2011, Davidson et al. 2007).

The degree to which airborne contaminants threaten the continued survival of Cascades Frogs is presumed to be low; however, complex interactions may exist between these chemicals and other stressors that have not been thoroughly examined (Pope et al. 2014). These effects are expected to be greatest in low- to mid-elevations downwind of agricultural areas (Ibid.).

Climate Change

As ectotherms, all aspects of amphibians’ life history are strongly influenced by the external environment, particularly temperature and moisture. Higher average temperatures, varying precipitation patterns, and alterations in disturbance regimes such as fire are already affecting many wildlife species across North America (Case et al. 2015, Chen et al. 2011, Parmesan 2006, Root et al. 2003). Among a set of 195 species of plants, mammals, birds, and herpetofauna (amphibians and reptiles) from the Pacific Northwest, Case et al. (2015) determined that herpetofauna were, on average, the most sensitive group to climate change. This result was primarily driven by the fact that 90% of the amphibians and reptiles studied relied on at least one habitat type that was highly sensitive to climate change, such as the seasonal wetlands Cascades Frogs occupy (Ibid.).

Climate-associated shifts in amphibian phenology (seasonal timing), geographic range, and host-pathogen interactions have been documented (Blaustein et al. 2010, Corn 2005, Li et al.

III.F.1. Information in the Petition (continued)

2013), and evidence is emerging that climate change may be contributing to population declines as well (Lowe 2012, Rohr and Palmer 2013). Li et al. (2013) synthesized the results of 14 long-term data sets on amphibian breeding timing in the U.S. and Europe and discovered that over half the populations under study were breeding earlier. Shifts in timing of breeding can have fitness and population-level consequences; amphibians that emerge earlier in the spring can be vulnerable to subsequent freeze events (Li et al. 2013). In addition, shifts in geographic range in response to climate change can be difficult for species like Cascades Frogs with restricted high-elevation ranges and specific habitat requirements (Ibid.).

Cascades Frogs inhabit montane wetlands, frequently using hydrologically intermediate ponds, which are naturally variable, holding water in most years but occasionally drying during droughts (Lawler et al. 2014, Ryan et al. 2014). Several studies predict a decreased availability of this habitat type as the distribution and composition of Pacific Northwest montane wetlands are altered by climate change (Lawler et al. 2014, Lee et al. 2015, Ryan et al. 2014). These projections are associated with changes in snowpack volume, runoff, direct precipitation, and evaporation (Hamlet et al. 2005, IPCC 2007, Ryan et al. 2014). Snowpack is estimated to have declined by more than 50% over the past century, snowmelt runoff and peak water availability are occurring earlier in the year, and soil moisture is receding (Hamlet et al. 2007, Mote et al. 2005, Ryan et al. 2014). Rising temperatures and decreased summer precipitation will continue to reduce mountain snowpack and increase evapotranspiration and soil-moisture stress in late summer months, potentially converting more than half of the intermediate montane wetlands into ephemeral wetlands by the 2080s (Lee et al. 2015). Lawler et al. (2014) concluded that Cascades Frogs had the highest risk of climate-change related declines of the three species of amphibians they studied in the Pacific Northwest. The predicted loss of high elevation, intermediate wetlands will force Cascades Frogs to move to larger, deeper lakes that are more likely to support non-native fish, which decrease abundance and survival (Ryan et al. 2014).

In the Cascades Range, Ryan et al. (2014) reported that wetland drawdown is occurring earlier and more rapidly, water availability is greatly reduced, complete drying is occurring more frequently, and summers have longer dry periods. This can lead to stranding and desiccation of Cascades Frog larvae and decreased larval densities, along with shifts in size at metamorphosis and reduced survival due to increased water temperatures (Lawler et al. 2014, Semlitsch et al. 1988). In addition, among the most important predictors of Cascades Frog occupancy at a site was the number of available pools (Cole and North 2014).

Climate change may facilitate or exacerbate other environmental stressors, leading to population declines (Lowe 2012, Rohr and Palmer 2013). For example, a more variable climate and more frequent extreme weather events due to climate change have the potential to increase the pathogenicity of chytrid, the fungus responsible for widespread amphibian declines (Li et al. 2013, Raffel et al. 2013).

The current drought in parts of the Pacific Northwest may be indicative of average future climatic conditions in the Cascades Frog range. In some areas, near complete reproductive failure has been observed as a result of premature drying in ponds that typically remain wetted throughout the year. Dead adults have also been observed in these areas.

III.F.1. Information in the Petition (continued)

The degree to which climate change threatens the continued survival of Cascades Frogs is potentially high, particularly for populations that breed in ephemeral wetlands and those in the Southern Cascades region where the species is already rare and, therefore, highly susceptible to environmental stochasticity (Pope et al. 2014).

Disease

Chytridiomycosis is the amphibian disease caused by the fungal pathogen *Batrachochytrium dendrobatidis* (*Bd*). The result of its global rate of infection and associated mortality has been described as “the most spectacular loss of vertebrate biodiversity due to disease in recorded history” (Skerratt et al. 2007). Symptoms of adult amphibians with chytridiomycosis include lethargy and reluctance to flee, skin abnormalities, loss of righting reflex, and extended back legs. In infected larvae, the jaw sheaths and tooth rows are abnormally formed or lack pigment, which likely inhibits foraging ability (Fellers et al. 2001). The species-specific impact of *Bd* varies and can be influenced by temperature, predation pressure, pesticide exposure, and UV-B radiation, as well as the virulence of the strain (Berger et al. 2005, Farrer et al. 2011, Fisher et al. 2009, Gahl et al. 2012, Piovia-Scott et al. 2015, Retallick and Meira 2007).

Bd occurs throughout the Cascades Frog’s range, and the species is susceptible to infection (Adams et al. 2010; Garcia et al. 2006; Piovia-Scott et al. 2011, 2015). In lab experiments, Cascades Frog metamorphs exposed to *Bd* experienced significant mortality (Garcia et al. 2006), but declines in wild populations in the presence of *Bd* are not universal (Piovia-Scott et al. 2011, Pope et al. 2011). The reasons why some *Bd* infected populations decline dramatically, while others remain relatively stable, are not well known (Pope et al. 2014), but a rapid decline at one site is presumed to be the result of a particularly virulent strain (Fellers et al. 2008, Piovia-Scott et al. 2015). Juvenile Cascades Frog abundance at Section Line Lake in the Klamath Mountains decreased from hundreds in 2010 to two in 2012, and adults began to decline three years later (Piovia-Scott et al. 2015). No other factors such as predation or desiccation were evident, but a virulent strain of *Bd* was identified, and the high rate of overwintering mortality was consistent with chytridiomycosis-associated declines (Ibid.).

The significant decline in Cascades Frog populations in the southern portion of their range due to *Bd* and the prevalence of the disease throughout the species’ range is cause for concern (Pope et al. 2014). It appears that larger populations of frogs may increase resistance to *Bd* (Knapp et al. 2011), so efforts aimed at increasing Cascades Frog population sizes, such as removing predatory trout, may be crucial to ensuring the species’ survival (Ibid.). In addition, there is some evidence that treatment with antifungal drugs, such as Itraconazole, increases survival of *Bd*-infected Cascades Frogs (Hardy et al. 2015).

Other infectious diseases may also negatively affect Cascades Frogs in California. For example, *Saprolegnia ferax* is a species of water mold that commonly infects fish that can spread to amphibians and has caused die-offs of the species in Oregon (Blaustein et al. 1994, Kiesecker and Blaustein 1997). Prevalence of *Saprolegnia* in the wild has increased due to introduction of hatchery-raised fish (Blaustein et al. 1994), and this practice has the potential to transmit more virulent strains to amphibians (Bucciarelli et al. 2014). *Saprolegnia*-associated mortality may be

III.F.1. Information in the Petition (continued)

greater with increased exposure to UV-B radiation, which is likely to occur more frequently as wetlands shrink due to climate change (Bucciarelli et al. 2014, Kiesecker and Blaustein 1995).

The degree to which disease threatens the continued survival of Cascades Frogs is considered to be high. *Bd* is present across the species' range and appears to be significantly reducing juvenile survival in many populations, which increases the risk of population extirpations (Pope et al. 2014).

Fire Suppression

Fire suppression activities in California have the potential to adversely affect Cascades Frogs, although this subject has not been well studied and most evidence is anecdotal (Pilliod et al. 2003). Fire suppression activities that could directly impact Cascades Frogs include water drafting from ponds and streams, application of fire retardant, and construction of fuel breaks. These activities could also result in indirect impacts to the species through changes in aquatic and riparian habitats via sedimentation, alteration in downed woody debris, and reduction in amounts of vegetation associated with required habitats (potentially producing both positive and negative effects). In spite of this, no known impacts to Cascades Frogs from fire suppression activities have been documented. These activities occur regularly in the lower elevations of the Cascades Frog range and near the wildland-urban interface, putting the remaining populations in the Southern Cascades region at greater risk than those in the Klamath Mountains region, which is primarily subalpine, with long fire return intervals, and largely in wilderness areas. Fire crews and other fire personnel attempt to minimize impacts to aquatic and semiaquatic species and their habitats, but inadvertent impacts may still occur.

Construction of fire lines or firebreaks can be extensive and mimic habitat changes associated with roads and road construction. Sedimentation associated with unpaved roads can be greater than from logging or fire (Rieman and Clayton 1997). Restoration activities like installation of water bars and revegetation can reduce erosion (Pilliod et al. 2003). Using mechanized equipment in wilderness areas for fire suppression is not permitted.

Application of ammonia-based fire retardant and surfactant-based fire suppressant from air tankers or fire engines has the potential to adversely affect Cascades Frogs because some are toxic to aquatic organisms (Buhl and Hamilton 2000, Gaikowski et al. 1996, McDonald et al. 1996). Tanker pilots are directed to avoid aerial application of retardant or foam within 91 m (300 ft) of waterways (USDA 2011), although accidental contamination is still possible.

Potential large-scale indirect effects of fire suppression activities on Cascades Frog habitat include decreased water input and altered peak flows into wetlands as well as increased sediment yield. Fire suppression activities over the past century have led to dense forests with very high fuel loads. Dense forests can reduce snowpack and take up water for transpiration, resulting in reduced water yields downslope (Kattelman 1996). In addition, fire suppression can increase the natural invasion of shrubs and trees into open meadows, clogging formerly open breeding habitat with vegetation (Fellers and Drost 1993). Cascades Frogs may be losing suitable habitat in Lassen Volcanic National Park in part due to woody vegetation encroachment (Ibid.). The Forest Service began actively removing fuel loads in an effort to reduce the

III.F.1. Information in the Petition (continued)

frequency and intensity of wildfires. Catastrophic fire can produce some of the most extreme and extensive alterations to watershed condition of any type of disturbance (Kattelman 1996).

The degree to which fire suppression activities threaten the continued survival of Cascades Frogs differs by location. It is unlikely to be high in wilderness and high-elevation areas with sparse vegetation, where mechanized equipment is not permitted and fire suppression activities are rare. However, it is potentially high in the Southern Cascades region, because so few populations and limited numbers of animals remain (Pope et al. 2014).

Habitat Loss and Alteration

Vegetation and fuels management, water development and diversion, mining, and road effects can degrade or destroy Cascades Frog habitat.

Timber harvest, fuels management, salvage logging, and prescribed fire can impact Cascades Frogs (Pope et al. 2014). These activities change vegetation structure, the shade it produces, and woody debris, which can alter the quality of breeding, active-season, refuge, and overwintering habitat quality (Ibid.). They can also affect soil stability, erosion, and sediment loading to aquatic habitats (Ibid.). The effects of controlled burns for fuel reduction on Cascades Frogs are not well understood (Pilliod et al. 2003). Prescribed fire may benefit the species if it reduces encroachment of woody vegetation into meadows or the likelihood of a catastrophic fire, but it can be hazardous if undertaken in areas with granitic soils. Erosion rates of burned areas on granitic soils can be 66 times as great as in undisturbed watersheds and can elevate annual sediment yields for 10 years or more (Megahan et al. 1995).

Water developments, such as dams and diversions, can dramatically alter aquatic habitats (Harris et al. 1987, Moyle and Randall 1998). Dams can raise the levels of existing lakes or ponds or flood meadow habitat, eliminating, or potentially creating, Cascades Frog habitat. Diversions can modify the hydrology and water retention at a site potentially affecting breeding habitat. Most major water developments and diversions occur at lower elevations (Moyle and Randall 1998), but hydroelectric power generation and water storage reservoirs also occur in higher elevation areas within the Cascades Frog's range, such as Lake Almanor and Butte Valley Reservoir in the Southern Cascades region and Shasta and Trinity dams in the Klamath Mountains region (Pope et al. 2014). There are about 15 small lakes and meadow systems within the species' historical range in California that have some form of hydrological development, the majority of which consist of small dam structures that raise the water level of an existing water body.

Suction-dredge gold mining in streams and rivers can impact habitat by increasing suspended sediment, rearranging stream substrate, altering stream geomorphology, and directly trapping or killing aquatic organisms, including Cascades Frogs (CDFG 2011). All instream suction-dredge mining has been suspended since 2009 in California; however, the legacy impacts of historic hydraulic mining continue, including altered stream geomorphology and release of contaminants such as acid, cadmium, mercury, and asbestos in waterways (Larson 1996).

III.F.1. Information in the Petition (continued)

Most populations of Cascades Frogs are likely not directly affected by roads, but the indirect impacts of roads on the species' habitats and dispersal ability may be significant (Pope et al. 2014). Roads have the potential to change soil density, temperature, soil water content, light input, dust, surface water flow, pattern of runoff, and rates of sedimentation, and may also serve as barriers to movement that could prevent recolonization of extirpated sites (Trombulak and Frissell 2000). Six major highways (Interstate 5 and Highways 32, 36, 44, 89, and 299) partly or completely fragment portions of the Cascades Frog's range in California. In addition, paved, dirt, and gravel roads and trails occur throughout the species' range. Road crossings of water courses have the potential to block in-channel movements and dispersal events if culverts are too steep, become blocked by debris, or become disconnected from the streambed.

The degree to which habitat loss and alteration caused by these factors threaten the continued survival of Cascades Frogs is considered to be low with the exception of population isolation and habitat alteration caused by roads, which may be moderate on private lands and on the Lassen and Klamath national forests (Pope et al. 2014).

Introduced Fish

The impacts of stocking non-native fish into historically fishless waters on ecosystem functions and native species assembles, particularly amphibians, have been well documented (Bradford 1989, Hartel et al. 2007, Hartman et al. 2013, Knapp 2005, Knapp and Matthews 2000, Knapp et al. 2001, Pilliod and Peterson 2001, Ryan et al. 2014, Schindler et al. 2001, Vredenburg 2004, Welsh et al. 2006). This impact is widespread; non-native trout and other salmonids occupy approximately 95% of large mountain lakes and 60% of smaller ponds and lakes that were formerly fishless in the western U.S. (Bahls 1992). The majority of large and deep lakes in the Klamath Mountains and Southern Cascades support non-native populations of brook trout (*Salvelinus fontinalis*) or rainbow trout (*Oncorhynchus mykiss*) (Pope et al. 2014, Welsh et al. 2006).

Introduced fishes can affect amphibians in a number of ways. Introduced fish and native species compete for resources such as invertebrate prey (Bucciarelli et al. 2014, Finlay and Vredenburg 2007). Joseph et al. (2011) reported that adult Cascades Frogs co-occurring with introduced trout had smaller proportions of aquatic invertebrate prey in their stomachs than those occupying areas without trout. Introduced fish also directly prey upon native amphibians (Finlay and Vredenburg 2007, Simons 1998). Hartman et al. (2013) observed that, in the presence of trout, Cascades Frog larvae were most often found in shallow, vegetated areas that serve as a refuge from fish. The presence of nonnative fish can also lead to an increase in other predators. For example, in the Klamath Mountains, the Aquatic Gartersnake (*Thamnophis atratus*) was able to expand its range as a result of more prey availability (introduced fish), thus facilitating opportunities to also increase predation upon Cascades Frogs (Pope et al. 2008).

Several studies have documented a "fish" effect on Cascades Frog abundance and distribution. Welsh et al. (2006) reported that Cascades Frog distribution was negatively correlated with fish distribution, and Cascades Frog larvae were 3.7 times more likely to occur in lakes without trout. Garwood and Welsh (2007) reported that the density of Cascades Frogs was 6.3 times higher in a fishless stream than a similar one containing a high density of trout. Pope (2008a) reported

III.F.1. Information in the Petition (continued)

that, within 3 years of removing fish from 3 lakes, Cascades Frog densities increased 13.6 times and juvenile survival increased from 59% to 94%. Cole and North (2014) reported that the presence of trout was one of the strongest factors predicting presence of Cascades Frogs, and at higher elevations where trout were absent, Cascades Frogs dominated the aquatic species assemblage. Given climate change predictions, it can be expected that as higher elevation, intermediate wetlands dry up, Cascades Frogs will be forced to move into deeper waterbodies that are more likely to be occupied by fish, and the shallow refuges that protect larvae will likely also dry up, forcing the species into deeper waters with less protection (Pope et al. 2014, Ryan et al. 2014).

The declines of Cascades Frog populations, as well as two other native amphibians in California, prompted a lawsuit that concluded in a ruling that the Department must consider the impacts of fish stocking on the environment and native ecosystems. The resulting Environmental Impact Statement (ICF Jones and Stokes 2010) determined that the impacts of non-native trout on Cascades Frogs were “potentially significant.” There were 175 trout stocking locations within the Cascades Frog’s range in California (ICF Jones and Stokes 2010). Although stocking has since ceased in areas known to support Cascades Frogs (ICF Jones and Stokes 2010, Pope et al. 2014), many populations of stocked fish are likely self-sustaining (Pope et al. 2014).

The degree to which introduced fish and other predators threaten the continued existence of Cascades Frogs is considered to be high and widespread (Pope et al. 2014). The adverse impacts of introduced fish on Cascades Frog presence and densities have been demonstrated in the Klamath Mountains region, strongly suggesting they also contributed to declines in the Southern Cascades region (Ibid.). In addition, the interactions of introduced fish with other stressors, such as climate change and disease, may also be high (Ibid.).

Livestock Grazing

Seasonal cattle and sheep grazing have occurred in California for over two centuries, and the impacts on native ecosystems have been well documented (Fleischner 1994, Menke et al. 1996). These impacts include loss of native species, changes in species composition, alteration of hydrological function, including lowered water tables, soil deterioration, degradation of fish and aquatic insect habitat, and changes in ecosystem structure and function (Belsky et al. 1999, Fleischner 1994, Flenniken et al. 2001, Kauffman and Krueger 1984). There are no published studies that have directly examined the impacts of livestock grazing on Cascades Frogs, but negative impacts to other high elevation wetland ecosystems and Ranid frog habitats have been reported, include reducing vegetative cover, creating excess nitrogen pollution, increasing siltation of breeding ponds, and altering the local hydrology through erosion (Jennings 1996, Jennings and Hayes 1994).

Livestock grazing still occurs across most of the Cascades Frog’s range, but the extent and numbers on public lands have been reduced dramatically compared to past practices. Meadow sites occupied by Cascades Frogs on private lands in the Southern Cascades region are still grazed by livestock, as is much of the species’ range in the Klamath Mountains region, although, although portions of the wilderness areas are inaccessible to cattle or are not

III.F.1. Information in the Petition (continued)

permitted for grazing. Long-term impacts of historical grazing practices are difficult to quantify, but where it has resulted in channel incision and lowered water tables, there may be less available Cascades Frog breeding habitat or it may dry up more rapidly (Pope et al. 2011). Risks from current grazing practices include trampling and water quality degradation, which are a greater threat to already small populations such as those in the Southern Cascades region (Pope et al. 2014).

The degree to which livestock grazing threatens the continued survival of Cascades Frogs is presumed to be low. Although livestock grazing is still fairly widespread across the Cascades Frog's range in California and effects from previous grazing may be extensive, the practice has not been permitted for over 10 years in most breeding habitats on public lands in the Lassen region, where the species has experienced the most extreme declines, and livestock numbers have been reduced on other public lands within the Cascades Frog's range (Pope et al. 2014). However, where livestock grazing still occurs in the Southern Cascades region, negative impacts could reduce the likelihood of persistence due to already small population sizes (Ibid.).

Recreational Activities

Approximately two-thirds of the Cascades Frog's range in California occurs on public lands; approximately 5% on national park lands and 62% on national forest lands (USDA 2001b). Approximately half of the national forest lands are designated as wilderness areas, where recreation is dispersed and limited to non-motorized activities such as hiking, fishing, and camping. On the other half, recreational use can involve motorized activities such as off-highway vehicle use, which may have the potential for greater impacts. Of the one-third of the species' range that occurs on private lands, most is owned by timber companies with limited public recreation, but there are some campsites and lodges with heavy recreational use.

There are no published studies that have directly examined the effect of recreational activities on Cascades Frogs, but potential impacts can be inferred from reports on similar habitats or species. Mid- to high-mountain lakes, streams, ponds, and wet meadows are popular recreational destinations that provide fishing and swimming opportunities and are connected through trail networks and campsites. Construction and use of trails and camps disturbs vegetation and soil structure, and anglers often create shoreline trails for access to fishing spots even at remote wilderness lakes, which can result in erosion that increases sedimentation in pools (Boyle and Samson 1985, Brönmark and Hansson 2002, Garton et al. 1977, Knight and Cole 1991). Recreational packstock (horses and mules used to assist travel in remote areas) grazing in alpine meadow habitat can adversely affect habitat quality, particularly important shallow water areas around breeding ponds and lakes, and can directly trample all life stages of frogs (Cole et al. 2004, Moore et al. 2000, Olson-Rutz et al. 1996).

Recreational activities may degrade habitat quality or frequently disturb normal basking and feeding behaviors, which can increase the production of glucocorticoid stress hormones in frogs, the long-term effects of which include suppression of growth, reproduction, and immune system functions (Moore and Jessop 2003). Stress hormones in amphibians are also elevated by exposure to *Bd* and cause increases in metabolic rates that are energetically costly (Peterson 2012, Wack et al. 2012), and the effect of environmental stress on frogs exposed to

III.F.1. Information in the Petition (continued)

Bd appears to result in lower energy stores and survival compared to unstressed frogs (Peterson 2012).

The degree to which recreational activities threaten the continued survival of Cascades Frogs is presumed to be low to moderate. Over most of the species' range, recreational activities are light and dispersed, but in some high-use areas like lakes that are not within designated wilderness and have road access, they may have measurable impacts to Cascades Frogs and their habitats (Pope et al. 2014). Recreational impacts also interact synergistically with other stressors to increase stress, which reduces the health and resilience of Cascades Frog populations (Pope et al. 2014).

Small Population Sizes

Small population size, combined with genetic isolation, increases a species' risk of extinction. Isolated sites are less likely to support Cascades Frog populations over the long-term and are less likely to be recolonized once the population is extirpated (Pope et al. 2014). Therefore, increasing population sizes and habitat connectivity are important factors in ensuring the long-term viability of Cascades Frogs.

Monsen and Blouin (2004) reported that Cascades Frogs exhibit extreme genetic isolation over relatively short distances compared to other frog species; gene flow is reduced at distances of as little as 10 km (6.2 mi). Montane habitats may promote this type of isolation, particularly for species like Cascades Frogs that have a limited active season and specialized habitat requirements, which make long-distance movements risky and infrequent (Ibid.). Recolonization of a historically occupied site in Oregon reportedly took 12 years, even though a population of Cascades Frogs was located within 2 km (1.2 mi) of the site (Blaustein et al. 1994).

The degree to which small population sizes threaten the continued survival of Cascades Frogs is potentially high in the Lassen area of the Southern Cascades region due to lack of connectivity among the remaining populations, which could lead to a genetic bottleneck (Young and Clarke 2000).

2. Other Relevant Scientific Information

Marijuana (*Cannabis* spp.) cultivation may also pose a threat to Cascades Frog survival. Marijuana cultivation is concentrated in Northern California throughout the lower elevation portion of the Cascades Frog's range, especially in habitats below 1500 m (5000 ft). Water diversions associated with illegal Marijuana cultivation can be a significant threat to desiccation-intolerant amphibian species (Bauer et al. 2015), including the highly aquatic Cascades Frog. Increased inputs of nutrients from fertilizers, toxins from pesticides, and other pollutants also potentially threaten existing Cascades Frog habitats, although these impacts have not been directly studied.

If beaver populations had declined historically in parts of the Cascades Frog's range, it may have contributed to loss or modification of breeding habitat. Cunningham et al. (2007) showed that as beavers have recolonized areas of their former range in North America, they have increased the number and diversity of available breeding sites in the landscape for pond-

breeding amphibians. Cascades Frogs are known to occur in habitats modified by beavers in the Lassen region (Pope et al. 2011).

3. Sufficiency of the Petition with regard to Factors Affecting the Ability to Survive and Reproduce and Degree and Immediacy of Threat

The Department concludes that the Petition contains sufficient information to suggest that Cascades Frogs are adversely affected by historical habitat damage and a number of on-going and future threats such as habitat degradation and loss, climate change, disease, and introduced fish, that may be synergistically acting together to threaten the species' continued survival.

G. Impact of Existing Management Efforts

1. Information in the Petition

The Petition contains the following information on the impact of existing management efforts on the Cascades Frog on pages 26 through 29.

Federal Regulatory Mechanisms

The Center for Biological Diversity petitioned the Cascades Frog for listing under the federal Endangered Species Act (CBD 2012), and the U.S. Fish and Wildlife Service determined that the petition possessed substantial information indicating listing may be warranted (USFWS 2015), but the agency does not expect to make a determination on whether or not to propose the species for listing until 2022 at the earliest (USFWS 2016b). Other federal regulatory mechanisms that could potentially provide some form of protection for the Cascades Frog include occurrence on federally protected land and consideration under the National Environmental Policy Act. There are no federal Habitat Conservation Plans in California that cover the Cascades Frog (USFWS 2017).

Occurrence on National Forests and National Parks/National Environmental Policy Act

Populations of Cascades Frogs that occur on federal lands are mostly protected from development, although other activities on these lands have the potential for harm and may threaten their long-term survival. In spite of management policies on federal lands that are designed to protect natural resources, amphibians are still declining in these areas, and the policies and practices do not provide protection from threats such as airborne contaminants and non-native predators (Adams et al. 2013). For example, even though non-native fish are no longer stocked in occupied Cascades Frog habitat (ICF Jones and Stokes 2010), there do not appear to be any current efforts to eradicate self-sustaining populations on federal lands within their range.

The national forest lands within the Cascades Frog's range in California have forest plans that provide direction on management and protection of aquatic and riparian-dependent species (Pope et al. 2014). In multiple-use areas (most non-wilderness areas), riparian management

III.G.1. Information in the Petition (continued)

zones are designated around all waterbodies and fluvial systems to emphasize their protection and to help maintain their ecological integrity. Generally, only activities that promote maintenance and restoration of these ecosystems and their functions are permitted within the riparian management zones, but timber harvest, road building, livestock grazing, and other activities that may degrade Cascades Frog habitat are not prohibited under the plans.

The Forest Service adopted the Sierra Nevada Forest Plan Amendment in 2001, which contains an Aquatic Conservation Strategy focused on reducing some threats to amphibians, including the Cascades Frog. Some of these measures include changes to livestock grazing and non-native fish stocking practices, but the plan also contains activities such as fire and fuels management that may increase risk of habitat degradation for Cascades Frogs. Efforts to weaken the environmental protections, and increase the amount of logging allowed, under the Sierra Nevada Forest Plan Amendment have been on-going since its adoption.

One of the products of the Sierra Nevada Forest Plan Amendment was publication of a conservation assessment for the Cascades Frog, in cooperation with other federal agencies, state agencies, universities, and research scientists (Pope et al. 2014, USDA 2001a). Conservation Assessments provide only management recommendations, not mandated habitat protections. The conservation assessment is envisioned to be the first of a three-phase process that also includes a conservation strategy and a conservation agreement, but given the fact that the conservation assessment took over a decade to produce, actions and protections in the planned conservation strategy and agreement will likely not be afforded to the species anytime soon.

The Cascades Frog is designated as a Sensitive Species by the Pacific Southwest Region (Region 5) of the Forest Service (USDA 1998). Under Forest Service policy, Sensitive Species are to be managed in a way that ensures their viability and precludes trends toward endangerment that would warrant federal listing. All Forest Service planned, funded, executed, or permitted programs and activities are reviewed under the National Environmental Policy Act (NEPA, 42 U.S.C.4321-4370a) for possible adverse effects on Sensitive Species, through a Biological Assessment and Evaluation. The NEPA process requires federal agencies to describe a proposed action, consider alternatives, identify and disclose potential environmental impacts of each alternative, and involve the public in the decision-making process. However, neither the Sensitive Species designation nor the NEPA process requires avoidance of impacts, just consideration and disclosure, so even if the determination is that Cascades Frogs will be harmed or destroyed, the action may be undertaken.

Lassen Volcanic National Park is the only national park within the Cascades Frog range in California, and its Resource Management Plan (NPS 1999) acknowledges the species' decline and provides guidance relevant to Cascades Frog conservation. These include maintaining and rehabilitating aquatic systems; protecting and monitoring populations of sensitive species; promoting cooperation among federal, state, and private entities in preserving ecosystem health; eliminating or controlling damaging non-native species; and restoring, to the extent feasible, extirpated species. However, the Cascades Frog is now extirpated from Lassen Volcanic National Park, and because fish stocking began before the park was established, it is

III.G.1. Information in the Petition (continued)

unclear which species of fish were native to each system. Even though stocking ceased completely in 1992, 16% (9 of 57) of the park's lakes still supported introduced trout as of 2004 (Stead et al. 2005).

State Regulatory Mechanisms

The Cascades Frog is listed as a Species of Special Concern by the state of California (CDFW 2017b). This is an administrative designation that reflects the fact that the species is in decline but does not afford any substantive or legal protection. Other state regulatory mechanisms that could potentially provide some form of protection for the Cascades Frog include a state aquatic biodiversity strategy and consideration under the California Environmental Quality Act. There are no Natural Community Conservation Plans that cover the Cascades Frog (CDFW 2017c).

Aquatic Biodiversity Strategy

The Department developed a strategy for maintaining aquatic biodiversity in high-elevation wilderness ecosystems, including protecting and enhancing native amphibian assemblages, while trying to optimize recreational trout fishing opportunities (Garwood and Welsh 2007). The Department began implementing this conservation strategy in 1999 in the Sierra Nevada Mountains through development of watershed-based management plans focused on Sierra Nevada and Southern Mountain Yellow-legged Frogs (*R. sierrae* and *R. muscosa*, respectively), but differences between the ecology of these species and the Cascades Frogs rendered the watershed plans inadequate to protect Cascades Frogs (Ibid.).

California Environmental Quality Act

The California Environmental Quality Act (CEQA, California Public Resources Code §§ 21000-21177) requires state agencies, local governments, and special districts to evaluate and disclose impacts from projects in the state. Under CEQA, Species of Special Concern must be considered during the environmental review process, with an analysis of the project impacts on the species, only if they meet the criteria of sensitivity under Section 15380 of the CEQA Guidelines. However, project impacts to Cascades Frogs would not need to be analyzed if project proponents determined there are insignificant impacts (e.g., if the project does not have population-level or regional effects or impacts a small proportion of the species' range).

In addition to promoting environmental protection through procedural and informational means, CEQA has substantive mandates that can benefit declining or otherwise imperiled species. Public agencies are required to deny approval of a project with significant adverse effects when feasible alternatives or feasible mitigation measures can substantially lessen such effects. However, this mandate is rarely implemented, and lead agencies may approve projects despite remaining significant adverse impacts after all mitigation measures and alternatives deemed feasible have been adopted, if it finds that social or economic factors outweigh the environmental costs. CEQA is not, nor was it ever intended to be, a habitat protection mechanism.

III.G.1. Information in the Petition (continued)

Summary

Existing federal or state regulatory mechanisms do not adequately protect Cascades Frog populations or their habitats. Without state listing, significant conservation efforts for the Cascades Frog, reintroduction of the species at unoccupied historic sites, and implementation of frog habitat restoration projects are unlikely to occur.

2. Other Relevant Information

The Department is in possession of additional information on existing management efforts for the Cascades Frog, specifically relating to introduced fish management and eradication. As stated in the Petition, fish stocking by the Department in waters known to support Cascades Frogs has ceased (ICF Jones and Stokes 2010). This has a direct bearing on Cascades Frog conservation. Some waterbodies in the Cascades Frog range lack spawning habitats and others are known to suffer from oxygen depletions caused by periodic eutrophic conditions (B. Aguilar pers. comm.). Although the Department has not assessed many of these waters since the change in stocking management, some fish populations are not self-sustaining and have likely gone extinct.

From 2003 to 2008, a fish removal experiment was conducted in four lakes across the Klamath Mountains that support extant Cascades Frog populations (Pope 2008a). Results from the Pope (2008a) experiment are covered in detail within the Petition. Currently, two of the four lakes have remained fishless as a result of the research project (K. Pope pers. comm.).

Starting in 2014, following the recommendation of a draft basin management plan, the Department began a fish removal project in Echo Lake Basin, Klamath Mountains. The goal of this project is to restore approximately 70% of the available aquatic habitat for Cascades Frogs. This basin was chosen for restoration based on its exceptional Cascades Frog habitats and because it maintains persisting Cascades Frog populations. The basin has been part of a long-term Cascades Frog population monitoring program initiated in 2003 (Garwood and Welsh 2007). Habitats containing brook trout include Echo Lake and approximately 1.6 km (1 mi) of stream channels occurring below the lake. Since the inception of the fish removal project, 724 brook trout have been removed from the lake and streams, with complete removal expected in 2017 (Demianew et al. 2016). The Department is tracking the numerical response of native amphibian populations in response to the removal of brook trout with a before-after-control-impact study design.

3. Sufficiency of the Petition with regard to Impacts of Existing Management Efforts

The Department concludes the Petition contains sufficient information to suggest that existing regulatory mechanisms and management efforts do not adequately protect Cascades Frogs from impacts that threaten their long-term survival.

H. Suggestions for Future Management

1. Information in the Petition

The Petition contains the following suggestions for future management of the Cascades Frog on page 30.

Remove Invasive Fish: Remove trout within the species' range to increase the amount of fishless habitat available, and continue to not stock in waters supporting Cascades Frogs.

Investigate Disease Treatment: Research the effectiveness of various methods to reduce the mortality rate of Bd, and determine the feasibility of treatment in the wild.

Modify Fuel Management and Livestock Grazing: Determine the effects of vegetation and fuels management and livestock grazing on Cascades Frogs, and modify management practices and grazing leases accordingly to protect and restore the species' habitat.

Restore Habitat: Determine the effectiveness of restoration and habitat enhancement methods such as modifying breeding pools, removing livestock, thinning riparian vegetation to increase basking opportunities, or thinning lodgepole pines adjacent to breeding pools; monitor populations pre- and post-restoration; prioritize sites for restoration actions.

Restrict Pesticide Use: Determine where and when pesticide uses should be restricted to prevent exposure to Cascades Frogs.

Reduce Recreational Impacts: Encourage diffuse recreation and limit camping at lakes inhabited by Cascades Frogs on federal lands.

Consider a Captive Breeding Program: Begin a captive breeding program to provide donors for reintroductions if local populations become extirpated.

Reintroduce Populations: Explore reintroduction into appropriate habitat within the historical range, and investigate the feasibility of translocation or reintroduction of captive raised Cascades Frogs, particularly in Lassen Volcanic National Park.

Monitor Populations: Institute a long-term, rangewide program to monitor extant Cascades Frog populations.

2. Other Relevant Information

The following recommendations are adapted from Thomson et al. (2016) *California Amphibian and Reptile Species of Special Concern*.

Conduct a detailed genetics study: Characterize the degree and extent of intraspecific variation and use that information to designate management units and to inform population reintroduction and augmentation efforts. Note that a current population genetics study is being conducted by the University of Wisconsin-Madison (B. Hardy pers. comm.).

Quantify interactive effects of threats: Better understanding of the relative weight of each threat (e.g., climate change, *Bd*, introduced fish, etc.) and their interactions may be useful in developing conservation strategies.

3. Sufficiency of the Petition with regard to Suggestions for Future Management

The Department concludes the Petition contains sufficient scientific information on additional management actions that may aid in maintaining and increasing self-sustaining populations of Cascades Frogs in California.

I. Availability and Sources of Information

1. Information in the Petition

The Petition contains a 17-page bibliography of literature cited on pages 31 through 47, the vast majority of which were provided to the Department on a CD.

2. Other Relevant Information

The Department used publicly available information and provided citations. The Department also used unpublished reports and personal communications that can be provided upon request. The Department did not receive any information from the public during the Petition Evaluation period pursuant to Fish and Game Code Section 2073.4.

3. Sufficiency of the Petition with regard to Availability and Sources of Information

The Department concludes the Petition contains sufficient sources of information that are readily available to attempt to determine the status of the Cascades Frog.

J. Detailed Distribution Map

1. Information in the Petition

The Petition contains a detailed map of the distribution of Cascades Frogs in California on page 9, which depicts known localities up to 2011 and distinguishes between sites that were confirmed to be occupied between the following years: 1891-1980, 1980-1999, 1999-2011 (Pope et al. 2014). All localities within the map provided by the petition fall within the Department's Cascades Frog 2016 range map (CDFW 2016).

2. Other Relevant Information

The Department's range map for Cascades Frog (Figure 1) is based on the work in Thompson et al (2016). There are subtle differences in the distribution of Cascades Frog observations in Thomson et al. (2016) and those in the Petition's map (Pope et al. 2014); however, none of these substantively change the known distribution of the species.

3. Sufficiency of the Petition with regard to a Detailed Distribution Map

The Department concludes the Petition provides a sufficiently detailed map of the historical and contemporary distribution of Cascades Frogs in California.

IV. Status of the Species

The Cascades Frog occupies mid- to high-elevation wetlands in the Klamath Mountains and Southern Cascades, and every life stage is closely associated with aquatic habitats. The species' distribution and abundance have declined in parts of its range in California, most dramatically in the Southern Cascades/Lassen region where few populations remain and nearly all are very small. Populations within the Klamath Mountains region are still relatively widespread and appear to be mostly stable, even with seemingly low overall population sizes. The Cascades Frog's breeding cycle is closely tied to snowmelt, and successful reproduction requires breeding habitats to remain stable for several months during embryonic and larval development. The direct and interactive effects of climate change, disease, and introduced fish appear to be the primary threats to continued survival of the species. Additional possible threats, which may be more severe at lower elevations and in areas with very small populations, include airborne contaminants, recreational activities, livestock grazing, fire suppression activities, and roads.

Having reviewed and evaluated the Petition on its face and in relation to other relevant information, including the material referenced in the Petition and other information in possessed or received by the Department, the Department has determined that there is sufficient scientific information available at this time to indicate that the petitioned action may be warranted and recommends that the Petition be accepted and considered. (See Fish & G. Code, § 2073.5, subd. (a)(2); Cal. Code Regs., tit. 14, § 670.1, subd. (d).)

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Personal Communications

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Hardy, Bennett. M.S. Student, Department of Biological Sciences, University of Wisconsin-Milwaukee, WI. Electronic mail received April 13, 2017.

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**STATE OF CALIFORNIA
FISH AND GAME COMMISSION
and
DEPARTMENT OF FISH AND WILDLIFE
JOINT MEMORANDUM**

DATE: January 26, 2017

TO: President Sklar and Members
Fish and Game Commission

FROM: Mike Yaun (Legal Counsel, Commission)
Erin Chappell (Wildlife Advisor, Commission)
Kevin Shaffer (Chief, Fisheries Branch, Department)
Karen Mitchell (Senior Environmental Scientist, Fisheries Branch, Department)

SUBJECT: Importation of live American bullfrogs and non-native turtles

Commission and California Department of Fish and Wildlife (Department) staff drafted this memo to inform the Commission of regulatory options to address impacts on California's native wildlife resulting from the importation of American bullfrogs and non-native turtles.

Background

Approximately two million non-native American bullfrogs and 300,000 non-native turtles (mostly red-eared sliders and softshell turtles) are imported into California annually for the food and pet trade. Even though the species are not imported into California with the intention of being released, these species have established wild populations in California's wetlands and waterways. For instance, the American bullfrog (*Rana catesbeiana*) was introduced into California in the late 19th century and has since established wild populations throughout the state which threaten populations of native amphibians, fish, and wildlife by direct predation and competition for resources and habitat. Bullfrogs are gape-limited generalist predators that will consume anything they can catch and fit in their mouths.

The California red-legged frog (*Rana draytonii*) is an example of a native amphibian that has been severely impacted by the introduction and invasion of American bullfrog populations into California's waterways. Similarly, non-native turtles, in particular red-eared sliders (*Trachemys scripta elegans*) and softshell turtles (*Apalone* spp.), have also established wild populations in California and can out-compete native western pond turtles (*Emys marmorata*) for basking space and food. The western pond turtle is the only freshwater turtle species native to California. It is listed as a Species of Special Concern by the Department and is currently under review for listing under the federal Endangered Species Act. Western pond turtles in California evolved without any other turtles. As a result, interspecific competition and

disease may put them at greater risk from introduced turtles than other areas where sliders and softshell turtles are released. Studies in Europe that investigated the impact of sliders on European pond turtles (related to western pond turtles) found that sliders did out-compete pond turtles for basking spots and reduced their growth. Western pond turtles are documented to aggressively defend their basking space, and less time basking can result in lower metabolic rate, which can affect growth, reproduction, and survival in extreme cases.

Importation of these species also serves as a vector for the introduction of novel diseases into California. One such introduction is chytrid fungus (*Batrachochytrium dendrobatidis*), a waterborne fungus that leads to a potentially fatal amphibian disease Chytridiomycosis. Chytrid fungus has spread from ports of entry across California and into high elevation waters of the Sierra Nevada Mountains, where it has significantly impacted two species of native mountain yellow-legged frogs (*Rana sierrae* and *Rana muscosa*) that are listed under both the California and federal Endangered Species Acts. In the State of Washington, where western pond turtles are listed as endangered under the federal Endangered Species Act, one population declined by a third due to an upper respiratory tract disease that was suspected to have been introduced by sliders.

A ban on the importation of American bullfrogs would bring California in line with the States of Oregon and Washington, which do not allow the importation of American bullfrogs. Also, the State of Oregon does not allow the importation of *Apalone* (softshells) and *Trachemys* (slider) species of non-native turtles.

State regulations must comply with the protections for interstate commerce contained in the United States Constitution. When a state's regulation prohibits importation of an item, but allows continued commercial activity of an item, that regulation disproportionately impacts interstate commerce. To comply with the constitutional protections, such a regulation must be for a legitimate state purpose and the purpose cannot be satisfied by a non-discriminatory method. The U.S. Supreme Court has upheld state regulation prohibiting live importation of species to protect native fish and wildlife species from the consequences of the importation when the state could show harm that could not otherwise be avoided.

Currently the Department is issuing Importation Permits for American bullfrogs and non-native turtles in an effort to provide a level of control to protect the native resources of the state. The conditions for these permits are:

1. Long-term importation permits valid for one month (turtles)
2. Standard importation permits valid for one shipment (bullfrogs)
3. No stocking in waters of the state
4. Operators must retain copies of sales information for one year
5. All products must be killed before leaving the store
6. Operators must keep a distribution report

Recent Commission Actions

There is a long history related to this subject, and the Commission has received considerable testimony on this issue. Periodically since 1998, members of the public have spoken at Commission meetings in opposition to sales of frogs and turtles in the live animal market. On March 3, 2010, the Commission directed the Department to stop issuing importation permits for non-native frogs and turtles pursuant to Section 236, Title 14, CCR, citing potential threats to the state's natural resources as the result of live escapes or releases. The Commission then adopted a formal policy statement on the matter at its April 10, 2010 meeting. In September 2010, the Commission directed the Department to prepare an Initial Statement of Reasons that would ban the importation of live bullfrogs and turtles. At the February 2011 meeting, the Commission rescinded their direction to prepare the Initial Statement of Reasons but approved Department amendments to the permits. These amendments included shortening the permit period from annual to one month, including reporting and documentation provisions, and requiring that animals be killed prior to leaving the stores.

Based on public testimony received at Commission meetings over the last 20 years, there are diverse opinions on the importation and sale of American bullfrogs and non-native turtles with three primary conflicting interests. One segment of the public is involved in marketing bullfrogs and turtles for human consumption. California's Asian-American and Asian immigrant communities are the largest consumers of American bullfrogs and imported turtles in the state. Banning importation for the live animal food market could impact long-standing cultural practices and have financial impacts on the businesses and individuals that profit from importation and retail sale of these animals if the market declines or collapses. The second segment of the public is opposed to the importation and sale of American bullfrogs and non-native turtles due to potential threats to native amphibians from disease, hybridization, competition, and predation; a portion of this segment is also opposed due to animal welfare concerns. Finally, the third segment of the public is involved in marketing bullfrogs and turtles for the pet industry. Pet industry sales of non-native frogs and turtles are significant in California and occur with minimal disease monitoring or regulatory restrictions.

In February 2015, the Commission and Department revisited the issue again. The Department provided an overview of their report, *Implications of Importing American Bullfrog (*Lithobates catesbeianus* = *Rana catesbeiana*) into California*. The Department determined that American bullfrogs posed a significant risk to the fish and wildlife resources of the state. At the meeting, the Department notified the Commission of its decision to stop the issuance of long-term importation permits and to only issue short-term individual event permits, consistent with Section 236(c)(6)(I) of Title 14, CCR. At the meeting, the Commission directed staff to work with Department staff to identify a list of potential actions the Commission could take to further address the issues identified in the Department's report.

Since 2015, the Commission and the Department have received numerous requests via e-mail, letter, and public comment, to ban the importation of live bullfrogs and non-native turtles due to the potential threats to native amphibians from disease, hybridization, competition, and predation. Two petitions for regulatory change were submitted to the Commission with requests to add American bullfrogs to the list of restricted species (Section 671(c), Title 14, CCR) in 2016. The first petition (#2016-016) submitted by Save the Frogs was rejected during Commission staff review as incomplete. The second petition (#2016-030) was submitted jointly by the Center for Biological Diversity and Save the Frogs in December. This petition was reviewed and accepted by Commission staff and will be received by the Commission at the February 2017 Commission meeting (see Agenda Item 2 - Public Forum).

Options for Restricting Importation

Per Commission direction, Commission and Department staff evaluated four potential options to restrict the importation of live American bullfrogs and non-native turtles. All of these options will require compliance with California Environmental Quality Act (CEQA; Public Resources Code, Section 21000 et seq.) prior to final Commission action.

- *Option 1*

Ban the importation of live American bullfrogs and *Apalone* and *Trachemys* species of non-native turtles into California, except as allowed under Section 236(b)(2). This option would prohibit the importation of American bullfrogs and non-native turtles for the live food market but allow aquaculture facilities to continue to raise bullfrogs and non-native turtles for commercial purposes, including human consumption, and allow for their importation for personal, pet, or hobby purposes without an importation permit.

This option would require amendments to sections 236 and 41.7 Title 14, CCR. Section 236 regulates the importation of live aquatic plants and animals. Section 41.7 regulates the commercial take and use of frogs for human consumption.

- *Option 2*

Ban the importation of live American bullfrogs and *Apalone* and *Trachemys* species of non-native turtles into California with no exceptions. This option would prohibit the live importation of American bullfrogs and *Apalone* and *Trachemys* species of non-native turtles into California for any purpose but would still allow for them to be sold alive.

This option would require amendments to sections 236 and 41.7, Title 14, CCR and Fish and Game Code sections 2271 and 15300. Fish and Game Code Section 2271(b)(2) allows for the importation of live animals for personal, pet industry, or hobby purposes without an importation permit. Fish

and Game Section 15300 permits the importation of aquatic animals for aquaculture purposes. Therefore, this option would require the Legislature to amend these code sections prior to the Commission adopting regulations to implement it.

- *Option 3*

Ban the importation *and sale* of live American bullfrogs and *Apolone* and *Trachemys* species of non-native turtles in the State of California, with no exceptions. This option would affect businesses that import these animals into the state for use by educational and scientific institutions, the pet industry, and those that raise and/or sell bullfrogs and turtles for human consumption.

This option would require amendments to sections 236 and 41.7 Title 14, CCR and Fish and Game Code sections 2271(b)(2), 15300; 6851 and 6852. Fish and Game Code Section 6851 prohibits the taking or possession of frogs for commercial purposes but does not apply to aquaculture. Section 6852 authorizes possession of frogs, pursuant to the Fish and Game Code or regulations adopted by the Commission, by any person in the business of selling frogs. This section applies to the selling of frogs for food and to educational and scientific institutions. In addition to importation, Section 15300 also allows frogs to be obtained from “(a) A holder of a commercial fishing license (b) A registered aquaculturist or (c) The department.” This option would also require the Legislature to amend these sections of Fish and Game Code prior to the Commission adopting regulations to implement it.

- *Option 4*

Add American bullfrog and *Apalone* and *Trachemys* species of non-native turtles to the list of restricted species, making it unlawful to import, transport, or possess them without a permit issued by the Department.

This option would require amendments to sections 671 and 41.7 Title 14, CCR and Fish and Game Code sections 6881, 6883, and 6885. Fish and Game Code sections 6881, 6883, and 6885 apply to the acquisition, use, and possession of frogs for use in frog-jumping contests. They are found in Division 6, Chapter 7, Article 2 of the Fish and Game Code. Section 6881 allows frogs for use in frog-jumping contests to be taken at any time without a license or permit. Section 6883 allows any person to possess any number of live frogs to use in frog-jumping contests. Section 6885 specifies that the Commission has no power to modify the provisions of this article by any order, rule, or regulation. This option would require the Legislature to amend these sections of Fish and Game Code prior to the Commission adopting regulations to implement it.

Staff Recommendation

Based on the Department's finding that American bullfrogs and non-native turtles pose a significant risk to the fish and wildlife resources of the state, staff recommends Option 1, amending sections 236 and 41.7, Title 14, CCR, to prohibit the live importation of American bullfrogs and non-native turtles into California, except for as allowed under Section 236(a)(2). Option 1 would thereby reduce threats to California's native reptile and amphibian populations. Unlike Options 2-4, Option 1 would allow aquaculture facilities to continue to raise bullfrogs and non-native turtles for commercial purposes and allow the importation of live American bullfrogs and non-native turtles for personal, pet, or hobby purposes without an importation permit. However, because Option 1 is consistent with the Commission's current authority under the Fish and Game Code, the Commission would not have to ask the Legislature to amend any provision of the code to implement the option.

Justification for Staff Recommendation

An importation restriction on American bullfrogs and non-native turtles into California would help protect California's native fauna, especially state-listed species including California red-legged frog, western pond turtle, mountain yellow-legged frog, California tiger salamander, and the giant garter snake, from predation, competition, and disease. These stressors result in significant impacts and declines to native California fauna, particularly native amphibians and reptile species. Imported live American bullfrogs and non-native turtles have served as vectors for the introduction of novel wildlife diseases to California. In addition, ecological restoration efforts benefitting California's native amphibians often involve costly efforts to eradicate American bullfrogs. An importation restriction would reduce the potential for continued introduction of American bullfrogs into these restored habitats and benefit taxpayers from the reduction in costly bullfrog eradication programs implemented by federal, state, and local wildlife protection agencies.

An importation restriction may have cultural as well as fiscal impacts. Businesses and individuals that profit from importation and retail sale of American bullfrogs and non-native turtles for the live animal food market will suffer impacts as the market declines or collapses. It is also possible the market will move underground and will necessitate the use of law enforcement resources to maintain a ban. Therefore, additional funds and wildlife officers may be necessary to enforce the new law.

In addition, it was determined that changes to regulations in Title 14, CCR, would require CEQA compliance, potentially incurring significant cost to the Department in staff time or costs to contract with outside consulting services. The Department would lose about \$7,200 annually in permit fees from an importation ban on American bullfrogs and non-native turtles; however, staff time associated with permitting may then be spent on other issues.

California Fish and Game Commission
Staff Proposal for
Stakeholder Engagement on American Bullfrogs and Non-native Turtles

Purpose: Fish and Game Commission (FGC) and California Department of Fish and Wildlife (CDFW) staff recommendation on a process and timeline for stakeholder engagement to identify potential regulatory and statutory changes, funding mechanisms, and strategies for existing wild populations of American bullfrogs and non-native turtles to reduce the impacts on California's native wildlife.

List of Possible Participants:

- Environmental / Animal welfare Non-Governmental Organizations
 - Petitioners – Center for Biological Diversity and Save-the-Frogs!
 - Action for Animals
 - Humane Society of the United States
 - Rescue group representative – TBD
- Industry Representatives
 - Live Food Market – TBD
 - Aquaculture – TBD
 - Pet trade – TBD
- Agency Representatives
 - FGC - Executive Director, Wildlife Advisor, and Legal Counsel
 - CDFW - Wildlife Branch, Wildlife Investigations Lab, Fisheries Branch, and Law Enforcement Division
 - California Department of Food and Agriculture (CDFA) - TBD
 - California Department of Public Health (CDPH) - TBD
 - U.S. Fish and Wildlife Service (USFWS) – TBD; Region 1 and Region 8
 - Santa Cruz County and/or City - TBD
 - State of Washington and/or Oregon – Fish and Wildlife departments
- Legislature
 - California Asian and Pacific Islander Legislative Caucus staff
 - Natural Resources Committee staff
 - Joint Committee on Fisheries and Aquaculture staff

Proposed Process:

- Agency Outreach - FGC staff hold several meetings (2-4) with agency staff to discuss implementation, management, enforcement, and regulatory consistency and compatibility.
 - One or two conference calls with implementing agencies CDFW, USFWS, Santa Cruz, Washington, and Oregon to discuss management strategies, implementation, and enforcement

- One or two meetings with state agencies CDFW, CDFA, CDPH to discuss regulatory consistency and compatibility and enforcement of regulations (Sacramento)
- Stakeholder Outreach - FGC staff hold series of small meetings (2-4) with key stakeholders to solicit input on options, including possible statutory and regulatory changes and management strategies.
 - Invitation only
 - Size – limit to 10-12 people each
 - Locations – Sacramento, Bay Area, Southern California
 - Structure
 - One or two meetings with environmental/animal welfare organizations, CDFW staff, and FGC staff (Sacramento)
 - One to two meetings with industry representatives, California Asian and Pacific Islander Legislative Caucus staff, CDFW staff, and FGC staff (Bay Area and Southern California)
- Legislative Outreach – FGC staff meetings (3) with California Asian and Pacific Islander Legislative Caucus, Natural Resources Committee, and Joint Committee on Fisheries and Aquaculture staff
- CDFW and FGC staff compile meeting outcomes and draft proposal
- FGC and CDFW staff co-host one-day public workshop to present draft proposal
 - Open to all interested parties
 - Location – Bay Area
 - Facilitated by FGC staff
 - Attendance by 1-2 Commissioners
- CDFW and FGC staff prepare and present final proposal to Commission
- Commission action on final proposal

Proposed Timeline:

- **Oct 2017** - Present stakeholder outreach proposal to Commission
- **Oct-Dec 2017** –
 - Identify and confirm stakeholders for small group and agencies meetings
 - CDFW and FGC staff preparation for meetings (logistics, materials, format, etc.)
- **Jan-Apr 2018** – Hold stakeholder and agencies meetings
- **Apr-Oct 2018** –
 - Outreach meetings with legislative caucus/committees
 - CDFW and FGC staff draft proposal
 - CDFW and FGC staff preparation for workshop
- **Oct 2018** – Public workshop
- **Nov-Dec 2018** – CDFW and FGC finalize proposal
- **Feb 2019** – Staff presentation and possible action on proposal by Commission

MARINA DEL REY
convention and visitors bureau

September 27, 2017

California Fish and Game Commission
1416 Ninth Street, Suite 1320
Sacramento, CA 95814

RE: Item #11 (A), October 11, 2017, Meeting Agenda
County Parking Leases at the Ballona Wetlands Ecological Preserve

Dear Members of the Commission,

The Marina del Rey Convention and Visitors Bureau is a joint venture of private hospitality and visitor serving businesses in Marina del Rey and the County of Los Angeles. Our mission is to stimulate economic development by marketing Marina del Rey as a tourist destination for leisure and business travel. It is important that we advocate for policies that ensure greater public access to Marina del Rey's public attractions and visitor amenities.

In August of 2005, the California Fish and Game Commission made an amendment to Section 630 of Title 14, which states "Existing parking areas under leases to the County of Los Angeles may be allowed unless it is determined by the department that restoration or other uses in those areas are more appropriate." That provision and a lease agreement that the County has with the department of Fish and Wildlife, allows the County to park vehicles on the Ballona lots that are used for marina and beach operations. In addition, Marina del Rey's Sheriff Station shares a portion of the paved parking spaces for 100 employees. The loss of this space would be problematic due to

the lack of available land in the area. The lots are critical to the operations of the County of Los Angeles. Loss of the parking lots would force County employees to use the public lot of Parcel W adjacent to Fisherman's Village, thereby limiting the use of the lots by tourists and locals seeking shoreline access and entry to Fisherman's Village and other nearby water attractions including yacht charters, Sportfishing excursions, parasailing, and kayak and jet ski rentals. Maintaining adequate public parking near this area is vital for visitor access and accommodating tourists.

Marina del Rey is a popular tourists destination. Last year, Marina del Rey hotels welcomed a 433,000 overnight visitors. An additional half-million tourists visited Marina del Rey during a day trip. Marina del Rey is L.A.'s Marina and the crown jewel of Los Angeles County. It is important that we maintain public access to the water and recreational and visitor-servicing facilities.

For the reasons mentioned above, we respectfully ask that you do not amend Title 14 and continue to allow the Los Angeles County Department of Beaches and Harbors and Los Angeles County Sheriff's Department to use the parking lots adjacent to the Ballona Wetlands. In addition, we request that Marina del Rey's stakeholders have an opportunity to review and comment on the Draft EIS/EIR for the Ballona Wetlands Restoration Project prior to the adoption of a permanent parking solution for the use of Area A.

Should you have any questions please contact Janet Zaldua at (310) 306-9900.

Respectfully,

A handwritten signature in black ink, appearing to read 'Janet Zaldua', with a stylized, flowing script.

Janet Zaldua

CEO

Marina del Rey Convention and Visitors Bureau

**Marina del Rey
Lessees Association**

C/o Mr. Timothy C. Riley, Executive Director
8537 Wakefield Avenue
Panorama City, CA 91402
Telephone: 818-891-0495; FAX: 818-891-1056

September 26, 2017

California Fish and Game Commission
1416 Ninth Street, Suite 1320
Sacramento, CA 95814

RE: Item #11 (A), October 11, 2017, Meeting Agenda
County Parking Leases at the Ballona Wetlands Ecological Preserve

Dear Members of the Commission:

The Marina del Rey Lessees Association represents the leaseholders of anchorages, residential, commercial, marine and visitor-serving properties in unincorporated Marina del Rey. The members of the Association operate their businesses under long-term leases with the County of Los Angeles. Our businesses also function under the County's goal of providing a balance of public and private uses in Marina del Rey, and as a result, we find ourselves as supportive stewards of the vision of the County of Los Angeles and the California Coastal Commission to maximize visitor-serving uses and public access to the water. To this end, we espouse sensible policies to afford greater public access to public attractions in Marina del Rey, and achieving this laudable goal is obtained by the County's continued use of a portion of the Ballona Wetlands Ecological Preserve in Area A that has been leased for a parking area since August of 2005.

Development of private leaseholds as well as public improvements and facilities in Marina del Rey are guided by the requirements of the Marina del Rey Local Coastal Program (LCP), which was certified by the California Coastal Commission on February 8, 2012. The Coastal Commission assigns high priority to public access to the shoreline and the coast. Shoreline access in the Marina is obtained from public and private parcels that front on the numerous basins of the Marina del Rey Harbor. The Commission also sets a high priority for visitor-serving uses in the Marina. Both shoreline access and visitor-serving uses are provided by the Fisherman's Village commercial and recreational development that occupies Parcel 56 on Fiji Way, across from the Ballona Wetlands parking area leased to the County.

The County's Department of Beaches and Harbors and the Marina del Rey Sheriff's Station share portions of the paved parking spaces on the leased land of the Ballona Wetlands in order to accommodate parking for vital law enforcement and government services, thereby freeing up parking spaces in the public lot of Parcel W adjacent to Fisherman's Village for the purpose of accommodating public needs to access the

shoreline and visitor-serving uses. The Marina del Rey LCP in Chapter 2, entitled "Recreation and Visitor-Serving Facilities," observes as an identified issue that "public parking in the Marina is very important because of the County's policy of maximizing recreational use of the area. However, the locations and size of parking lots may not be sufficient to handle peak periods."

Due to the numerous restaurants, retail shops, harbor cruises, equipment rentals, sightseeing opportunities and fishing along the docks at the Fisherman's Village parcel, the adjacent parking lot is well-utilized and often reaches capacity during peak periods. Therefore, if the Fish and Game Commission were to deny the County the continued use of the parking area at Ballona Wetlands, given the approximately 250 spaces currently used by the County and employees, the inevitable relocation of such parking to Parcel W adjacent to Fisherman's Village would seriously displace parking availability for the public that the Coastal Commission has deemed critical for access to the shoreline and visitor-serving uses.

Additionally, the Marina del Rey LCP recognizes the importance of maximum access to the coast in several respects. Chapter 1, entitled "Shoreline Access," notes in reference to Coastal Act Policy 30212 that "public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development," with some exceptions. The "Shoreline Access" chapter observes that "to invite maximum use by the public, access to the shoreline requires: 1) public awareness, 2) physical presence, and 3) legal access." Physical access and legal access to the shoreline are "available and consistent throughout most of the Marina." However, public awareness of shoreline access varies. The LCP observes that "maximum awareness" is found in "shoreline adjacent to public attractions such as Fisherman's Village, the Marina Beach and Burton Chace Park." All three of these sites, of which only Fisherman's Village is developed as a private leasehold, are known public venues for access to the water.

The important point is that the parking lot at Ballona Wetlands serves to provide access to the Fisherman's Village development that the California Coastal Commission has deemed to be a significant access to the shoreline. This point is conceded by the opponents of the County's continued use of the parking lot insofar as their arguments are that the parking serves "patrons of a private shopping plaza" and provides "parking for the employees of private entities." While the majority of the parking serves the needs of law enforcement and the government agencies, the ability to accommodate some parking for employees of private businesses quite obviously allows for more parking at Parcel W to be used by the public visiting the Marina to enjoy recreational and visitor-serving opportunities that are promulgated by the Coastal Act policies embodied in the Marina del Rey LCP.

The Association believes that any action to eliminate the parking use exemption for the County of Los Angeles at the Ballona Wetlands Ecological Preserve would not only harm public access as discussed above, but would result in a decision that is premature at this time considering that the California Department of Fish and Wildlife

has released for public review on September 25, 2017 the Draft EIS/EIR for the Ballona Wetlands Restoration Project for a comment period that extends to November 24, 2017. Sufficient time is required by the stakeholders in Marina del Rey to review and comment on the proposed three-story parking structure within the existing parking footprint in Area A and whether this proposal would enhance to an even greater degree public access to the shoreline and the visitor-serving uses at Fisherman's Village and other proximate commercial and recreational opportunities.

In addition to fostering more visitor-serving and recreational uses in the Marina, the Association has worked closely with the Department of Beaches and Harbors and the Sheriff's Department on initiatives to address homeless encampments in the Ballona Wetlands that have unfortunately degraded the site's ecological resources. We are aware that the County and the Sheriff have committed significant financial resources and law enforcement activity to assist with the preservation of the Ballona Wetlands. Moreover, the County at its own expense maintains and conducts enforcement of the parking area to keep it clean and secure.

For the reasons stated above, the Marina del Rey Lessees Association strongly urges the Fish and Game Commission to allow the County's use of the parking lots adjacent to the Ballona Wetlands to continue as a vital public service that enhances public safety as well as advances the public interest of providing access to the shoreline and visitor-serving uses at Fisherman's Village and other nearby venues for the enjoyment of visitors and the residents of Los Angeles County.

Thank you for your consideration of our support for the County of Los Angeles to maintain its parking exemption at the Ballona Wetlands Ecological Preserve and our request to allow ample opportunities for stakeholders in Marina del Rey to review and comment on the Draft EIS/EIR for the Ballona Wetlands Restoration Project prior to the adoption of any permanent parking solution for the use of Area A. .

Sincerely,

A handwritten signature in blue ink that reads "David O. Levine / m". The signature is fluid and cursive, with a large "D" and "L".

David O. Levine
President



MARINA del REY SPORTFISHING, Inc.

RECEIVED
CALIFORNIA
FISH AND GAME
COMMISSION

1 September 2017

2017 SEP 12 PM 1:20

CA Fish and Game Commission
Wildlife Resources Committee
1416 Ninth St, Suite 1320
Sacramento, CA 95814

Re: Ballona Wetlands / Fisherman's Village Overflow Parking Lot

Exalted Commissioners,

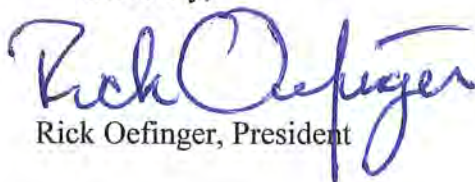
...I cringe at the thought of children allowed to frolic in the Rattlesnake Infested, Filthy Vagrant Encampment Populated area adjacent the Overflow Parking Lot. It is Sickening to hear reports from Wardens and Officers of some of the Vile going's on taking place there and thought of kids and the often young people charged with their care possibly being exposed to such is frightening...

In reality, the Overflow Lot only lives up to its name maybe four or six times a year, and rather than regularly Overflowing with the cars of customers here to further line the pockets of those Rich, Money Grubbing Restaurateurs and Charterboat Operators, the lot's primary users are, The Workers.

If the lot goes away, it'll be those hourly employees, the ones from all those various persuasions and ethnic groups who drive from other parts of the city down to The Marina to work who'll lose their ample, free parking, just steps from their places of employment.

I hope that you Wise Commissioners will put the Good of the working folks and general public and a system that has been Just Fine for years over the vocal but selfish desires of some few who, frankly, probably wouldn't do what the lot's regular users do, but are more than willing to upset the cart at the expense of others in pursuit of their personal, often unsound and usually unrealistic visions of what is best and therefore, should be.

Sincerely,


Rick Oefinger, President

RICK@MDRSF.NET
310-372-3712 Office

From: patricia mc pherson
Sent: Wednesday, September 20, 2017 5:40 PM
To: FGC
Subject: October Meeting Item BALLONA WETLANDS



To: All California Fish and Game Commissioners
From: Grassroots Coalition, Patricia McPherson

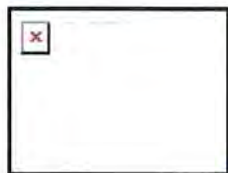
Please provide to all the Fish and Game Commissioners. The 2017 October meeting agenda includes the Ballona Wetlands. The information below is provided for all the Commissioners as background information for the upcoming meeting.

Ballona Wetlands is one of California's rarest coastal wetlands —a predominantly freshwater, seasonal wetlands. The Lost Wetlands of Los Angeles (link below) is based upon historical studies payed for with public Proposition 12 bond funds dedicated to the restoration of Ballona Wetlands that illuminate the **seasonal freshwater nature of Ballona Wetlands.**

<https://www.kcet.org/shows/lost-la/the-lost-wetlands-of-los-angeles>

ftp.sccwrp.org/pub/download/DOCUMENTS/.../671_BallonaHistoricalEcology.pdf

[Implications Ballona Wetlands Restoration, Dr. Travis Longcore ...](#)



▶ 1:01:12

<https://www.youtube.com/watch?v=1viLaZaVhOY>

Aug 2, 2012 - Uploaded by Jeanette Vosburg

USC's Dr. Travis Longcore's lecture titled "Closure Dynamics of Southern California Estuaries, and ...

Additionally, the Environmental Impact Report done for the Playa Vista Project (former development plan for Ballona) provides for hydrology data and information

of Ballona that reveals the fresh groundwaters of Ballona, aside from deeper underlying aquifers, including the Silverado, are at or near the surface.

The California Fish and Game Commission characterized Ballona Wetlands in the acquisition document of 2005 as can

be seen in their **2005 Final Statement of Reasons for Regulatory Action.**

<http://www.fgc.ca.gov/regulations/2005/630fsor.pdf>

PG. 7 portion, below-

Updated Informative Digest/Policy Statement Overview

Currently, there are 132 ecological reserves designated in Section 630, Title 14, CCR, for the purpose of protecting sensitive habitats and species. The department is requesting that this section be amended to add one new ecological reserve, Ballona Wetlands, to this listing.

Ballona Wetlands consisting of 553 acres in Los Angeles County is proposed for designation as an ecological reserve for the protection and enhancement of coastal salt marsh, freshwater marsh, transitional uplands, and associated species, including the state listed endangered Belding's savannah sparrow. The area is also an important wildlife movement corridor to other public lands in the vicinity of the wetlands.

Of concern however, is the mischaracterization of Ballona Wetlands as a Saltmarsh, as can be seen in the Ca. Dept. Fish & Wildlife(CDFW) Powerpoint—the utilization of an 1876 map as a sole source of information—the PPT, utilizes, without explanation as to the manmade condition of salt water intrusion, via a manmade entrance, into Ballona to erroneously portray Ballona as a salt marsh. This mischaracterization was also made by the California Coastal Commission in its Settlement Agreement of 1990 which ultimately involved numerous agencies, including the Army Corps of Engineers, in permitting on Ballona for Playa Vista's Flood Control System. The misnomer has stuck and despite a plethora of available data demonstrating Ballona's unique nature as a predominantly seasonal freshwater wetland—

NO ALTERNATIVES IN THE CURRENT EIR/S PROVIDE FOR A SEASONAL FRESHWATER WETLAND.

Furthermore,

Current CalEPA investigations have been recently launched to review the DRAINING, PUMPING OUT AND THROW AWAY of Ballona's fresh groundwater and surface rainwater by Playa Vista and CDFW which needs to be stopped. Please review the attached SUMMARIES OF EPA INVESTIGATION into the deliberate DRYING OUT OF BALLONA BY PLAYA VISTA AND CDFW. (See below screenshots)

Commissioners may be unaware of the Grassroots Coalition lawsuit against Playa Capital LLC and CDFW, in which GC prevailed.

CDFW has been allowing for the Draining of Ballona Wetlands via illegal drains installed by Playa Capital LLC. A Settlement Agreement has since been reached however, CDFW has not acted in good faith to expeditiously provide a complete Application for a Coastal Development Permit to stop the drains from allowing ponding rainwater from being drained away from Ballona and thrown out to sea. Furthermore, as part of the oversight of the Playa Vista flood control system, aka-Freshwater Marsh System, to which Playa Vista representatives claim that CDFW is a partner and

decision maker, CDFW has been partnering with the throw away of groundwaters being pumped out from under Playa Vista and thrown away via both the sanitary sewer system and/or into Ballona Channel and out to sea.

Please review the link below to discussion and visuals of the **DRYING OUT OF BALLONA** by CDFW and Playa Vista.

<http://www.saveballona.org/>

[PPT] **Ballona Wetlands Ecological Reserve - Los Angeles County**

file.lacounty.gov/SDSInter/bos/supdocs/82526.pptx ▼

August 19, 2005. California Fish and Game Commission designated the area as an Ecological Reserve. Acquiring the **Ballona Wetlands**. Area C. Area B. Area C.

Historical studies since the PPT have demonstrated the **historic nature of Ballona as being a predominantly seasonal freshwater wetland**, having tidal incursion only during storm seasons that infrequently were able to break through the dunes barriers and allow for the temporary saltwater intrusion before silting up again.

THE POLAND REPORT.. (the Ballona region portion) has been available since its creation and demonstrates the freshwater nature of Ballona. The Report as utilized in House Doc. 389 discusses the multiple underlying freshwater aquifers of Ballona and the various clay layers of protection to these aquifers. The creation of the Marina del Rey is discussed alongside the creation of Ballona Channel pertaining to the harm done to the aquifers via these manmade developments and further discusses the remaining wetlands regarding protection to the remaining freshwater aquifers. In later years over drafting the freshwaters via various drinking water wells gave rise to further saltwater intrusion but, all due to manmade interference in the aquifers that are classified today as 'potential drinking water'

The Poland Report provides numerous diagrams of drinking water wells along the coast of Playa del Rey and further east. Why this information has been ignored and/or excluded from discussions and studies pertaining to BALLONA is extremely problematical since it excludes **the BASIC ALTERNATIVE OF RESTORATION FOR BALLONA—NAMELY AS A SEASONAL FRESHWATER WETLAND.**



CalEPA

California Environmental
Protection Agency

DO NOT REPLY TO THIS MESSAGE.

Thank you for submitting your environmental complaint to CalEPA.

If this is an emergency, please dial 911 immediately. For hazardous material spill notification, call the State Warning Center at 1-800-852-7550.

Dear Patricia McPherson,

The California Environmental Protection Agency (CalEPA) received your complaint on 7/21/2017. Your complaint will be referred to the appropriate agency for investigation. Your complaint tracking number is COMP-23608.

A summary of the information you provided is provided below. If you need to correct any information or have questions about your complaint, please send your request or questions to complaints@calepa.ca.gov.

Thank you for taking the time to notify us of your concern.

Description: # 1.

The California Dept. of Fish & Wildlife is seeking a California Coastal Commission-Coastal Development Permit to CAP its unpermitted DRAINS in the Ballona Wetlands that are joined into the Playa Vista Freshwater Marsh System(FWMS) via the Freshwater Marsh's main drainage pipeline to Ballona Channel. The two side-tracking illegal drains have been draining waters of Ballona Wetlands for many years without having been permitted by the California Coastal Commission and without any agency oversight or alert that they exist and have been negatively altering the environment for at least 15 years. Any and all local, state and federal agency characterization of the drains' surrounding habitat area has been done without acknowledgement that these drains exist and without accounting for the drainage and throw away of all the freshwater that

surrounding habitat area has been done without acknowledgement that these drains exist and without accounting for the drainage and throw away of all the freshwater that normally ponds seasonally from rain and is within the near surface as groundwater. All of these freshwaters have been being dewatered and diverted out to the ocean. Since the insertion of the Drains, any site characterization of the areas pertaining to their wetland characteristics has thus been compromised due to the manmade manipulation of dewatering.

Due to public discovery of these illegal drains, and an alert to the California Coastal Commission(CCC), the CCC undertook an investigation and determined that the drains were unpermitted and are harming the Ballona Wetlands. The California Coastal Commission letters to Playa Vista and the California Department of Fish & Wildlife are included for reference and cite to the need of further studies to determine the wetland harm done thus far in their discussion of a Consent cease and Desist and Restoration Order option. Playa Capital LLC and CDFW both decided to simply ignore the CCC which resulted in litigation of the issues, in which GC prevailed.(Grassroots Coalition v Playa Capital LLC & CDFW)

#2

2016-17 NEW ROAD BUILDING by Playa Vista in Playa Vista's RIPARIAN CORRIDOR.

Grassroots Coalition seeks the assistance of the LARWQCB in assessment of the potential violations and mitigation for damages done in violation of the LARWQCB's requirements that are part of their oversight functions for the Freshwater Marsh System which includes the Riparian Corridor. (See 401 Certification Permit PDF above)

In 2016 Playa Vista undertook new road building below Cabora Road on a small access pathway that is part of the Freshwater Marsh System (FLOOD CONTROL System of Playa Vista).

Currently, Los Angeles Dept. of Building & Safety (LADBS) is investigating what occurred. No LADBS permits or permits from any other city, state or federal agency were garnered for the grading and subsequent raising and widening of this new road.

CDFW has issued a Streambed Alteration Violation. The Violation remains unresolved according to Public Record Act request responses.

The PDF provided as attachment for this issue, provides for LARWQCB input regarding potentially contaminated soils being moved and placed in the Riparian Corridor, on top of the small access pathway . The soils were transported to the new roadway from excavation and development work at 6030 Seabluff Drive. Grading permit 160301000001455 (Seabluff location only).

Date/Time of Occurrence: 7/14/2017 12:00 PM

Location Address:

Lincoln Blvd & Jefferson Blvd / Bluff Creek Drive
Playa Vista,



CalEPA

California Environmental
Protection Agency

DO NOT REPLY TO THIS MESSAGE.

Thank you for submitting your environmental complaint to CalEPA.

If this is an emergency, please dial 911 immediately. For hazardous material spill notification, call the State Warning Center at 1-800-852-7550.

Dear Patricia McPherson,

The California Environmental Protection Agency (CalEPA) received your complaint on 7/27/2017. Your complaint will be referred to the appropriate agency for investigation. Your complaint tracking number is COMP-25061.

A summary of the information you provided is provided below. If you need to correct any information or have questions about your complaint, please send your request or questions to complaints@calepa.ca.gov.

Thank you for taking the time to notify us of your concern.

Description: • This is a request for review and analysis to determine potential harm to the Ballona Wetlands Ecological Reserve from the diversion of all the waters east of Lincoln Blvd. that would ordinarily flow into the Ballona Wetlands. The Waterboard is requested to investigate this matter and act to protect the historic groundwater flows into Ballona via any and all codes and other legal means available. "Ballona's freshwater are currently being destroyed due to the diversion and throw-away of its freshwaters to both the sanitary sewer and the Santa Monica Bay via the Ballona Channel. The City of LA Dept of Sanitation is allowing, without any consideration of the negative environmental consequences, for Playa Vista to simply throw away this precious groundwater into the sanitary sewer. The Waterboards are aiding this endeavor due to the lack of review of how diverting and taking away a wetland's groundwaters has deleterious environmental consequences."

Date/Time of Occurrence: 7/25/2017 12:00 PM

Location Address:

Playa Vista,

Location Description (if provided):

Thank you for your review of this important information prior to the upcoming Ballona discussion at the October meeting,

Patricia McPherson, Grassroots Coalition

From: patricia mc pherson
Sent: Thursday, September 21, 2017 3:43 PM
To: FGC; Termini, Valerie@FGC
Cc: Vosburg Jeanette
Subject: Oct. 2017 Meeting (F&G Comm.) BALLOON WETLANDS
Attachments: Present doc history3.pdf



TO: ALL F&G COMMISSIONERS; Dir. Valerie Termini
FROM: Patricia McPherson, Grassroots Coalition

Ms. Termini and Commissioners,

In anticipation of the October meeting and the agenda item per Ballona Wetlands Ecological Reserve, GC provides again the following powerpoint regarding the needs of public address.

Thank you for your time spent in review of these very serious matters of public concern,
Patricia McPherson, Grassroots Coalition



MEMO

August 13, 2004

TO: Chuck Raysbrook, South Coast Regional Manager
Terri Stewart, Lands Manager
California Department of Fish and Game

CC: Pam Griggs, Staff Counsel and Project Manager, State Lands Commission

FR: Marc Beyeler, Southern California Regional Manager
Mary Small, Senior Project Manager, Ballona Wetlands Restoration Planning Project
State Coastal Conservancy

RE: Ballona Wetland Restoration Planning, Proposed Approach

This memo outlines the Coastal Conservancy's proposed approach for planning the restoration and enhancement of the Ballona Wetland Restoration Project ("the project"). The restoration plan will be developed for all of the lands owned (or soon to be owned) by the Department of Fish and Game and the State Lands Commission, as shown on the attached map, a total of approximately 607 acres. The project area will include the 547 acres, parcels "A," "B," and "C", owned (or soon to be owned) by the Department of Fish and Game and the approximately 60 acres currently owned by the State Lands Commission (38 acres within the Freshwater Marsh and 22 acres in the Expanded Wetlands Parcel).

The project will develop restoration alternatives for the state owned properties. Consistent with the recommendations of the Wetland Recovery Project's Regional Strategy, restoration planning will be conducted within the landscape and watershed context, with attention paid to adjacent and ecologically related resources. This comprehensive planning approach will increase the efficiency of the planning, environmental review and permitting processes resulting in lower overall costs and superior restoration alternatives. Restoration planning is expected to take three years and cost up to two million dollars.

Goals/Principles

The restoration plan will be based on the best science, incorporate technical scientific expertise, and will be developed through a transparent planning process that allows stakeholders to provide input and comment on all restoration planning products. The restoration planning process will develop and analyze a range of alternatives to implement the following project goals:

- * Restore and enhance a mix of wetland habitats to benefit endangered and threatened species as well as other migratory and resident species;
- * Provide for wildlife-oriented public access and recreation opportunities; and
- * Implement a technically feasible, cost-effective, ecologically beneficial and sustainable restoration.

When the public purchase of Ballona finally happened—a good faith process of public inclusion and hands on participation in restoration planning was incorporated. All subsequent public money used for the restoration has been predicated upon that premise.

That premise was broken as the Coastal Conservancy, CA. Dept of Fish and Game and the SMBRC/private smbrfoundation utilized the public's money to suit a privatized agenda.

..will be developed through a transparent planning process that allows stakeholders to provide input and comment on all restoration planning products.

1330 Broadway, 110
Oakland, California 94612
510-286-1015 Fax: 510-286-1016

Goals/Principles

The restoration plan will be based on the best science, incorporate technical scientific expertise, and will be developed through a transparent planning process that allows stakeholders to provide input and comment on all restoration planning products. The restoration planning process will develop and analyze a range of alternatives to implement the following project goals:

- * Restore and enhance a mix of wetland habitats to benefit endangered and threatened species as well as other migratory and resident species;
- * Provide for wildlife-oriented public access and recreation opportunities; and
- * Implement a technically feasible, cost-effective, ecologically beneficial and sustainable restoration.

1330 Broadway, 11th Floor
Oakland, California 94612-2530
510-286-1015 Fax: 510-286-0470



a l i f o r n i a S t a t e C o a s t a l C o n s e r v a n c y

.....developed through a transparent planning process that allows stakeholders to provide input and analyze a range of alternatives to ...

- Restore and enhance a mix of wetland habitats to benefit endangered and threatened species as well as other migratory and resident species;

NOTE: THERE IS NO ESTUARINE GOAL HERE, Instead this follows the USACE GOALS OF THE 2005 JOINT EIR/EIS which requires an ITERATIVE process and ALL REASONABLE ALTERNATIVES reviewed.

Groundwater hydrology studies have not been done and no historically relevant freshwater alternative has been explored or shared with the public.

- Provide for wildlife-oriented public access and recreation opportunities;

NOTE: Recreation & access are set within the context of wildlife-oriented, nothing else.

- * Implement a technically feasible, cost-effective, ecologically beneficial and sustainable restoration.

NOTE: The State's Plan is not cost effective but has spent all of the public's \$25 million and expectations are for \$100 million plus for construction and future maintenance and dredging costs –thus it is not self-sustaining AND THE BULLDOZING AND FILLING OF ALL BALLONA IS NOT ECOLOGICALLY BENEFICIAL.

What happened to this process?

Documents obtained through Public Record Act requests and Freedom of Information Act requests reveal the eradication of this process as the predetermined- estuarine plan- destroyed any iterative process for true alternative options- such as historically oriented freshwater models.

Eg. The SAC team was contracted to fulfill the goal of estuarine planning. The SAC team meetings were primarily telephonic and minutes of meetings gotten via PRAs reveal the restrictions imposed by the Coastal Conservancy and SMBRC 'STAFF' to extend the Santa Monica Bay inland.

Ballona Restoration Planning Working Group: Stakeholder Committee and Public Involvement (BRPWG) made up of interested organizations, agencies, and individuals, will meet periodically to obtain project status updates, to provide input, and to support the restoration planning process. These meetings will be open to the public. Subcommittees may be established to address specific issues that may arise during planning.

Project Management



The principal state agencies, the State Coastal Conservancy (SCC) and Department of Fish and Game (DFG) will work together to develop a restoration plan for the Ballona Wetlands. The two principal state agencies will cooperate with the State Lands Commission (SLC), the current owners of a portion of the Ballona Wetlands, including the recently constructed Freshwater Marsh. All the cooperating state agencies will actively encourage and plan for the participation of interested stakeholders, agency representatives, technical and scientific experts, and members of the general public.

Decisions about the restoration plan will be based on the best available science, with input from technical scientific experts, stakeholders and the public. Each state agency involved in the planning process will respect the right and discretion of its own decision-making body and will work cooperatively to resolve planning, funding, or other issues as they arise. A project management team consisting of staff from SCC, DFG, and SLC will meet regularly to provide updates on the restoration planning.

The SCC will develop and manage the workplan, budget, and schedule for restoration planning. The SCC will provide funding for the planning effort, which is estimated to take about three years. The SCC will manage funds made available to or by SCC for restoration planning, hire and manage contractors, and ensure availability of its project management staff to oversee day-to-day project management.

DFG, as the landowner, will be the applicant for any permits needed for the restoration project and the lead agency for purposes of CEQA. DFG and, to the extent its lands are proposed for restoration, SLC, will have final discretionary authority and approval of the environmental document, with respect to their respective ownerships, prepared for the restoration planning and construction.

Ballona Restoration Planning Working Group: Stakeholder Committee and Public Involvement

A Ballona Restoration Planning Working Group (BRPWG) made up of interested organizations, agencies, and individuals, will meet periodically to obtain project status updates, to provide input, and to support the restoration planning process. These meetings will be open to the public. Subcommittees may be established to address specific issues that may arise during planning.

MEMORANDUM OF UNDERSTANDING

among the
CALIFORNIA DEPARTMENT OF FISH AND GAME

and the
STATE COASTAL CONSERVANCY

and the
STATE LANDS COMMISSION

regarding

RESTORATION PLANNING FOR THE BALLONA WETLANDS

This Memorandum of Understanding (MOU) by and between the California Department of Fish and Game, hereinafter called the "Department", the State Lands Commission, hereinafter called "SLC", and the State Coastal Conservancy, hereinafter called "SCC," is for the purpose of defining the partnership of these agencies in restoration planning for the Ballona Wetlands Ecological Reserve (BWER).

WHEREAS, the Ballona Wetland Restoration plan is being developed for all of the lands owned by the State of California as shown on the attached map, a total of approximately 607 acres, including the 547 acres, parcels "A," "B," and "C", under the jurisdiction of the Department and the approximately 60 acres under the jurisdiction of the SLC (36 acres within the Freshwater Marsh and 24 acres in the Expanded Wetlands Parcel); and

WHEREAS, Section 1580 of the Fish and Game Code states that the policy of the State of California is to protect threatened or endangered native plants, wildlife, or aquatic organisms or specialized habitat types, both terrestrial and nonmarine aquatic, or large heterogeneous natural gene pools through the establishment of ecological reserves; and

WHEREAS, the SLC was established in 1938 with authority detailed in Division 6 of the California Public Resources Code; and holds the Freshwater Marsh and Expanded Wetlands Parcel as real property of the legal character of tidelands and submerged lands subject to the Public Trust Doctrine; and,

WHEREAS, the SLC leased the Expanded Wetlands Parcel to the Department

MOU 2008 CDFG; SCC; SLC The SWITCH to **ESTUARINE** from an historically relevant restoration.

The acreage cited herein is approximately 607 acres inclusive of Areas A, B, C under the jurisdiction of the Dept. of Fish and Game and; State Lands Commission jurisdiction over the freshwater marsh and the Expanded Wetlands Parcel. THE BALLONA CHANNEL IS NOT PART OF THE BWER Legal acreage. The Channel is under USACE and Los Angeles County Flood Control.

effective July 1, 2005, for a period of 49 years, and the Expanded Wetlands Parcel is part of the BWER; and,

WHEREAS, the Freshwater Marsh is managed by the Ballona Wetlands Conservancy under a Conservation Easement and is subject to numerous deed restrictions that mandate its use as a freshwater marsh in perpetuity, and, although it is not part of the BWER, there may be opportunities to incorporate it into the Project; and,

WHEREAS, it is the SCC's mission to act with others to preserve, protect and restore the resources of the California coast and the San Francisco Bay Area; and,

WHEREAS, the Department, SLC and SCC have previously concurred in a planning approach for the Project embodied in the memo dated August 13, 2004, and

WHEREAS, the Department, SLC and SCC wish to now formally reaffirm this planning approach,

NOW THEREFORE, the Department, SLC and SCC agree as follows:

I. PURPOSE

The Ballona Wetland Restoration Project ("the Project") will develop project alternatives, conduct environmental review, obtain permits, and complete planning for the restoration of all the state-owned properties. The purpose of this comprehensive planning approach is to increase the efficiency of the planning, environmental review and permitting processes resulting in a superior restoration plan.

II. GOALS AND PRINCIPLES

The purpose of the restoration plan will be to implement the Project goals:

1. Restore, enhance, and **create estuarine** habitat and processes in the Ballona Ecosystem to support a natural range of habitat and functions, especially as related to estuarine dependent plants and animals;
2. Create opportunities for aesthetic, cultural, recreation, research and educational use of the Ballona Ecosystem that are compatible with the environmentally sensitive resources of the area.

The restoration plan will be based on the best available science, incorporate technical scientific expertise, and will be developed through a public planning process that allows stakeholders to provide input and comment on restoration planning.

May 19, 2008

Page 2 of 4

THE SWITCH - Inconsistent With 2004 Memo & PUBLIC BOND APPROVALS

II. GOALS AND PRINCIPLES

1. **Restore, enhance, and create estuarine habitat and processes** in the Ballona Ecosystem to support a natural range of habitat and functions, **especially as related to estuarine dependent plants and animals.**

2004 Memo-GOAL:

"1. Restore and enhance a mix of wetland habitats to benefit endangered and threatened species as well as other migratory and resident species."

Ballona is predominantly a seasonal freshwater wetlands closed off to the Santa Monica Bay. Ballona is the rarest type of remaining coastal wetlands having numerous rare, endangered and imperiled species."

MEMORANDUM OF UNDERSTANDING
among the
CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
and the
STATE COASTAL CONSERVANCY
and the
SANTA MONICA BAY RESTORATION COMMISSION
and
THE ANNENBERG FOUNDATION
regarding
RESTORATION PLANNING FOR THE BALLONA WETLANDS

This Memorandum of Understanding ("MOU") is by and between the California Department of Fish and Wildlife, hereinafter called the "Department," the State Coastal Conservancy, hereinafter called "SCC," the Santa Monica Bay Restoration Commission, hereinafter called "SMBRC," and The Annenberg Foundation, hereinafter called the "Foundation." The Department, SCC, SMBRC, and Foundation are collectively the "Parties." The Department, SCC, and SMBRC are collectively the "Public Agencies." This MOU is for the purpose of defining the objectives and planning processes for the collaborative development of an innovative public/private partnership to facilitate the possible creation of an interpretive center and related public access amenities that would greatly improve the benefit to the public of the proposed restoration of the Ballona Wetlands Ecological Reserve ("BWER"). One goal of the Parties is that this collaboration could serve as a model for similar joint efforts that are intended to facilitate the implementation of public projects while incorporating philanthropic partners and community programs. This MOU memorializes the Parties' understanding concerning their expectations, goals, and objectives related to the BWER, and as such, is not intended to create any legal obligation between or among any of the Parties.

WHEREAS, Section 1580 of the Fish and Game Code states that the policy of the State of California is to protect threatened or endangered native plants, wildlife, or aquatic organisms or specialized habitat types, both terrestrial and nonmarine aquatic, or large heterogeneous natural gene pools through the establishment of ecological reserves; and

WHEREAS, the Department, SCC, SMBRC, and the State Lands Commission ("SLC") are undertaking the Ballona Wetland restoration project (the "Restoration Project") for lands owned by the State of California adjacent to Ballona Creek near the Santa Monica Bay, a total of

WHEREAS Section 1580 of the Fish and Game Code states that the policy of the State of California is to protect threatened or endangered native plants, wildlife, or aquatic organisms or specialized habitat types, both terrestrial and nonmarine aquatic, or large heterogeneous natural gene pools through the establishment of ecological reserves; and...

1580 disallows the Annenberg Project

January
2013

MOU

Annenberg
Foundation
is added/
CDFW/
SCC/
SMBRC

No State
Lands
Comm.
???

approximately 571 acres that include the 547 acres, parcels "A," "B," and "C," under the fee title ownership of the Department and the approximately 24 acres under the fee title ownership of SLC; and

WHEREAS, the Department, SCC and SLC have previously agreed to a planning approach for the Restoration Project set forth in those certain memoranda dated August 13, 2004, and May 19, 2008 for the purpose of developing project alternatives, conducting environmental review, obtaining permits, and completing planning for the restoration of all the state-owned properties, including Area C; and

WHEREAS, the Foundation is a non-profit, charitable organization that exists to advance the public well-being through improved communication and by creating opportunities and experiences that enhance quality of life, and

WHEREAS, the Foundation supports the goals and objectives of the entire 571 acre Restoration Project and desires to construct and operate interpretive facilities within a portion of Area C comprising approximately fifteen to twenty (15-20) acres (the "Ballona Interpretive Center") as well as provide funding for a uniform and consistent design related to the Restoration Project and more specifically to certain areas surrounding the Ballona Interpretive Center in furtherance of the conservation, restoration, educational and recreational uses on the BWER.

NOW THEREFORE, the Department, SCC, SMBRC, and the Foundation agree as follows:

I. GOALS AND PRINCIPLES

The Parties agree that the Ballona Interpretive Center furthers the goals and objectives of the Restoration Project and could serve as a model for future public private philanthropic partnerships. The Parties agree to work together to evaluate the feasibility of locating the Ballona Interpretive Center within Area C. The goal of the Ballona Interpretive Center is to promote respect, appreciation and stewardship among people, animals and all natural ecosystems, including the wildlife that lives within BWER and Santa Monica Bay. This goal furthers the restoration and enhancement of BWER by creating opportunities for aesthetic, cultural, recreation, conservation, research, and educational use of BWER that are compatible with the environmentally sensitive resources of the area and Department regulations and policies.

The Foundation is willing to design, construct, maintain, and operate the Ballona Interpretive Center and supporting infrastructure which could include such items as restrooms, interpretive elements, recreation elements, and landscape elements. The Foundation intends to plan and design the area surrounding the Ballona Interpretive Center as an integrated element of the Restoration Project.

The Foundation's objective is to start construction of the Ballona Interpretive Center in 2014. The Parties agree that the Ballona Interpretive Center may be planned, designed, and permitted to proceed in a phased approach that would enable its construction to commence prior to the restoration work on Areas A, B, as well as the balance of Area C.

WHEREAS, the Department, SCC and SLC have previously agreed to a planning approach for the Restoration Project set forth in those certain memoranda dated August 13, 2004, (& inconsistent SWITCHED MOU GOAL of 2008)... for the purpose of developing project alternatives, conducting environmental review, obtaining permits, and completing planning for the restoration of all the state-owned properties, including Area C; and...

Excerpt from the 2013 MOU- AF/SCC/CDFW/SMBRC

III. PROJECT PLANNING MANAGEMENT

A Ballona Interpretive Center management team consisting of staff from the Department, SCC, SMBRC, and the Foundation (collectively the "Management Team") will develop a meeting schedule in order to coordinate activities and resolve issues related to reviewing the feasibility and planning the design of the Ballona Interpretive Center including any regulatory changes required to accommodate the Ballona Interpretive Center within BWER. Upon signing this MOU, the Management Team members will provide to the Foundation all of the relevant documentation reasonably requested by the Foundation to permit the Foundation to plan and design the Ballona Interpretive Center. If the siting of the Ballona Interpretive Center is deemed feasible within Area C by all members of the Management Team, and subject to any required environmental review, the Foundation will seek to enter into a long-term lease, operating agreement, or other mutually acceptable arrangement that will allow it to construct and operate the Ballona Interpretive Center within Area C. Along with such agreement would be a proposed "Public Access, Management and Operating Plan" for the Ballona Interpretive Center that would be developed by the Foundation with input from the Management Team. Any final Public Access, Management and Operating Plan would require mutual approval by the Department and Foundation. The Department and Foundation agree to cooperate on all required local, state or federal permits, approvals, and environmental review necessary to construct and operate the Ballona Interpretive Center consistent with the Foundation's objective to commence construction by 2014.

The Department and Foundation further agree to collaborate on matters that the Parties agree are necessary to facilitate development of the Ballona Interpretive Center or the Restoration Project. Such collaboration could include consideration of legislation that would authorize the Department to lease the Ballona Interpretive Center site to the Foundation for a term of not less than fifty (50) years.

The Department and Foundation further agree to collaborate on matters that the Parties agree are necessary to facilitate development of the Ballona Interpretive Center or the Restoration Project. ...Include consideration of legislation

The MOU relies upon presumed after the fact changes to legislation, deed and codes..

....and resolve issues related to reviewing the feasibility and planning the design of the Ballona Interpretive Center including any regulatory changes required to accommodate the Ballona Interpretive Center within BWER. (Ballona Wetlands Ecological Preserve)

What have they left out?

- Their knowledge that it is illegal to have the domestic animal project on an ecological preserve per CDFW codes. And,
- Deed restrictions of Area C also preclude anything other than conservation, restoration and recreation.
- And, the right to transfer the property to another state agency for only those purposes.

Process Principles and Goals per the SCC 2004 Memo

- SCC will develop and manage the work-plan budget and schedule for planning.
- SCC will provide funding for the planning which, will take 3 years.
- SCC will hire and manage contractors.
- DFW will apply for any permits.
- The Ballona Working/ Planning Group will consist of organizations and individuals.
- The Working/Planning Group will meet periodically to obtain status updates.
- The Working/Planning group will support the planning process.
- The Working/ Planning group meeting will be open to the public.
- The Working/Planning Group may establish sub-committees.
- The SCC shall be responsible for the Working/Planning Group.
- A science advisory committee will be assembled.
- The public outreach budget will be 100-150 thousand dollars.
- The total planning process will cost 1.4-2 million dollars.
- Draft and final alternatives will be presented to the Planning/ Working Group for further input.
- Public outreach will be conducted so the public remains informed about the status.
- Periodic Working/Planning Group meetings, workshops, a website, and e-mail notices will be conducted.

The 2013 MOU with Annenberg is based upon this process having occurred and continuing to occur.

To the contrary, the public and stakeholders of the Ballona Working/ Planning Group have been and continue to be excluded in the planning and decision making process.

Transparency of process, knowledge and deal-making is obscured within the 2013 MOU as is evidenced by the lack of forthright information regarding the illegalities of allowing Annenberg's Domestic Pet Project upon an Ecological Preserve as cited under Fish & Game Code 1580 and other deed restrictions.

GRANT DEED

For good and valuable consideration, receipt of which is hereby acknowledged, BNY Western Trust Company, a California banking association, successor to First Nationwide Savings as trustee under the Declaration of Trust, dated August 29, 1984, as amended on December 11, 1984, and known as the HRH Inheritance Tax Security Trust (Trust), grants to the State of California, acting by and through the Wildlife Conservation Board of the Department of Fish and Game, the real property in Los Angeles County, California, referred to in the Trust as the Playa Vista Property, commonly known as Playa Vista Area C, and described in Exhibit A, which is attached and incorporated by reference. The property is shown for reference purposes only on a map attached as Exhibit B.

This grant is made at the direction of the California State Controller, acting pursuant to Article VI of the Trust and Public Resources Code section 21080.29. The Controller's written directive to the trustee is attached as Exhibit C. This grant is subject to the restriction, set forth in Public Resources Code section 21080.29, that the property be used for conservation, restoration or recreation purposes only, with the right to transfer the property for those uses to another agency of the State of California.

The Wildlife Conservation Board has fulfilled Public Resources Code section 21080.29's prerequisite to the Controller's directive and this grant by acquiring other

Subject to the restriction, set forth in Public Resource code section 21080.29, that the property be used for conservation, restoration or recreation purposes only, with the right to transfer the property for those uses to another agency of the State of California.

The STATE COASTAL CONSERVANCY contracts The SOUTHERN CALIFORNIA COASTAL WATER RESEARCH PROJECT (SCCWRP) to subcontract a Science Advisory Committee (SAC) -for both to adhere to a Preferred Goal of Saltwater influenced wetland.



SOUTHERN CALIFORNIA COASTAL WATER RESEARCH PROJECT
7171 FENWICK LANE WESTMINSTER, CA 92683-5218
714-894-2222 FAX 714-894-9699

April 29, 2005

Dear Dr. :

Thank you for agreeing to participate on the Science Advisory Committee (SAC) for the Ballona Wetlands Restoration Project. This project is one of the most important restoration projects in Southern California and we appreciate your assistance in developing the long-term plan for the property. We have assembled a very impressive group of scientists to serve of this committee, and the process promises to be challenging and exciting. The SAC will be co-chaired by Eric Stein of the Southern California Coastal Water Research Project (SCCWRP) and Richard Ambrose of UCLA. A full list of the committee members is provided in the attached materials.

The Conservancy and its project partners are committed to developing a restoration plan for the Ballona Wetlands based on the best available science. The SAC will help achieve this objective by reviewing scientific issues related to restoration approach, design and monitoring. The SAC will contribute to the development and analysis of the preferred restoration alternative. We anticipate that the SAC will meet seven to ten times over the next three years, until the restoration and monitoring plan is complete.

The Ballona Wetlands SAC will act as a sub-committee of the Southern California Wetlands Recovery Project Science Advisory Panel (SAP). In this capacity activities of the Ballona Wetlands SAC will be distinct from the overall SAP activities, but will be closely coordinated with the SAP's ongoing efforts to develop a regional wetlands monitoring and assessment program. This coordination will occur via the numerous individuals who serve on both the SAC and the SAP.

Schedule and Time Commitment

We realize that you are all very busy and that some members are located far away from the Ballona Wetlands. However, we want to encourage all of you to participate in this process in a meaningful way. If individuals can not attend in person, there will be opportunities to join meetings via conference phone or provide written comments. In addition to the meetings of the full SAC, we may ask individual members to provide input on specific issues depending on their expertise. The SAC may also elect to recruit individuals for technical input on specific elements of the project.

Thus, the GOAL of ESTAURINE restoration is pre-ordained and no meaningful alternative analysis is performed.

The proposed schedule for the first year of the project is outlined below.

Meeting #1: Initial Meeting with Tech Consultants and Working Group (may including site tour) Review of proposed consultant scope of work	May-June
Meeting #2: Data Needs Analysis and Data Collection Recommendations Review data report and recommendations	September '05
Meeting #3: Restoration Approach Comment on proposed approach to restoration design	October '05
Meeting #4: Preliminary Alternatives Review conceptual alternatives	January '06

Compensation

The Conservancy has approved a grant to the SCCWRP to pay for costs associated with the SAC. These funds will be used to fund administration and support of the SAC, and to reimburse SAC members for their time and travel costs. In addition, some funding will be available to bring additional expertise to the SAC if needed. SCCWRP will manage the SAC sub-contracting and administration elements of this effort, including reimbursement for you time and expenses.

We expect Committee members to allocate 6 hrs to attend each meeting plus an additional 4 hours per meeting to review material. We propose to reimburse scientists for their participation based on their current billing rate, up to a maximum of \$125/hr. For those scientists who do not have a current billing rate, we propose either a flat fee of \$1,000 per meeting (include prep time) or \$100/hr. We may also request and compensate individuals on a hourly basis for additional review time on specific issues that may be identified by the Project Management Team or the SAC.

In addition to compensation for your time, SCCWRP will compensate members for the actual cost of their travel. Rates for travel reimbursement must comply with the state's grant guidelines, which are included as an attachment to this letter.

Next Steps

Individual members will need to enter into working agreements with SCCWRP in order to be compensated for their participation. A draft agreement is included for your review, if this is acceptable please sign it and return it to SCCWRP. Again, thank you for agreeing to serve on the Ballona Wetlands SAC and we look forward to working with you on this project.

Sincerely,

Eric D. Stein, D.Env.
Co-chair

Richard F. Ambrose, Ph.D.
Co-chair

In 2004, an SCC grant is awarded to the BAY FOUNDATION for studies on Ballona. In early 2006, this grant is amended to include an "unanticipated" study- Hydraulics Modeling of the watershed flowing into the Channel and the preferred alternative, the end of pipe catch basin project.

Background: Ballona Wetlands Restoration Planning

Last year, the State of California acquired more than 600 acres of the former Ballona Wetlands. The property is owned by two state agencies, the Department of Fish and Game and the State Lands Commission. The property was acquired for the purposes of enhancing wetland resources, preserving open space and creating managed public access compatible with the natural resources of the site. A third agency, the State Coastal Conservancy, has a specific appropriation to fund planning and implementation of enhancements to the property.

The three agencies have agreed to work together to develop a restoration plan for the state owned lands. The Coastal Conservancy will fund and manage the restoration planning. Planning was initiated last fall with a public meeting that outlined the approach to restoration planning. The state agencies have committed to developing a plan that is based on the best available science and that is developed with a transparent planning process that allows stakeholders to provide input and comment throughout the process.

The following project goals:

- Restore and enhance salt water influenced wetland habitats to benefit Endangered and Threatened species, migratory shorebirds, waterfowl, seabirds, and coastal fish and aquatic species. Restoration of seasonal ponds, riparian and freshwater wetlands, and upland habitats will be considered where beneficial to another project goal or biological and habitat diversity.
- Provide for wildlife-oriented public access and recreation opportunities compatible with the habitats, fish and wildlife conservation.
- Identify and implement a cost-effective, ecologically beneficial, and sustainable (low maintenance) habitat restoration alternative.

Project Organization and Public Participation

The Conservancy and its project partners have also committed to developing a restoration plan for the Ballona Wetlands in a transparent process. Consistent with this approach to restoration planning, the public will be welcome to observe SAC meetings and there will be a specific period at the end of each meeting devoted to public comments. SAC meeting summaries will also be made available to interested stakeholders. In addition to the SAC meetings, we will continue to hold quarterly public meetings to provide an update on the restoration plan for all interested stakeholders. The Working Group meetings will remain the primary venue for public comment on the restoration plan.

Project Management Team includes staff from the Coastal Conservancy, the Department of Fish and Game and the State Lands Commission.

Agency Advisors are staff from other agencies, such as US Fish and Wildlife Service and National Marine Fisheries Service that will advise the Project Management Team. The agency advisors include representatives from the regulatory agencies that will be involved in project permitting.

Ballona Wetlands Restoration Working Group is a stakeholder group comprised of interested parties, agencies and members of the public. The Working Group meets quarterly to obtain project status updates, to provide input, and to support the restoration planning process. These meetings will be open to the public. Subcommittees may be established to address specific issues that may arise during planning. One subcommittee, the **Interim Management and Stewardship Subcommittee**, has already been formed to discuss issues related to site management during the period before the restoration plan is implemented.

The so-called “transparent planning process that allows stakeholders to provide input and comment throughout the process”...

Does not occur and most SAC meetings are telephonic. The state fails to embrace and work with the public.

As seen in the SAC meeting minutes (obtained via Public Record Act Requests)

the contracted participants are told to discuss an Estuarine Goal; any other wetland habitat and/or discussion regarding species must be subservient to the Estuarine Goal.

“Restore and enhance salt water influenced wetland habitats”...

“Restoration of seasonal ponds, riparian and freshwater wetlands, and upland habitats will be considered where beneficial to another project goal or biological and habitat diversity.”

No meaningful historically relevant alternative has been analyzed. No hydrology studies have been performed that would analyze the restoration of Ballona as a seasonal freshwater wetlands. Currently, drains exist onsite to drain away rainwaters and the adjacent Playa Vista Project diverts fresh groundwaters from their natural flow into Ballona and dispatches the waters into the sanitary sewer.

Timeline:

2004- Memo August 13, that all later MOUs and SCC grants cite for adherence and consistency. This premise, reinforced via Deed restrictions, Public Resource Codes, California Fish & Game Codes and bond language was drastically altered and switched. While all later MOUs and grants continued to claim consistency with the 2004 Memo and attendant Codes and Deeds, a new goal was quietly inserted that provided for the singular outcome of creating a totally different habitat – a saltwater/ estuarine catchbasin. From the initial premise of:

“ Restoration planning is expected to take three years and cost up to two million dollars.” 2004 MOU

Instead, the new and not disclosed Estuarine goal, was cause for the 2006 amended grant of 2004. The SCC 2006 amended grant provided more funding for what was labeled as “unanticipated Hydraulic Modeling”. The Hydraulic Modeling became the Grading Plan of the demise of Ballona via dredging, bulldozing and surcharging over almost the entirety of the Reserve. This Plan gave rise to the need of securing a 408 USACE Permit for the removal of the existing Ballona Channel levees and placement of new earthen levees on the perimeter of Ballona. (May 2012 Application)

A 404 Clean Water Act Permit authorization by the USACE for dredging and filling of Ballona was also applied for by CDFG in 2010. Both require flood control Water Resource Development Act (WRDA) funding for Permit review by the USACE and approval by the County Board of Supervisors for WRDA use. In December of 2013, Ballona was approved for placement on a WRDA Priority Listing. However, the Ballona Project must come back for approval prior to any WRDA funding usage.

Ballona costs taxpayers \$140 million, most of which is from Wildlife Conservation bond funds. The State of California acquired the 640 plus acres, dedicating the public land as the Ballona Wetlands Ecological Reserve to protect its ecologically sensitive species. Proposition 12 bond funds provided \$25 million – \$10 million was spent as part of the acquisition fees.

The acreage does not encompass the Ballona Channel (80 + acres) whose jurisdiction is under USACE and LA County Public Works- Flood Control.

2005- SCC contracts the Southern California Wetlands Recovery Project Science Advisory Panel (SAP) for oversight of Estuarine Plan and to subcontract a Science Advisory Committee (SAC) to provide for an Estuarine Goal. Numerous SAP and SAC members overlap. The public became shut out of the planning process. (April 2005)

Meanwhile, in 2005, the Santa Monica Bay Restoration Commission (SMBRC) becomes the Sponsor to the USACE in a Joint EIR/S process having engaged with USACE during the Feasibility Study for restoration of the Lower Ballona Channel Watershed. Ballona was to be part of an iterative process of including all reasonable alternatives for its restoration set within the broader context of the historic Ballona Wetlands-inclusive of Marina del Rey, Del Rey Lagoon, Ballona Lagoon and the Ballona Channel. The latter sites, already estuarine habitats. SCC and SMBRC engage with USACE which ends in a collapsed contractual agreement with SMBRC having not provided neither money nor the in kind contribution necessary. No close out reports for state and/or federal money spent has since been provided—though requested via Freedom of Information Act requests and Public Record Act requests.

Meanwhile, just prior to the USACE Noticed end of the 2005-12 Joint EIR/S, a NEW JOINT EIR/S is Noticed by USACE and announced

as the EIR that is finally just underway. However, thus far, no sponsor is known for the Joint EIR/S to be taking place.

2005- Dec. SCC grant to the Santa Monica Bay Restoration FOUNDATION. The SMBRFOUNDATION is a private non-profit.

“This authorization would provide funding to advance the efforts of the SMBRFoundation(Foundation) to improve the health of the Santa Monica Bay by helping to restore the former Ballona Wetlands and to implement the Santa Monica Bay Plan.”

The improvement of the health of the Santa Monica Bay appears to trump Ballona’s historic ecosystem welfare. The historic nature of Ballona but, for thousands of years ago, has been predominantly a freshwater, seasonal wetland that was closed to the Bay but for large winter/spring storm events.

2006- The 2004 SCC grant is amended to provide funding for the “unanticipated hydraulic modeling.”

2008- MOU language for Goal is switched to Estuarine.

2010- Feb.SCC Request for Services- Ballona Wetlands Ecological Reserve Hydrology and Engineering Design Analysis and Permit Assistance. Technical studies, evaluations, and designs will be of sufficient detail to support completion of a project level EIR/S and preparation and processing of a Section 408 permit through the USACE. DEADLINE FEB. 2012.

2012-

Goal. We believe that the money paid for work already done per the 2010 Request for Services, even though the grant claimed new work was to be done as the same Request of 2010 was utilized per the 2012 Jan. approval.

2012 Joint EIR/S ends and begins anew.

2013 MOU



2015-009
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: Jean Su on behalf of Petitioners Center for Biological Diversity and Project Coyote
Address: 1212 Broadway St, Suite 800, Oakland, CA 94612
Telephone number: (510) 844-7139
Email address: jsu@biologicaldiversity.org
2. **Rulemaking Authority (Required)** - Reference to the statutory or constitutional authority of the Commission to take the action requested: FGC §§ 200, 202, 203, 4006(c) and 4009..
3. **Overview (Required)** - Summarize the proposed changes to regulations: Petitioners submit this petition to the California Fish and Game Commission ("the Commission") to raise commercial trapping license fees to the levels necessary for full recovery of the Commission's and Department's reasonable administrative and implementation costs of the trapping program so as to comply with section 4006(c) for the California Fish and Game Code ("FGC") and SB 1148 (Pavley). In the alternative, in the event that program costs are determined unlikely to be fully recovered by license fee revenue, Petitioners request the Commission to ban commercial fur trapping of fur-bearing and nongame mammals. .
4. **Rationale (Required)** - Describe the problem and the reason for the proposed change: Based on information readily available on the Commission's and Department's websites, public statements by the Commission and Department, as well as from Public Record Act responses from the Department, it is undisputable that the Commission has failed to comply with the mandates of FGC § 4006(c) when setting trapping license fees. Prior to the Department's issuing trapping licenses for the 2016-2017 season, the Commission must either raise fees to legally-required levels, or, alternatively, implement a ban on commercial fur trapping in order to meet this legal mandate. See attached for more details.

SECTION II: Optional Information



5. **Date of Petition:** Dec 4, 2015
6. **Category of Proposed Change**
 - ☐ Sport Fishing
 - ☐ Commercial Fishing
 - ☐ Hunting
 - ☒ Other, please specify: Trapping
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): Proposal is to enforce FGC § 4006(c), or in the alternative, ban commercial trapping of all fur-bearing and nongame mammals.
 - ☐ 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 NA**
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: Immediate.
10. **Supporting documentation:** Identify and attach to the petition any information supporting the proposal including data, reports and other documents: See attached..
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: None.
12. **Forms:** If applicable, list any forms to be created, amended or repealed:
NA.

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: 12/15/15

Meeting date for FGC consideration: Feb 10-11, 2016

FGC action:

RECEIVED
 CALIFORNIA
 FISH AND GAME
 COMMISSION
 2015 DEC -4 PM 2:49



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

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

BEFORE THE CALIFORNIA FISH AND GAME COMMISSION

**PETITION TO RAISE TRAPPING LICENSE FEES IN COMPLIANCE WITH FEE
RECOVERY MANDATE PURSUANT TO FGC § 4006(c) and SB 1148**

**CENTER FOR BIOLOGICAL DIVERSITY and PROJECT COYOTE
December 4, 2015**

I. NOTICE OF PETITION

Pursuant to Title 14, Section 662 of the California Code of Regulations ("CCR") (*Petitions for Regulation Change*), the Center for Biological Diversity ("the Center") and Project Coyote (collectively "Petitioners") submit this petition to the California Fish and Game Commission ("the Commission") to raise commercial trapping license fees to the levels necessary for full recovery of the Commission's and Department's reasonable administrative and implementation costs of the trapping program so as to comply with section 4006(c) for the California Fish and Game Code ("FGC") and SB 1148 (Pavley). In the alternative, in the event that program costs are determined unlikely to be fully recovered by license fee revenue, Petitioners request the Commission to ban commercial fur trapping of fur-bearing and nongame mammals.

A. LEGAL AUTHORITY

The Commission possesses the authority to make such amendments pursuant to FGC §§ 200, 202, 203, 4006(c) and 4009.

B. PETITIONERS

The Center for Biological Diversity is a non-profit, public interest environmental organization dedicated to the protection of species and their habitats through science, policy and environmental law. The Center has over 900,000 members and online activists worldwide, including over 100,000 members and supporters in California.

Project Coyote is a national nonprofit wildlife conservation organization with more than 25,000 advocates dedicated to promoting coexistence between people and wildlife through education, science and advocacy.

Authors: Jean Su, Brendan Cummings, Center for Biological Diversity
Address: 1212 Broadway St, Suite 800, Oakland, CA 94612
Phone: (510) 844-7139
Email: jsu@biologicaldiversity.org

I hereby certify that, to the best of my knowledge, all statements made in this petition are true and complete.



Jean Su
Staff Attorney
Center for Biological Diversity

Submitted on behalf of Petitioners
Date submitted: December 4, 2015

II. INTRODUCTION AND RECOMMENDED ACTION

Pursuant to Title 14, Section 662 of the California Code of Regulations (“CCR”) (*Petitions for Regulation Change*), the Center for Biological Diversity (“the Center”) and Project Coyote (collectively, “Petitioners”) submit this petition to the California Fish and Game Commission (“the Commission”) to raise existing fur trapping license fees to levels necessary to fully recover the Commission’s and the California Department of Fish and Wildlife’s (“the Department”) reasonable administrative and implementation costs of commercial fur trapping programs for fur-bearing and nongame mammals, as required under FGC § 4006(c). In the alternative, in the event that program costs are determined unlikely to be fully recovered by license fee revenue, Petitioners request the Commission to ban all commercial trapping of fur-bearing and nongame mammals.

Based on information readily available on the Commission’s and Department’s websites, public statements by the Commission and Department, as well as from Public Record Act responses from the Department, it is undisputable that the Commission has failed to comply with the mandates of FGC § 4006(c) when setting trapping license fees. Prior to the Department’s issuing trapping licenses for the 2016-2017 season, the Commission must either raise fees to legally-required levels, or, alternatively, implement a ban on commercial fur trapping in order to meet this legal mandate.¹

III. TRAPPING IN CALIFORNIA

In California, trapping of certain furbearing and nongame mammals is permitted, subject to license requirements. FGC §§ 4005, 4006. Among the most commonly trapped species are badger, beaver, coyote, gray fox, mink, muskrat, opossum, raccoon, spotted skunk, striped skunk and weasel. By regulation, the Commission has previously banned the trapping of fisher, marten, river otter, desert kit fox and red fox. *See* 14 CCR § 460. Earlier this year, the Commission banned all commercial trapping of bobcats. 14 CCR § 478(c).

Currently, a trapping license is required for both trapping for commerce in fur as well as for those engaged in trapping for depredation purposes. FGC § 4005. For administrative purposes, the Department classifies commercial fur trapping as “recreational”, and for depredation purposes as “pest control”. In 2014, the Department sold 860 trapping licenses, with the overwhelming majority being for pest control purposes.² In 2015, the Department sold 675 trapping licenses, with the overwhelming majority again being for pest control purposes. Of the 2015 licenses, 506 were for pest control purposes, 99 were for commercial fur trapping, while 70 were for both purposes.

¹ Given the fee-recovery mandatory of FGC § 4006 is a non-discretionary provision of law, Petitioners believe that a petition for rulemaking prior to the Commission implementing this provision should not be required. Additionally, the fee increase can be implemented administratively rather than through regulation. Nevertheless, because Plaintiffs believe that the existing fur trapping program is highly unlikely to be fiscally viable even with a mandated fee increase, Petitioners submit this petition seeking regulations prohibiting commercial fur trapping. By submitting this petition, Petitioners do not waive their right to seek immediate judicial relief to compel compliance with the requirements of FGC § 4006 and other provisions of law.

² Generally, data on license sales and revenues is available at <http://www.dfg.ca.gov/licensing/statistics/>. *See* California Department of Fish and Wildlife, “Special Permits: Fees Reported by License Year.” Available at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=59826&inline>.

IV. JUSTIFICATION FOR RECOMMENDED ACTION

A. The Commission is legally mandated to adjust license fees to fully recover trapping program costs

Trappers in California are required to procure a trapping license. FGC § 4005. Trapping license fees are governed by FGC § 4006. FGC § 4006(a) sets a base level fee for trapping licenses and requires the Department to increase that fee based on federal inflation statistics pursuant to FGC § 713. Under this regime, trapping license fees have increased from \$45 several decades ago to \$117.16 for the 2015-2016 license year.

However, in addition to the inflation-related increases contemplated by FGC §§ 4006(a) and 713, FGC § 4006(c) requires that fees also be adjusted to recover the costs of the Department and Commission in managing the trapping program. Specifically, FGC § 4006(c) states:

- (c) The commission shall adjust the amount of the fees specified in subdivision (a), as necessary, to fully recover, but not exceed, all reasonable administrative and implementation costs of the department and the commission relating to those licenses.

FGC § 4006(c). This provision was added to the FGC as a result of the passage of SB1148 (Pavley) and should have been operative in California commencing with the 2013-2014 trapping season. SB 1148 specifically required the Commission to recoup program and implementation costs from fee-based programs in an effort to “enable the Department and the Commission to do a better job as public trustees for the state’s fish and wildlife, and for the people they serve.”³

As detailed below, the reality that the existing trapping program is not self-financing plainly violates SB 1147, as codified in FGC § 4006(c). The legal arguments aside, the practical implications of perpetuating an unsustainable trapping program presents an equally compelling reason to either raise fees or eliminate the program: insufficient financial resources will inevitably lead to the program’s inadequate implementation. As noted by the Legislature in enacting F&G Code §§ 710-711, the Department has failed to adequately meet its regulatory mandates due, in part, to “a failure to maximize user fees and inadequate non-fee related funding”, which has “prevented proper planning and manpower allocation” to carry out its “public trust responsibilities” and the “additional responsibilities placed on the Department by the Legislature.” F&G Code § 710-710.5. As a result, the Department is burdened with “the inability . . . to effectively provide all of the programs and activities required under this code and to manage the wildlife resources held in trust by the Department for the people of the state.” F&G Code § 710.5. As a matter of public policy, the Commission should ensure that fees are raised sufficiently to cover the trapping program’s costs, or if it is determined that such costs cannot realistically be recovered, to eliminate the program.

³ See “Legislature Passes Huffman and Pavley Bills to Improve Fish & Wildlife Conservation” (Sep. 6, 2012). Available at: <http://sd27.senate.ca.gov/news/2012-09-06-legislature-passes-huffman-and-pavley-bills-improve-fish-wildlife-conservation>.

B. Current and past license fees have been woefully inadequate to recover trapping program costs and thus violate SB 1148 and FGC § 4006(c)

In spite of the cost recovery mandate of SB1148, the Commission has failed to implement FGC § 4006(c) for the past three trapping seasons, resulting in unlawfully low license fees that have failed to recoup the actual costs of the Department and Commission. As is clear from the 2015-2016 trapping license application, the Department is charging \$117.16 for the resident trapping fee for the current year.⁴ While the marginal increase of \$3.91 over the 2014-2015 season fee may be consistent with the inflation adjustment requirements of FGC §§ 4006(a) and 713, clearly, these fee adjustments do not comply with FGC § 4006(c).

According to the 2014-15 trapping license data available, the Department issued 671 resident licenses (at \$113.75/license), 3 junior licenses (at \$38.25/license), and 1 non-resident license (at \$570/license), recouping a total revenue of around \$77,000 for the entire trapping program.⁵ Based on the Department's documents released over the course of the AB 1213 rulemaking process, a single Department warden, who is fundamental to field surveillance of trap lines and investigations, costs the Department over \$100,000 annually in salary and related expenses.⁶ Given that the 2014-2015 license revenue of approximately \$77,000 fails to cover the cost of a single full-time warden⁷, it is clear that the existing fee structure fails to recoup the costs of California's entire trapping program. Moreover, this amount is for both commercial fur trappers and pest control trappers; licenses fees from purely commercial trappers total less than \$12,000 for the season. Similar low fees and consequently low revenue totals for prior seasons show that the Commission has affirmatively violated FGC § 4006(c) for the past three trapping seasons, including the current one ending on June 30, 2016.

Overall, these figures demonstrate that the Commission has been and remains in gross noncompliance with the unambiguous requirements of the Fish & Game Code. It is critical that the Commission comply with code requirements for the upcoming 2016-2017 trapping season. Further violations of law should not be countenanced.

C. License fees for the upcoming 2016-2017 trapping season must be substantially raised in order to comply with cost recovery provisions of SB 1148 and FGC § 4006(c)

While the exact costs of California's trapping program are not publicly available, the extrapolation of existing data shows that license fees will need to increase substantially in order to meet the cost recovery mandate of FGC § 4006(c) and SB 1148.

⁴ California Department of Fish and Wildlife, "2015-2016 Trapping License Application." Available at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=84525&inline>.

⁵ See <https://www.wildlife.ca.gov/Licensing/Statistics>. The majority of these licenses were purchased for pest-control purposes rather than for fur trapping purposes.

⁶ See Memorandum from Charlton Bonham, Director, Cal. Dep't of Fish and Wildlife and Sonke Mastrup, Executive Director, Cal. Fish and Game Comm'n to the Assemblymember Richard Bloom, Member of the Assembly, 50th District, California, "Re: Assembly Bill 2013" (June 13, 2014). Available at: http://www.fgc.ca.gov/meetings/2015/Aug/Exhibits/0805_Item_20_Bobcat.pdf. Given the overlap in the fee recovery provisions of § 4006(c) and AB1213, all fee related documents before the Commission in the bobcat rulemaking should be considered part of the administrative record of the Commission's actions on this petition.

⁷ *Id.*

Total Cost of Trapping Program

During the administrative rulemaking process for AB 1213, the Department stated that existing enforcement, management, and administrative costs of implementing the bobcat trapping program alone amounted to \$161,000.⁸ This total figure included enforcement costs consisting of salaries and vehicle mileage of 12 officers spending approximately 2,000 hours on field patrols over the course of the bobcat trapping season alone. As we demonstrated in the bobcat rulemaking, this cost estimate is unreasonably low. Nevertheless, given bobcats were only one of a dozen species targeted by commercial trappers in California, program costs for the enforcement, management and administration of the overall commercial trapping program likely greatly exceed the figure generated by the Department for just bobcats. A reasonable estimate is likely at least \$200,000, and more likely substantially greater than that. Additionally, enforcement, management, and administrative costs related to pest control trapping likely also exceed the costs attributable to the commercial bobcat trapping program.

Number of Trappers

The critical factor in determining an appropriate license fee is an accurate estimate of the number of trappers who will purchase the license. According to Department license statistics, the total number of trapping licenses issued in the 2014-2015 trapping season was 675, with 506 licenses obtained for pest control only purposes, 99 licenses for commercial fur trapping, and 70 for both purposes.⁹ Given the different purposes as well as logistical, administrative, management and enforcement costs between commercial fur trapping and pest control trapping, Petitioners believe that setting fees separately for these two groups of trappers is appropriate.¹⁰

To accurately estimate the number of commercial fur trappers who will purchase trapping licenses for the 2016-2017 trapping season and beyond, the Commission must reduce the total number of trappers to exclude those trappers primarily trapping bobcats in prior years, as it can be assumed that these individuals will no longer purchase trapping licenses given the implementation of the statewide commercial bobcat trapping ban. Given a maximum of 169 individuals who bought licenses for purposes of fur-trapping in the 2014-2015 season, the number seeking fur trapping licenses for 2016-2017 will likely be fewer than 150, and most likely fewer than 100. Absent a substantial fee increase, the number of pest control trappers would presumably remain roughly the same.

Trapping License Cost

Assuming a total commercial fur trapping program cost of \$200,000 (again, likely an underestimate) and the number of fur trappers to be 100 (again, likely an overestimate), a resident trapping license fee would be approximately \$2,000—seventeen times the license fee for the 2015-2016 trapping season. Even if 150 fur trappers were expected to purchase a license, the fee would need to be set at \$1,333. At the very least, these numbers illustrate that the existing license fee of \$117 for the 2015-2016 season will need to be exponentially increased to meet the cost recovery mandate of the trapping program.

⁸ See “Initial Statement of Reasons for Regulatory Action re: Implementation of the Bobcat Protection Act of 2013” (herein, “AB 1213 ISOR”), at 16. Available at: <http://www.fgc.ca.gov/regulations/2015/478isor.pdf>.

⁹ See <https://www.wildlife.ca.gov/Licensing/Statistics>.

¹⁰ Through this petition, Petitioners at this stage seek that the Commission only address fees for, and/or termination of, the trapping program for commercial (*i.e.* “recreational”) trappers. Setting lawful fees for pest control trappers is likely best done through a separate process.

Given the costs of administering and enforcing the commercial fur trapping program and relatively low number of current fur trappers, we do not see how the program can ever be self-funding. The average income of trappers in the 2014-2015 trapping season was \$1,239, but that figure includes income from bobcat trapping. Absent bobcat trapping, the average income per trapper was well below \$1,000. At a program cost of \$200,000 and 150 trappers paying a \$1,333 trapping fee, the average trapper would still make less from trapping than necessary to pay for the cost of the license. Given this difficulty of breaking even, it is not rational to expect 150 individuals to pay a license fee so as to engage in a commercial enterprise when that enterprise generates on average less money than the cost of the fee. Consequently, the number of trappers supporting the program would be fewer and the fee would need to be raised accordingly. At 50 trappers, the fee would be \$4,000, an amount likely none would be willing to pay.

D. Implementing a statewide ban on all commercial fur trapping is a compelling alternative solution to meeting the cost recovery mandate

This basic economic analysis, based on logical assumptions of cost and viable number of trappers, plainly illustrates that much higher prices of trapping licenses need to be set in order to recover the costs of a commercial fur trapping program in accordance with F&G Code § 4006(c). It is also clear, though, that setting such fees at the required levels would result in a far lower number of trappers (likely approaching zero) willing to pay such fees, leading to a cost-recovery shortfall. Yet setting fees at a level low enough that significant numbers of trappers will pay the fees will simply not recoup program costs. This is also legally impermissible.

In short, given the substantial administrative and enforcement costs associated with fur trapping, and the relatively low numbers of commercial trappers operating in the state, such trapping simply cannot continue in California without a substantial subsidy. Consequently, operating as it must under the cost recovery mandates of F&G Code § 4006(c), we do not see how the Commission can lawfully adopt fees that allows continued commercial fur trapping in California. A statewide ban on commercial and recreational trapping is a compelling alternative and practical solution to meet the statutory cost recovery mandate.

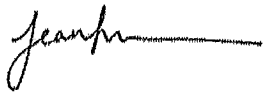
E. The existing trapping fee schedule perpetuates a pattern of fiscal irresponsibility that the Legislature has cautioned against

The reality that the existing trapping program is not self-financing plainly violates SB 1147, as codified in FGC § 4006(c). The legal arguments aside, the practical implications of perpetuating an unsustainable trapping program presents an equally compelling reason to raise fees: insufficient financial resources will inevitably lead to the program's inadequate implementation. As noted by the Legislature in enacting F&G Code §§ 710-711, the Department has failed to adequately meet its regulatory mandates due, in part, to "a failure to maximize user fees and inadequate non-fee related funding", which has "prevented proper planning and manpower allocation" to carry out its "public trust responsibilities" and the "additional responsibilities placed on the Department by the Legislature," F&G Code § 710-710.5. As a result, the Department is burdened with "the inability . . . to effectively provide all of the programs and activities required under this code and to manage the wildlife resources held in trust by the Department for the people of the state." F&G Code § 710.5. As a matter of public policy, the Commission should ensure that fees are raised accordingly for, at the bare minimum, the subsequent trapping season 2016-2017.

V. CONCLUSION

The Commission, presumably by oversight rather than design, is in clear noncompliance with unambiguous requirements of the Fish and Game Code. To rectify these violations, the Department and Commission should perform a cost analysis of the fur trapping program and implement license fees that adequately recoup the cost of that program. However, should the Commission determine that license fees are unlikely to generate sufficient revenue to cover the costs of the program, Petitioners urge the Commission to implement a state-wide ban on all commercial trapping of fur-bearing and nongame mammals.

Respectfully submitted on behalf of Petitioners,



Jean Su
Staff Attorney
Center for Biological Diversity
1212 Broadway Street, Suite 800
Oakland, California 94612
Phone: (510) 844-7139
jsu@biologicaldiversity.org



Tracking Number: (Click here to enter text.) **2016-028**

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: Sean Campbell
Address: 631 9th Street, **Arcata, CA 95521**
Telephone number: 707-825-2000
Email address: scampbell@arcatafire.org

2. Rulemaking Authority (Required) - Reference to the statutory or constitutional authority of the Commission to take the action requested: Fish and Game Code, Section 4341

3. Overview (Required) - Summarize the proposed changes to regulations: I believe the new wording could be as follows: ***On duty firefighter of any rank, working for a recognized fire agency within the State of California (Local government Firefighter, Special District Firefighter, County Firefighter, State Firefighter, and Federal Firefighter)***

4. Rationale (Required) - Describe the problem and the reason for the proposed change: The code lists a *County fireman at or above the class of foreman* is an approved person to validate deer and elk. This language is outdated and no longer used in the California Fire Service. I believe the intent of this language is to allow on duty firefighters be allowed to validate deer and elk in their fire stations. Our department has been validating deer and elk for over 30 years but has recently discontinued this practice because we are not "County Fireman" and don't have "Foreman's" in our rank structure. We asked our local Wardens and received mixed answers on whether we were allowed to validate deer and elk. There is confusion amongst the response we received. Some believe the intent of the code allows us to validate, while others believe we would be violating the code if we are not County Fireman. If the language was updated, our department would likely continue with the service of deer/elk validation at our fire stations. This is a service that our community appreciated because our personnel were easy to contact and our facilities are centrally located within the community.



SECTION II: Optional Information

5. **Date of Petition:** 10-26-16

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): 708.6 (c)(1.)(C)(1.)
☐ 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: It would be a benefit to have this change occur before the 2017 Regulations guide is published.

10. **Supporting documentation:** Identify and attach to the petition any information supporting the proposal including data, reports and other documents: Not Applicable

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: None

12. **Forms:** If applicable, list any forms to be created, amended or repealed:
None

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: _____

Meeting date for FGC consideration: _____

RECEIVED
CALIFORNIA
FISH AND GAME
COMMISSION

2016 OCT 26 PM 2:20
AM 10/21
MS



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

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: September 26, 2017

To: Valerie Termini, Executive Director
Fish and Game Commission

From: David Bess, Deputy Director
Law Enforcement Division



Subject: Petition 2016-028

The California Department of Fish and Wildlife Law Enforcement Division has reviewed the petition (tracking #2016-028) regarding California Code of Regulations Code Section 708.6 (c)(1)(C)(1) which specifies persons authorized to validate or countersign deer and elk tags. The petition identifies outdated language causing confusion for the public and public safety agencies listed.

The law enforcement division recommends granting and accepting the above-mentioned petition for review and evaluation for proposed changes.



Letter to

California Fish & Game Commission

Re: Fish & Game Commission's Legal Authority to Modify Trapping License Fees without Commission Petition Process

I am writing to compel the California Fish and Game Commission to come into compliance with state law requiring that the Commission raise trapping license fees to cover program and implementation costs. The Commission has failed to comply with this straightforward requirement for four years now. We cannot stand for a fifth year of non-compliance.

If the Commission cannot ensure that trapping license fees are raised to a level that would realistically cover the state's trapping program implementation costs, the Commission should eliminate the fur-trapping program altogether.

Fewer than 100 Californians engage in commercial trapping for the fur trade. As public trustees of California's wildlife, the Commission should require licensing fees that are in line with the true costs incurred by this tiny minority of people who enjoy trapping animals for fun and profit.

OK

End All Commercial Fur Trapping in California

Genevieve DeGuzman

Mon 6/26/2017 6:03 PM

To:FGC <FGC@fgc.ca.gov>;

Valerie Termini, Executive Director
California Fish and Game Commission

Dear Ms. Termini,

I am writing to urge the California Fish and Game Commission to support ending of all commercial fur trapping in California. I was outraged to learn that the commission has for multiple years knowingly allowed an illegal subsidy for commercial fur trapping to continue. As a taxpayer, I strongly oppose my tax dollars being used to illegally support this appalling practice.

Given it is unlikely that the state could ever bring in enough money from trappers to cover the costs of the trapping program, the simplest -- and the only lawful -- option is to ban commercial fur trapping in California. Doing so is also consistent with the values of the overwhelming majority of Californians who appreciate our wildlife alive, not as commodities to be killed and exported for the benefit of a handful of trappers.

You made the right choice in 2015 by banning the cruel practice of commercial bobcat trapping--thank you!; now's your chance to end commercial fur trapping of all other species in California, bringing the state into the 21st century of wildlife management.

PLEASE do the right thing and ban commercial fur trapping!

Thank you for taking my comment.

Sincerely,

Genevieve DeGuzman

CA Fish & Game Commission Comply with State Law

louis gauci

Tue 9/19/2017 3:07 PM

To:FGC <FGC@fgc.ca.gov>;

Cc:info@projectcoyote.org

California Fish & Game Commission,

I am writing to compel the California Fish and Game Commission to come into compliance with state law requiring that the Commission raise trapping license fees to cover program and implementation costs. The Commission has failed to comply with this straightforward requirement for four years now. We cannot stand for a fifth year of non-compliance.

If the Commission cannot ensure that trapping license fees are raised to a level that would realistically cover the state's trapping program implementation costs, the Commission should eliminate the fur-trapping program altogether.

Fewer than 100 Californians engage in commercial trapping for the fur trade. As public trustees of California's wildlife, the Commission should require licensing fees that are in line with the true costs incurred by this tiny minority of people who enjoy trapping animals for fun and profit.

Sincerely,

Louis

California Wildlife Officers

Quarterly Report April – June 2017

The majority of California's outdoors, hunting, and fishing communities are law-abiding citizens. A small percentage are not. From poaching and pollution investigations, to handling calls about problem wildlife, responding to assist allied law enforcement agencies, other general law enforcement and more, here is a snapshot of Wildlife Officers and their stories.



California Department of Fish and Wildlife Law Enforcement Division Command Staff, Wildlife Officers and Academy Cadets from around the state attended the California Peace Officer Memorial at the State Capitol in May. The event honors peace officers who died in the line of duty in the previous year and their families. Their names are permanently affixed to the California Peace Officer Memorial thereafter. It is always somber, but very moving as well.

Cases throughout the State

Wildlife officers on night patrol surveilled a group of anglers along the river. They observed two subjects netting juvenile salmon with a dip net along the shoreline. The officers contacted the suspects, questioning them about the net and the attempted take of juvenile salmon. The suspects strongly denied the allegation and observations of the officers, and began video recording the contact with their cellphones. Within moments, a wildlife officer found a water bottle containing four live juvenile salmon. Confronted with the evidence the suspects stopped the video recording. Both suspects were cited for using juvenile salmon as bait, which was the second offense of this nature for one of the suspects who was cited for the same activity in the same location two years prior. One suspect refused to sign the citation and was transported and booked into Jail.



Wildlife officers were on vessel patrol when they observed on radar a Commercial Passenger Fishing Vessel (CPFV) within a State Marine Reserve. The area is a closed preserve and prohibits all take or possession of any species. The officers marked the location where the vessel was fishing inside the reserve, then approached for contact. As the patrol vessel approached, the CPFV powered away attempting to leave the boundary of the reserve, but were caught before they could exit the area. During interviews, the captain admitted they were within the reserve, but alleged it was due to drifting caused by tangled fishing lines. The captain was cited for fishing inside the reserve.



Wildlife officers assisted National Park Rangers with removing abandoned and entangled lobster traps, many of which were stuck on rocks and required the use of special equipment such as lift bags to bring them to the surface. A total of seven traps were recovered during three dives, from which over thirty lobsters were released, 90% being egg carrying females. These activities remain a priority as the department continues to solicit assistance from the public to report anytime they know of or discover such gear
<http://www.opc.ca.gov/2010/08/derelect-fishing-gear-removal-pilot-project/>

Wildlife officers from around the state converged for two separate multi-day minus tide saturation abalone patrols of the coast. During the course of the two operations, wildlife officers contacted over 2,914 divers/anglers and issued 190 citations for various violations including over-limit, undersized, and tagging violations of abalone. A wildlife officer/ K-9 duo participated in the operation and assisted

in various cases resulting in the seizure of 31 unlawful abalone. During one of the investigations an individual was suspected of taking an over limit of abalone and stashing them in his trailer. The K-9 searched the camper and located an untagged abalone hidden in the bathroom cabinet.

A wildlife officer investigated an egregious dumping of trash onto a forested area. Miscellaneous items located within the dump rubbish contained personal information and an address for a potential suspect. After an extensive investigation starting with the address and follow-up interview, the suspect confessed to the illegal dumping and agreed to remove the trash and restore the area, a testament solidified in the before and after photos of the site.



A wildlife officer responded to a report of a subject shining a light into a wooded area and discharging a firearm, activity known as spotlighting. The officer arrived in the area and saw a light shining through the trees then heard a gunshot. The suspect vehicle sped away from the area down a rough mountain road as the officer pursued. The suspect eventually crashed the vehicle after failing to yield for several miles. As the officer approached, he saw the driver retrieve an SKS style assault weapon from the vehicle and flee into the woods. Fearing a potential ambush/sniper situation, the officer retreated to a safe location and waited for backup assistance. The wildlife officer, sheriff's deputies, and CHP returned to the scene and conducted a search of the vehicle, which resulted in the seizure of methamphetamine, stolen property, and over 500 rounds of rifle ammunition. An extensive search for the suspect using K-9s and helicopters yielded no results. A records check of the vehicles registered owner indicated multiple felony arrest and numerous warrants in multiple states. The suspect was apprehended following day near the wrecked vehicle, without further incident.

Wildlife officers with the Wildlife Trafficking Unit (WTU) conducted several inspection details at public fairs and shops aimed to curtail illegal ivory sales. Officers seized 23 pieces of ivory from the various storekeepers during special detail efforts.

A wildlife officer located an online advertisement offering the sale of multiple pieces of ivory, thus conducted an undercover buy-bust. The seller had nine pieces of ivory offered for sale at 5,000. Officers seized the ivory as well as collected statements and evidence to file a formal complaint with the District Attorney's office.



Wildlife officers with the Watershed Enforcement Team (WET) investigated several illegal marijuana cultivation sites and executed search warrants on parcels throughout California associated with negative environmental destruction of creeks, streams, and waterways. The team predominantly focused on areas near the coast that have anadromous waterways and sensitive ecological areas. Many of the investigated sites involved pollution, litter, or dewatering of protected steelhead and coho salmon spawning areas, two fish species that are federally endangered. Violations included unlawful cultivation of marijuana where no nexus to medical marijuana existed, illegal timber conversion, pollution of water sources, illegal water diversion, possession of firearms and ammunition by convicted felons, and multiple contacts with persons with felony warrants.

Marijuana Enforcement Team (MET) wildlife officers conducted trespass marijuana grow scouts, arrests, eradications and reclamation missions in over thirteen counties throughout the state. Several of the unlawful grow operations were occurring in sensitive and volatile habitats and ecosystems. One trespass grow site led to the discovery of a California condor carcass and another was found in the high altitude areas of Sierra Nevada, home to the protected and highly regulated big horn sheep. CDFW K-9s continue to aid in the improvement of department efficiency and overall officer safety through support tactics involving suspect apprehensions and handler protections. In total, the teams successfully eradicated thousands of illegal marijuana plants, along with removing all the trash and miles of plastic pipe. Wildlife officers restored dozens of creek beds to their natural course by removing illegal water diversion dams.

The Law Enforcement Division was saddened to lose two K-9s this quarter. The Law Enforcement Division mourns and memorializes the life and career of K-9 Buddy. K-9 Buddy graduated from K-9 Academy 4 in July 2009. K-9 Buddy remained an active and valuable asset to the Department under the care and partnership of two handlers along the way. One of his handlers recalled one of this fondest memories working with Buddy, "I received a call from a fellow wildlife officer from a neighboring patrol area requesting Buddy to aid in locating white wing doves shot out of season and buried. We arrived on scene and readied and deployed Buddy for an area search of the hidden doves. Buddy searched a large area with no luck, but as he walked by a place that appeared to have been



freshly shoveled, he made a hard right turn back to the freshly shoveled dirt and laid down with his nose to the ground. As I brushed the dirt away and dug down about one foot, I first noticed feathers then as I dug down more I found three white wing dove that had been buried."

The Law Enforcement Division mourns and memorializes the life and career of K-9 Reno, who passed away unexpectedly. K-9 Reno graduated from K-9 Academy 4 in July 2009 and was assigned to Orange and south Los Angeles counties. During his tour, Reno became known as the "Gun Dog," as he was trained to locate recently-fired firearms and casings. Multiple agencies used Reno's



talents and some even began training their own gun dogs after seeing Reno's value. K-9 Reno also liked the limelight. Throughout his career, he participated in more than 400 public demonstrations showcasing his talents and connected with well over 100,000 people. Reno was destined to retire out at the end of the year but passed away unexpectedly.



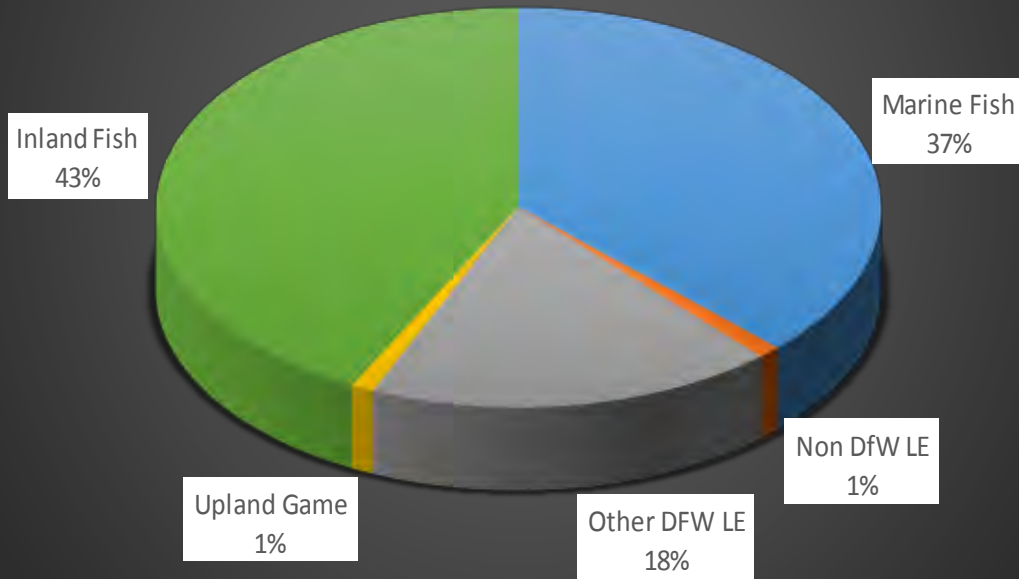
Dispositions

A substantial commercial mining pollution civil case settled, with the defendants ordered to pay \$87,000 in fines. Additionally, they are required to hire an environmental engineering company to completely restore the affected stream. Lastly, the suspects are banned from mining for the next three years.

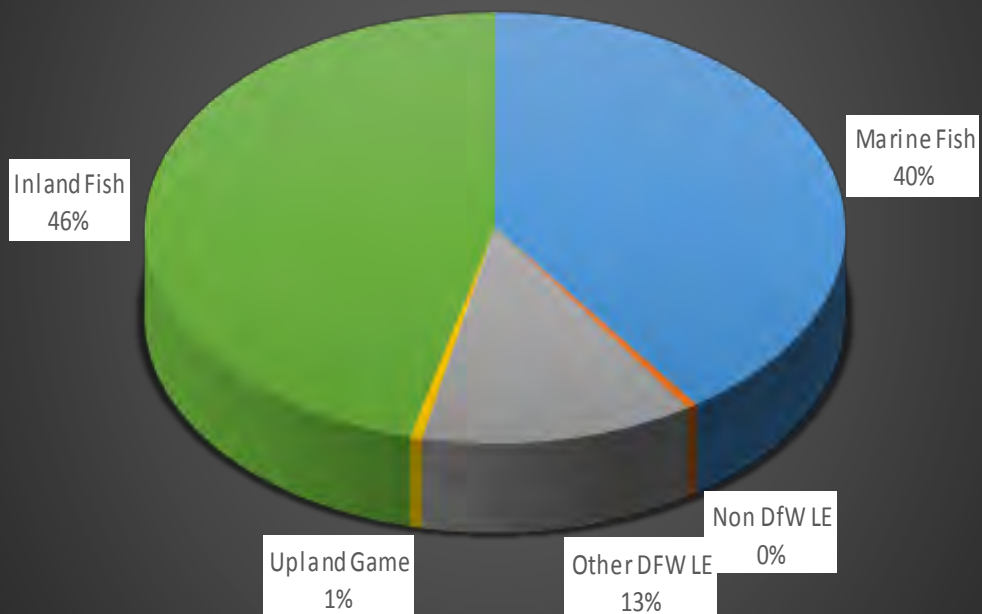
A disposition of a case involving the illegal sale of native reptiles/amphibians by a large volume reptile/amphibian exporter resulted in the company being fined \$10,000 and ordered to implement a training program within their company to educate the employees regarding federal and state laws. This company has prior egregious state and federal violations.

A wildlife officer received a disposition for a deer case last October. A poacher shot a trophy 6X7 buck on a children's school playground. The man was convicted of felony possession and discharge of a firearm in a school zone, as well as illegal possession of wildlife and waste of game. He was fined over \$2,500 dollars, placed on formal probation for two years and served four days in jail.

147,373 CONTACTS FOR 2ND QUARTER 2017



3,893 CITATIONS FOR 2ND QUARTER 2017





California Department of Fish and Wildlife
Marine Region News Service

News Release

FOR IMMEDIATE RELEASE - September 21, 2017

CDFW Arrests Four Suspects for Commercial Sale of Sport Harvested Abalone

Contact:

Lt. Chris Stoots
CDFW Law Enforcement
(916) 651-9982

Wildlife officers have arrested four suspects on charges of harvesting abalone with a recreational fishing license then selling it on the black market for profit, the California Department of Fish and Wildlife (CDFW) announced. The arrests were preceded by a five-month investigation of the suspects, some of whom have been previously convicted of similar violations.



A CDFW Wildlife Officer places an abalone poaching suspect under arrest.
CDFW photo

Arrested were Oakley resident Thepbangon Nonnarath, 48, El Sobrante resident Dennis Nonnarath, 45, and San Jose residents Thu Thi Tran, 45, and Cuong Huu Tran, 42.

The group came to the attention of CDFW wildlife officers in November 2016, when Thepbangon and Dennis Nonnarath and two associates were cited for multiple abalone violations at Moat Creek, a popular recreational abalone fishery in Mendocino County. Thepbangon Nonnarath had previous abalone poaching convictions and the wildlife officers suspected the group may be engaged in the commercial sale of recreationally harvested abalone, which is unlawful.

Beginning in May 2017, wildlife officers observed suspicious activity by the same group of suspects in several popular recreational abalone diving locations in both Mendocino and Sonoma counties. Further investigation revealed an extended group of people who were harvesting abalone and allegedly selling it on the black market. The five-month investigation uncovered evidence of various poaching crimes among the group, including unlawful sale of sport caught abalone, take of abalone for personal profit, commercial possession of sport caught abalone, exceeding the seasonal limit of abalone, falsification of abalone tags and conspiracy to commit a crime, among others.

"The collective efforts of these suspected poachers show a blatant disregard for the regulations designed to protect California's abalone resources," said David Bess, Chief of CDFW's Law Enforcement Division. "Whether it be California abalone or African ivory, wildlife officers will not tolerate trafficking of our wildlife resources."

The alleged abalone poaching crimes occurred at a time when abalone are facing significant threats to their populations due to [unprecedented environmental and biological stressors](#). As a result, the California Fish and Game Commission has re-adopted an emergency abalone regulation to continue the restriction of the annual abalone limit to 12 abalone per person and continue the reduced open season which is limited to May, June, August, September and October.

###

CDFW Marine Region News Service
Ocean-related news and information

Learn more about CDFW's Marine Region on the web at wildlife.ca.gov/regions/marine
Read the CDFW Marine Management News blog at cdfwmarine.wordpress.com


California Department of Fish and Wildlife
Marine Region
20 Lower Ragsdale Dr. Suite 100
Monterey CA 93940

State of California
California Department of Fish and Wildlife

M e m o r a n d u m

Date: September 27, 2017

To: Valerie Termini, Executive Director
California Fish and Game Commission

From: 
Charlton Bonham, Director
California Department of Fish and Wildlife

Subject: Commission Renewal of John Becker's Sea Urchin Diving Permit

The Department of Fish and Wildlife ("Department") is requesting that the Fish and Game Commission ("Commission"), at its October 11-12, 2017 meeting, consider the renewal of John Becker's Sea Urchin Diving Permit ("Permit"). The Department has agreed not to oppose Mr. Becker's renewal request.

Fish and Game Code Section 7852.2 ("Section 7852.2"), subdivision (c), states that the Department shall "deny any application for renewal received after March 31 of the permit year following the year in which the applicant last held a valid permit for that fishery." Furthermore, Section 7852.2, subdivision (d), states, "The commission, upon consideration of the appeal, may grant renewal." The Permit expired on March 31, 2002. In a March 7, 2002 letter from the Department to Mr. Becker, the Department informed him that it would authorize the reinstatement of the Permit when he submits a letter to the Department from his physician stating the nature and duration of his injury and that he is sufficiently recovered to be able to return to commercial diving. Mr. Becker submitted a request to renew the Permit on January 30, 2017, after he had recovered from various injuries that had prevented him from commercial diving. The Department denied his renewal request on April 3, 2017. Mr. Becker submitted a timely appeal request to the Commission on April 19, 2017, along with letters from two physicians stating that he is able to return to commercial diving. In lieu of an appeal hearing, the Department settled with Mr. Becker. The Department has agreed to not challenge Mr. Becker's request to renew the Permit. Mr. Becker has agreed to pay \$12,413.02 in fees specified in Section 7852.2, subdivision (a), in addition to fees owed for the 2017-2018 permit year, and not seek any further appeals. Pursuant to Section 7852.2(d), the Commission may approve Mr. Becker's renewal request.

Thank you for your consideration. If you have any questions, please contact Mr. Stafford Lehr, Deputy Director, at (916) 653-4673.

Attachments (Confidential)

cc: Department of Fish and Wildlife

Stafford Lehr, Deputy Director
Wildlife and Fisheries Division
Stafford.Lehr@wildlife.ca.gov

Joshua Morgan, Chief
License and Revenue Branch
Administrative Division
Joshua.Morgan@wildlife.ca.gov

David Kiene, Attorney
Office of the General Counsel
David.Kiene@wildlife.ca.gov

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made between the Department of Fish and Wildlife ("CDFW") and John Becker (individually, a "Party," and collectively, "Parties").

I. Recitals

The Parties execute this Agreement with reference to and in contemplation of the following facts:

- a. Mr. Becker possessed a Sea Urchin Diving Permit (Permit).
- b. CDFW license records indicate that the Permit was last valid during the 2001-2002 permit year, making it eligible for renewal in 2002-2003, but not 2017-2018.
- c. On February 13, 2002, Mr. Becker sent the Department a letter requesting a waiver of minimum landing requirements to renew the Permit because of an injury. On March 7, 2002, CDFW responded, granting the waiver request, and stating that CDFW would authorize the reinstatement of the Permit "when you submit a letter to the Department from your physician stating the nature and duration of your injury, and that you are sufficiently recovered to be able to return to commercial diving."
- d. On January 30, 2017, CDFW received a request from Mr. Becker to renew the Permit. ("Renewal Request;" Exhibit A.)
- e. On April 3, 2017, CDFW denied the Renewal Request pursuant to Fish and Game Code Section 7852.2 (Section 7852.2), subdivision (c). (Exhibit B.) Section 7852.2, subdivision (c) states "The department shall deny any application for renewal received after March 31 of the permit year following the year in which the applicant last held a valid permit for that fishery." For CDFW to grant the Renewal Request, Mr. Becker would have had to submit the Renewal Request along with applicable fees by March 31, 2003.
- f. Section 7852.2, subdivision (d), states "An applicant who is denied renewal of a late application may submit a written appeal for renewal to the commission within 60 days of the date of the department's denial. The commission, upon consideration of the appeal, may grant renewal. If the commission grants renewal, it shall assess the applicable late fee pursuant to subdivision (a)." On April 19, 2017, Mr. Becker submitted to the California Fish and Game Commission ("Commission") a request for an appeal of CDFW's denial of his Renewal Request. Mr. Becker also provided the Commission with letters from two physicians stating that he has recovered from his injuries and is able to resume commercial sea urchin diving. (Exhibit C.)
- g. Section 7852.2, subdivisions (a) and (b) state:
 - (a) In addition to the base fee for the license, stamp, permit, or other entitlement, the department shall assess a late fee for any renewal the application for which is received after the deadline, according to the following schedule:
 - (1) One to 30 days after the deadline, a fee of one hundred twenty-five dollars (\$125).

- (2) Thirty-one to 60 days after the deadline, a fee of two hundred fifty dollars (\$250).
 - (3) Sixty-one days or more after the deadline, a fee of five hundred dollars (\$500).
- (b) The department shall not waive the applicable late fee. The late fees specified in this section are applicable beginning in the 2008 license year, and shall be adjusted annually thereafter pursuant to Section 713."
- h. Pursuant to Section 7852.2, subdivisions (a) and (b), Mr. Becker would owe \$12,413.02 in fees if the Commission reinstates the Permit. (Exhibit D.)
- i. The Parties understand that this Agreement is solely between CDFW and Mr. Becker and that the Commission is neither a signatory to it nor bound by it in any way. Furthermore, the Parties understand that pursuant to Section 7852.2, subdivision (d), the Commission, and not CDFW, has the sole discretion to approve or deny the Renewal Request.
- j. For the purpose of saving time and costs associated with an appeal hearing, the Parties agree to compromise and settle these issues. In light of recent discussions between CDFW and Mr. Becker, the Parties have come to an agreement on terms upon which they can resolve this matter.

II. Terms


The Parties hereby agree to the following:

- a. CDFW agrees to not oppose the Renewal Request.
- b. If the Commission reinstates the Permit, Mr. Becker agrees to fully pay all fees owed pursuant Section 7852.2, subdivisions (a) and (b)--\$12,413.02--within 60 days of the Commission's decision. CDFW shall not issue the Permit until the \$12,413.02 in fees are paid.
- c. The Parties agree that this Agreement, all documents attached to this Agreement, and documents previously submitted to the Commission related to the Renewal Request constitute Mr. Becker's written appeal pursuant to Section 7852.2, subdivision (d), provided that the Commission considers the Renewal Request at an upcoming Commission meeting. Each Party may, at its discretion, address the Commission at a Commission meeting regarding the Renewal Request, so long as the address is consistent with the terms of this Agreement. In addition, CDFW or Mr. Becker may submit a memorandum or other documents to the Commission requesting that it take action on the Renewal Request, so long as these documents are consistent with the terms of this Agreement.
- d. This Agreement is intended to be a full and complete settlement of all disputes between the Parties pertaining to the Renewal Request. Provided that the Commission considers the Renewal Request at an upcoming Commission meeting, Mr. Becker agrees to waive any present and future administrative appeal related to

this renewal of the Permit, the April 3, 2017 denial of the Renewal Request, and all future claims and/or causes of action against CDFW related to renewing the Permit.

- e. This Agreement may be pleaded as a full and complete defense and may be used as the basis for an injunction against any action, suit or proceeding which may be prosecuted, instituted or attempted by any Party in breach thereof.
- f. This Agreement is only applicable to Mr. Becker's Renewal Request. This Agreement does not relate in any way to Mr. Becker's general Commercial Fishing License or any other CDFW-issued entitlement held by Mr. Becker.
- g. Each party shall bear its own costs and attorneys' fees, and any other expenses, related to the Renewal Request subject to resolution by this Agreement.
- h. The obligations of this Agreement apply to and are binding on CDFW and any successor agency or department and Mr. Becker and his respective heirs, executors, administrators, and permitted assigns.
- i. The Parties represent and warrant to each other that the execution of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on each Party and is enforceable in accordance with its terms.
- j. If any provision of this Agreement is found to be illegal or unenforceable, then any such provision shall be deemed stricken and the remaining provisions hereof shall remain in full force and effect.
- k. This Agreement constitutes the entire understanding between the Parties as to the Renewal Request and can only be amended or modified in writing, signed by duly authorized representatives of the Parties. This Agreement supersedes all prior representations and agreements, if any, between the Parties regarding the Renewal Request.
- l. This Agreement, when signed by all of the signatories, shall become effective as of the last signature date.
- m. This Agreement may be signed in counterparts, which together shall constitute one and the same Agreement. A facsimile or scanned signature shall be the same as an original.

IN WITNESS THEREOF, the Parties have executed this Agreement as of the date of the last signature below:

By: 
Gabriel Tiffany
Deputy Director, Administration Division
Department of Fish and Wildlife


John Becker

Date: 9/28/17

9/15/2017

BEFORE THE FISH AND GAME COMMISSION
STATE OF CALIFORNIA

In the Matter of:) Case No. 17ALJ10-FGC
John M. Becker,)
Appellant.)
_____)

DECISION

Consistent with the terms of the attached Settlement Agreement between John M. Becker (“Appellant”) and the Department of Fish and Wildlife (“Department”), fully executed September 28, 2017, and the authority provided in Fish and Game Code Section 7852.2, subdivision (d), and Government Code section 11415.60, the Fish and Game Commission hereby orders that:

1. The Commission hereby grants reinstatement of the Sea Urchin Diving Permit (Permit) previously issued to Appellant by the Department.
2. The Appellant must pay the Department all license, permit, and late fees owed pursuant to Section 7852.2, subdivision (a) and the fees owed for the 2017-2018 permit year, within 60 days of this Decision, which total \$12,413.02.
3. The Department shall issue Appellant the Permit if the fees are paid consistent with this Decision.

IT IS SO ORDERED this _____ day of October 2017.


Eric Sklar, President

State of California
California Department of Fish and Wildlife

M e m o r a n d u m

Date: September 27, 2017

To: Valerie Termini, Executive Director
California Fish and Game Commission

From:  for
Charlton Bonham, Director
California Department of Fish and Wildlife

Subject: Transfer of Kevin Clifton's Salmon Vessel Permit

The Department of Fish and Wildlife ("Department") is requesting that the Fish and Game Commission ("Commission"), at its October 11-12, 2017 meeting, consider a request made by the Estate of Kevin Clifton ("Estate") to transfer his Salmon Vessel Permit ("Permit"). The Department has agreed not to oppose the transfer request.

On June 7, 2017, the Department received a request from Patricia Gruver, the Administrator of the Estate, to transfer the Permit from the *F/V Wild Turkey* to the *F/V Penny S*. Mr. Clifton died on October 13, 2016. On June 27, 2017, the Department denied the transfer request because Mr. Clifton did not have a 50 percent or greater ownership interest in the *F/V Penny S* as required by Fish and Game Code, Section 8239 ("Section 8239"), subdivision (g). Fish and Game Code Section 8246.6 states, "A person whose commercial salmon fishing vessel permit is revoked by the commission or who has been denied a permit transfer may appeal the revocation or denial to the commission by submitting the appeal in writing to the commission within 60 days of the decision." On July 3, 2017, Ms. Gruver submitted a timely request for an appeal of the Department's denial of the Estate's transfer request to the Commission. The Department and Estate agree that the Fish and Game Code establishes a different standard for the Commission to apply in the context of an appeal that was not available to the Department. Specifically, Fish and Game Code Section 8246.7, subdivision (a)(5) authorizes the Commission to approve the permit transfer if the "denial of the permit transfer was pursuant to subdivision (g) or (h) of Section 8239 and the applicant can show that the 18-month requirement cannot be met due to death....". In lieu of an appeal hearing, the Department settled with the Estate (see attached agreement), and agrees not to challenge the Estate's request to transfer the Permit. The Estate has agreed not to seek any further appeals. Because the Commission has the authority to transfer the Permit, the request must be submitted to the Commission.

Thank you for your consideration. If you have any questions, please contact Mr. Stafford Lehr, Deputy Director, at (916) 653-4673.

Attachments (Confidential)

cc: Department of Fish and Wildlife

Stafford Lehr, Deputy Director
Wildlife and Fisheries Division
Stafford.Lehr@wildlife.ca.gov

Joshua Morgan, Chief
License and Revenue Branch
Administrative Division
Joshua.Morgan@wildlife.ca.gov

David Kiene, Attorney
Office of the General Counsel
David.Kiene@wildlife.ca.gov

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made between the Department of Fish and Wildlife ("CDFW") and the Estate of Kevin Clifton ("Estate"). Hereinafter, CDFW or the Estate may be individually called a "Party," or collectively, "Parties."

I. Recitals

The Parties execute this Agreement with reference to and in contemplation of the following facts:

- a. Kevin Clifton possessed a Salmon Vessel Permit, Permit Number (SA0633). CDFW license records indicate that the Permit is currently valid. On October 13, 2016, Kevin Clifton died. (Exhibit A.)
- b. On June 17, 2017, CDFW received a request from Patricia Gruver, the Administrator of the Estate, to transfer the Permit from the *FV Wild Turkey* (FG24159) to the *FV Penny S* (FG72163; "Transfer Request"). (Exhibit B.)
- c. Fish and Game Code Section 8239 states, in part, "A transfer may be approved and a permit issued for use of a replacement vessel pursuant to Section 8241 under all of the following conditions...(g) The permittee has 50 percent or greater ownership interest in the permitted vessel and in the replacement vessel. For purposes of this subdivision and subdivision (h), 'permittee' means an individual designated as the owner of the permitted vessel."
- d. On June 27, 2017, CDFW denied the Transfer Request because Mr. Clifton did not have a 50 percent or greater ownership interest in the replacement vessel, the *FV Penny S*. (Exhibit C.)
- e. Fish and Game Code section 8246.6 ("Section 8246.6") states, "A person whose commercial salmon fishing vessel permit is revoked by the commission or who has been denied a permit transfer may appeal the revocation or denial to the commission by submitting the appeal in writing to the commission within 60 days of the decision."
- f. On July 3, 2017, Ms. Gruver submitted a timely request for an appeal of CDFW's denial of the Estate's Transfer Request to the California Fish and Game Commission ("Commission"). (Exhibit D.)
- g. Fish and Game Code section 8246.7 ("Section 8246.7") states, in part, "(a) The commission shall...order the approval of a permit transfer only if it finds one of the following grounds...(5) The denial of the permit transfer was pursuant to subdivision (g) or (h) of Section 8239 and the applicant can show that the 18-month requirement cannot be met due to death, physical illness, mental incapacity, or being called to active military duty."
- h. The Parties agree that pursuant to Section 8246.7, subdivision (a)(5), because of Mr. Clifton's death, the Estate is not subject to the requirement in Section 8239(g) that a permittee must have at least a 50 percent ownership in a replacement vessel.

- i. The Parties understand that this Agreement is solely between CDFW and the Estate, and that the Commission is neither a signatory to this Agreement nor bound by it in any way. Furthermore, the Parties understand that pursuant to Section 8246.7, subdivision (a)(5), the Commission, and not CDFW, has the authority to approve or deny the Transfer Request.
- j. For the purpose of saving time and costs associated with an appeal hearing, the Parties agree to compromise and settle these issues. In light of recent discussions between CDFW and the Estate, the Parties have come to an agreement on terms upon which they can resolve this matter.


II. Terms

The Parties hereby agree to the following:

- a. CDFW agrees to not oppose the Transfer Request.
- b. The Parties agree that this Agreement, all documents attached to this Agreement, and documents previously submitted to the Commission related to the Transfer Request constitute the Estate's written appeal pursuant to Section 8246.6, provided that the Commission considers the Transfer Request at an upcoming Commission meeting. Each Party may, at its discretion, address the Commission at a Commission meeting regarding the Transfer Request, so long as the address is consistent with the terms of this Agreement. In addition, CDFW or the Estate or their representatives may submit a memorandum or other documents to the Commission requesting that it take action on the Transfer Request, so long as these documents are consistent with the terms of this Agreement.
- c. This Agreement is intended to be a full and complete settlement of all disputes between the Parties pertaining to the Transfer Request. Provided that the Commission considers the Transfer Request at an upcoming Commission meeting, the Estate agrees to waive any present and future administrative appeal related to this transfer of the Permit, the June 27, 2017 denial of the Transfer Request, and all future claims and/or causes of action against CDFW related to renewing the Permit.
- d. This Agreement may be pleaded as a full and complete defense and may be used as the basis for an injunction against any action, suit or proceeding which may be prosecuted, instituted or attempted by any Party in breach thereof.
- e. This Agreement is only applicable to the Estate's Transfer Request. This Agreement does not relate in any way to any other license, permit or other Department-issued entitlement held by Mr. Clifton or the Estate
- f. Each party shall bear its own costs and attorneys' fees, and any other expenses, related to the Transfer Request subject to resolution by this Agreement.

- g. The obligations of this Agreement apply to and are binding on CDFW or any successor agency or department and the Estate and its respective heirs, executors, administrators, and permitted assigns.
- h. The Parties represent and warrant to each other that the execution of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on each Party and is enforceable in accordance with its terms.
- i. If any provision of this Agreement is found to be illegal or unenforceable, then any such provision shall be deemed stricken and the remaining provisions hereof shall remain in full force and effect.
- j. This Agreement constitutes the entire understanding between the Parties as to the Transfer Request and can only be amended or modified in writing, signed by duly authorized representatives of the Parties. This Agreement supersedes all prior representations and agreements, if any, between the Parties regarding the Transfer Request.
- k. This Agreement, when signed by all of the signatories, shall become effective as of the last signature date.
- l. This Agreement may be signed in counterparts, which together shall constitute one and the same Agreement. A facsimile or scanned signature shall be the same as an original.

IN WITNESS THEREOF, the Parties have executed this Agreement as of the date of the last signature below:

By: 
Gabriel Tiffany
Deputy Director, Administration Division
Department of Fish and Wildlife

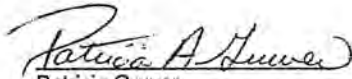
Patricia Gruver
Administrator for the Estate of Kevin
Clifton

Date: 9/28/17

- g. The obligations of this Agreement apply to and are binding on CDFW or any successor agency or department and the Estate and its respective heirs, executors, administrators, and permitted assigns.
- h. The Parties represent and warrant to each other that the execution of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on each Party and is enforceable in accordance with its terms.
- i. If any provision of this Agreement is found to be illegal or unenforceable, then any such provision shall be deemed stricken and the remaining provisions hereof shall remain in full force and effect.
- j. This Agreement constitutes the entire understanding between the Parties as to the Transfer Request and can only be amended or modified in writing, signed by duly authorized representatives of the Parties. This Agreement supersedes all prior representations and agreements, if any, between the Parties regarding the Transfer Request.
- k. This Agreement, when signed by all of the signatories, shall become effective as of the last signature date.
- l. This Agreement may be signed in counterparts, which together shall constitute one and the same Agreement. A facsimile or scanned signature shall be the same as an original.

IN WITNESS THEREOF, the Parties have executed this Agreement as of the date of the last signature below:

By: _____
Gabriel Tiffany
Deputy Director, Administration Division
Department of Fish and Wildlife


Patricia Gruver
Administrator for the Estate of Kevin
Clifton

Date: _____

9/13/17

BEFORE THE FISH AND GAME COMMISSION
STATE OF CALIFORNIA

In the Matter of:) Case No. 17ALJ13-FGC
Estate of Kevin L. Clifton,)
Appellant.)
_____))

DECISION

Consistent with the terms of the attached Settlement Agreement between the Estate of Kevin L. Clifton (“Appellant”) and the Department of Fish and Wildlife (“Department”), fully executed September 28, 2017, and the authority provided in Fish and Game Code Section 8246.7, subdivision (a)(5), and Government Code section 11415.60, the Fish and Game Commission hereby orders that:

1. The Appellant requested a permit transfer of the Salmon Vessel Permit, Permit Number (SA0633), (Permit) previously issued to Kevin Clifton.
2. The Department denied the requested permit transfer made by Appellant; that denial was pursuant to subdivision (g), Section 8239 of the Fish and Game Code.
3. The Appellant demonstrated that the basis of the denial could not be met due to death.
4. The Commission hereby grants the request and authorizes the transfer of the Permit from the F/V Wild Turkey (FG24159) to the F/V Penny S (FG72163).

IT IS SO ORDERED this _____ day of October 2017.

Eric Sklar, President



CALIFORNIA HALIBUT BOTTOM TRAWL VESSEL PERMIT TRANSFER APPLICATION



GENERAL PROVISIONS

Pursuant to Fish and Game Code (FGC), Section 8494(d)(3), the permit holder of a California Halibut Bottom Trawl Vessel Permit (CHBTVP), or his or her conservator or estate representative, may transfer the permit simultaneously with the vessel to a new permit holder if the following conditions are met to the satisfaction of the Fish and Game Commission (Commission):

- (A) The permit holder has died, is permanently disabled, or the permit holder is at least 65 years of age and has decided to permanently retire from commercial fishing of all types; and
- (B) California halibut landings contributed significantly to the record and economic income derived from the vessel, to which the CHBTVP is attached, as determined by regulations adopted by the Commission. The Commission may request information that it determines is reasonably necessary from the permit holder or his heirs or estate prior to and for the purposes of authorizing the transfer of the permit.

Permit holder must complete the application and submit the required documentation. Section 8494(d)(3) FGC.
See reverse for instructions and documents required for transfer.

CURRENT PERMIT HOLDER

FIRST NAME Bruce	M.I. A	LAST NAME BRAMEL	BUSINESS NAME (If any) / JOINT OWNERS Colleen Bramel
MAILING ADDRESS			DAY TELEPHONE (Voluntary)
CITY	STATE	ZIP CODE	E-MAIL ADDRESS
CHBTVP is attached to F & G BOAT # 00612		BOAT NAME C	CF/DOC# 257 103
List all commercial fishing permits that you currently possess: Salmon, Ridge back Prawn, Trawl Sea Bumble, Trawl Halibut			COMMERCIAL FISHING ID# L 25943
List all commercial fishing vessels registered with Department of Fish and Wildlife that you are full or part owner of:			

F & G BOAT # 00612	BOAT NAME "C"	CF/DOC # 257 103
F & G BOAT #	BOAT NAME	CF/DOC #

PROPOSED NEW PERMIT HOLDER

FIRST NAME Michael	M.I. K	LAST NAME Peery	BUSINESS NAME (If any) / JOINT OWNERS
MAILING ADDRESS		COMMERCIAL FISHING ID# L 47769	DAY TELEPHONE (Voluntary)
CITY	STATE	ZIP CODE	E-MAIL ADDRESS

CHECK THE APPROPRIATE BOX FOR THE TRANSFER YOU ARE APPLYING FOR.

☒ I AM 65 YEARS OF AGE OR OLDER, AGREE TO PERMANENTLY RETIRE FROM COMMERCIAL FISHING OF ALL TYPES, AND AM APPLYING TO TRANSFER TO A NEW PERMIT HOLDER.

CERTIFICATION OF PERMIT HOLDER: I hereby certify that I am the holder of a valid California Halibut Bottom Trawl Vessel Permit and that the information provided by me in connection with this application is true and accurate to the best of my knowledge. If the Commission approves this transfer, I agree to permanently retire from all commercial fishing as a necessary condition for transfer of the CHBTVP (as specified in subsection 8494(d)(3) of the FGC). I understand that I shall not participate/assist in any commercial fishing activity and that any remaining commercial fishing entitlement will not be renewed. I further understand that, in the event of making any such false statement, I will be subject to prosecution pursuant to Section 746, Title 14, of the California Code of Regulations (CCR).

APPLICANT'S SIGNATURE
X [Signature] DATE
5-20-2017

☐ I AM PERMANENTLY DISABLED AND APPLYING TO TRANSFER TO A NEW PERMIT HOLDER.

CERTIFICATION OF PERMIT HOLDER: I hereby certify that I am the holder of a valid California Halibut Bottom Trawl Vessel Permit and that the information provided by me in connection with this application is true and accurate to the best of my knowledge. I am permanently disabled from continuing to fish commercially, as described in the statement from my physician accompanying this application. I further understand that, in the event of making any such false statement, I will be subject to prosecution pursuant to Section 746, Title 14, of the California Code of Regulations (CCR).

APPLICANT'S SIGNATURE
X DATE

☐ DEATH OF PERMIT HOLDER.

I hereby certify that I am the Executor/Executrix/Authorized Representative of _____, deceased, who was the holder of a valid California Halibut Bottom Trawl Vessel Permit immediately preceding his/her death, and that the information provided by me in connection with this application is true and accurate to the best of my knowledge. I further understand that, in the event of making any such false statement, I will be subject to prosecution pursuant to Section 746, Title 14, of the California Code of Regulations (CCR).

APPLICANT'S SIGNATURE
X DATE

CALIFORNIA USA

DRIVER LICENSE



CLASS C
END NONE

LN BRAMEL
FN BRUCE ALBERT

RSTR CORR LENS

Bruce Albert

CD F W
Received
Aug-7-2017
L RB

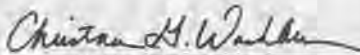


UNITED STATES OF AMERICA

DEPARTMENT OF HOMELAND SECURITY
UNITED STATES COAST GUARD

NATIONAL VESSEL DOCUMENTATION CENTER

CERTIFICATE OF DOCUMENTATION

VESSEL NAME C		OFFICIAL NUMBER 257103	IMO OR OTHER NUMBER NONE	YEAR COMPLETED 1948	
HAILING PORT SANTA BARBARA CA		HULL MATERIAL WOOD		MECHANICAL PROPULSION YES	
GROSS TONNAGE 24 GRT	NET TONNAGE 11 NRT	LENGTH 40.3	BREADTH 12.4	DEPTH 7.2	
PLACE BUILT TACOMA, WA					
OWNERS BRUCE BRAMEL COLLEEN BRAMEL		OPERATIONAL ENDORSEMENTS FISHERY REGISTRY COASTWISE			
MANAGING OWNER BRUCE BRAMEL					
RESTRICTIONS NONE					
ENTITLEMENTS NONE					
REMARKS NONE					
ISSUE DATE OCTOBER 27, 2016		 DIRECTOR, NATIONAL VESSEL DOCUMENTATION CENTER			
THIS CERTIFICATE EXPIRES NOVEMBER 30, 2017					



17

FISH &
WILDLIFE

VLE

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE
**CALIFORNIA HALIBUT TRAWL
VESSEL PERMIT**

Valid only when in possession of a
Commercial Boat Registration for the
same license year.



California Halibut Bottom Trawl
Permit Number: **BT0002**

Fish & Game Boat Number: **FG00612**

Vessel Name: **C**

Coast Guard: 257103
Home Port: SANTA BARBARA HARBOR

VESSEL OWNER:

BRAMEL, BRUCE/COLLEEN

Outlet No: 310009-001
4/27/2017 8:10:09 AM

Item	Fee*
CA Halibut Trawl Vessel Permit	\$62.32
LE Permit Type: California Halibut Bottom Trawl	
LE Permit ID: BT0002	

Total: \$62.32

*Includes any applicable application fees, agent handling fees
and license buyer surcharge.

I certify under penalty of perjury under the laws of the State of
California that all information on this document is true and
correct and that I meet the requirements for these licenses. I
understand it is unlawful to make any false statement in this
application or to use or possess a license obtained by fraud or
deceit (Fish and Game Code §§1052(b) and 1054).

X

Signature

NOT VALID UNLESS SIGNED

THIS DOCUMENT MUST BE CARRIED ON VESSEL
WHEN FISHING



17

V

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE
COMMERCIAL BOAT REGISTRATION
Valid 04/27/2017 to 03/31/2018



Fish & Game Boat Number: FG00612

Vessel Name: C

Coast Guard: 257103

Home Port: SANTA BARBARA HARBOR

HULL NUMBER:

YEAR BUILT: 1948

GROSS TONNAGE: 24

NET TONNAGE: 11

LENGTH: 40

BREADTH: 12

DEPTH: 7

VESSEL OWNER:

BRAMEL, BRUCE/COLLEEN

Outlet No: 310009-001
4/27/2017 8:10:09 AM

Item	Fee*
Comm Boat Registration (Res)	\$357.00
Total: \$357.00	

*Includes any applicable application fees, agent handling fees and license buyer surcharge.

Fish and Game Code Section 7831 requires owners to immediately notify the Department if vessel is lost, destroyed or sold.

Help us tackle California's lost fishing gear!

Report loss or sightings of lost recreational and commercial fishing gear. Anonymous reports accepted. Call 1-888-491-GEAR or report online: www.lostfishinggear.org

I certify under penalty of perjury under the laws of the State of California that all information on this document is true and correct and that I meet the requirements for these licenses. I understand it is unlawful to make any false statement in this application or to use or possess a license obtained by fraud or deceit (Fish and Game Code §§1052(b) and 1054).

X

Signature

NOT VALID UNLESS SIGNED

REGISTRATION MUST BE POSTED IN A CONSPICUOUS PLACE ON VESSEL AT ALL TIMES



17

C

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE
COMMERCIAL FISHING LICENSE
Valid 04/27/2017 to 03/31/2018



Commercial Fishing License ID: L25943

BRUCE ALBERT BRAMEL

Outlet No: 310009-001
4/27/2017 8:10:09 AM

Item	Fee*
Comm Fishing License (Res)	\$136.99
Commercial Salmon Stamp	\$87.55
Ocean Enhancement Stamp	\$50.73
Golden & Ridgeback Prawn Permit	\$43.00
Total: \$318.27	

*Includes any applicable application fees, agent handling fees and license buyer surcharge.

Help us tackle California's lost fishing gear!

Report loss or sightings of lost recreational and commercial fishing gear. Anonymous reports accepted. Call 1-888-491-GEAR or report online: www.lostfishinggear.org

When taking Golden or Ridgeback Prawn, licensee must maintain a Shrimp/Prawn Trawl Log.

I certify under penalty of perjury under the laws of the State of California that all information on this document is true and correct and that I meet the requirements for these licenses. I understand it is unlawful to make any false statement in this application or to use or possess a license obtained by fraud or deceit (Fish and Game Code §§1052(b) and 1054).

X

Signature

NOT VALID UNLESS SIGNED
LICENSE AND PHOTO IDENTIFICATION MUST BE IN
IMMEDIATE POSSESSION WHILE FISHING

17

C

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE
COMMERCIAL FISHING LICENSE
Valid 04/01/2017 to 03/31/2018



Commercial Fishing License ID: L47769

MICHAEL KELTON PEERY

Outlet No: 305002-001
24/2017 5:07:59 PM

Item	Fee*
Comm Fishing License (Res)	\$143.64
Comm Trap Permit	\$53.18
Total: \$196.82	

*Includes any applicable application fees, agent handling fees and license buyer surcharge.

Help us tackle California's lost fishing gear!

Report loss or sightings of lost recreational and commercial fishing gear. Anonymous reports accepted. Call 1-888-491-GEAR or report online: www.lostfishinggear.org

I certify under penalty of perjury under the laws of the State of California that all information on this document is true and correct and that I meet the requirements for these licenses. I understand it is unlawful to make any false statement in this application or to use or possess a license obtained by fraud or deceit (Fish and Game Code §§1052(b) and 1054).

X

Signature

NOT VALID UNLESS SIGNED

LICENSE AND PHOTO IDENTIFICATION MUST BE IN IMMEDIATE POSSESSION WHILE FISHING



Memorandum

2017 SEP 28 PM 3:16

Date: September 25, 2017

To: Valerie Termini
Executive Director
Fish and Game Commission

From: Charlton H. Bonham
Director



Subject: **Agenda Item for October 11-12, 2017, Fish and Game Commission Meeting: Consideration of a California Halibut Bottom Trawl Vessel Permit Transfer Application from Mr. Bruce A. Bramel to Transfer the California Halibut Bottom Trawl Vessel Permit (CHBTVP), Permit Number BT0002, Upon the Sale of the F/V C (FG00612)**

The Department of Fish and Wildlife (Department) requests that the Fish and Game Commission (Commission) consider Mr. Bruce A. Bramel's application to transfer his CHBTVP to Mr. Michael K. Peery for use on the F/V C (FG00612). The Department has received the application and supporting documents for the Commission to consider.

Pursuant to Fish and Game Code Section 8494(d)(3), CHBTVPs may be transferred if, prior to the implementation of a halibut trawl restricted access program, specific conditions are met. Currently, there is not a formal restricted access program for the California halibut fishery; therefore, the Department is requesting the Commission determine if Mr. Bramel is eligible to transfer the CHBTVP to another owner upon the sale of the F/V C.

Authority

Pursuant to FGC Section 8494(a), beginning April 1, 2006, the owner of a registered commercial fishing vessel using trawl gear to take, possess aboard a vessel, or land California halibut for commercial purposes must have a valid CHBTVP that has not been suspended or revoked. A CHBTVP shall be issued annually, beginning with the 2006 permit year. Beginning with the 2007-2008 permit year, in order to be eligible for a CHBTVP, an applicant shall have been issued a CHBTVP in the immediately preceding permit year.

Further, FGC Section 8494(d) specifies that CHBTVPs issued pursuant to this section may be transferred only if at least one of the following occur:

- (1) The commission adopts a restricted access program for the fishery that is consistent with the commission's policies regarding restricted access to commercial fisheries.
- (2) Prior to the implementation of a restricted access program, the permit is transferred to another vessel owned by the same permit holder of equal or less

capacity, as determined by the department, and if the originally permitted vessel was lost, stolen, destroyed, or suffered a major irreparable mechanical breakdown. The department may not issue a permit for a replacement vessel if the department determines that the originally permitted vessel was fraudulently reported as lost, stolen, destroyed, or damaged. Only the permit holder at the time of the loss, theft, destruction, or irreparable mechanical breakdown of a vessel may apply to transfer the vessel permit. Evidence that a vessel is lost, stolen, or destroyed shall be in the form of a copy of the report filed with the United States Coast Guard, or any other law enforcement agency or fire department that conducted an investigation of the loss.

(3) Prior to the implementation of a halibut trawl restricted access program, the commission may consider requests from a vessel permit holder or his or her conservator or estate representative to transfer a permit with the vessel if both of the following conditions are met:

- (A) The permit holder has died, is permanently disabled, or the permit holder is at least 65 years of age and has decided to retire from commercial fishing; and
- (B) California halibut landings contributed significantly to the record and economic income derived from the vessel, as determined by regulations adopted by the commission. The commission may request information that it determines is reasonably necessary from the permit holder or his or her heirs or estate for the purpose of verifying statements in the request prior to authorizing the transfer of the permit.

Documentation Submitted By Mr. Bruce A. Bramel

Mr. Bramel indicated that he is 65 years of age or older, and agreed to permanently retire from commercial fishing, consistent with Section 8494(d)(3)(A and B). He has submitted the following documentation to the Department:

- A California Halibut Bottom Trawl Vessel Permit Transfer Application dated May 20, 2017, received on August 7, 2017, requesting to transfer the CHBTVP from Mr. Bramel to Mr. Michael K. Peery for use on the F/V C.
- Copy of the 2017-2018 CHBTVP for the F/V C.
- Copy of the 2017-2018 Resident Commercial Boat Registration for the F/V C.
- Copy of the United States Coast Guard Certificate of Documentation (USCG) for the F/V C, dated October 27, 2016, that shows Mr. Bramel is the owner.
- Copy of Mr. Bramel's 2017-2018 Commercial Fishing License.
- Copy of Mr. Peery's 2017-2018 Commercial Fishing License.

- Confidential copy of the Department's Commercial Fisheries Information Systems (CFIS) Landing Receipt Records from January 1, 2003 through December 31, 2016 for the F/V C.
- Copy of Mr. Bramel's valid California Driver's License.

Department Findings

Department license records show that the F/V C has held a valid CHBTVP from the 2006-2007 permit year to the current 2017-2018 permit year. In addition, Mr. Bramel possesses a 2017-2018 Resident Commercial Fishing License and Resident Commercial Boat Registration for the F/V C.

Summary of Landing Information

Based on fish landing records on file with the Department for the F/V C, Mr. Bramel participated in the California halibut fishery from 2003 through 2013. Mr. Bramel is a CHBTVP holder that contributed to the record of California halibut landings.

The Department recommends that, if the Commission approves Mr. Bramel's application, the Commission stipulate that, as a necessary condition to transfer the CHBTVP, Mr. Bramel agrees that he shall not possess a Commercial Fishing License or otherwise participate/assist in any commercial fishing activity.

Thank you for your consideration. If you have any questions, please contact Mr. Stafford Lehr, Deputy Director, at (916) 653-4673.

Attachments (including confidential)

ec: **Department of Fish and Wildlife**

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Valerie Termini, Executive Director
Fish and Game Commission
September 25, 2017
Page 4

Genalyn Lobel, Analyst
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Marine Resources Committee (MRC) 2017-18 Draft Work Plan: Scheduled topics and timeline for items referred to MRC from the California Fish and Game Commission (Updated for Oct 2017 FGC meeting)

Topic	Type of Topic	2017		2018	
		JUL	NOV	MAR	JUL
		Santa Rosa	Marina	Santa Rosa	TBD
Management Plans					
MLMA Master Plan for Fisheries	Amendment	X	X / R		
Abalone FMP / ARMP Update	FMP development	X	X	X	
Herring FMP Updates	FMP development	X	*	X	
Regulations					
Kelp & Algae Harvest	DFW project		*	X	-
Aquaculture - Best Management Practices	DFW project	X	*	X / R	
Pink Shrimp Fishery and Capacity Goal	DFW project		X		
California halibut trawl permit transferability	Initial review		X		
Emerging Management Issues					
Aquaculture - Future Lease Considerations	Initial review	X	*	X	
Box crab and king crab: Incidental take limits and consider experimental fishing permit applications	DFW project		X		
Special Projects					
Fisheries Bycatch Workgroup	MRC workgroup	X	X / R		
California’s Fishing Communities	MRC project	X	X	X / R	
Informational / Special Topics					
Marine Debris and Plastic Pollution	Informational	X	X		
Offshore Wind Energy (BOEM Project)	Informational				
KEY: X Discussion scheduled X/R Recommendation developed and moved to FGC					
* Proposed for defererral to Mar 2018					

STAFF SUMMARY FOR JUNE 21-22, 2017

30. NEARSHORE AND DEEPER NEARSHORE FISHERIES**Today's Item****Information** ☐**Action** ☒

Authorization to publish notice of intent to amend the commercial nearshore fishery regulations.

Summary of Previous/Future Actions

- | | |
|---------------------------------|-------------------------------------|
| • Today's Notice hearing | Jun 21-22, 2017; Smith River |
| • Discussion hearing | Aug 16-17, 2017; Sacramento |
| • Adoption hearing | Oct 11-12, 2017; Atascadero |

Background

Under current regulations (Section 150), only persons with a Nearshore Fishery Permit are allowed to take nearshore species (cabezon; California scorpionfish; California sheephead; kelp and rock greenlings; and, black-and-yellow, China, gopher, grass and kelp rockfishes). Transfer of a Nearshore Fishery Permit is allowed on a two-for-one basis with the new permittee purchasing two permits, and agreeing to retire one permit and fish using the other. The number of permits has declined 35 percent in the past 13 years and it has become very difficult to find two permits for sale in the same regional management area. Proposed changes for Section 150 include:

- clarify that Nearshore Fishery Permit holders can only have one permit, regardless of the management area, at any time;
- add a requirement that the estate of a non-transferable Nearshore Fishery Permit shall immediately surrender the permit to DFW;
- allow for permit transfers on a one-for-one basis, making it easier for new permittees to enter the fishery as well as current permittees to retire;
- standardize the paperwork by changing from notarized letters to a notarized application;
- allow the estate of a deceased permittee two years to transfer a permit;
- require that the estate of a deceased permittee temporarily relinquish the permit until the transfer can be made;
- delay a transfer pending resolution of any criminal, civil and/or administrative action involving the current permittee; and
- change the process for appealing denial of a transfer from a two-step process to a one-step process whereby the person denied a transfer can appeal directly to FGC within 60 calendar days of DFW's denial.

Under current regulations (Section 150.02), only persons who held a valid Deeper Nearshore Species Fishery Permit (for the take of black, blue, brown, calico, copper, olive, quillback and treefish rockfishes) during the immediately preceding permit year are eligible to obtain a permit for the following permit year, which has resulted in a permit moratorium that prohibits any new entrants into the fishery. The proposed regulation would allow new individuals to enter the fishery by obtaining a permit from an existing permit holder. Additionally, the proposed

STAFF SUMMARY FOR JUNE 21-22, 2017

regulations would require completion of a notarized transfer application. Proposed changes for Section 150.02 include:

- establish permit transfer provisions;
- establish that all Deeper Nearshore Species Fishery Permits are transferable;
- establish a notarized application for the permit transfer;
- allow the estate of a deceased permittee two years to transfer a permit
- require that the estate of a deceased permittee temporarily relinquish the permit until the transfer can be made;
- delay a transfer pending resolution of any criminal, civil and/or administrative action involving the current permittee, and
- establish a permit transfer fee as specified in Section 705.

Current regulations (Section 150.03) allow persons with a Nearshore Fishery Permit to use trap gear with a Nearshore Fishery Gear Endorsement, which is transferable on a one-for-one basis. Proposed changes for Section 150.03 include:

- standardize the paperwork by changing from notarized letters to a notarized application;
- allow the estate of a deceased permittee two years to transfer the gear endorsement;
- require that the estate of a deceased permittee temporarily relinquish the gear endorsement until the transfer can be made;
- delay a transfer pending resolution of any criminal, civil and/or administrative action involving the current permittee; and
- change the process for appealing denial of a transfer from a two-step process to a one-step process whereby the person denied a transfer can appeal directly to FGC within 60 calendar days of DFW's denial.

Current regulations (Section 705) establish a Nearshore Fishery Permit Transfer Fee of \$500. The proposed regulations would increase the permit transfer fee to somewhere in a range of \$1,000 to \$2,500 and also establish a transfer fee somewhere in the range of \$1,000 to \$2,500 for the Deeper Nearshore Species Fishery Permit. The proposed regulations would also include reference to the proposed Nearshore Fishery Permit and Nearshore Fishery Trap Endorsement Transfer Application (DFW 1045) and the proposed Deeper Nearshore Species Fishery Permit Transfer Application (DFW 1048).

Additional minor changes are proposed to correct grammatical errors and remove section references to Title 14, CCR, to improve clarity and standardize regulatory format.

Significant Public Comments (N/A)

Recommendation

FGC staff: Authorize publication of notice.

STAFF SUMMARY FOR JUNE 21-22, 2017

DFW: Authorize publication of notice as detailed in the initial statement of reasons (ISOR) (Exhibit 2).

Exhibits

1. DFW memo, received May 8, 2017
2. ISOR

Motion/Direction

Moved by _____ and seconded by _____ that the Commission authorizes publication of a notice of its intent to amend sections 150 et al., related to commercial nearshore and deeper nearshore fishing permit and appeal regulations.

Memorandum

2017 MAY -8 AM 10:37

Date: May 1, 2017

To: Valerie Termini
Executive Director
Fish and Wildlife Commission

From: Charlton H. Bonham
Director



Subject: **Agenda item for the June 21-22, Fish and Game Commission Meeting**
Re: Request to Publish Notice of the Commission's Intent to Amend Sections 150, 150.02, 150.03, and 705, Title 14, California Code of Regulations (CCR), Nearshore Permits Transferability

The Department of Fish and Wildlife (Department) requests that the Fish and Game Commission (Commission) authorize publication of notice of its intent to consider amending existing regulations for the commercial nearshore fishery (Sections 150, 150.02, 150.03, and 705, Title 14, CCR).

The Department is proposing to ease transfer requirements for the Nearshore Fishery Permit and to allow permit transfers for the Deeper Nearshore Species Fishery Permit. The Department is also proposing administrative changes to clarify the permit transfer and appeal processes.

A Notice of Exemption (NOE) is also attached. Since the NOE is not anticipated to change, this early submission gives the Commission notice of the Department's recommendation to rely on a California Environmental Quality Act (CEQA) categorical exemption for the proposed regulations.

If you have any questions regarding this item, please contact Dr. Craig Shuman, Regional Manager, Marine Region, at (805) 568-1246. The public notice for this rulemaking should identify Senior Environmental Specialist, Traci Larinto as the Department's point of contact. Ms. Larinto can be reached at (562) 355-7061 or Traci.Larinto@Wildlfe.ca.gov.

Enclosure

ec: Stafford Lehr, Deputy Director
Wildlife and Fisheries Division
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Craig Shuman, D. Env., Regional Manager
Marine Region
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STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR PROPOSED REGULATORY ACTION
(Pre-publication of Notice Statement)

Amend Subsections (b), (e), (g), (m), and (n) of Section 150;
Subsections (d) and (j) of Section 150.02;
Subsections (c), (d) and (h) of Section 150.03; and
Subsection (b) of Section 705, Title 14, California Code of Regulations
Re: Nearshore Fishery Permit, Nearshore Fishery Permit Gear Endorsements,
and Deeper Nearshore Species Fishery Permit Transferability

I. Date of Initial Statement of Reasons: April 3, 2017

II. Dates and Locations of Scheduled Hearings:

- (a) Notice Hearing: Date: June 22, 2017
Location: Smith River
- (b) Discussion Hearing: Date: August 17, 2017
Location: Sacramento
- (c) Adoption Hearing: Date: October 12, 2017
Location: Atascadero

III. Description of Regulatory Action:

- (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

In 1998, the Legislature created the Nearshore Fishery Permit for the take of cabezon; California scorpionfish; California sheephead; kelp and rock greenlings; and, black-and-yellow, China, gopher, grass and kelp rockfishes. In 2003, the Fish and Game Commission (Commission) established a regional restricted access program allowing take with hook-and-line and dip net (used while diving) gears; trap gear is allowed with a Nearshore Fishery Permit Gear Endorsement. Additionally, 20-year commercial fishers could qualify for a non-transferable permit. Permit transfers are allowed as long as the new entrant purchased two permits, agreed to retire one and fish the other permit if the transfer was approved. Gear endorsement transfers are allowed when the new entrant has a valid permit for the same regional management area. Permit holders only need to purchase one gear endorsement as they are transferable one-for-one. The transfer fees for Nearshore Fishery Permits and gear endorsements

are \$500 and \$75, respectively. Notarized letters are used to apply for permit transfers.

In 2003, the Commission established the Deeper Nearshore Species Fishery Permit for the take of black, blue, brown, calico, copper, olive, quillback and treefish rockfishes, amid concerns over increasing effort by those that did not qualify for a Nearshore Fishery Permit. The Deeper Nearshore Species Fishery Permit is a statewide permit without gear restrictions, and is nontransferable.

Between 2003 and 2016, the number of Nearshore Fishery Permits decreased from 220 to 141 due to permit transfers and nonrenewal; and, the Deeper Nearshore Species Fishery Permits decreased from 281 to 180 due to nonrenewal. Overall the nearshore fishery has seen a 35 percent decline in the number of permits. In 2015, the Department of Fish and Wildlife (Department) surveyed nearshore permittees and found that majority (96 percent) supported making the Deeper Nearshore Species Fishery Permit transferable, and while not asked directly, many expressed support for making the Nearshore Fishery Permit transferable on a one-for-one basis. Additionally, in the last several years the Department and the Commission have heard from many fishers about the need to provide for Deeper Nearshore Species Fishery Permit transfers as well as change the Nearshore Fishery Permit transfer provisions.

For the Nearshore Fishery Permit, it has become quite difficult to obtain two permits for the same region that the new entrant wants to fish in. Additionally, the inability to transfer a Deeper Nearshore Species Fishery Permit impacts fishers wanting to enter the fishery, as well as those that want to retire. Finally, the nearshore and deeper nearshore species are frequently caught together and fishers with only one permit and not the other have to discard species that they do not have a permit for.

Changing transfer rules for both nearshore permits will allow new entrants into the fishery, and allow permittees to retire or leave the fishery and either recoup something for their investment or pass their permit along to a family member. It will also make it easier for those with one permit to obtain the other permit, reducing discards.

Unless specified, all section references in this document are for the regulations in Title 14, California Code of Regulations.

Amend Subsection 150(b): Permittees can only hold one permit

Proposed Changes – one permit per person

Current regulations state that a person will receive only one Nearshore Fishery Permit for use in only one regional management area during initial

issuance. This regulation change would clarify that Nearshore Fishery Permit holders can only have one permit, regardless of the regional management area, at any time.

Necessity/Rationale

The proposed change would clarify the Commission's and Department's intent that a person cannot hold more than one Nearshore Fishery Permit, regardless of the regional management area stated on the permit. This is supported by state trip limits for cabezon, sheephead and greenlings as well as federal trip limits for rockfishes and California scorpionfish that are based on the individual's commercial fishing license identification number, such that having additional permits would not allow for the taking of more than one trip limit per person.

Amend Subsection 150(e)(5): Initial Qualification for 20-year California Commercial Fishermen

Proposed changes – death of non-transferable Nearshore Fishery Permit holder

This subsection will be deleted and added to subsection (g) permit transfers, procedures and timeline to keep all transfer provisions together.

Amend Subsection 150(g): Permit Transfer, Procedures, and Timeline

Table 1. Summary of proposed changes to Subsection 150(g).

Current Subsection Number	Regulation Subject	Proposed Subsection Number
150(g)(1)(A)	2-for-1 transfers; Transferee conditions	150(g)(2), 150(g)(5), 150(g)(6)
150(g)(1)(B-D)	Transfer paperwork (notarized letter)	150(g)(4)
150(g)(1)(E)	Former permit holder cannot take nearshore fish species	Proposed to be repealed
150(g)(2)	Commission can prescribe other transfer provisions	Proposed to be repealed
150(g)(3) and 150(g)(4)	Transfer provisions and paperwork after permittees death	150(g)(3) and 150(g)(4)
150(g)(5)	Exempt permit transfer from two-for-one requirements in the case of the estate of the deceased transferring to the deceased's family member	Proposed to be repealed

Proposed Changes – Current two-for-one transfer provisions

Fish and Game Code Section 7857(j) states that a commercial license, permit or endorsement is nontransferable unless otherwise provided in Fish and Game Code. Proposed subsection 150(g)(1) would make this

section inoperable under authority provided in the Nearshore Fishery Management Act, Fish and Game Code Section 8587.1(b).

Subsection 150(g)(1)(A) currently allows Nearshore Fishery Permit transfers on a two-for-one basis, with one permit being surrendered to the Department for cancellation at the time of the transfer, if the number of Nearshore Fishery Permits in a regional management area exceeds the capacity goal. This subsection is proposed to be repealed and replaced by Subsection 150(g)(2), which would prescribe one-for-one permit transfers and require that the transfer be for the same regional management area on the permit.

Necessity/Rationale

In 2003, 220 Nearshore Fishery Permits were issued and over the next thirteen years 41 Nearshore Fishery Permits were transferred (with an additional 41 Nearshore Fishery Permits retired) and 35 Nearshore Fishery Permits were not renewed. Of the 35 Nearshore Fishery Permits that were not renewed, 25 Nearshore Fishery Permits were transferable and could have been sold but weren't. The remaining 10 Nearshore Fishery Permits that were not renewed were nontransferable. In 2016, 144 Nearshore Fishery Permits were issued for an attrition rate of 35 percent.

The proposed regulation change would change the Nearshore Fishery Permit transfer requirements from two-for-one, whereby the new entrant has to purchase two permits, agreed to retire one and fish the other permit if the transfer was approved, to one-for-one. While each region remains above its capacity goal, great progress has been made towards reaching the capacity goals. Additionally, the capacity goals are outdated. In 2002, only one nearshore species had been assessed (black rockfish in 1999) and total allowable catches were developed using a precautionary approach that was based on 50 percent of historic catch. Trip limits were derived from the commercial allocation based on the total allowable catches. Since then, over half of the nearshore species have been assessed (Table 2), resulting in increased total allowable catches and increased trip limits (Table 3), in most cases, such that the established capacity goals are no longer applicable.

Table 2. List of nearshore species and year the stock was assessed.

Species	Assessment year
<i>Deeper Nearshore Rockfish</i>	
Black rockfish	2015, 2007, 2003, 1999
Blue rockfish	2007
Brown rockfish	2013
Calico rockfish	
Copper rockfish	2013
Olive rockfish	
Quillback rockfish	
Treefish	
<i>Shallow Nearshore Rockfish</i>	
Black-and-yellow rockfish	
China rockfish	2015
Gopher rockfish	2005
Grass rockfish	
Kelp rockfish	
<i>Other Nearshore Fishery Permit species</i>	
Cabazon	2009, 2005, 2003
California scorpionfish	2004
California sheephead	2004
Kelp greenling	2015, 2005
Rock greenling	

Table 3. Nearshore species trip limits for 2003 and 2017.

Minor Nearshore Rockfish, North of 40°10' N lat. Includes shallow and deeper rockfish combined. Numbers in parentheses are rockfish other than black rockfish.						
	Jan-Feb	Mar-Apr	May-Jun	Jul-Aug	Sep-Oct	Nov-Dec
2003	3000 (900)	3000 (900)	3000 (900)	4000 (1200)	4000 (1200)	4000 (1200)
2017	8500 (1200)	7000 (1200)	7000 (1200)	7000 (1200)	7000 (1200)	7000 (1200)
Deeper Nearshore Rockfish , South of 40°10' N lat.						
	Jan-Feb	Mar-Apr	May-Jun	Jul-Aug	Sep-Oct	Nov-Dec
2003	200	Closed	200	500	300	200
2017	1000	Closed	1000	1000	1000	1000
Shallow Nearshore Rockfish, South of 40°10' N lat.						
	Jan-Feb	Mar-Apr	May-Jun	Jul-Aug	Sep-Oct	Nov-Dec
2003	200	Closed	400	400	300	200
2017	1200	Closed	1200	1200	1200	1200
Cabazon						
	Jan-Feb	Mar-Apr	May-Jun	Jul-Aug	Sep-Oct	Nov-Dec
2003	100	Closed	1000	1000	400	100
2017	300	Closed	500	500	500	300
California scorpionfish						
	Jan-Feb	Mar-Apr	May-Jun	Jul-Aug	Sep-Oct	Nov-Dec
2003	300	Closed	300	400	400	300
2017	1500	Closed	1500	1500	1500	1500
California sheephead						
	Jan-Feb	Mar-Apr	May-Jun	Jul-Aug	Sep-Oct	Nov-Dec
2003	2000	Closed	2400	2400	2400	2400
2017	2000	Closed	2400	2400	2400	2400

Table 3. Nearshore species trip limits for 2003 and 2017.

Greenlings						
	Jan-Feb	Mar-Apr	May-Jun	Jul-Aug	Sep-Oct	Nov-Dec
2003	25	Closed	25	25	25	25
2017	150	Closed	200	200	200	150

Additionally, the nearshore fishery has been successfully managed using a combination of bimonthly trip limits and depth restrictions. Department staff monitor the catch of nearshore species inseason and recommend changes to trip limits as needed. As a result, the commercial nearshore fishery has not closed early since 2005. Finally, analysis of Nearshore Fishery Permit transfers and fishing activity before and after the transfer reveals half of the new permittees actually fished less than one of the previous owners. This would indicate that fishing effort will only moderately increase, and any increases could be managed by adjusting the bimonthly trip limits.

Proposed changes – Transfer paperwork

Current regulations in Subsection 150(g)(1)(B-D) require a notarized letter from buyer and sellers stating the conditions of the transfer, describe completion of the transfer after payment of fees and review by the Department, and if the person holds a nontransferable Nearshore Fishery Permit, that permit shall be surrendered to the Department. These subsections are proposed to be repealed and replaced with subsections 150(g)(4) and 150(g)(6). Subsection 150(g)(4) would change the notarized letters to a notarized application, specify the effective date is the date of written notification by the Department of approval of the transfer, and that the permit is valid for the remainder of the permit year. Subsection 150(g)(6) would require the transferee to surrender their nontransferable Nearshore Fishery Permit to the Department when they receive the transferable permit.

Necessity/Rationale

The proposed regulation requires a notarized transfer application to formalize the transfer process and collect accurate information from the permit holder and the proposed permit holder in the place of a notarized letter for each transfer.

Proposed changes – Former permit holder cannot take nearshore fish species

Subsection 150(g)(1)(E) states that the former permit holder cannot take nearshore species once the permit transfer is completed unless otherwise permitted by law. This subsection is proposed to be repealed as it is redundant.

Proposed changes – Commission can prescribe other transfer provisions

Subsection (150)(g)(2) allows the Commission to prescribe other transfer criteria should the number of Nearshore Fishery Permits fall below the capacity goal. This subsection is proposed to be repealed because it is redundant, as the Commission retains the ability to change regulations. Additionally, with permit transfers changing to a one-for-one basis there is little need to change transfer requirements.

Proposed changes – Permit transfers after the death of the permit holder

Subsections (150)(g)(3) and 150(g)(4) describe the conditions for transfer of a Nearshore Fishery Permit by the estate of the deceased permit holder, allowing for transfer within one year of the death, and requires a notarized letter detailing the conditions of the transfer. These provisions will be included in subsections 150(g)(3) and 150(g)(4). The new Subsection 150(g)(3) requires that the estate of the deceased permit holder to temporarily relinquish the permit to the Department until the transfer is completed, but allows the estate to renew the permit to keep it current. Additionally, it will allow two years for the transfer to take place instead of the current one year. Instead of having a separate subsection to deal with transfer paperwork for the deceased permit holder's estate, it will be included in Subsection 150(g)(4).

Necessity/Rationale

This amendment is necessary because it is unlawful for the estate to allow another commercial fisherman to fish the permit and therefore is required to temporarily relinquish the permit to the Department until the permit transfer can take place. Additionally, changing the amount of time allowed, from one to two years, to transfer permits will give the estate more time to try to find a buyer for the permit. Finally, requiring a notarized application will allow for collection of information from the permit holder and the proposed permit holder in the place of a notarized letter for each transfer.

Proposed changes – Delay transfer pending final resolution of pending action

Subsection 150(g)(5) will be added stating that the transfer shall be deferred pending final resolution of any criminal, civil, and/or administrative action involving the current permit holder that could affect the status of the permit. This will prevent a permit from being transferred in an effort to avoid a suspension or revocation of a permit.

Proposed changes – death of non-transferable Nearshore Fishery Permit holder

Currently, Subsection 150(e)(5) states that a non-transferable Nearshore Fishery Permit becomes null and void upon the death of the individual to whom the permit was issued. The proposed change will move the requirement to Subsection 150(g)(7) and will add a requirement that the estate shall immediately surrender the permit to the Department.

Necessity/Rationale

This amendment is necessary because it is unlawful for the estate to allow another commercial fisherman to fish the permit and therefore is required to surrender the permit to the Department. The proposed regulations are consistent with current regulations for lobster operator permits (Section 122(c)(5)). This subsection was previously Subsection 150(e)(5) under initial qualification for 20-year fishermen, and is being moved to the permit transfers subsection for clarity.

Amend Subsection 150(m)(3): Transfer Appeals

Currently, the appeals process is a two-step process with the Department reviewing the appeal based on the fisher's request. If the Department denies the appeal, then the permittee has 60 days to appeal to the Commission in writing. The changes to Subsection 150(m)(3) would reduce the appeals to a one-step process via a written request to the Commission for an appeal of the Department's denial of a Nearshore Fishery Permit transfer within 60 calendar days of the date of the Department's denial.

Amend Subsection 150(n): Fees

Current regulations stipulate that the Department shall charge a nonrefundable fee for each permit transfer, and that if more than one permit is required for the transfer only one fee will be charged. The proposed change would be to delete the reference to more than one permit required to transfer to be consistent with the new transfer provisions.

Add Subsection 150.02(j): Permit transfers, procedures and timelines

Current regulations provide for a permit with annual renewal, initial qualifying criteria from 2003, annual renewal requirements, and a control date for a future restricted access program. Current regulations do not provide for transfer of Deeper Nearshore Species Fishery Permits. Subsection 150.02(j) would be added making all Deeper Nearshore Species Fishery Permits transferable on a one-for-one basis; allowing transfers after the death of the permit holder with a two year time limit, providing the estate temporarily relinquishes the permit to the department until the transfer can be completed; requiring a notarized application be

submitted along with payment of nonrefundable transfer fee; specifying that the effective date is the date of written notice of approval by the Department; deferring permit transfers until final resolution of any pending action against the current permit holder that could affect the status of the permit; and allowing the person denied transfer to appeal any denial to the Commission within 60 days of the Department's denial.

Necessity/Rationale

In 2003, 281 Deeper Nearshore Species Fishery Permits were issued, capping participation in this fishery. Over the last thirteen years, 101 Deeper Nearshore Species Fishery Permits have not been renewed for a 36 percent attrition rate. However, the permittees are ageing with over half the participants over 50 years of age. Other fishers would like to get into the fishery while many of the permittees would like to retire or leave the fishery.

The proposed regulation would allow all Deeper Nearshore Species Fishery Permit holders to transfer their permit to a licensed California commercial fisherman on a one-for-one basis. This would allow existing Deeper Nearshore Species Fishery Permit holders to retire and pass on their permit to a family member or business partner, or sell to a new entrant. Attrition will likely continue to occur but at a slower pace. While effort in the Deeper Nearshore Species Fishery Permit fishery may increase with new entrants, Department staff monitor the catch of Deeper Nearshore Species Fishery Permit species inseason to ensure that catch limits are not exceeded and recommend changes to trip limits as needed.

Additionally, while many fishers (86 in 2016-17) hold both a Nearshore Fishery Permit and a Deeper Nearshore Species Fishery Permit, there are many with only one permit (58 Nearshore Fishery Permit and 98 Deeper Nearshore Species Fishery Permit in 2016-17). These permittees sometimes catch species that require the other permit to land, thus these fish have to be discarded. Easing transfer rules for both permits will make it easier for those with just one permit (Nearshore Fishery Permit or Deeper Nearshore Species Fishery Permit) to purchase the other permit, thus reducing regulatory discards.

Amend Subsection 150.02(d): Fees for Deeper Nearshore Species Fishery Permit Transfers

Current regulations provide for an annual permit fee for a Deeper Nearshore Species Fishery Permit, but there are no fees for the transfer of these permits. This change would add a fee as specified in Subsection 705(b) for the transfer of a Deeper Nearshore Species Fishery Permit. See below for additional discussion of permit transfer fees.

Amend Subsection 150.03(c)(5): Death of the non-transferable Nearshore Fishery Gear Endorsement holder

Currently, a non-transferable Nearshore Fishery Gear Endorsement becomes null and void upon the death of the individual to whom the permit was issued. The proposed amendment will move this requirement to subsection 150.03(d)(6) and add that the estate shall immediately surrender the gear endorsement to the Department.

Necessity/Rationale

This amendment is necessary because it is unlawful for the estate to fish with the gear endorsement and therefore is required to surrender the gear endorsement to the Department. The proposed regulations are consistent with the proposed regulations for Nearshore Fishery Permits and the current regulations for lobster operator permits (Section 122(c)(5)).

Amend Subsection 150.03(d): Transfer of Nearshore Fishery Gear Endorsements

Current regulations allow for transfer of Nearshore Fishery Gear Endorsements on a one-for-one basis and require a notarized letter from buyer and seller. The proposed changes include changing from a notarized letter to a notarized application, specifying that the effective date is the date of written notification by the Department of approval of the transfer, allowing the estate of a deceased transferable Nearshore Fishery Gear Endorsement holder up to two years to complete a transfer, providing that the estate temporarily relinquish the permit to the department until the transfer can be made; and, streamlining the appeals process when denied a gear endorsement transfer.

Necessity/Rationale

These changes are necessary to mirror the changes to the Nearshore Fishery Permit transfer rules, since fishers are required to have a Nearshore Fishery Permit in order to have a Nearshore Fishery Gear Endorsement. Most of the time, the Nearshore Fishery Permit and Nearshore Fishery Gear Endorsement are transferred to the same person. Having different rules for the permit and the gear endorsement would be confusing for both the person transferring and the person trying to purchase the permit and gear endorsement.

Amend Subsection 150.03(h)(3): Nearshore Fishery Gear Endorsement Transfer Appeals

Currently, the appeals process is a two-step process with the Department reviewing the appeal based on the fisher's request. If the Department denies the appeal, then the permittee has 60 days to appeal to the Commission in writing. The changes to Subsection 150.03(h)(3) would

reduce the appeals to a one-step process via a written request to the Commission for an appeal of the Department's denial of a Nearshore Fishery Gear Endorsement transfer within 60 calendar days of the date of the Department's denial.

Amend Subsection 705(b): Transfer Fees

Current regulations provide for a Nearshore Fishery Permit transfer fee of \$500. There are no provisions for a transfer fee for a Deeper Nearshore Species Fishery Permit. The proposed change would increase the Nearshore Fishery Permit transfer fee to a range of \$1,000 to \$2,500, and establish a permit transfer fee for the Deeper Nearshore Species Fishery Permit of a range of \$1,000 to \$2,500. Additionally, the proposed changes would incorporate the transfer application into the regulations.

Necessity/Rationale

The proposed fees for the transfer of a Nearshore Fishery Permit and Deeper Nearshore Species Fishery Permit were set based on a fiscal analyses completed by the Department to recover costs incurred by the Department pursuant to FGC sections 1050 and 8587.1. This transfer fee will cover the administrative costs of the permit, costs to review the applications and to execute approved transfer requests, as well help offset the increased costs to monitor and track nearshore fishery performance and make management adjustments.

The Nearshore Fishery Permit And Nearshore Fishery Gear Endorsement Transfer Application (DFW 1045) will replace the notarized letters that currently are submitted by the permit holders and transferee to apply for a transfer. The Deeper Nearshore Species Fishery Permit Transfer Application (DFW 1048) is new and will standardize the transfer request process. These transfer applications will need to be reviewed and approved by the Department and require the permit holder's signature "under penalty of perjury" that the information submitted is accurate; both DFW 1045 and DFW 1048 must also be notarized.

Commercial fishing is a highly regulated activity involving the take of public trust resources. Effective administration, management, and enforcement of marine fisheries require accurate information about the resources and those who participate in their take. Penal Code Section 115 makes it a crime to knowingly file a forged document with a government office in the state. Fish and Game Code Section 1054 makes it unlawful to submit any false, inaccurate, or otherwise misleading information on any application or other document presented to the Department for the purpose of obtaining a license, permit, tag or other entitlements and allows the Department to require such applicants to show proof of the statements

or facts required for obtaining such license or permit. California Code of Civil Procedure Section 2015.5 provides that such statements or facts may be supported by an unsworn declaration in writing of such an applicant which recites that it is certified or declared to be true under penalty of perjury. By requiring such certification on its forms, the Department notifies the applicants of his/her legal duty while establishing his/her knowledge of such duty. Requiring that the signature of the applicant be notarized on both DFW 1045 and DFW 1048 helps minimize the potential for fraud.

Other Changes

Additional minor changes are proposed to correct grammatical errors and remove section references to Title 14, CCR, to improve clarity and standardize regulatory format.

- (b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 713, 1050, 7071 and 8587.1, Fish and Game Code.
Reference: Sections 713, 1050, 7071, 7850, 7852.2, 7857, 7858, 8043, 8046, 8102, 8585.5, 8587, 8587.1, 8588, 8589.5 and 8589.7, 9001 and 9001.5, Fish and Game Code.

- (c) Specific Technology or Equipment Required by Regulatory Change: None

- (d) Identification of Reports or Documents Supporting Regulation Change:
None.

- (e) Public Discussions of Proposed Regulations Prior to Notice Publication:

Marine Resources Committee Meeting, November 15, 2016, Los Alamitos, CA

Marine Resources Committee Meeting, March 23, 2017, Oceanside, CA

The Notice, Discussion and Adoption meetings are being held in three of the four nearshore fishery permit regions and the two Marine Resources Committee meetings were held in the fourth nearshore permit region giving permittees ample opportunity to provide comment.

IV. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change:

An alternative would be to convert one or both nearshore fisheries to open

access. This is not desirable as it would likely result in a significant increase in effort, and possibly push the fishery to unsustainable levels. It is also unfair to the fishermen who did not originally qualify for a permit and have sold or given away their gear. It also creates ill will and a lack of trust between the department and the industry. A California fishery that was restricted has never been converted back to open access before. Restriction adds value to a permit, and has been shown to increase fishermen's sense of ownership and respect for the resource.

Another alternative would be to limit the number of Deeper Nearshore Species Fishery Permit transfers annually. This is not desirable because it would be difficult to develop a system that would fairly address those that were not allowed to complete the transfer process because the number of transfers had been reached for the year. This could also cause the permit holder to lose the opportunity to sell his permit as the other party may not want to wait to try again the following year. Additionally, this would increase the permit transfer fee to cover the additional costs to manage a permit transfer lottery system.

(b) No Change Alternative:

If the proposed regulations are not adopted, it will continue to be very difficult for new members to enter the fishery as participants retire or shift focus to other fisheries. It will also be difficult for permittees to pass their permits along to family members or business partners. In addition, fishermen with only one of the permits will still have to discard fish for which they do not have a permit.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the proposed regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

(d) Description of Reasonable Alternatives That Would Lessen Adverse Impact on Small Business:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed regulations to ease transfer requirements for Nearshore Fishery Permits and to allow transferable Deeper Nearshore Species Fishery Permits would allow new members to enter the fishery. This is needed to maintain a viable nearshore fishery in California, resulting in a positive economic impact for participants and small businesses.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because the proposed changes are not expected to reduce the number of fishermen active in the fishery, nor the number of trips or harvest quantities.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses or the expansion of businesses in California because the proposed changes are not expected to reduce the number of fishermen active in the fishery, nor the number of trips or harvest quantities..

The Commission does not anticipate any benefits to the health and welfare of California residents, worker safety, or the environment.

(c) Cost Impacts on a Representative Private Person or Business:

The Commission anticipates cost impacts ranging from \$1,000 to \$2,500 per permit transfer that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The Department anticipates revenue in the range of \$4,200 - \$63,000 annually to recover the costs of administering one to fifteen for each nearshore and deeper nearshore permit transfers per year. The proposed action is not anticipated to affect any other State Agency or Federal Funding to the State.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None
- (f) Programs Mandated on Local Agencies or School Districts: None
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None
- (h) Effect on Housing Costs: None

VII. Economic Impact Assessment:

Currently (2016) there are about 238 Nearshore Fishery Permits and Deeper Nearshore Species Fishery Permits in use. The numbers of nearshore and deeper nearshore permits have declined by 35 percent from 2003 to 2016. About 80 nearshore permits were dropped due to nonrenewal and permit transfers. Deeper Nearshore Species Fisheries Permits have also dropped by about 100 permits due to nonrenewal.

A 2015 Department survey found that 96 percent of Nearshore permittees expressed support for making the Deeper Nearshore Species Fishery Permit transferable. Many permittees also added that they support making the Nearshore Fishery Permit transferable on a one-for-one basis since for the Nearshore Fishery Permit, it has become quite difficult to obtain two permits for the same region. The existing inability to transfer a Deeper Nearshore Species Fishery Permit impacts fishers wanting to enter the fishery, as well as those that want to retire. Another environmental and economic impact should be lessened as these nearshore species are frequently caught together and fishers with only one permit and not the other have to discard species that they do not have a permit for.

Changing transfer rules for both nearshore permits will allow new entrants into the fishery, and allow permittees to retire or leave the fishery and either recoup something for their investment or pass their permit along to a family member or business partner. It will also make it easier for those with one permit to obtain the other permit, reducing discards. Fishing effort may increase only moderately, and any potential increases would be limited by the bimonthly trip limits.

The proposed regulations to ease transfer requirements for Nearshore Fishery Permits and to allow transferable Deeper Nearshore Species Fishery Permits would allow new members to enter the fishery. This is needed to maintain a viable nearshore fishery in California, and is anticipated to result in positive economic impacts for participants and businesses.

(a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State:

The Commission does not anticipate any adverse impacts on the creation or elimination of jobs within the State because the proposed changes are not expected to reduce the number of fishermen active in the fishery, nor the number of trips or harvest quantities. The proposed regulations to ease transfer requirements for Nearshore Fishery Permits and to allow transferable Deeper Nearshore Species Fishery Permits would allow new members to enter the fishery which may result in a gradual increase in harvest.

(b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State:

The Commission anticipates a positive impact on the creation of new businesses with permit transferability. The Commission does not anticipate any impacts on the elimination of existing businesses within the State because the proposed changes are not expected to reduce the number of fishermen active in the fishery, nor the number of trips or harvest quantities.

(c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State:

The Commission does not anticipate any impacts on the expansion of businesses currently doing business within the State because the proposed changes are not expected to reduce the number of fishermen active in the fishery, nor the number of trips or harvest quantities.

- (d) Benefits of the Regulation to the Health and Welfare of California Residents:

The Commission does not anticipate any benefits to the health and welfare of California residents.

- (e) Benefits of the Regulation to Worker Safety:

The Commission does not anticipate any benefits to worker safety.

- (f) Benefits of the Regulation to the State's Environment:

The Commission anticipates benefits to the environment with improved fisheries management and decreased regulatory discards.

- (g) Other Benefits of the Regulation: None.

Informative Digest/Policy Statement Overview

Under current regulations (Section 150), only persons with a Nearshore Fishery Permit are allowed to take nearshore species (cabezon; California scorpionfish; California sheephead; kelp and rock greenlings; and, black-and-yellow, China, gopher, grass and kelp rockfishes). Transfer of Nearshore Fishery Permits is allowed on a two-for-one basis with the new permittee purchasing two permits, agreeing to retire one permit and fish using the other. The number of permits has declined 35 percent in the past 13 years and it's become very difficult to find two permits for sale in the same regional management area. The proposed regulations would change permit transfers to one-for-one making it easier for new permittees to get into the fishery as well as current permittees to retire. Additionally, the proposed regulations would standardize the transfer paperwork by changing from notarized letters from permit holders to a notarized application provided by the Department. The following is a summary of the changes proposed for Sections 150:

- Clarify that Nearshore Fishery Permit holders can only have one permit, regardless of the management area, at any time (Subsection 150(b))
- Add a requirement that the estate of a non-transferable Nearshore Fishery Permit shall immediately surrender the permit to the Department (Subsection 150(e)(5))
- Revise permit transfers (Subsection 150(g)(1-7)):
 - Allow for permit transfers on a one-for-one basis,
 - Change the paperwork from notarized letters to a notarized application,
 - Allow the estate of a deceased permittee two years to transfer the permit,
 - Require that the estate temporarily relinquish the permit until the transfer can be made, and
 - Delay the transfer pending resolution of any criminal, civil and/or administrative action involving the current permittee.
- Change the process for appealing denial of a transfer from a two-step process to a one-step process (Subsection 150(m)(3)) whereby the person denied a transfer can appeal directly to the Commission within 60 calendar days of the Department's denial.

Under current regulations (Section 150.02), only persons who held a valid Deeper Nearshore Species Fishery Permit (for the take of black, blue, brown, calico, copper, olive, quillback and treefish rockfishes) during the immediately preceding permit year are eligible to obtain a permit for the following permit year. This has resulted in a permit moratorium that prohibits any new entrants into the fishery. The proposed regulation

would allow new individuals to enter the fishery by obtaining a permit from an existing permit holder. Additionally, the proposed regulations would require completion of a notarized transfer application. The following is a summary of the changes proposed for Section 150.02:

- Establish permit transfer provisions (Subsection 150.02(j)):
 - Establish that all Deeper Nearshore Species Fishery Permits are transferable,
 - Establish a notarized application for the permit transfer,
 - Allow the estate of a deceased permittee two years to transfer the permit,
 - Require that the estate temporarily relinquish the permit until the transfer can be made, and
 - Delay the transfer pending resolution of any criminal, civil and/or administrative action involving the current permittee.
- Establish a permit transfer fee as specified in Section 705 (Subsection 150.03(d))

Current regulations (Section 150.03) allow persons with a Nearshore Fishery Permit to use trap gear with a Nearshore Fishery Gear Endorsement, which is transferable on a one-for-one basis. The proposed regulations would change the permit transfer requirement from notarized letters from the permit holder to a notarized application provided by the Department. The following is a summary of the changes proposed for Sections 150.0:

- Move the subsection 150.03(c)(5) requirement that a non-transferable Nearshore Fishery Gear Endorsement become null and void upon the death of the individual who holds the permit and propose to add that the estate of a non-transferable Nearshore Fishery Gear Endorsement holder shall immediately surrender the permit to the Department to Subsection 150.03(d)(6)
- Revise permit transfers (Subsection 150.03(d)) to:
 - Change the paperwork from notarized letters to a notarized application,
 - Allow the estate of a deceased permittee two years to transfer the gear endorsement,
 - Require that the estate temporarily relinquish the gear endorsement until the transfer can be made, and
 - Delay the transfer pending resolution of any criminal, civil and/or

administrative action involving the current permittee.

- Change the process for appealing denial of a transfer from a two-step process to a one-step process (Subsection 150.03(h)(3)) whereby the person denied a transfer can appeal directly to the Commission within 60 calendar days of the Department's denial.

Current regulations (Section 705) establish a Nearshore Fishery Permit Transfer Fee of \$500. The proposed regulations would increase the permit transfer fee to a range of \$1,000 to \$2,500 and also establish a transfer fee in the range of \$1,000 to \$2,500 for the Deeper Nearshore Species Fishery Permit. The proposed regulations would also include reference to the proposed Nearshore Fishery Permit and Nearshore Fishery Trap Endorsement Transfer Application (DFW 1045) and the proposed Deeper Nearshore Species Fishery Permit Transfer Application (DFW 1048).

Additional minor changes are proposed to correct grammatical errors and remove section references to Title 14, CCR, to improve clarity and standardize regulatory format.

The proposed regulatory action will benefit fishermen, processors, and the State's economy by maintaining a healthy sustainable fishery, and ensuring future harvestable nearshore populations.

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. Section 20, Article IV, of the State Constitution specifies that the Legislature may delegate to the Fish and Game Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to regulate the commercial take of nearshore species (Section 8587.1, Fish and Game Code). The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. The Commission has searched the California Code of Regulations and finds no other State agency regulations pertaining to the commercial take of nearshore fish stocks.

Regulatory Language

Section 150, Title 14, CCR is amended as follows:

§ 150. Nearshore Fishery Restricted Access Program.

[...No proposed changes to subsection (a)]

(b) The department shall issue a Nearshore Fishery Permit for a regional management area described in Section 52.04, ~~Title 14, CCR~~ to each nearshore fishery permittee who meets the regional qualifying criteria below. A person will receive only one Nearshore Fishery Permit for use in only one regional management area and cannot hold a valid permit for more than one regional management area. A person meeting the qualifications for more than one regional management area must make a permanent, irrevocable decision prior to obtaining a Nearshore Fishery Permit for the 2003-2004 permit year to fish in one regional management area. The permit shall not be changed to another regional management area under any circumstances.

[...No proposed changes to subsections (c) through (d)]

(e) Initial Qualification for 20-year California Commercial Fishermen. During the initial year of the nearshore restricted access program, any person who has been licensed as a California commercial fisherman for at least 20 years at the time of application, and who does not qualify for a permit in (d)(1), (2), (3), or (4) above, and who has participated in the commercial nearshore fishery for at least one of those years as documented by department fish landing receipts submitted in his name and commercial fishing license identification number pursuant to Fish and Game Code Section 8046, upon application shall be issued a Non-Transferable Nearshore Fishery Permit for one regional management area, based on the following minimum landing requirements in subsection (e)(1), (2), (3), or (4) below:

(1) landed at least 200 pounds of nearshore fish stocks as described in Section 150.01, ~~Title 14, CCR~~, in any one calendar year between January 1, 1994 and December 31, 1999.

(A) landings used to qualify must have been made at ports located within the North Coast Region as defined in Section 52.04, ~~Title 14, CCR~~.

(B) Nearshore Fishery Permits issued pursuant to subsection (e)(1) are designated Non-Transferable North Coast Nearshore Fishery Permits and authorize the holder to take, possess aboard a vessel, or land nearshore fish stocks as described in Section 150.01, ~~Title 14, CCR~~, in the North Coast Region only.

(2) landed at least 650 pounds of nearshore fish stocks as described in Section 150.01, ~~Title 14, CCR~~, in any one calendar year between January 1, 1994 and December 31, 1999.

(A) landings used to qualify must have been made at ports located within the North-Central Coast Region as defined in Section 52.04, ~~Title 14, CCR~~.

(B) Nearshore Fishery Permits issued pursuant to subsection (e)(2) are designated

Non-Transferable North-Central Coast Nearshore Fishery Permits and authorize the holder to take, possess aboard a vessel, or land nearshore fish stocks as described in Section 150.01, ~~Title 14, CCR~~, in the North-Central Coast Region only.

(3) landed at least 1,050 pounds of nearshore fish stocks as described in Section 150.01, ~~Title 14, CCR~~, in any one calendar year between January 1, 1994 and December 31, 1999.

(A) landings used to qualify must have been made at ports located within the South-Central Coast Region as defined in Section 52.04, ~~Title 14, CCR~~.

(B) Nearshore Fishery Permits issued pursuant to subsection (e)(3) are designated Non-Transferable South-Central Coast Nearshore Fishery Permits and authorize the holder to take, possess aboard a vessel, or land nearshore fish stocks as described in Section 150.01, ~~Title 14, CCR~~, in the South-Central Coast Region only.

(4) landed at least 800 pounds of nearshore fish stocks as described in Section 150.01, ~~Title 14, CCR~~, in any one calendar year between January 1, 1994 and December 31, 1999.

(A) landings used to qualify must have been made at ports located within the South Coast Region as defined in Section 52.04, ~~Title 14, CCR~~.

(B) Nearshore Fishery Permits issued pursuant to subsection (e)(4) are designated Non-Transferable South Coast Nearshore Fishery Permits and authorize the holder to take, possess aboard a vessel, or land nearshore fish stocks as described in Section 150.01, ~~Title 14, CCR~~, in the South Coast Region only.

~~(5) A non-transferable Nearshore Fishery Permit shall become null and void upon the death of the permit holder.~~

[...No proposed changes to subsection (f)]

(g) Permit Transfers, Procedures and Timelines.

~~(1) If the combined total of transferable and non-transferable Nearshore Fishery permits in a regional management area is greater than the capacity goal for that regional management area on or after April 1, 2003, the following provisions for permit transfers are in effect:~~

~~(A) A Nearshore Fishery Permit issued pursuant to this section may be voluntarily transferred by the permittee, if the transferee (person to whom the permit is to be issued) has never been convicted of a violation of any provision of these regulations or of the Fish and Game Code pertaining to the commercial take of nearshore fish stocks as described in Section 150.01, Title 14, CCR. Until the number of permits in a regional management area equals or falls below the capacity goal for that regional management area, a permit may only be transferred if one additional transferable permit for the same regional management area is surrendered to the department for cancellation at the same time the application for the transfer is submitted to the department.~~

~~(B) A Nearshore Fishery Permit may be transferred pursuant to this section to a person only if that person holds a commercial fishing license issued pursuant to Fish and Game Code Section 7850 and submits to the department a notarized letter from each of the permittees described in subdivision (A), that each includes a statement identifying the~~

person to whom the Nearshore Fishery Permit is to be transferred and setting forth the conditions of the transfer.

~~(C) Application for transfer of a Nearshore Fishery Permit, in the form of a notarized letter, shall be submitted to the department by the transferee.~~

~~(D) Upon determining that the transferee of the Nearshore Fishery Permit is qualified to receive a Nearshore Fishery Permit and upon payment of all permit and transfer fees, the department shall issue a Nearshore Fishery Permit for that regional management area to the transferee that is valid for the remainder of the then current fishing season. At the time the permit transfer is complete the additional transferable Nearshore Fishery Permit is required to be surrendered by the transferee pursuant to subsection (g)(1)(A). If the transferee holds a Non Transferable Nearshore Fishery Permit, that permit shall be cancelled.~~

~~(E) After the transfer of a person's Nearshore Fishery Permit, the former permit holder may not take, possess, transfer, or sell any nearshore fish stocks as described in Section 150.01, Title 14, CCR, for commercial purposes unless otherwise permitted by law.~~

~~(2) Should the combined total of transferable and non-transferable Nearshore Fishery Permits in a regional management area fall below the capacity goal, the commission may prescribe criteria for the transfer of permits or the issuance of additional permits pursuant to the Administrative Procedure Act following public notice and not less than one public hearing.~~

~~(3) A transferable Nearshore Fishery Permit issued pursuant to this section may be transferred to the estate of a permittee who has died only for the purpose of transferring the Nearshore Fishery Permit to another person.~~

~~(A) Such transfer may be considered if the estate makes application, in the form of a notarized letter, for the transfer within one year of the date of death as listed on the death certificate.~~

~~(B) The estate is responsible for any permit renewal fees under subsection (n) of this Section or Section 150.03, Title 14, CCR.~~

~~(4) The Nearshore Fishery Permit in the estate of a deceased permittee may be transferred to any person who meets all of the following qualifications:~~

~~(A) The person, at that time, holds a commercial fishing license issued pursuant to Fish and Game Code Section 7850.~~

~~(B) The person has never been convicted of a violation of any provision of these regulations or of the Fish and Game Code pertaining to the commercial take of nearshore fish stocks.~~

~~(C) The transfer of the permit is subject to subsection (g)(1) and (2) above.~~

~~(5) A Nearshore Fishery Permit in the estate of a deceased permittee that is transferred to an immediate family member (spouse, child, grandchild, parent, or sibling) or to a partner as described in Fish and Game Code Section 8102 is exempt from the requirements in subsection (g)(1) and (2) above.~~

(1) Pursuant to Fish and Game Code Section 8587.1(b), Fish and Game Code Section 7857(j) is made inoperative as applied to the commercial nearshore fishery.

(2) A person with a valid transferable nearshore fishery permit that has not been

suspended or revoked may transfer his/her permit to a licensed California commercial fisherman. The permit shall be transferred for use in the same regional management area listed on the permit.

(3) Upon the death of a person with a valid transferable nearshore fishery permit, that person's estate shall immediately, temporarily relinquish the permit to the department's License and Revenue Branch. The estate may renew the permit as provided for in this section if needed to keep the permit valid. The estate of the decedent may transfer the permit pursuant to this section no later than two (2) years from the date of death of the permit holder as listed on the death certificate.

(4) The permit holder or the estate of the deceased permit holder shall submit the notarized transfer application and the nonrefundable permit transfer fee specified in Section 705 for each permit transfer. The transfer shall take effect on the date on the written notice of approval of the application given to the transferee by the department. The nearshore fishery permit shall be valid for the remainder of the permit year and may be renewed in subsequent years pursuant to this section.

(5) An application for a transfer of a nearshore fishery permit shall be deferred when the current permit holder is awaiting final resolution of any pending criminal, civil and/or administrative action that could affect the status of the permit.

(6) If a transferable nearshore fishery permit is transferred to a person with a valid non-transferable nearshore fishery permit, the non-transferable nearshore fishery permit shall become null and void and the permit shall be immediately surrendered to the department's License and Revenue Branch.

(7) Upon the death of a person with a valid non-transferable nearshore fishery permit, the permit shall become null and void and the estate shall immediately surrender the permit to the department's License and Revenue Branch.

[...No proposed changes to subsections (h) through (l)]

(m) Appeals.

(1) Any applicant who is denied initial issuance of a Nearshore Fishery Permit for any reason may appeal to the department in writing describing the basis for the appeal. The appeal shall be received or, if mailed, postmarked, no later than March 31, 2004. The appeal shall be reviewed and decided by the department. The decision of the department may be appealed in writing to the commission within 60 days of the date of the department's denial.

(2) Renewal Appeals. Late renewal appeal provisions are specified in Fish and Game Code Section 7852.2.

~~(3) Any applicant who is denied transfer of a Nearshore Fishery Permit may appeal to the department in writing describing the basis for the appeal. The appeal shall be reviewed and decided by the department. The decision of the department may be appealed in writing to the commission within 60 days of the date of the department's denial.~~
Any person who is denied transfer of a transferable nearshore fishery permit may submit a written request for an appeal to the commission within 60 calendar days of the date of the department's denial.

(n) Fees. Notwithstanding Fish and Game Code Section 8587, the fees for a Nearshore Fishery Permit under the restricted access program shall be as follows:

(1) The department shall charge an annual fee for each transferable Nearshore Fishery Permit as specified in Section 705.

(2) The department shall charge an annual fee for each Non-Transferable Nearshore Fishery Permit as specified in Section 705.

(3) The department shall charge a non-refundable fee for each permit transfer as specified in Section 705. ~~If more than one permit is required for the transfer, the fee specified in Section 705 shall be charged.~~

[...No proposed changes to subsection (o)]

Note: Authority cited: Sections 713, 1050, 7071 and 8587.1, Fish and Game Code.
Reference: Sections 713, 1050, 7071, 7850, 7852.2, 7857, 7858, 8043, 8046, 8102, 8587, 8587.1, 8588, 8589.5 and 8589.7, Fish and Game Code.

Section 150.02, Title 14, CCR is amended as follows:

§ 150.02. Deeper Nearshore Species Fishery Permits; Control Date for Other Nearshore Species. ~~Control Dates for Other Nearshore Species; Permits to Commercially Take Deeper Nearshore Fish Species.~~

[...No proposed changes to subsections (a) through (c)]

(d) Fees.

(A) The fee for a deeper nearshore species fishery permit is specified in Section 705.

(B) The nonrefundable fee to transfer a deeper nearshore species fishery permit is specified in Section 705.

[...No proposed changes to subsections (e) through (i)]

(j) Permit Transfers, Procedures, and Timelines.

(1) Pursuant to Fish and Game Code Section 8587.1(b), Fish and Game Code Section 7857(j) is made inoperative as applied to the commercial deeper nearshore fishery.

(2) Upon the effective date of these regulations, each person possessing a valid deeper nearshore species fishery permit that has not been suspended or revoked shall have his or her permit designated by the department as a transferable deeper nearshore species fishery permit.

(3) A person with a valid transferable deeper nearshore species fishery permit that has not been suspended or revoked may transfer his/her permit to a licensed California commercial fisherman.

(4) Upon the death of a person with a valid transferable deeper nearshore species fishery permit, the estate of a person with a valid transferable deeper nearshore species fishery permit shall immediately temporarily relinquish the permit to the department's License and Revenue Branch. The estate may renew the permit as provided for in this section if needed to keep the permit valid. The estate of the decedent may transfer the permit pursuant to this section no later than two (2) years from the date of death of the permit holder as listed on the death certificate.

(5) The permit holder or the estate of the deceased permit holder shall submit the notarized transfer application and the nonrefundable permit transfer fee specified in Section 705 for each permit transfer. The transfer shall take effect on the date of the written notice of approval of the application given to the transferee by the department. The deeper nearshore species fishery permit shall be valid for the remainder of the permit year and may be renewed in subsequent years pursuant to this section.

(6) An application for a transfer of a deeper nearshore species fishery permit shall be deferred when the current permit holder is awaiting final resolution of any pending criminal, civil and/or administrative action that could affect the status of the permit.

(7) Any applicant who is denied transfer of a deeper nearshore species fishery permit may submit a written request for an appeal to the commission within 60 calendar days of the date of the department's denial.

Note: Authority cited: Sections 713, 1050, 7071 and 8587.1, Fish and Game Code.

Reference: Sections 1050, 7071, 7852.2, 7857, 7858, 8585.5 and 8587.1, Fish and Game Code.

Section 150.03, Title 14, CCR is amended as follows:

§ 150.03. Nearshore Fishery Gear Endorsement Program.

[...No proposed changes to subsections (a) through (b)]

(c) Qualifications for Gear Endorsement. A transferable gear endorsement shall be issued upon application only to a person who has a valid 2003-2004 transferable Nearshore Fishery Permit, issued pursuant to Section 150, ~~Title 14, CCR~~, for a specific regional management area as defined in Section 52.04, ~~Title 14, CCR~~. A non-transferable gear endorsement shall be issued upon application only to a person who has a valid 2003-2004 non-transferable Nearshore Fishery Permit, issued pursuant to Section 150, ~~Title 14, CCR~~, for a specific regional management area as defined in Section 52.04, ~~Title 14, CCR~~. The following qualifying criteria shall be used to determine eligibility for either a transferable or non-transferable trap endorsement:

(1) North Coast Region Trap Endorsement. A trap endorsement allows the permittee to use trap gear when taking nearshore fish stocks as described in Section 150.01, ~~Title 14, CCR~~, in addition to gear authorized under Section 150(I), ~~Title 14, CCR~~. A trap endorsement shall be attached to the North Coast Region Nearshore Fishery Permit issued to a person who has satisfied the following requirements:

(A) has a valid 2002-2003 general trap permit that has not been suspended or revoked, and

(B) has landed at least 1,000 pounds of nearshore fish stocks as described in Section 150.01, ~~Title 14, CCR~~, between January 1, 1994 and October 20, 2000 that were taken with trap gear.

(C) landings of nearshore fish stocks as described in Section 150.01, ~~Title 14, CCR~~, used to qualify must have been made at ports located within the North Coast Region as defined in Section 52.04, ~~Title 14, CCR~~, as documented by department landing receipts submitted in his name and commercial fishing license identification number pursuant to Fish and Game Code Section 8046.

(2) North-Central Coast Region Trap Endorsement. A trap endorsement allows the permittee to use trap gear when taking nearshore fish stocks as described in Section 150.01, ~~Title 14, CCR~~, in addition to gear authorized under Section 150(l), ~~Title 14, CCR~~. A trap endorsement shall be attached to the North-Central Coast Region Nearshore Fishery Permit issued to a person who has satisfied the following requirements:

(A) has a valid 2002-2003 general trap permit that has not been suspended or revoked, and

(B) has landed at least 1,000 pounds of nearshore fish stocks as described in Section 150.01, ~~Title 14, CCR~~, between January 1, 1994 and October 20, 2000 that were taken with trap gear.

(C) landings of nearshore fish stocks as described in Section 150.01, ~~Title 14, CCR~~, used to qualify must have been made at ports located within the North-Central Coast Region as defined in Section 52.04, ~~Title 14, CCR~~, as documented by department landing receipts submitted in his name and commercial fishing license identification number pursuant to Fish and Game Code Section 8046.

(3) South-Central Coast Region Trap Endorsement. A trap endorsement allows the permittee to use trap gear when taking nearshore fish stocks as described in Section 150.01, ~~Title 14, CCR~~, in addition to gear authorized under Section 150(l), ~~Title 14, CCR~~. A trap endorsement shall be attached to the South-Central Coast Region Nearshore Fishery Permit issued to a person who has satisfied the requirements of either (A), or (B) and (C) below:

(A) has a valid 2002-2003 finfish trap permit that has not be suspended or revoked, or

(B) has a valid 2002-2003 general trap permit that has not been suspended or revoked, and has landed at least 500 pounds of nearshore fish stocks as described in Section 150.01, ~~Title 14, CCR~~, in each of 3 calendar years during the period January 1, 1994 through October 20, 2000 that were taken with trap gear.

(C) landings of nearshore fish stocks as described in Section 150.01, ~~Title 14, CCR~~, used to qualify must have been made at ports located within the South-Central Coast Region as defined in Section 52.04, ~~Title 14, CCR~~, as documented by department landing receipts submitted in his name and commercial fishing license identification number pursuant to Fish and Game Code Section 8046.

(4) South Coast Region Trap Endorsement. A trap endorsement allows the permittee to use trap gear when taking nearshore fish stocks as described in Section 150.01, ~~Title 14, CCR~~, in addition to gear authorized under Section 150(l), ~~Title 14, CCR~~. A trap endorsement shall be attached to the South Coast Region Nearshore Fishery Permit

issued to a person who has a valid 2002-2003 finfish trap permit that has not been suspended or revoked.

~~(5) A non-transferable trap endorsement issued under this Section shall become null and void upon the death of the permit holder.~~

~~(d) Transfer of Nearshore Fishery Permit Gear Endorsements. The transfer of a Nearshore Fishery Permit gear endorsement is subject to the provisions of Section 150(g), Title 14, CCR. Only one Nearshore Fishery Permit gear endorsement is required to transfer the gear endorsement to a new permittee.~~
Gear Endorsement Transfers, Procedures, and Timelines.

(1) Pursuant to Fish and Game Code Section 8587.1(b), Fish and Game Code Section 7857(j) is made inoperative as applied to the commercial nearshore fishery.

(2) A person with a valid transferable nearshore fishery gear endorsement that has not been suspended or revoked may transfer his/her nearshore fishery gear endorsement to a licensed California commercial fisherman with a valid Nearshore Fishery Permit for the same regional management area. The nearshore fishery gear endorsement shall be transferred for use in the same regional management area listed on the nearshore fishery gear endorsement.

(3) Upon the death of a person with a valid transferable nearshore fishery gear endorsement, the estate of a person with a valid transferable nearshore fishery gear endorsement shall immediately, temporarily relinquish the nearshore fishery gear endorsement to the department's License and Revenue Branch. The estate may renew the nearshore fishery gear endorsement as provided for in this section if needed to keep the nearshore fishery gear endorsement valid. The estate of the decedent may transfer the nearshore fishery gear endorsement pursuant to this section no later than two years from the date of death of the nearshore fishery gear endorsement holder as listed on the death certificate.

(4) The nearshore fishery gear endorsement holder or the estate of the deceased nearshore fishery gear endorsement holder shall submit the notarized transfer application and the nonrefundable nearshore fishery gear endorsement transfer fee specified in Section 705 for each gear endorsement transfer. The transfer shall take effect on the date of the written notice of approval of the application given to the transferee by the department. The nearshore fishery gear endorsement shall be valid for the remainder of the permit year and may be renewed in subsequent years pursuant to this section.

(5) An application for a transfer of a nearshore fishery gear endorsement shall be deferred when the current nearshore fishery gear endorsement holder is awaiting final resolution of any pending criminal, civil and/or administrative action that could affect the status of the nearshore fishery gear endorsement.

(6) Upon the death of a person with a valid non-transferable nearshore fishery gear endorsement, the nearshore fishery gear endorsement shall become null and void and the estate shall immediately surrender the nearshore fishery gear endorsement to the department's License and Revenue Branch.

[...No proposed changes to subsections (e) through (g)]

(h) Appeals.

(1) Any applicant who is denied initial issuance of a Nearshore Fishery Permit gear endorsement for any reason may appeal to the department in writing describing the basis for the appeal. The appeal shall be received or, if mailed, postmarked, no later than March 31, 2004. The appeal shall be reviewed and decided by the department. The decision of the department may be appealed in writing to the commission within 60 days of the date of the department's denial.

(2) Renewal Appeals. Late renewal appeal provisions are specified in Fish and Game Code Section 7852.2.

~~(3) Any applicant who is denied transfer of a Nearshore Fishery Permit gear endorsement may appeal to the department in writing describing the basis for the appeal. The appeal shall be reviewed and decided by the department. The decision of the department may be appealed in writing to the commission within 60 days of the date of the department's denial.~~ Any applicant who is denied transfer of a transferable nearshore fishery gear endorsement may submit a written request for an appeal to the commission within 60 calendar days of the date of the department's denial.

[...No proposed changes to subsections (i) through (k)]

Note: Authority cited: Sections 713, 1050 and 8587.1, Fish and Game Code. Reference: Sections 1050, 7852.2, 8046, 8589.5, 8589.7, 9001 and 9001.5, Fish and Game Code.

Subsection 705(b), Title 14, CCR is amended as follows:

§ 705 Commercial Fishing Applications, Permits, Tags and Fees.

Fees (US\$)

[...No proposed change to subsection (a)]

(b) Transfer, Upgrade, or Change of Ownership

[...No proposed changes to subsections (b)(1) through (b)(4)]

- (5) Nearshore Fishery Permit And Nearshore Fishery
Trap Endorsement Transfer Application DFW 1045
(New 4/2017), incorporated by reference herein.

(A) Nearshore Fishery Permit Transfer

~~500~~1,000.0
0-2,500.00

~~(6)(B)~~ Nearshore Fishery Trap Endorsement Transfer 75.00

(6) Deeper Nearshore Species Fishery Permit Transfer
Application DFW 1048 (New 4/2017) incorporated by
reference herein.

(A) Deeper Nearshore Species Fishery Permit Transfer [1,000.00-
2,500.00]

[...No proposed changes to subsections (b)(7) through (b)(11), (c) and (d)]

NOTE: Authority cited: Sections 713 and 1050, Fish and Game Code. Reference: Sections 713 and 1050, Fish and Game Code.

Notice of Exemption

Appendix E

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

County Clerk
County of: N/A

From: (Public Agency): CA Fish and Game Commission
1416 Ninth Street, Room 1320
Sacramento, CA 95814

(Address)

Project Title: Nearshore Fishery Permit and Deeper Nearshore Species Fishery Permit Transferability

Project Applicant: N/A

Project Location - Specific:
Statewide

Project Location - City: N/A Project Location - County: N/A

Description of Nature, Purpose and Beneficiaries of Project:

The project revises the regulations for Nearshore Fishery Permit and/or a Deeper Nearshore Species Fishery Permit to align the transfer provisions for consistency with other Commission limited entry programs.

Name of Public Agency Approving Project: California Fish and Game Commission

Name of Person or Agency Carrying Out Project: California Department of Fish and Wildlife

Exempt Status: (check one):

- ☐ Ministerial (Sec. 21080(b)(1); 15268);
☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
☒ Categorical Exemption. State type and section number: Cal. Code Regs., tit. 14, §§ 15307, 15308
☐ Statutory Exemptions. State code number: _____

Reasons why project is exempt:

See attached.

Lead Agency
Contact Person: Valerie Termini Area Code/Telephone/Extension: (916) 653-4899

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? ☒ Yes ☐ No

Signature: _____ Date: 10/12/2017 Title: Executive Director

☒ Signed by Lead Agency ☐ Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: _____

ATTACHMENT TO NOTICE OF EXEMPTION

October 12, 2017

Adoption of Nearshore Fishery Permit, Deeper Nearshore Fishery Permit and Nearshore Fishery Gear Endorsement Transfer Regulations

The California Fish and Game Commission (Commission) will take final action under the Fish and Game Code and the Administrative Procedure Act (APA) with respect to the proposed project on October 12, 2017. In taking its final action for the purposes of the California Environmental Quality Act (CEQA, Pub. Resources Code, § 21000 *et seq.*), the Commission adopted the regulations relying on the categorical exemption for “Actions by Regulatory Agencies for Protection of Natural Resources” contained in CEQA Guidelines section 15307, and the categorical exemption for “Actions by Regulatory Agencies for Protection of the Environment” contained in CEQA Guidelines section 15308. (Cal. Code Regs., tit. 14, §§ 15307, 15308.)

Categorical Exemptions to Protect Natural Resources and the Environment

In adopting the regulations modifying transfer provisions for the Nearshore Fishery Permit, Deeper Nearshore Species Fishery Permit and Nearshore Fishery Trap Endorsement, the Commission relied for purposes of CEQA on the Class 7 and 8 categorical exemptions. In general, both exemptions apply to agency actions to protect natural resources and the environment. The regulations establish one-for-one permit transfers for Nearshore Fishery Permits, Deeper Nearshore Species Fishery Permits, and Nearshore Trap Endorsements, providing for an orderly fishery but do not change the overall number of permits available, limiting capacity in the nearshore fishery.

The nearshore restricted access program has been managed by the Department of Fish and Wildlife (Department) since 2003. Since that time, the Department has not been aware of any significant cumulative impacts of successive projects of the same type in the same place, nor has it determined there is a reasonable possibility the activity will have a significant effect on the environment due to unusual circumstances. Because these regulations are intended to limit capacity to protect the sustainability of the fishery as a public trust resource, Commission adoption of these regulations is an activity that is the proper subject of CEQA’s Class 7 and 8 categorical exemptions.

From:
Sent: Thursday, September 21, 2017 2:04 PM
To: FGC; Larinto, Traci@Wildlife; Yaremko, Marci@Wildlife
Subject: proposed nearshore regulations

As a way of introduction, I have been a commercial fisherman in California for 45 years. I currently hold a "South Central Shallow Nearshore Permit" with a "Trap Endorsement", a Federal Groundfish Permit for longline and a California "Southern Rock Permit". The current situation with the existing nearshore regulations is inherently flawed due to extensive species overlap, ie. "shallow nearshore" species commonly inhabit the same areas as "deeper" nearshore species and vice versa. There is considerable by-catch with a resulting mortality of both "deeper" and "shallow" species by permit holders who have only either a "nearshore" or a "deeper nearshore" permit. Allowing the transfer of deeper permits to anybody is only going to increase the take of shallow nearshore species by fishers who don't hold "shallow nearshore" permits. The effort expended on "deeper" species is going to increase dramatically as the current "latent" permits will now be in the hands of people who are going to put them to use. The problem of two permits covering species that inhabit the same areas is only going to get worse. I suggest that the law be modified to allow only the transfer of deeper nearshore permits to shallow permit holders. At very least, try this system for five years and study what happens before creating another regulatory and management nightmare. Thank You, William Diller

From:
Sent: Tuesday, August 15, 2017 7:20 PM
To: FGC
Subject: Discussion Hearing: Item #20. Discuss proposed changes nearshore and deeper nearshore fishing permits

August 15, 2017

Fish and Game Commission
1416 Ninth Street, Room 1320
Sacramento, CA 95814

To Valerie Termini, Executive Director

My name is Fred Arnoldi. I have been a commercial fisherman since 1967. I have a nearshore fishing permit that is non-transferable and wish to have it changed to transferable.

The reason I have a non-transferable permit is because I did not have the required landings for the designated window of landings. I did not meet this criteria because I was fishing other fisheries during that window of time.

My argument for changing the non-transferable permits to transferable permits:

In the Fish and Game Commission "Notice of Proposed Changes in Regulations it is stated that during the past 13 years, there has been a decline of 35 percent in permit holders because of the two-for-one transfer basis. This situation has caused a decline in revenue. Now the Commission is proposing a change to the transfer basis of one-for-one making it easier for new permittees as well as **current permittees to retire or leave the fishery and either recoup something for their investment or pass their permit along to a family member**. These words are found in the Description of Regulatory Action: (a) (page 2) in the Commissions: ("Pre-publication of Notice Statement").

Between the years from 2003 to 2016 the decline from 220 permits to 141 permits is a difference of **79 permits**. Stating the decline is 35% does not seem like a large amount but if you consider it is 79 permits it is considerable.

Currently there are only 141 nearshore permits for the entire California coast. I have **not** been successful in obtaining the actual number of permits that are **non-transferable** but even if it is 50% which would make the number either 70 or 71 non-transferable permits to become transferable.

Personally, I think the actual non-transferable permit total is much less than 50%. I think it may be even less than 25% which would mean an even lower number of permits becoming transferable.

Making the non-transferable permits transferable would not impact the total number of permits but it would generate revenue and allow **permittees to retire or leave the fishery and either recoup something for their investment or pass their permit along to a family member**.
(Again, the words of the Commission).

The Commission has also stated that the analysis of Nearshore Fishery Permit transfers and fishing activity before and after the transfer reveals half of the new permittees actually fished less than one of the previous owners. This indicates that fishing effort will only moderately increase, and any increases could be managed by adjusting the bio-monthly trip limits if it is deemed necessary.

To me, it makes sense for the Department of Fish & Wildlife who wishes to generate more revenue to ask the Commission to allow these permits to become transferable. It would be a win, win and would not impact the total number of overall permits.

Please consider my request to make the non-transferable permits to a transferable. I am very sure I am not the only person who is at or reaching retirement age who would like their permit to be changed to transferable. we also deserve to leave the fishery and recoup something for our investment and or pass our permit along to a family member.

Is it not reasonable for us non-transferable permit holders to expect the same consideration from the Commission that it seems to have for the transferable permit holders?

I thank you for your time and consideration of my request.

Sincerely,

Fred Arnoldi

Dear Fish and Game Commissioners,

My name is Nathan Rosser. I have worked on fishing boats since I was 12 years old, have owned and operated my own commercial sea urchin and sea cucumber diving business for the last 5 years, and have actively sought a transferable near-shore fish permit for the past 3 years with no luck, despite very persistent efforts to attain one. These days, complex regulations, capital risk, and physical hazards are only a few of the many barriers preventing up-and-coming commercial fishermen like myself from successfully establishing themselves. To be frank, the 2-for-1 permit transfer mechanism and extremely low capacity goals are incredibly frustrating to prospective entrants like myself, as the regulations have had the unintended effect of making the permit market-place rampant with speculators, resulting in permit-holders 'holding' their permits in anticipation of ever increasing permit prices. Furthermore, investing into the Near-shore fishery without transferability of the Deeper Near-shore Permit is not practical. Having worked as a deckhand in the Near-shore fishery and seeing as a diver the co-habitation of all the near-shore species group, the ability to attain both permits would greatly increase the efficiency, profitability, and sustainability of the 'live fish' fishery by eliminating regulatory discards and the waste of fish.

The trip limits, size limits, gear restrictions, and seasonal and spatial closures have been very effective. The resource is healthy, well-managed, and able to withstand any additional pressure that stream-lining permit transfers would have. Please seriously consider making Near-shore fish permits transferable on a 1 for 1 basis, and allowing deeper near-shore permits to be transferred. I am eagerly awaiting the opportunity to attain both of these permits, which would benefit my business, my family, the local economy, and other fishermen as well.

Thank you for your consideration,

Nathan Rosser

Commercial Fisherman – Ventura County



Nearshore Permit Transfer Regulations



Traci Larinto
Senior Environmental Specialist, Marine Region
Fish and Game Commission Meeting
October 12, 2017



Nearshore Fishery Permit (NFP) Changes

- For **transferable** NFPs only:
 - Current regulations require two existing permits to be transferred to one new entrant
 - Proposed regulations would allow one permit to be transferred to one new entrant
- Clarify existing language for **all** NFPs:
 - Only one NFP may be held per person for use in one of the four management areas





Deeper Nearshore Species Fishery Permit (DNSFP) Changes

- For **all** DNSFPs:
 - Current regulations prohibit any transfers
 - Proposed regulations would allow for one permit to be transferred to one new entrant



Photo credit: CDFW



Permit Transfer Fees

Current Transfer Fee	Proposed Fee Range	Recommended Fee
Nearshore Fishery Permit – transferable		
\$500	\$1,000-\$2,500	\$2,500
Deeper Nearshore Fishery Permit		
n/a	\$1,000-\$2,500	\$2,500



Photo credit: CDFW



Recommended Action

- 1-for-1 transfers for transferable NFPs
- 1-for-1 transfers for all DNSFPs
- \$2500 transfer fee for both NFP and DNSFP
- 1 NFP per person regardless of management area
- 2 years to transfer in the event of death of a permittee
- Change transfer paperwork
- Delay transfer if action pending against permit holder



Questions?

Traci Larinto
Senior Environmental Specialist
Traci.Larinto@wildlife.ca.gov

Memorandum

2017 JUN -5 AM 11:10

Date: June 1, 2017

To: Valerie Termini, Executive Director
Fish and Game Commission

From: Charlton H. Bonham
Director



Subject: **Agenda Item for June 22, 2017, Fish and Game Commission Meeting**
Re: Request to Publish Notice of Commission's Intent to Add Section 128,
Commercial Take of Sea Cucumber

The Department of Fish and Wildlife (Department) requests the Fish and Game Commission (Commission) authorize publishing notice of its intent to add Section 128 to Title 14, California Code of Regulations concerning commercial take of sea cucumbers. Authorization of this request to publish notice will allow for discussion and possible adoption at the August 17 and October 12, 2017 Commission meetings, respectively.

At the March 2017 meeting of the Marine Resource Committee (MRC), the Department presented its research findings and information on the status of the warty sea cucumber commercial fishery. The results indicate a significant risk to the sustainability of this fishery. After a discussion with Department staff and constituents in attendance, the MRC recommended adding a rulemaking to the Commission's 2017 calendar to address concerns raised by the Department.

Informed by a 2014 survey of fishery participants and meetings with the fleet in March and April of this year, it has been determined that a seasonal closure for warty sea cucumber is the preferred first step for addressing sustainability concerns. Based on the results of recent research, the Department recommends a seasonal closure that includes a significant portion of the key spawning period that spans from March through July.

At this time, the Department is considering three closure options. A survey of commercial divers will be sent out in early June and the results will be presented at the June Commission meeting. The three closure options currently include:

1. From April 1 through June 30;
2. From March 1 through June 14; or,
3. From January 1 through June 14.

Valerie Termini, Executive Director
Fish and Game Commission
June 1, 2017
Page 2 of 2

The Department is requesting authorization to prepare and publish an Initial Statement of Reasons (ISOR) that includes the three seasonal closure options. The ISOR and rulemaking documents to establish a closed season for the commercial take of warty sea cucumber will be available to the public for review and comment prior to the Commission's August discussion meeting.

If you have any questions or need additional information, please contact Dr. Craig Shuman, Marine Region Regional Manager at (805) 568-0216.

cc: Stafford Lehr, Deputy Director
Wildlife and Fisheries Division
Stafford.Lehr@Wildlife.ca.gov

Craig Shuman, D. Env.
Regional Manager
Marine Region (Region 7)
Craig.Shuman@wildlife.ca.gov

Sonke Mastrup, Program Manager
State Managed Invertebrate Fisheries
Marine Region (Region 7)
Sonke.Mastrup@wildlife.ca.gov

Tom Mason, Senior Environmental
Scientist (Supervisor)
Marine Region (Region 7)
Tom.Mason@wildlife.ca.gov

Robert Puccinelli, Captain
Law Enforcement Division
Robert.Puccinelli@wildlife.ca.gov

Joe Milton, Senior Staff Counsel
Office of General Counsel
Joe.Milton@wildlife.ca.gov

Craig Martz, Program Manager
Regulations Unit
Craig.Martz@wildlife.ca.gov

Mike Randall, Regulations Analyst
Regulations Unit
Mike.Randal@wildlife.ca.gov

Memorandum

2017 JUL 19 AM 10:41

Date: July 19, 2017

To: Valerie Termini, Executive Director
Fish and Game Commission

From: Charlton H. Bonham
Director



Subject: **Submission of Initial Statement of Reasons Regarding Proposed Addition of Section 128, Title 14, California Code of Regulations, Re: Commercial Taking of Sea Cucumber**

The Fish and Game Commission (Commission) authorized publication of the notice of its intent to add Section 128, Commercial Taking of Sea Cucumber, at its June meeting. Publication in the California Regulatory Notice Register is scheduled for August 4 and the notice will be posted to the Commission website at the same time. Discussion on this item is scheduled for the August 17 meeting and adoption is scheduled for the October 12 meeting.

The Department proposed to add a new Section 128, Commercial Taking of Sea Cucumber, to improve the sustainability of the fishery by restricting the harvest of warty sea cucumber during their spawning period.

If you have any questions regarding this item, please contact Craig Shuman, Regional Manager, Marine Region at (805) 568-1246 or Craig.Shuman@Wildlife.com. For purposes of the notice, identify Carlos Mireles as the lead contact he can be reached at (805) 568-1221, or Carlos.Mireles@wildlife.ca.gov.

Attachments

cc: Stafford Lehr, Deputy Director
Wildlife and Fisheries Division
Stafford.Lehr@wildlife.ca.gov

Craig Shuman, Manager
Marine Region
Craig.Shuman@wildlife.ca.gov

Sonke Mastrup, Marine Region
Environmental Program Manager
Sonke.Mastrup@wildlife.ca.gov

Valerie Termini, Executive Director
Fish and Game Commission
July 19, 2017
Page 2

Tom Mason, Marine Region
Sr. Environmental Scientist Supervisor
Invertebrate Fishery Management
Plan Project
Tom.Mason@wildlife.ca.gov

Robert Puccinelli, Captain
Law Enforcement Division
Robert.Puccinelli@wildlife.ca.gov

Joe Milton, Senior Staff Counsel
Office of General Counsel
Joe.Milton@wildlife.ca.gov

Carlos Mireles, Marine Region
Environmental Scientist
Marine Invertebrate Project
Carlos.Mireles@wildlife.ca.gov

Susan Ashcraft, Marine Advisor
Fish and Game Commission
Susan.Ashcraft@fgc.ca.gov

Scott Barrow, Acting Manager
Regulations Unit
Wildlife and Fisheries Division
Scott.Barrow@wildlife.ca.gov

Mike Randall, Analyst
Regulations Unit
Wildlife and Fisheries Division
Mike.Randall@wildlife.ca.gov

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

Add Section 128
Title 14, California Code of Regulations
Re: Commercial Taking of Sea Cucumber

I. Date of Initial Statement of Reasons: July 11, 2017

II. Dates and Locations of Scheduled Hearings:

(a) Notice Hearing: Date: June 22, 2017
Location: Smith River, CA

(b) Discussion Hearing: Date: August 16, 2017
Location: Sacramento, CA

(c) Adoption Hearing: Date: October 12, 2017
Location: Atascadero, CA

III. Description of Regulatory Action:

(a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

The proposed addition of Section 128, Title 14, California Code of Regulations (CCR), Commercial Take of Sea Cucumber, is necessary because research and fishery analyses detail concerning trends regarding the warty sea cucumber commercial fishery and indicate that the continued unregulated harvesting of warty sea cucumber during their spawning period poses a significant risk to the sustainability of this fishery.

Current Laws

Current laws for the commercial sea cucumber fishery are found in Fish and Game Code (FGC) sections 8405, 8405.1, 8405.2, and 8405.3. These statutes are permissive with only permits and permitting provisions for the sea cucumber fishery (e.g., gear type, fees, records, renewal, transfer, and number of permits).

The commercial sea cucumber fishery is a limited entry fishery with separate permits for the dive and trawl fisheries, which primarily target warty (*Apostichopus parvimensis*) and giant red (*Apostichopus californicus*) species, respectively. In 2016, 82 dive permits and 16 trawl permits were issued. A trawl

permit can be converted to a dive permit during a transfer, but a dive permit cannot be converted to a trawl permit (Section 8405.2, FGC). Regardless of the permit type, all commercial sea cucumber fishermen are required to fill out a commercial fishing log detailing their daily fishing activities (Subsection 8405.1(c), FGC).

There are currently no seasons, size limits, catch limits, or limits on dive gear usage (e.g., SCUBA and surface supplied air) for the sea cucumber dive fishery. However, under FGC subsection 8405.3(a), the Fish and Game Commission (Commission) has the authority to adopt regulations that are reasonably necessary to protect the sea cucumber resource, to assure a sustainable sea cucumber fishery, or to enhance enforcement activities.

From 2013-2016, the Department of Fish and Wildlife (Department) conducted fishery analyses and collected additional essential fishery information required to inform the development of management measures for the fishery. At the March 2017 meeting of the Commission's Marine Resource Committee, the Department presented its research findings and status of the warty sea cucumber commercial fishery. Based on the analysis and feedback from the fishery in the "2014 CDFW Sea Cucumber Diver Survey: Summary of Key Results" (Attachment 1), the Department recommended a seasonal closure as the initial step for addressing sustainability concerns with the fishery.

The Department developed three seasonal closure options for consideration by the Commission after an evaluation of fishery trends, reproductive patterns of the species, and meetings with commercial sea cucumber divers in March and April of 2017. If adopted, the Department is committed to evaluating the effectiveness of the seasonal closure and working with the fishery and others to develop additional management measures pursuant to goals and objectives of the Marine Life Management Act (Section 7050, et seq., FGC).

Current global demand and almost a complete lack of regulations for the fishery will continue to put the fishery at risk, if no action happens. Sea cucumber fisheries around the world that have shown similar trends have resulted in localized depletion and/or collapse of the fishery due to many of the fisheries developing faster than management can respond (Anderson, 2011). In addition, effective management measures for sea cucumber fisheries have been particularly difficult to develop, as many species are data poor, display late maturity, are long lived, have low rates of recruitment, and exhibit density-dependent reproduction.

Fishery Analyses Key Findings

The first recorded commercial landings of warty sea cucumber occurred in 1980, with landings remaining relatively low until 1990 (Figure 1). From 1990 to 1998,

landings went from 50,000 pounds to over 600,000 pounds as market demand increased. The rapid increase in value from 2005 to 2011 is due to the recent increase in market demand from foreign markets resulting in a dramatic increase in the ex-vessel price paid per pound (Figure 2). Global harvest of sea cucumber has expanded greatly in recent times to meet growing demand in Asia. A study examining the global impacts of this demand found that 81 percent of 37 global fisheries have experienced population declines due to overexploitation and that new sea cucumber fisheries expanded five to six times faster in the 1990's than they did in the 1960's.

1. **Since 2011, landings and ex-vessel value have declined sharply with 2016 landings at a 20-year low and value at an 11-year low (Figure 1). The decline in ex-vessel value has occurred despite the average ex-vessel price per pound increasing (Figure 2).**

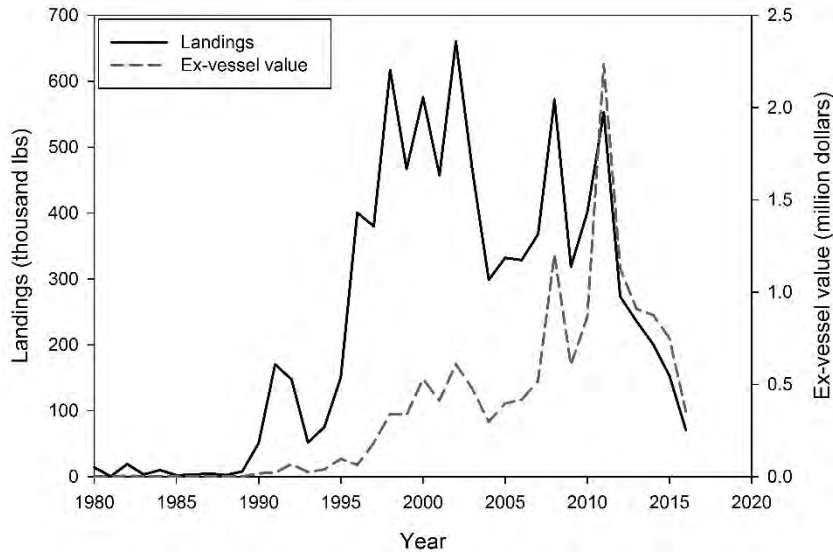


Figure 1. Sea cucumber dive landings and total ex-vessel value from 1980-2016. Data source: CDFW landings data.

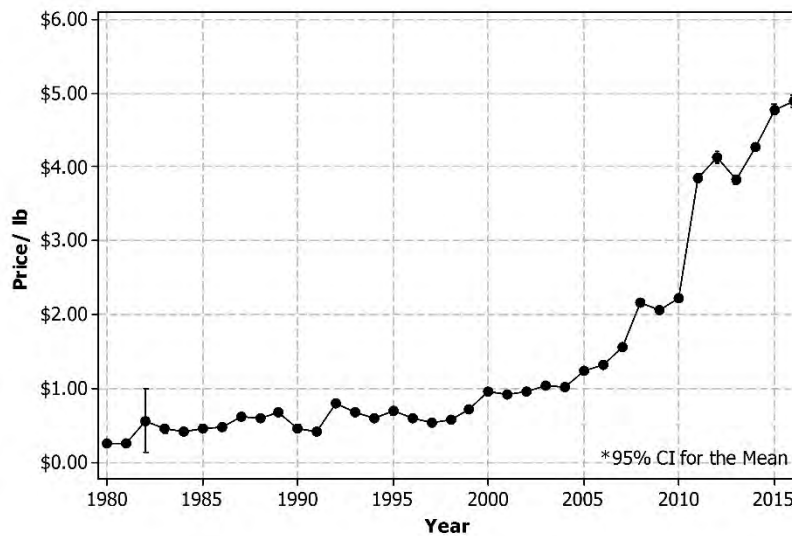


Figure 2. Average price per pound paid for sea cucumber harvested by the commercial dive fishery from 1980-2016. Lines extending from the averages indicate 95% confidence intervals of the average. Data source: CDFW landings data.

In 2011, the total ex-vessel value for the commercial fishery reached a record high of \$2.2 million and landings reached approximately 553,000 pounds. While the average price per pound continued to increase to a record high in 2016 (Figure 2), both annual ex-vessel value and landings have declined continuously since 2011, with 2016 ex-vessel value reaching an 11-year low of approximately \$353,000 and landings reaching a 20-year low of approximately 66,000 pounds (Figure 1). The Department is aware that landings data are influenced by sea cucumbers being landed in both an eviscerated (cut) and whole (un-cut) state; however, the Department has found that declines in landings cannot be fully explained by changes in processing practices alone.

According to the 2014 Sea Cucumber Diver Survey (Attachment 1), a majority of individuals believed that the change in processing occurred sometime between 2008 and 2010. Looking at the period from 2008 to 2010 as the most relatable to current processing practices, a continued declining trend from this earlier period until now can be assumed. In addition, the total ex-vessel value has also reached an 11-year low in 2016, suggesting that regardless of landing condition (cut vs. un-cut) the fishery is generating increasingly less ex-vessel value. Considering that demand for sea cucumber is on the rise, as evidenced by the average price/lb continually increasing (Figure 2), it is concerning that landings are trending down as this is a classic example of market demand exceeding the ability of the resource to sustain itself. Sea cucumber and other fisheries that have collapsed in the past typically show similar trends in increasing value and decreasing catch.

2. Dive catch per unit effort has declined sharply over the history of the fishery (Figure 3).

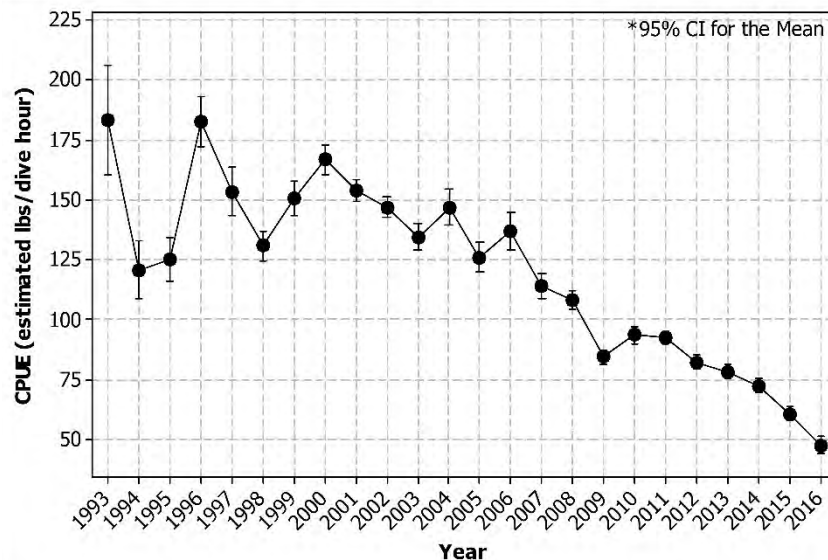


Figure 3. Average catch per unit effort (CPUE) for the commercial dive fishery from 1993-2016. Lines extending from the averages indicate 95% confidence intervals of the average. Data source: CDFW landings data.

Catch per unit effort (CPUE) data from commercial dive log data from 1993 to 2016 indicates that the amount of sea cucumber harvested per dive hour is also on a downward trend, with average CPUE for 2016 reaching a record low of 47 pounds per dive hour (Figure 3). As with landings, declines in CPUE are not fully explained by changes in processing practices as evidenced by CPUE declining by 51 percent since 2009, the estimated year that most divers believe that a majority of the fishery was landing product in a cut state. Considering these fishery trends, the Department is concerned with the sustainability of the fishery.

Department Research Findings

Warty sea cucumbers are broadcast spawners with fertilization occurring externally in the water column, requiring individuals to be in close proximity to each other for successful reproduction. The sexes are separate and occur in approximate ratios of 1:1. The reproductive cycle of warty sea cucumber was first described in 1983 for individuals collected off Santa Catalina Island (Muscat, 1983). Research over the course of three years (1980-1982) found that individuals reached peak maturation during the months of March-April with peak spawning occurring during the months of May-June. Department research

findings on reproductive cycle of the species are consistent with previous findings. The similar findings of these two studies conducted over 30 years apart provide evidence that warty sea cucumber exhibit consistent seasonal spawning behavior during spring and early summer periods.

1. **The reproductive condition of warty sea cucumbers increases in early spring with spawning occurring from late spring into summer (Figure 4).**

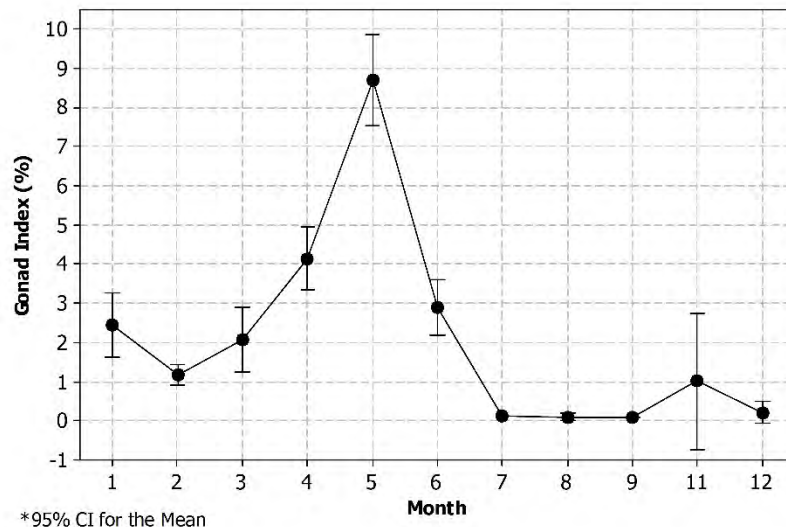


Figure 4. Reproductive condition represented by Gonadosomatic Index (GSI) (%) (Gonad Index) of warty sea cucumber by month from 2013-2016. (GSI= (gonad weight/ total body weight) x 100) Data source: CDFW data.

Department research findings from 2013-2016 on 1,462 individuals collected from the northern Channel Islands demonstrate that warty sea cucumber ovaries and testes begin maturing in January with gonads continuing to develop through February and March, and reaching peak maturation in April-May as measured using Gonadosomatic index (GSI) analysis (Figure 4). GSI is used to determine the degree of sexual maturity by comparing the proportion of each individual's gonad mass relative to its total body mass. Although it appears that some spawning may begin as early as April, most spawning occurs from May-July, as shown by the decreasing average GSI values from May to July (Figure 4).

2. **Increased densities from March to July indicate formation of spawning aggregations (Figure 5).**

Department dive surveys inside and outside marine protected areas (MPAs) at the northern Channel Islands were conducted simultaneously with the reproductive research. The MPAs chosen for this study do not allow the take of warty sea cucumber and represent populations that are in as close to natural

state as possible. The research revealed that warty sea cucumber densities are considerably lower in fished sites when compared to the MPA sites and that densities inside MPAs build to peak levels during maturation and spawning periods in March-July (Figure 5). This build-up of densities is related to individuals aggregating for spawning. Since warty sea cucumber are broadcast spawners, reproductive success is dependent upon individuals of the opposite sex being in close proximity to increase the chances of successful fertilization. Once spawning activities begin to dwindle in July and August, the densities of warty sea cucumber begin to decline, with annual lows in density observed in MPAs during October and November (Figure 5, Table 1).

The seasonal aggregation behavior displayed by warty sea cucumber results in the resource being the most available to dive harvest during sensitive reproductive periods. For this research, MPAs provided an invaluable tool for determining the seasonality of spawning aggregations as densities outside MPAs did not display measurable seasonal differences in density.

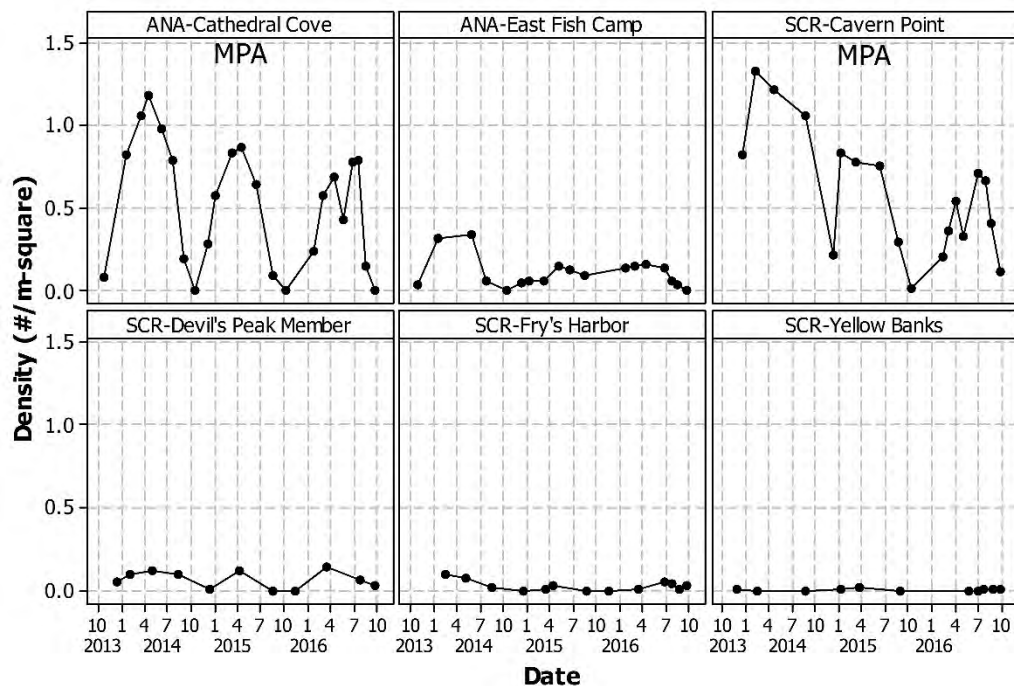


Figure 5. Seasonal densities of warty sea cucumber (number per square meter) measured inside and outside of Marine Protected Areas (MPA) at Anacapa (ANA) and Santa Cruz Islands (SCR) from 2013-2016. Each panel represents a different site with the site name in the panel heading. Data source: CDFW data.

3. The fishery primarily harvests warty sea cucumber during peak aggregation (March –June) and spawning months (May-July) (Figure 6).

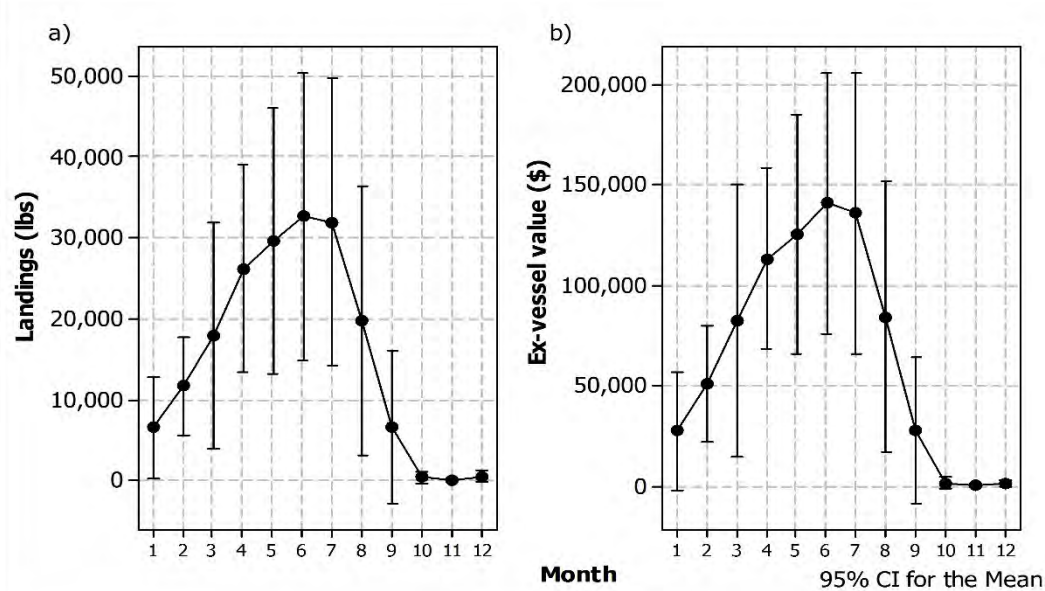


Figure 6. a) Average annual commercial landings by month from 2012-2016 and b) Average total ex-vessel value by month from 2012-2016. Lines extending from the averages indicate 95% confidence intervals of the average. Data source: CDFW landings data.

From 2012-2016, the months of March-July accounted for approximately 75 percent of the total dive landings, with the fishery peaking in both landings (Figure 6a) and ex-vessel value (Figure 6b) in June. Reasons for this peak in value and landings in June can mostly be attributed to the high CPUE that spawning aggregations provide divers. The practice of harvesting before and during peak spawning times results in the take of individuals before they have a chance to spawn, reducing productivity. Continued unregulated harvesting during the spawning season poses a significant risk to the sustainability of this fishery.

Proposed Regulation

Add Section 128, Title 14, CCR; Commercial Taking of Sea Cucumber

This regulatory proposal would add new Section 128, Title 14, CCR, for the commercial take of sea cucumber. This proposed new section will establish a closed season for commercial take of warty sea cucumber, prohibit the possession of warty sea cucumbers during the closed season, and clarify logbook requirements for commercial sea cucumber dive activities. It is necessary for the Commission to adopt new regulations to protect the sea cucumber resource and to assure a sustainable sea cucumber fishery.

Add subsection 128(a), Closed Season for Commercial Take of Warty Sea Cucumber

The proposed regulation establishes a closed season for the commercial take of warty sea cucumber during significant portions of the spawning season. This is a critical first step towards improving management of this fishery and resource.

Three seasonal closure options are provided for Commission consideration:

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

The three options protect important aspects of the spawning period (March-July) and strike a balance between the needs of the resource and maintaining the fishery it supports. Each option includes critical aspects of the reproductive stages of aggregation, maturation, and spawning while providing fishing opportunities either before and/or near the end of the reproductive season.

To aid the decision-making process, the reproductive and fishery importance of each month is described in Table 1a, the biological and fishery pros and cons for each option are provided below, and results from a May 2017 “Commercial Sea Cucumber Diver Survey Results for Three Seasonal Closure Options” (Attachment 2) indicate similar levels of preference for options 1 and 3. Most divers ranked them as either their most or least preferred options (Attachment 2, Figure 1). This suggests that two groups exist in the fishery, those that want a shorter closure and those that want a longer closure. However, there is strong agreement between the two groups on option 2, as all respondents ranked it as either their first or second preferred option. No respondents listed option 2 as their least preferred option.

Table 1 a) Warty sea cucumber reproductive cycle (Department research 2013-2016), average landings, and ex-vessel value of the dive fishery by month (monthly averages calculated using 2012-2016 Department landings data). b) Description of the three proposed seasonal closure options including the months that would be open or closed under each option.

a)

	January	February	March	April	May	June	July	August	September	October	November	December
Reproductive Importance	Low -gonads developing -aggregations begin building and can range between 25-100% of peak density	Low -gonads developing -aggregations building to 50-100% of peak density	Moderate -gonads developing -aggregations nearing maturation -aggregations building to 75-100% of peak density	High -peak gonad maturation -some spawning -peak aggregations 75-100% of peak density	Critical -peak gonad maturation -peak spawning -peak aggregations 75-100% of peak density	Critical -peak gonad maturation with some reduction due to spawning -peak spawning -peak aggregations 75-100% of peak densities	Moderate -gonads reduced after spawning -spawning lessens -aggregations generally start to decline but can still be between 75-100% of peak density	Low -gonads extremely reduced or absent -spawning likely completed -aggregations declining but can still be between 50-100% of peak density	Low -gonads reduced or absent -spawning completed -aggregations declining to 0-25% of peak density	Low -gonads reduced or absent -spawning completed -aggregations near 0% of peak density	Low -gonads reduced or absent -spawning completed -aggregations near 0% of peak density	Low -gonads developing -aggregations begin building to 0-25% of peak density
Average Percentage of Annual Landings	3.4	6.8	9.7	14.2	16.1	17.6	17.3	11.1	2.9	0.3	0.2	0.3
Average Annual Ex-Vessel Value	\$27,691	\$52,219	\$83,069	\$114,821	\$127,765	\$142,993	\$137,761	\$90,575	\$23,265	\$3,705	\$837	\$1,612
Average number of participants	11	22	26	29	29	31	27	20	11	4	2	3
Importance to Fishery Based on Ex-Vessel Value (rank 1-12)	8	7	6	4	3	1	2	5	9	10	12	11

b)

b)			<u>Seasonal Closure Options</u>									
Options	January	February	March	April	May	June	July	August	September	October	November	December
1. (April 1 - June 30)	Open			Closed			Open					
2. (March 1 - June 14)	Open		Closed				Open					
3. (January 1 - June 14)	Closed					Open						

Option 1: From April 1-June 30 (3 months)

Pros:

Biological:

- Protects the formation of aggregations and gonad development in April.
- Protects the two most critical months for peak maturity and spawning (May and June).

Fishery:

- Allows for harvest during July, August, and March, which are the second, fifth, and sixth most valuable months for the fishery, respectively.
- Allows for harvest from January through March prior to peak spawning periods and July after most spawning has occurred.
- Provides the most fishing opportunity of all three options.

Cons:

Biological:

- Individuals that are developing gonads and forming aggregations in March would be available for harvest.
- If levels of fishing in March increase due to effort shift, then densities may be reduced to levels that would impact successful fertilization during April-June, potentially reducing much of the benefits of protection during this period.

Fishery:

- The fourth, third, and first most valuable months to fishery value would not be open to harvesting (April-June); however, it is expected that a portion of individuals that were historically harvested during these months would be available for harvest once the fishery opens on July 1.

Option 2: March 1-June 14 (3.5 months)

Pros:

Biological:

- Protects a majority of the months when aggregations form and peak in density (March-June).
- Protects key periods for gonad development (March-May).
- Protects approximately 75 percent of the peak spawning months (May-June).
- Anticipated that most individuals will have spawned before the fishery would re-open on June 15.

Fishery:

- Allow for harvest during two weeks of June, which is historically the most valuable month and all of July and August, which are the second and fifth most valuable months to the fishery, respectively.
- Allows for fishing opportunity in January and February prior to spawning aggregations fully developing and it is expected that CPUE will be enhanced once the fishery re-opens on June 15.

Cons:

Biological:

- Two weeks of June, one of the two most critical spawning months would be open to harvesting, likely resulting in the harvest of some individuals before they spawn.

Fishery:

- Two weeks of historically the most significant landing month (June) would not be open to harvesting. Similar level of impacts to the fishery as option 1, but results in 15 fewer fishing days with the tradeoff of closing March for opening two weeks in June.

Option 3: From January 1-June 14 (5.5 months)

Pros:

Biological:

- Like option 2, protects a majority of aggregation formation (March-June) and approximately 75 percent of peak spawning periods (May-June).

- Some added benefit by including January and February when densities generally start to increase and gonad development commences.

Fishery:

- Likely to result in the highest CPUE of the three options once the fishery re-opens as aggregations are completely protected prior to the season opening.
- Like option 2, allows for harvest during two weeks of June, the most valuable month and all of July and August, which are the second and fifth most valuable months to the fishery, respectively.

Cons:

Biological:

- Like option 2, two weeks of June, one of the two most critical spawning months would be open to harvesting, likely resulting in the harvest of some individuals before they spawn.

Fishery:

- Largest impact to the fishery of the three options, with the greatest impacts to divers who only have sea cucumber permits (17 individuals). The other 65 divers have sea urchin permits and can dive for urchin during the sea cucumber closure.
- Expect to result in the “race to fish” once the fishery re-opens due to low sea cucumber availability from September to December, essentially creating a two and one-half to three-month fishing season.

Add subsection 128(b), Prohibiting Possession of Warty Sea Cucumber for Commercial Purposes during the Closed Season

The proposed regulation would prohibit the possession of warty sea cucumber aboard any commercial fishing vessel as well as the landing of warty sea cucumber during the proposed closed season. Since the commercial take of warty sea cucumber during the proposed closed season (subsection 128(a)) is prohibited, the regulation would also require any incidentally caught warty sea cucumber to be immediately returned to the water. The proposed subsection 128(b) is designed to prevent the take, possession, and/or landing of warty sea cucumber by any sea cucumber permit holder during the closed season proposed in subsection 128(a). While warty sea cucumber is almost exclusively taken by divers, minor incidental catch of the species also occurs in the trawl fishery. As such, the proposed regulation would clarify that the possession or landing of warty sea cucumber aboard any commercial fishing vessel during the

closed season, regardless of the method of take, is prohibited and any incidental catch must be immediately returned to the water.

Add subsection 128(c), Commercial Dive Fishing Logbook Requirement

The proposed regulation would clarify the recordkeeping requirements already laid out in FGC Section 8405.1 by referring to Section 120.7, Title 14, CCR, which specifies the Commercial Dive Fishing logbook form (DFG 120.7), incorporated by reference. The proposed regulation is needed to provide clear rules for recordkeeping under a sea cucumber dive permit and improve regulatory enforcement.

FGC subsection 8405.1(c) requires all sea cucumber permit holders to complete and submit an accurate record of their fishing activities on forms provided by the Department. Currently, each sea cucumber permit is specific to a method of take (i.e., trawl permit or dive permit). Section 176, Title 14, CCR, specifically describes the Department logbook form that commercial trawlers must use to record their trawl fishing activity. However, a similar regulation identifying a specific Department logbook form does not currently exist for divers taking sea cucumbers for commercial purposes. Each commercial sea cucumber dive permit holder currently fills out a daily dive record using the Department's Commercial Dive Fishing Log, but use of the form is not explicitly referenced in Title 14.

Benefits of the Proposed Regulation

It is the policy of this State to ensure the conservation, sustainable use, and, where feasible, restoration of California's marine living resources for the benefit of all the citizens of the State. The objectives of this policy include, but are not limited to, conserving the health and diversity of marine ecosystems and marine living resources; allowing and encouraging only those activities and uses of living marine resources that are sustainable; and recognizing the importance to the economy and the culture of California of sustainable sport and commercial fisheries.

Over time, a seasonal closure will have a positive impact on population growth of the resource and benefit the fishery.

- (b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Section 8405.3, Fish and Game Code.

Reference: Sections 8026, 8405.1, 8405.3 and 8500, Fish and Game Code.

- (c) Specific Technology or Equipment Required by Regulatory Change: None.
- (d) Identification of Reports or Documents Supporting Regulation Change:
1. Attachment 1: 2014 CDFW Sea Cucumber Diver Survey: Summary of Key Results.
 2. Attachment 2: Commercial Sea Cucumber Diver Survey Results for Three Seasonal Closure Options, May 25, 2017.
 3. Anderson, S.C., Flemming, J.M., Watson, R., Lotze, H.K. 2011. Serial exploitation of global sea cucumber fisheries. *Fish and Fisheries*. 12, 317–339.
 4. Caddy, J.F., Defeo, O. 2003. Enhancing or restoring the productivity of natural populations of shellfish and other marine invertebrate resources. *FAO Fisheries Technical Paper*. No. 448. Rome, FAO. 159p.
 5. Chavez, E.A., Salgado-Rogel, MA. DE Lourdes, Palleiro-Nayar, J. 2011. Stock assessment of the warty sea cucumber fishery (*Parastichopus parvimensis*) of NW Baja California. *California Cooperative Oceanic Fisheries Investigations*. Vol. 52. 136-147p.
 6. Muscat, A.M. 1983. Population dynamics and the effect on the infauna of the deposit feeding holothurian (*Parastichopus parvimensis*) (Clark). PhD Dissertation. University of Southern California, Los Angeles.
 7. Purcell, S.W., Lovatelli, A. (eds), Vasconcellos, M.(eds), Yimin, Y. (eds). 2010. Managing sea cucumber fisheries with an ecosystem approach. *FAO Fisheries and Aquaculture Technical Paper*. No. 520. Rome, FAO. 157p.
 8. Rogers-Bennett, L., Ono, D.S. 2001. Sea cucumbers. California living marine resources: A status report. California Department of Fish and Game. 131–134 p.
 9. Schroeter, S.C., Reed, D.C., Kushner, D.J., Estes, J.A., Ono, D.S., 2001. The use of marine reserves in evaluating the dive fishery for the warty sea cucumber (*Parastichopus parvimensis*) in California, U.S.A. *Canadian Journal of Fisheries and Aquatic Sciences*. 58, 1773–1781.
 10. Toral-Granda, V., Lovatelli, A., Vasconcellos, M. (eds). 2008. Sea cucumbers. A global review of fisheries and trade. *FAO Fisheries and Aquaculture Technical Paper*. No. 516. Rome, FAO. 317p.

- (e) Public Discussions of Proposed Regulations Prior to Notice Publication:
1. March 16, 2017, Los Alamitos, California. The Department presented and discussed the status of the California sea cucumber dive fishery at an outreach meeting to commercial sea cucumber fishermen.
 2. March 23, 2017, San Clemente, California. The Department briefed the Marine Resources Committee on the status of the commercial sea cucumber dive fishery and discussed potential sea cucumber regulation changes.
 3. April 28, 2017, Oxnard, California. The Department presented sea cucumber dive permit holders in the Santa Barbara/Ventura area with the information regarding the trend of the fishery; the permit holders were given opportunity to voice their opinions concerning potential management measures.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

Total Allowable Catch (TAC): A cap on overall harvest was considered and rejected. This alternative is not deemed viable at this time because historical landings data is used as the basis for determining a sustainable TAC, but such data is not available. Without precise landing data, the Department cannot effectively determine a sustainable quota.

(b) No Change Alternative:

Under the no change alternative, the commercial take of warty sea cucumber during the spawning season will continue to occur without any restriction on take. Research and fishery analyses detail concerning trends regarding the warty sea cucumber commercial fishery and indicate that the continued unregulated harvesting of warty sea cucumber during their spawning period poses a significant risk to the sustainability of this fishery. The intent of the proposed action is the improved management of the warty sea cucumber resource and fishery and a step towards the long-term sustainability of the resource and viability of the commercial fishery in accordance with the goals and objectives of the Marine Life Management Act and provisions of FGC subsection 8405.3(a).

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to

affected private persons than the proposed regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

(d) Description of Reasonable Alternatives That Would Lessen Adverse Impact on Small Business:

The proposed action will affect a relatively small number of jobs (17-21) engaged in commercial take of warty sea cucumber as a sole source of income. However, these individuals may sustain their income through the harvest of warty sea cucumbers in the remaining portion of the season. No other reasonable alternative was identified that would lessen the impact on small business while providing the same level of protection to the warty sea cucumber resource.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because harvest quantities by California permittees are not anticipated to fall and a commercial warty sea cucumber fishery only exists in the State of California and there are no like products that currently compete as substitutes for warty sea cucumber. While no other state has a commercial fishery that poses competition, Mexico does have a warty sea cucumber fishery. However, Mexico's fishery has been exhibiting similar signs of decline. In light of the fact that other sea cucumber stocks in the world have been overharvested, it is critical to maintain a sustainable sea cucumber fishery in California.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to

the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission anticipates limited short-term negative impacts from a curtailed season length on the creation or elimination of jobs within the State, with the potential for the direct, indirect, and induced loss of 17 to 21 jobs that are directly or indirectly linked to the warty sea cucumber fishery statewide.

The proposed action is not anticipated to exert significant impact on the creation of new businesses, the elimination of existing businesses, or the expansion of businesses in California because the proposed action will not constitute a substantial year-round drop in fishery activity.

The Commission anticipates generalized benefits to the health and welfare of California residents through the improved reporting and better monitoring of the fishery.

No impacts to worker safety are anticipated.

The State's environment should benefit by the improved management of the warty sea cucumber resource with the goal of creating a more sustainable sea cucumber dive fishery, which would benefit existing businesses in the long term.

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The annual income from sea cucumber harvesting is not likely to change for individuals since the regulation only changes the season dates. The proposal does not impose additional compliance costs such as gear, fees, etc. The individuals comprising the sea cucumber fishery support the changes in order to sustain the fishery for future years.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

(e) Nondiscretionary Costs/Savings to Local Agencies: None.

(f) Programs Mandated on Local Agencies or School Districts: None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.

(h) Effect on Housing Costs: None.

VII. Economic Impact Assessment:

Reported commercial landings of warty sea cucumber have shown a five-year declining trend since ex-vessel value peaked in 2011, with 2016 landings at a 20-year low (see Figure 1). Dive logbook data also indicate a continuous decline in CPUE over this period, which translates to declining profit margins for fishermen (see Figure 3). Outreach in the fishery community showed the strongest support for a seasonal closure to begin to address the long-term sustainability of the warty sea cucumber fishery.

The three proposed seasonal closure periods include all or part of the key spawning period that spans from March through June. Estimates for the annual economic impacts of each option are shown in Table 2. These values show the difference between the historical average annual values and the projected outcome for the proposed scenarios in which three to five and one-half months of historical catch is forgone. As such, this static comparison tends to overstate the probable impacts because fishermen's behavior is likely to adjust to the new season length. Effort is likely to shift to the remaining open months and the ex-vessel value may exceed the historical average for those months. Additionally, many warty sea cucumber fishermen will pursue income in other active fisheries during the proposed seasonal closure.

Table 2. Impacts on Ex-Vessel Value, Jobs, Wages, and Total Economic Output

Options	Ex-Vessel Value	Jobs	Wages	Total Economic Output
1. (April-June)	-\$385,579	-17	-\$202,859	-\$641,898
2. (March-June 14)	-\$397,151	-17	-\$208,947	-\$661,163
3. (January-June 14) *proposed by divers	-\$477,061	-21	-\$250,989	-\$794,194

- Option 1, a closure during peak spawning from April - June results in the lowest loss in ex-vessel value and total economic output (Table 2). These three months historically have had the highest landings and value, averaging \$ 213,966 in ex-vessel value per month. Despite that, the April – June three-month closure is the shortest time and sums to the lowest aggregate impact on the fishery economy including associated businesses.
- Option 2, March – June 14, constitutes a three and one-half month closure,

which adds a small amount to the aggregate economic impact, whereas the average ex-vessel value over this period is historically less, at \$188,904 per month (Table 3).

- Option 3, January – June 14, is a closure of five and one-half months but spans several months with historically low landings. While the total economic impact is the highest of the options, the historical ex-vessel value per month is the lowest, at \$144,399 per month from January – June 14.

Table 3. Adverse Economic Impact Per Month By Proposed Option.

Options	Months Closed	Adverse Impact/Month Closed
1. (April-June)	3.0	-\$213,966
2. (March-June 14)	3.5	-\$188,904
3. (January-June 14) *proposed by divers	5.5	-\$144,399

The socio-economic multipliers used to derive these estimates are specific to the warty sea cucumber fishery with linkages to an array of associated business activities. Warty sea cucumber fishing is somewhat similar to red sea urchin diving in which the typical operation involves a mid-size fishing vessel, air compression apparatus with hookah lines or scuba equipment, with one or two divers and one crew member. The first stage of warty sea cucumber processing (cutting) is increasingly onboard, while the boiling and drying is on land in facilities in the same county or some other location within the State. The final product is virtually all exported to Asia. The multiplier effect of traded goods once exported outside of the State economy limits the extent of value and income generation within the State. As products leave a region, the market, transportation, and handling costs are also “leaked” outside of the regional economy.

- (a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State:

The Commission anticipates limited short-term negative impacts from a curtailed season length on the creation or elimination of jobs within the State, with the potential for the total loss of 17 to 21 jobs statewide.

- (b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State:

The proposed action is not anticipated to exert significant impact on the creation of new businesses or the elimination of existing businesses because the regulatory action will limit warty sea cucumber harvest over a few months and the total annual harvest could nearly match the historical averages in the remaining open months. Moreover, if harvest during spawning is not curtailed, the long-term economic viability of the warty sea cucumber fishery may be lost which would adversely impact the associated businesses that support the commercial dive fishery for warty sea cucumber.

(c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State:

The proposed regulations are not anticipated to result in the expansion of businesses currently doing business in the State because the proposed seasonal closure is not expected change the volume of economic activity. Clarification of the logbook requirement is administrative in nature and will not impact the volume of fishing activity or the purchasing of fish.

(d) Benefits of the Regulation to the Health and Welfare of California Residents:

The Department anticipates generalized benefits to the health and welfare of California residents through the improved reporting and better monitoring of the fishery.

(e) Benefits of the Regulation to Worker Safety:

The proposed regulations represent a neutral effect, offering neither benefits nor detriment to worker safety in the State.

(f) Benefits of the Regulation to the State's Environment:

The Commission anticipates benefits to the State's environment. It is the policy of this State to ensure "the conservation, sustainable use, and, where feasible, restoration of California's marine living resources for the benefit of all the citizens of the State" (FGC subsection 7050(b)).

Over time, a seasonal closure will have a positive impact on population growth of the resource and benefit the fishery. However, positive impacts may not be measurable for five or more years. Recent findings reported by the National Parks Kelp Forest Monitoring Program demonstrate that warty sea cucumber densities take at least 10 years to recover to pre-fishing levels once areas become fully protected from take by MPAs (D. Kushner, pers. communication). Considering these findings and that fishing will still be allowed outside of the closed season, it can be expected

that warty cucumbers in fished areas may take a considerable amount of time to reach the densities needed to increase the overall productivity of the resource. MPAs will provide an invaluable tool moving forward to assess the degree to which a seasonal closure or other management measures are promoting population growth in fished areas. MPAs allow comparison between fished and non-fished areas to tease out the differences between potential effects of fishing and/or changes in environmental conditions.

Informative Digest/Policy Statement Overview

The proposed addition of new regulations in Section 128, Title 14, California Code of Regulations (CCR), will create a seasonal closure that would prohibit all commercial take of warty sea cucumber during a significant portion of the spawning season and prohibit the possession aboard commercial vessels and landings of warty sea cucumbers during the closed season.

Current laws governing commercial harvest of sea cucumber in California are permissive with only permits and permitting provisions for the sea cucumber fishery (Fish and Game Code (FGC) Section 8405, et seq.). There are no seasons, size limits, catch limits or limits on dive gear usage (e.g. SCUBA and surface supplied air) when commercially fishing for sea cucumber by diving or trawling.

Under FGC subsection 8405.3(a), the California Fish and Game Commission (Commission) has the authority to adopt regulations that are reasonably necessary to protect the sea cucumber resource, to assure a sustainable sea cucumber fishery, or to enhance enforcement activities. Consistent with the policy and criteria outlined in FGC subsection 8405.3(a), the Department of Fish and Wildlife (Department) recommends that the Commission add Section 128, Title 14, CCR, to establish a closed season for warty sea cucumber. The proposed regulations would promote a sustainable warty sea cucumber fishery through the protection of the spawning population.

Three seasonal closure options are provided for the Commission's consideration,

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

The proposed regulations would also clarify the existing recordkeeping obligations for commercial sea cucumber dive activities (FGC subsection 8405.1(c)) by referencing Section 120.7, Title 14, CCR, which incorporates the Department's Commercial Dive Fishing Log form (DFG 120.7) by reference. A similar regulation currently exists for recordkeeping of commercial trawling activities for sea cucumber in Section 176, Title 14, CCR.

Benefits of the Regulations

The proposed closed season for the commercial warty sea cucumber fishery would protect warty sea cucumber spawning aggregations from overexploitation and promote the long-term sustainability of the fishery resource. The recordkeeping requirements would provide clarification and improve compliance with and enforcement of the regulations.

Consistency and Compatibility with Existing Regulations

The proposed regulations are consistent with sections 120, 120.7, 123, 189 and 632, Title 14, CCR. Commission staff has searched the CCR and found no other regulations that address the commercial take of sea cucumber and therefore finds that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. The Legislature has delegated authority to the Commission to adopt regulations necessary to protect the sea cucumber resource and to assure a sustainable sea cucumber fishery (FGC subsection 8405.3(a)). No other State agency has the authority to regulate the commercial take of warty sea cucumber.

Proposed Regulatory Language

Section 128, Title 14, CCR, is added to read:

§ 128 Commercial Taking of Sea Cucumber.

(a) Closed Season. Warty sea cucumber may not be taken for commercial purposes from [April 1 through June 30; or, March 1 through June 14; or, January 1 through June 14] .

(b) All warty sea cucumber taken during the closed season shall be immediately returned to the water. Warty sea cucumber may not be possessed aboard or landed from any commercial fishing vessel during the closed season.

(c) Pursuant to Section 190 of these regulations, each sea cucumber dive permit holder shall complete and submit an accurate record of his/her sea cucumber fishing activities on the logbook form incorporated by reference under Section 120.7, of these regulations. The completed daily records shall be sent to the department address specified on the logbook.

Note: Authority cited: Section 8405.3, Fish and Game Code. Reference: Sections 8026, 8405.1, 8405.3 and 8500, Fish and Game Code.

Attachment 1

2014 CDFW Sea Cucumber Diver Survey: Summary of Key Results

In summary, 30 out of 86 total dive permittees (35% return rate) provided valuable feedback to questions related to fishery/market dynamics, sea cucumber biology, and current fishery management. Survey results strongly suggest a vast majority (74%, 20 of 27 responses) of fishery respondents feel that current management policies are not sufficient to maintain a sustainable fishery, with a majority of respondents (55%, 15 of 27 responses) suggesting a seasonal closure to improve sustainability.

*Note all further percentages are based off the *responses per question* unless otherwise noted

General Fishery Practices

1. What is the diver's home port? (Total responses: 26/30 (86%))

Channel Islands: 11 (42%)	Santa Barbara: 5 (19%)	San Pedro: 3 (12%)	Terminal Island: 2 (8%)
Los Angeles: 2 (8%)	Ventura: 1 (4%)	San Diego: 1 (4%)	Marina Del Ray: 1 (4%)

2. What percentage of time does the diver use scuba or hookah to harvest sea cucumbers

(Total responses: 30/30 (100%))

Hookah only: 17 (57%)	Scuba only: 5 (17%)	Majority hookah: 2 (7%)	Majority scuba: 4 (13%)
Both scuba and hookah equally: 2 (7%)			

3. Does the diver use a scooter for harvesting? (Total responses: 29/30 (97%))

Yes: 8 (27%)	No: 21 (73%)
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4. Does the diver use a scooter for scouting? (Total responses: 29/30 (97%))

Yes: 12 (41%)	No: 17 (59%)
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5. What percentage of total dive time does the diver use a scooter? (Total responses: 12/30 (40%))

The average use is 24% of total dive time.
--

6. What year did the fishery start cutting sea cucumbers? (Total responses: 23/30 (77%))

14 divers said it started within 2008 – 2010 (47%)
--

*Other responses: 1985 (1), 1995 (1), 1999 (1), 2000 (2), 2005 (2), 2007 (1), 2011 (1), not known (3)

7. What year did the individual diver start cutting cucumbers? (Total responses: 28/30 (93%))

1985	1988	1992	1995	1999	2005	2007	2008	2009	2010	2011	2013	other
(2)	(1)	(1)	(1)	(2)	(2)	(1)	(5)	(3)	(3)	(4)	(1)	(2)

8. What percentage of an individual's landed product are sold cut? (Total responses: 28/30 (93%))

100%: 19	91-99%: 4	80-90%: 4	75%: 1
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9. What percentage of an individual's landed product are sold whole? (Total responses: 10/30 (33%))

100%: 1	25-50%: 1	15-20%: 3	1-10%: 5
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10. Does the diver cut differently for each buyer or processor? (Total responses: 28/30 (93%))

Yes: 14 (50%)	No: 14 (50%)
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11. Does the diver target a specific size of sea cucumber? (Total responses: 21/30 (70%))

Yes: 12 (57%)	No: 9 (43%)
---------------	-------------

12. What size of sea cucumber does the diver target? (Total responses: 14/30 (47%))

9 divers stated that they target large individuals.
3 divers stated that they target smaller individuals for a live market.

Biology

13. Sea cucumber biology: seasonal movement (Total responses: 20/30 (67%))

6 divers said they move into deeper areas, spread out, or disappear (ex. go in holes/cracks) in fall
7 divers said they move in to shallow areas during late winter
3 divers acknowledged that they move but no specifics are given

14. Sea cucumber biology: aggregation (Total responses: 16/30 (53%))

All 16 divers noted aggregation behavior
10 divers said aggregations occur from March – July (late spring and summer)
4 divers noted that aggregations occur on the sand at the base of/between rocks
Response: “Cuke sometime stand up in groups and undulate back and forth in current”

15. Sea cucumber biology: spawning (Total responses: 13/30 (43%))

10 divers said spawning happens April – July (late spring and early summer) (77% of responses)
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*Other responses are “varies”, “hard to be specific”, and “July – Sept, contain eggs/sperm, raise bodies off bottom”

16. Sea cucumber biology: internal organs absent (Total responses: 10/30 (33%))

8 divers noted that this happens in September – January (Fall/winter) (80% of responses)
2 divers noted this observation, but did not provide a time period

Perspectives on the Fishery and Fishing Behavior

17. Has the diver observed any good changes for the fishery? (Total responses: 7/30 (23%))

6 divers noted the price being good (86% of responses). Other diver said “Stable market”
--

18. Has the diver observed any bad changes for the fishery? (Total responses: 21/30 (70%))

21 divers indicated bad changes for the fishery. These included: “diminishing catch”, “volume is down”, “increased pressure”, “increased competition”, “less animals”, “poaching in MPA’s”, “take of small cucumbers” “start harvesting too early because of increased value” “take too long to reproduce” “nothing to ensure sustainability”, “too much year round harvest, no time for cucumbers to aggregate”
--

19. What are the advantages/disadvantages of using hookah and/or scuba to harvest?

(Total responses: 26/30 (87%))

Advantages:

<u>Hookah</u> : safer, easier to enforce closed areas, stay down longer, and can thoroughly work an area
<u>Scuba</u> : more efficient, cover more area, no anchoring, less restrictions, can dive in kelp, and can dive in current

Disadvantages:

<u>Hookah</u> : decreased mobility and restricted in kelp
<u>Scuba</u> : more dangerous, can lose divers, and on limited time

20. Has the diver's diving methods changed as effort has increased, yes or no?

(Total responses: 26/30 (87%))

Yes: 15 (58%)	No: 11 (42%)
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21. What has changed for the diver's diving methods? (Total responses: 26/30 (87%))

Working deeper: 5 (19%)
Staying down longer: 3 (12%)
More scouting time: 3 (12%)
Starting earlier in season: 1 (Jan. – Feb.)
Relocation: 1
Increased effort: 1
Only targeting large: 1
No change: 11 (42%)

22. Did the diver's dive effort increase, decrease, or stay the same from 2012 to 2013?

(Total responses: 26/30 (87%))

Decrease: 15 (58%)	Increase: 2 (8%)	Stay the same: 6 (23%)	No/NA: 2 (8%)	Yes": 1 (4%)
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23. Why did the diver's dive effort change? Total responses: 21/30 (70%)

Increase effort because less cucumbers: 2 (10%)
Increase due to the price: 3 (14%)
Decrease effort because less cucumbers: 6 (29%)
Decrease due to the price: 3 (14%)
Decrease for other personal reasons: 7 (33%)
Decrease to give resource a break: 2 (10%)
Same: 1 (5%)

24. What are the advantages for being in the sea cucumber fishery over other fisheries?

(Total responses: 25/30 (83%))

Season for sea cucumbers (opposite from urchins/complements it): 8 (32%)
Price is good: 6 (24%)
Paid at the dock/set price: 4 (16%)
Change of pace/fun: 4 (16%)
Limited permits/transferable permits: 2 (8%)
Easier to harvest and transport: 1(4%)

25. What are the disadvantages for being in the sea cucumber fishery over other fisheries? (*Total responses: 9/25 (36%)*)

Unsustainable/unprofitable because bad market: 6 (67%)
Unethical managers, researchers, politicians: 1 (11%)
Need ice to transport: 1 (11%)
Diving deeper: 1 (11%)

Management

26. Does the diver support regulations requiring a count of individuals landed?
(*Total responses: 26/30 (87%)*)

Yes: 11 (42%) (note 6 of these individuals reported “yes with a bucket count” size of the bucket varied between 2, 3, and 5 gallons)	No: 15 (58%)
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27. Does the diver support regulations requiring individuals to report condition (cut vs. uncut)?
(*Total responses: 23/30 (77%)*)

Yes: 14 (61%) *	No: 9 (39%)
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28. What logbook changes does the diver support? (*Total responses: 21/30 (70%)*)

Most fishermen just elaborated on their response to the previous question stating that they would support a space for cut vs. uncut (9 brought it up again) or would support a space to record a bucket count (2 brought it up again).
8 stated that they want no change, not enough information to comment, etc.

29. Are the current regulations enough to keep the fishery sustainable, yes or no?
(*Total responses: 27/30 (90%)*)

Yes: 7 (26%)	No: 20 (74%)
--------------	--------------

30. What changes does the diver want to keep the fishery sustainable, if any?
(*Total responses: 27/30 (90%)*)

*Note: this is a tally of suggested methods – divers frequently said more than one of these options

Seasonal closure: 15 (55%)	Banning scuba: 7 (26%)	Size limit: 5 (19%)	Total Allowable Catch: 2 (7%)
Permit Buy backs: 1 (4%)	IFQ's: 1 (4%)	Area rotation: 1 (4%)	Nothing/leave alone: 5 (19%)

Seasonal closure recommendations: what should season timing be?

<i>Spring/Summer months open for harvest everything else closed:</i> 3 responses (“Sea cucumbers are at their greatest density and peak quality from March to July”)
<i>Spring/Summer months closed for harvest:</i> 3 responses (“Close for spawning”)
Unspecified time: 2 responses (“2 month closure”, “later in year”)
Close the fishery from August-December: 1 response

Attachment 2

Commercial Sea Cucumber Diver Survey Results for Three Seasonal Closure Options

In order to determine the level of fishery support for the three seasonal closure options, the Department of Fish and Wildlife mailed a survey on May 25, 2017 to all 82 sea cucumber dive permit holders. In the survey, divers were asked to rank the three options in order of preference with 1 being their most desired option, 2 being their moderately preferred option, and 3 being their least preferred option. Forty-three of the 82 surveys were returned to the Department (52% return rate), with 37 individuals providing complete rankings of the three seasonal closure options (Figure 1), 3 individuals choosing to only provide their preference for one of the options (Table 2), and 3 individuals returning their surveys without indicating preference for any of the three options.

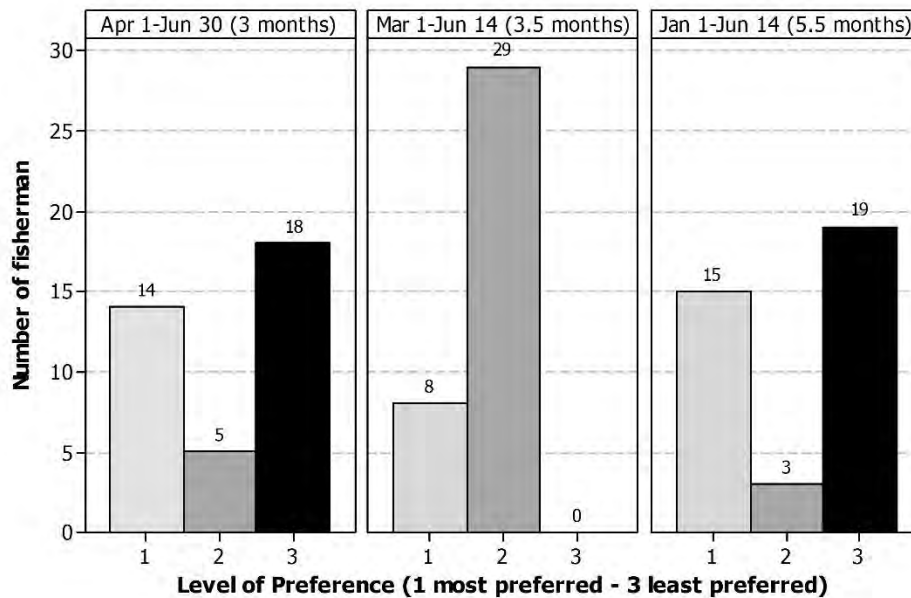


Figure 1. Level of preference for the three seasonal closure options submitted by the 37 individuals that provided complete rankings.

Table 1. Level of preference for the three individuals that only supplied their preference for one option.

	Seasonal Closure Options		
Preference	April – June 30 (3 months)	March 1- June 14 (3.5 months)	January 1- June 14 (5.5 months)
1 (most desired)	1	1	1
2 (moderately desired)			
3 (least desired)			

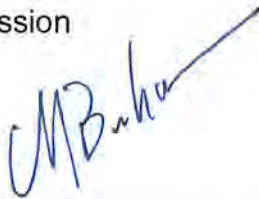
Memorandum

2017 SEP 28 PM 3:40

Date: September 27, 2017

To: Valerie Termini
Executive Director
Fish and Game Commission

From: Charlton H. Bonham
Director



Subject: **Notice of Exemption for Proposed Addition of Section 128, Title 14, California Code of Regulations; Sea Cucumber Fishery Regulations**

Attached please find the Draft Notice of Exemption (NOE) to add Section 128 in Title 14 of the California Code of Regulations (CCR). The attached NOE has been prepared pursuant to Section 15062 of the California Environmental Quality Act (CEQA) Guidelines. Since the NOE is not anticipated to change, this early submission gives the Commission notice of the Department's recommendation to rely on CEQA exemption for the proposed actions. Staff's analysis of the use of exemptions under CEQA is described below.

The review effort by Department staff pursuant to CEQA Guidelines Section 15061 lead staff to conclude that proposed subsections (a) and (b) of Section 128, Title 14, CCR, which create a seasonal closure and prohibit all commercial take of warty sea cucumber during that time, fall within the Class 7 categorical exemption (CEQA Guidelines Section 15307). The regulations are intended to protect warty sea cucumber as a natural resource and the sustainability of the fishery. In addition, staff has reviewed all of the available information possessed by the Department relevant to the issue and does not believe that the Commission's reliance on the Class 7 categorical exemption is precluded by the exceptions set forth in CEQA Guidelines Section 15300.2.

In addition, proposed subsection 128(c), Title 14, CCR, is administrative in nature; therefore, will not result in a direct or indirect physical change to the environment. The proposed regulation would clarify the recordkeeping obligations already laid out in Fish and Game Code subdivision 8405.1(c) by referring to a specific, existing form for commercial sea cucumber dive activities, Commercial Dive Fishing Log (DFG 120.7), that each sea cucumber dive permit holder must complete and submit to the Department.

Valerie Termini, Executive Director
Fish and Game Commission
September 27, 2017
Page 2

Since there is no possibility that the proposed clarifying provision has the potential to have a significant adverse effect on the environment, the action is exempt from CEQA pursuant to the General Rule exemption (CEQA Guidelines subdivision 15061(b)(3)).

If you have any questions regarding this item, please contact Dr. Craig Shuman, Regional Manager, Marine Region, at (805) 568-1246.

Attachments

cc: Stafford Lehr, Deputy Director
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Notice of Exemption

Appendix E

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

County Clerk

County of: N/A

From: (Public Agency): CA Fish and Game Commission
1416 Ninth Street, Room 1320
Sacramento, CA 95814

(Address)

Project Title: Add Section 128, Title 14, California Code of Regulations; Re: Warty Sea Cucumber

Project Applicant: N/A

Project Location - Specific:
Statewide

Project Location - City: N/A

Project Location - County: N/A

Description of Nature, Purpose and Beneficiaries of Project:

Adoption of regulations to establish a closed season for the commercial warty sea cucumber fishery to protect spawning aggregations from over exploitation and promote long-term sustainability of the resource pursuant to Fish and Game Code (FGC) subdivision 8405.3(a); and, clarify the Department of Fish and Wildlife logbook form that commercial sea cucumber permittees must complete to comply with FGC subdivision 8405.1(c).

Name of Public Agency Approving Project: CA Fish and Game Commission

Name of Person or Agency Carrying Out Project: CA Department of Fish and Wildlife

Exempt Status: (check one):

- ☐ Ministerial (Sec. 21080(b)(1); 15268);
- ☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
- ☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- ☒ Categorical Exemption. State type and section number: 14 CCR 15061(b)(3), 15307
- ☐ Statutory Exemptions. State code number: _____

Reasons why project is exempt:

See Attachment

Lead Agency

Contact Person: Valerie Termini

Area Code/Telephone/Extension: (916) 653-4899

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? ☐ Yes ☐ No

Signature: _____ Date: _____ Title: Executive Director

☒ Signed by Lead Agency ☐ Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: _____

October 12, 2017

ATTACHMENT TO NOTICE OF EXEMPTION
Adoption of Sea Cucumber Commercial Fishery Regulations
Section 128, Title 14, California Code of Regulations

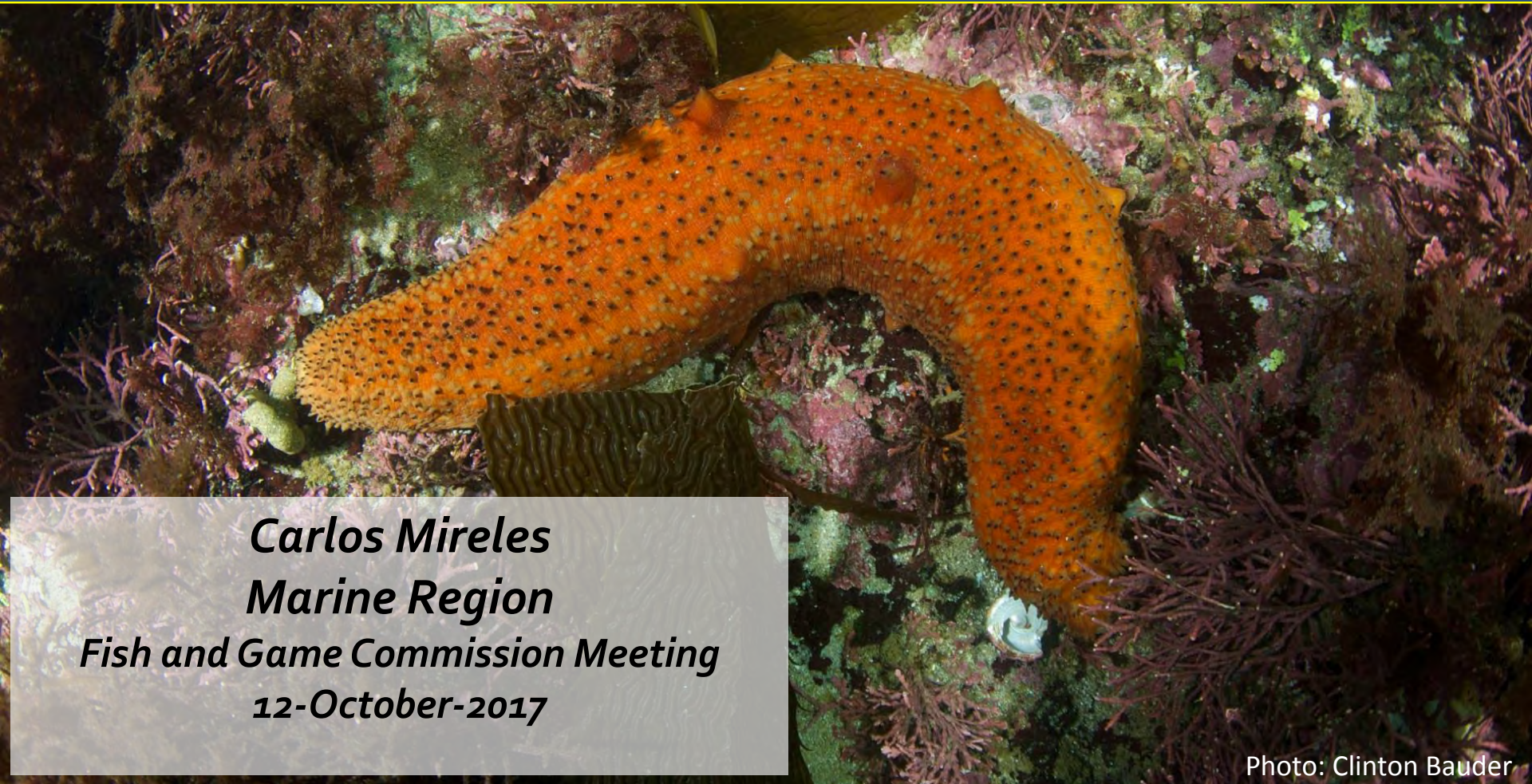
The California Fish and Game Commission (Commission) has taken final action on October 12, 2017, under the Fish and Game Code (FGC) and the Administrative Procedure Act with respect to Sea Cucumber Commercial Fishery Regulations. On June 22, 2017, the Commission authorized notice of its intent to add Section 128 to Title 14 of the California Code of Regulations (CCR) to establish a commercial fishing season for warty sea cucumber and clarify the logbook form that each commercial sea cucumber dive permit holder must complete to record his/her daily fishing activities. The Commission held a public hearing on August 16, 2017, to allow all interested individuals to provide comments and information to the Commission regarding the proposed regulations. For the purposes of the California Environmental Quality Act (CEQA, Pub. Resources Code, Section 21000 et seq.), the Commission adopted the regulations relying on the Class 7 categorical exemption for "Actions by Regulatory Agencies for Protection of Natural Resources" contained in CEQA Guideline Section 15307 (Section 15307, Title 14, CCR).

Categorical Exemption to Protect Natural Resources and the Environment

The exemption applies to agency actions that protect natural resources. Under FGC subdivision 8405.3(a), the Commission has the authority to adopt new regulations that are reasonably necessary to protect the sea cucumber resource, to assure a sustainable sea cucumber fishery, or to enhance enforcement activities. The adopted regulations promote a sustainable warty sea cucumber fishery by establishing a seasonal fishery closure to protect the spawning population. Because the regulations are intended to protect the warty sea cucumber resource, the Commission's adoption of the regulation is an activity that is the proper subject of the Class 7 categorical exemption under CEQA.

The proposed administrative amendments adopted by the Commission are exempt under the General Rule contained in CEQA Guidelines subdivision 15061(b)(3). CEQA applies only to projects that have the potential for causing significant effect on the environment. The proposed regulations would clarify the recordkeeping obligations already laid out in FGC subdivision 8405.1(c) by referring to a specific, existing form for commercial sea cucumber dive activities, Commercial Dive Fishing Log (DFG 120.7 (03/08)), that each sea cucumber dive permit holder must complete and submit to the California Department of Fish and Wildlife. Since there is no possibility that the regulations would have a significant adverse effect on the environment, the action is exempt from CEQA.

Adoption Hearing: Seasonal Closure to Stabilize the Commercial Dive Fishery for Warty Sea Cucumber



***Carlos Mireles
Marine Region
Fish and Game Commission Meeting
12-October-2017***

Photo: Clinton Bauder

Overview



- **Necessity for proposed changes**
 - Fishery/Resource Concerns
 - Department Research Results
- **Proposed Changes**
 - Seasonal Closure
 - Mail Survey Results
- **Timeline**
 - Next Steps



Photo: Clinton Bauder

Dive Fishery Concerns



- Catch & value trending down as price/lb increasing
- CPUE trending down
- Landings peak in spring/summer (75% March-July)
- Monitoring data show population declines

*Sea cucumber fisheries worldwide have collapsed after showing similar trends

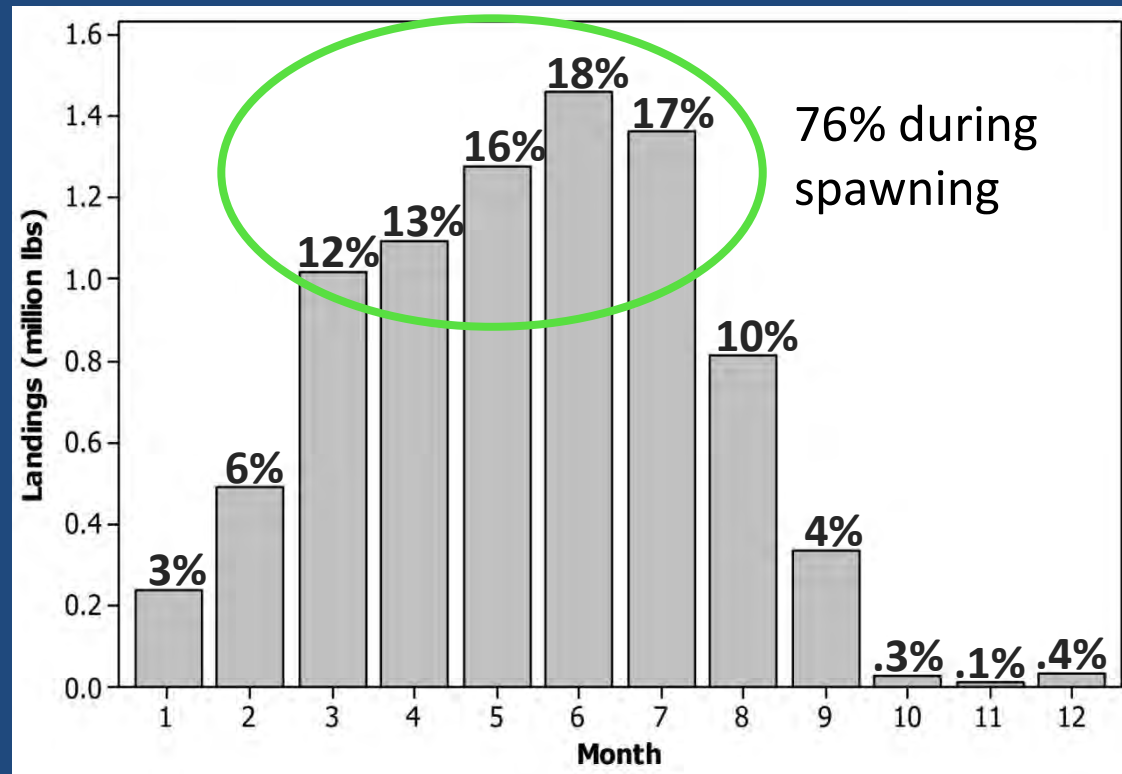


Department Research Results



- Aggregations peak in spring/early summer
 - Coincide with spawning activities

- Landings suggests that spawning aggregations are mainly targeted





Proposed Changes: Add Sec. 128 Commercial Take of Sea Cucumbers

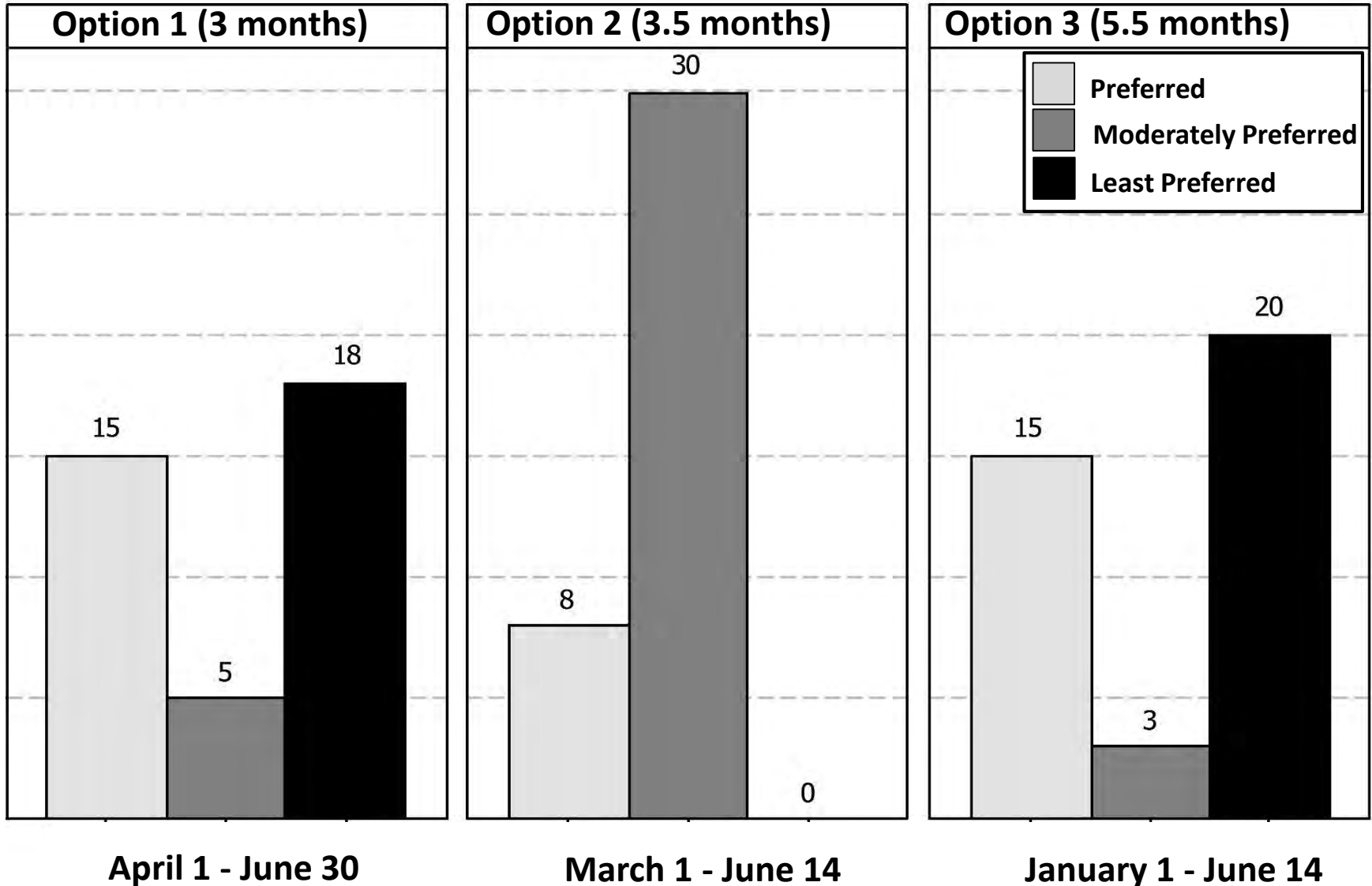
- Dive Logbook clarification
- Establish a seasonal closure for warty sea cucumber to protect their spawning activity

Three seasonal closure options:

- 1) April 1 - June 30 (3 months)
- 2) March 1 - June 14 (3.5 months)
- 3) January 1 - June 14 (5.5 months)

* Mail survey used to scope seasonal closure options

Mail Survey Results





Timeline/Recommendation

June 2017: Notice Hearing
August 2017: Discussion Hearing
October 2017: Adoption Hearing

Recommendation:

- Adoption of the proposed logbook clarification regulation
- Adoption of closure Option 2 (March 1 - June 14)



Questions?

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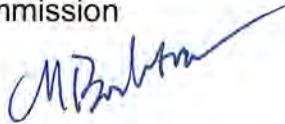
Memorandum

2017 SEP 19 PM 1:01

Date: September 19, 2017

To: Valerie Termini
Executive Director
Fish and Wildlife Commission

From: Charlton H. Bonham
Director



Subject: **Initial Statement of Reasons to Amended Section 29.15 Re: Red Abalone Regulations**

At its August 16th meeting, the Fish and Game Commission (Commission) authorized publishing notice of its intent to amend regulations for the recreational abalone fishery, including the regulatory option presented by the Department and additional options discussed and requested by the Commission at the meeting. The Initial Statement of Reasons (ISOR) must be filed by September 19th to accommodate the 45-day public comment period and allow the Commission to consider adopting new regulations at its meeting on December 6th.

The Department is submitting the ISOR with two proposed regulatory options for the recreational red abalone fishery in 2018.

- Option 1— Full Fishery Closure due to continued decline of abalone densities below the Abalone Recovery and Management Plan (ARMP) fishery closure density trigger of 0.30 abalone m². Additionally, the Department has not observed any significant improvement to the environmental conditions and health of the red abalone resource in 2017.
- Option 2 - Limited Fishery Option with four sub-options for limiting the fishery. This option was included in the ISOR at the request of the Commission. The four sub-options include:
 - Sub-Option A: Re-open Fort Ross for Abalone Fishing
 - Sub-Option B: Reduce Daily Bag/Possession and Annual Limits
 - Sub-Option C: Increase Minimum Size Limit to 8"
 - Sub-Option D: Limit the Number of Report Cards from 5,000 – 25,000

The four sub-options can be selected individually or in any combination. Some of the sub-options have ranges that must be selected from at the adoption hearing.

The Department recommends Option 1 to close the recreational abalone fishery. This recommendation is consistent with the ARMP and reflects the evidence that this fishery is unsustainable and in rapid decline.

Valerie Termini, Executive Director
Fish and Game Commission
September 19, 2017
Page 2

A draft Notice of Exemption (NOE) is also attached. Since the NOE is not anticipated to change, this early submission gives the Commission notice of the Department's recommendation to rely on a California Environmental Quality Act (CEQA) categorical exemption for red abalone.

If you have any questions or need additional information, please contact Dr. Craig Shuman, Marine Region, Regional Manager at (805) 568-0216.

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STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

Amend Section 29.15,
Title 14, California Code of Regulations
Re: Abalone Regulations

I. Date of Initial Statement of Reasons: September 12, 2017

II. Dates and Locations of Scheduled Hearings:

- (a) Notice Hearing: Date: August 17, 2017
Location: Sacramento, CA
- (b) Discussion Hearing: Date: October 12, 2017
Location: Atascadero, CA
- (c) Adoption Hearing: Date: December 7, 2017
Location: San Diego, CA

III. Description of Regulatory Action:

- (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

The recreational red abalone (*Haliotis rufescens*) fishery is one of California's most successful and popular fisheries, and is economically important, particularly to Sonoma and Mendocino counties where approximately 95 percent of the multi-million dollar fishery takes place. Over 25,000 fishermen participate in the fishery each year. Red abalone may be taken with a sport fishing license subject to regulations prescribed by the Fish and Game Commission (Commission). The Marine Life Management Act (MLMA) requires that fisheries are managed with objectives that include that the fishery is conducted sustainably so that the long-term health of the resource is not sacrificed in favor of short-term benefits (Fish and Game Code Section 7056(a)).

Under existing statute (Fish and Game Code Section 5521) and regulation (Section 29.15, Title 14, CCR), only red abalone may be taken for recreational purposes north of a line drawn due west magnetic from the center of the mouth of San Francisco Bay, except in the closed Fort Ross area. The current regulation also specifies the season, hours, a combined daily and possession limit, annual limit, special gear provisions, measuring

devices, abalone report card requirements, and minimum size. Red abalone may only be collected by skin diving (without SCUBA) or rock picking during low tides, so that a deep-water refuge population is maintained to enhance productivity of the fishery. The recreational red abalone season is scheduled to open April 1, 2018.

In 2005, the Commission adopted the Abalone Recovery and Management Plan (ARMP) pursuant to requirements in statute (Fish and Game Code Section 5522), to provide a cohesive framework for recovering depleted abalone populations in southern California, and for managing the northern California fishery and future fisheries, including red abalone. The ARMP articulates a framework for sustaining red abalone populations based largely on densities, catch, size, and reproductive success which serve as triggers for adjusting total allowable catch (TAC) and engaging other management measures. Using criteria described in the ARMP, the TAC is adjusted when specific triggers are met, through various management actions such as changes to daily bag/possession limits, seasonal limits, and season length.

In 2013, when average densities in northern California fell below established ARMP triggers, the Commission took action to adjust the TAC from 280,000 to 190,000, with the goal to sufficiently reduce take such that densities would stop declining and eventually recover to target densities. The Commission also took management action to meet the adjusted TAC by amending the annual limit for red abalone north of the Mendocino/Sonoma county line from 24 to 18, amending the annual limit south of the Mendocino/Sonoma county line from 24 to 9, and moving the start time for fishing from one half hour before sunrise to 8:00 a.m. The Fort Ross area was closed to red abalone fishing as a result of hitting the site closure trigger. The new regulations went into effect in 2014, resulting in a 35 percent decline in take to approximately 148,000 in 2015.

In 2015, a combination of unprecedented environmental and biological stressors began to take their toll on red abalone populations, including warmer-than-normal waters and decreasing food resources, leading to starvation conditions. In 2016 the California Department of Fish and Wildlife (Department) determined from surveys that deep water red abalone densities were below ARMP minimum sustainable levels, which prompted the Commission to take emergency action to reduce the season by two months and the annual limit from 18 to 9 for the 2017 season. Throughout 2016 and 2017, the Department conducted surveys, visual assessments, and histological sampling of red abalone along the north coast, and documenting citizen reports of unhealthy or moribund red abalone within the fishery. The Department has identified wide-sweeping changes in the density, occurrence, depth distribution, size and health of

red abalone and the kelp upon which it depends for food. Specifically, the Department has found:

- **Warm Water Conditions and Kelp and Algae Declines.** Red abalone are herbivores that live on rocky reefs in kelp forests, eating red and brown algae. In 2014, the kelp forests in the abalone fishery region declined by 93 percent from known maximum potential due to (1) extreme warm water conditions, (2) a dramatic decline in sea stars, important sea urchin predators, due to sea star disease, and (3) an unprecedented 60 percent increase in herbivorous purple sea urchin populations. Unlike red abalone, sea urchin populations are generally resilient to food shortages and can survive longer, such that even if water conditions cool, grazing pressure from surviving sea urchins may still keep kelp from wide-spread recovery. Warm water conditions persisted through 2015, impacting kelp recovery and red abalone health. Recently there has been some improvement in kelp growth with cooler water this year, but current kelp canopies are still very sparse compared to the long-term average.
- **Starvation Conditions.** Red abalone are susceptible to starvation when kelp and algal abundances decline. Kelp and other algal species are being actively cleared from rocky bottom habitat that is dominated by grazing purple sea urchins, which are at least sixty times more abundant now than prior to 2013. Urchin populations increased, in part, to large-scale loss of predatory starfish species in 2013 due to sea star wasting disease. Bull kelp and other algal food sources for red abalone have remained at extremely low levels since 2014; the large number of purple urchins is likely keeping kelp recovery confined to very limited areas.

Red abalone have been observed stacked on top of each other in shallow water, which could be attributed to either red abalone moving from deeper water to shallower water where algae is slightly more abundant, or red abalone trying to graze whatever algae is growing on the shells of other red abalone; shells were observed to be unusually clean of algal growth. Recent evidence indicates the starvation conditions have not yet abated; additional impacts have been observed in 2017 and are expected to continue through the 2018 season.

- **Density Declines.** In spite of the Commission's 2013 actions to reduce take and allow for recovery, densities continued to decline from an average of 0.47 red abalone per square meter (m^2) in 2013 to 0.44 per m^2 in 2016. The Department believes the density decline is largely due to the environmental conditions described herein. The emergency action taken by the Commission last year was made with a level of optimism about environmental conditions that are not being realized. Recent Department

surveys conducted in August of this year (2017) in Sonoma and Mendocino counties show a large decline in densities at seven of the ten index sites, to an average of 0.16 per m² (Table 1).

Table 1. Sonoma County and Mendocino County index site red abalone densities past (2012-2016) and current (2017) with percentage decline.

Index Site (Sonoma-SC or Mendocino-MC)	Past Density (abalone/m²) (year sampled)	2017 Density (abalone/m²)	Decline
Fort Ross (SC)	0.44 (2015)	0.20	-55%
Timber Cove (SC)	0.38 (2015)	0.15	-60%
Ocean Cove (SC)	0.44 (2016)	0.17	-61%
Salt Point (SC)	0.38 (2016)	0.06	-84%
Sea Ranch (SC)	0.37(2012)	0.27	-27%
Sonoma Average	0.39	0.17	-46%
Point Arena (MC)	0.66 (2014-15)	Not sampled	NA
Van Damme (MC)	0.33 (2016)	0.14	-58%
Russian Gulch (MC)	0.60 (2014)	Not sampled	NA
Caspar Cove (MC)	0.35 (2013)	Not sampled	NA
Todd's Point (MC)	0.47 (2013)	0.16	-60%
Mendocino Average	0.49	0.15	-69%
Overall Average	0.44	0.16*	-58%

* The ARMP fishery closure is 0.3 abalone/m². The overall average, when including past densities as a proxy for sites not sampled in 2017, is 0.28.

- Deep-Water Refuge.** Deep-water refuge is believed to be a critical component in maintaining a highly productive recreational fishery. Deep-water red abalone are generally safe from take and can be a source of both adults to replace red abalone removed from shallower waters and larvae to enhance red abalone reproduction rates. Surveys in summer of 2016 showed large reductions in red abalone densities in deep water refuges (greater than 28 foot depths). The average density of deep-water red abalone populations over the past four years has declined below the ARMP management trigger and increases the risk that the fishery is not sustainable. It should be noted that red abalone movement from deep water into shallow water or from cryptic locations to exposed shallow areas can give the impression that red abalone populations are stable or have increased if the absence of red abalone in deeper waters is not considered.

- **Abalone Health, Reproduction, and Mortality.** The abundance of warm water, coupled with a lack of algae, has severely impacted the health and reproductive development of red abalone. Fishermen and the public have reported weak, shrunken, and dying red abalone, as well as unusually high numbers of empty shells of all size classes throughout 2016, which has continued into the 2017 season. Department surveys in 2016 revealed that more than 25 percent of catch at 10 survey sites had body mass that was shrunken (foot observably smaller than the size of the shell), a sign of starvation conditions. The first survey of the 2017 season at nine survey sites show similar results with approximately 25 percent of the catch continuing to show starvation conditions. Reductions in body mass lead to reduced reproductive fitness; just a 20 percent reduction in body mass can reduce reproduction by 60-90 percent. Red abalone require approximately 12 years to grow to minimum legal size, so that multi-year gaps in reproduction will be observed in the fishery for years to come. Furthermore, recent laboratory feeding studies of starved wild red abalone indicate that reproductive capability may take more than one year to recover to normal levels after algal conditions improve.
- The weakened condition of red abalone may also reduce their ability to withstand normal storm waves during the winter months, and increase mortality. 2017 appears to be the third consecutive year of poor reproduction compared with previous average or good years, which is likely to put future sustainability of the fishery at risk. Four plus years of no or little reproduction (three consecutive years plus one year to recover to normal if conditions improve) will have very significant effects on the red abalone fishery in the future. Lack of kelp and other algae greatly reduces cover for red abalone, making them easier to locate by fishermen. In addition, fishermen are able to select the healthiest of the remaining red abalone from declining populations.

On December 7, 2016, the Commission took emergency action to reduce the annual limit for the take of red abalone from 18 to 12 (except for Sonoma County, which remains at 9) and reduce the months open to fishing from 7 to 5 by closing April and November. The emergency actions, along with the reductions in the fishery from action taken in 2014, have not had the desired effect of stopping the decline in red abalone densities during this unprecedented environmental disaster for red abalone in northern California's nearshore rocky reef habitats.

The ARMP adopted by the Commission in 2005 outlines management triggers (also known as control rules) to help guide fishery management.

- Fishery Reduction Density: The ARMP prescribes a 25% reduction in the catch when the density drops by 25%. **The fishery reduction trigger of 0.5 red abalone/m² has been met.** The next trigger for a 25% reduction in the catch is when the overall density of the fishery drops below 0.375 red abalone/m², which current densities are well below, **thereby triggering further reduction under the ARMP.**
- Fishery Closure Density: The ARMP prescribes a fishery closure if the average density of the index sites falls below 0.3 red abalone/m². Average density in this case is calculated using the most recent data from all ten index sites. **The fishery closure density of 0.3 red abalone/m² has been met (Table 1).**

Proposed Regulatory Options to Reduce Catch

The proposed regulations respond to continued dramatic decline of the red abalone population following severe, wide-spread, starvation conditions throughout the fishery. The proposals are grouped into two options:

- **Option 1– Full Fishery Closure**, until it recovers, due to continued decline of red abalone densities below the ARMP fishery closure density trigger of 0.30 red abalone/m².
 - The Department has not observed any significant improvement to the environmental conditions and health of the red abalone resource in 2017. This option is consistent with the ARMP.
- **Option 2 - Limited Fishery Option**, with four sub-options for limiting the fishery, which are not consistent with the ARMP. This option was included at the request of the Commission at the August 2017 meeting for further discussion. The four sub-options include:
 - Sub-Option A: Re-open Fort Ross for Abalone Fishing
 - Sub-Option B: Reduce Daily Bag/Possession and Annual Limits
 - Sub-Option C: Increase Minimum Size Limit to 8 inches
 - Sub-Option D: Limit the Number of Report Cards to within a Range of 5,000 to 25,000.

Estimates of the reduction in catch for some management sub-options are presented below, and are based on past fishing behavior and catch from report card data; however, these estimates are highly uncertain due to changes in the fishery and environment. Because past experience does not necessarily predict future behavior, especially when combining multiple sub-options, there are varying degrees of uncertainty associated with these estimates.

Option 1 - Full Fishery Closure: Amend Section 29.15 to close the fishery until it recovers.

Pros

- Consistent with the ARMP
- Consistent with general policies of the MLMA to ensure conservation, sustainable use, and restoration of state marine living resources for the benefit of all citizens of the state
- Easy to understand and enforce
- Maintains red abalone populations in shallow water since there are functionally none in deep water, which previously acted as a refuge population
- Population and fishery recovery rate maximized
 - Long-term economic impacts may be minimized
 - Maximizes future sustainable fishing opportunities
- Provides language for red abalone legally taken prior to the April 1, 2018 closure and still in possession at a residence.

Cons

- Eliminates all fishing opportunity in the near-term until recovery
- Will adversely affect local businesses in the-near term until recovery
- May increase illegal fishing
- Ceases Department funding from abalone report card sales to support biological research and enforcement

Option 2 – Limited Fishery Option: Amend Section 29.15 to establish a limited fishery to reduce take.

The limited fishery option uses as baseline the regulations that existed prior to the 2016 emergency action that modified the 2017 season. For example, the proposal assumes the season length is 7 months, April – June plus August through November. The limited fishery option has four sub-options that can be selected individually or in any combination. Some of the sub-options have ranges that must be selected at the adoption hearing.

Pros

- Allows limited red abalone fishing opportunity in the short-term
- Provides some economic benefits as compared to a complete closure

Cons

- Not consistent with the ARMP

- Not consistent with the MLMA objectives of conducting sustainable fisheries
- Allows continued targeting of healthiest remaining red abalone from declining populations
- Increases risk of collapse of California's last red abalone fishery

Sub-Option A: Re-open Fort Ross for Abalone Fishing

Fort Ross was closed through regulatory action in 2014 due to a severe decline in density following a toxic harmful algal bloom (HAB) in 2011. The most recent surveys from 2017 show an additional 18% density reduction from 2012 values, despite nearly four years of no fishing allowed in the area. Density at Fort Ross remains low (Table 1), below the site closure threshold, although it is higher than most of the other sites in Sonoma County. The sub-option to re-open Fort Ross acknowledges that all of the Sonoma County sites are now at similarly very low densities, and seeks to reduce fishing impacts at any given location by further distributing effort. In the past, a newly-opened site (e.g. Sea Lion Cove at Stornetta Ranch) experienced higher fishing pressure than surrounding sites and local densities were severely reduced (>65%) in just three years. The response of fishers to re-opening a very low-density site is not predictable.

Pros

- See Option 2 pros above
- May help spread fishing pressure so that most sites may experience somewhat reduced fishing pressure
- Re-introduce red abalone fishing access to the historically most-popular fishing site

Cons

- See Option 2 cons above
- Allows fishing of a population that is not self-sustaining. The density at Fort Ross has declined even in the absence of fishing. Opening this site to fishing pressure while starvation conditions persist will drive densities to decline more rapidly.
- Continued density declines at Fort Ross will severely hinder future population recovery through reduced reproduction.

Sub-Option B: Reduce Daily Bag/Possession and Annual Limits

The proposed regulation to reduce the daily bag/possession and annual limits is to allow limited fishing effort under the current conditions; a reduction in these limits is relatively simple to enforce and the regulation is easy to understand. A range of 1 to 3 red abalone per day (daily bag/ possession limit) and 2 to 9 red abalone per year (annual limit) is proposed. Some combinations of reduced

bag/possession and annual limits are listed in Table 2 with corresponding estimates of possible catch reductions. The estimates are based on data from abalone report cards returned in 2016 and are provided to frame take that could occur as a result of this sub-option. However, behavior of the fishers under these regulations are unknown. Estimates assume people will not increase or decrease the number of trips they made in 2016. Actual reductions in catch could be significantly different because of changes in availability of red abalone, the reluctance of fishers to buy abalone report cards under more restrictive limits, or a change in the numbers of trips per individual to take red abalone.

Table 2. Examples of estimated catches for reduced bag/possession and annual limits (Sub-Option B) using 2016 abalone report card data.

Daily Bag/ Possession Limit	Annual Limit	Estimated Catch
3	9	120,000
3	6	94,000
2	6	82,000
1	5	52,000
2	4	63,000
3	3	54,000
1	3	42,000
2	2	37,000
1	2	32,000

Pros

- See Option 2 pros above

Cons

- See Option 2 cons above
- Allows fishing on a resource that is not self-sustaining
- May increase illegal fishing. The demand for black market red abalone is already high and any further restrictions that limit take will increase the value of black market red abalone creating a greater incentive for poaching. In particular, poaching under the guise of recreational fishing (i.e., altering report card information) may increase.
- Lower annual limits may increase violations of card alteration, failure to complete card, or false application for lost card
- Fishers accustomed to taking larger annual limits might decide greatly reduced annual limits are not worth the cost of a report card
- Fishers from outside the region who are accustomed to taking larger bag/possession limits might decide that the necessary travel and costs are not worth the effort, impacting fishing-related businesses

Sub-Option C: Increase Minimum Size Limit to 8 Inches

Increasing the minimum size limit is often used to allow more time for animals to reproduce before fishing. However, during this starvation event most red abalone are starving and are not reproductive. It is unclear if increasing the size limit to 8-inch red abalone under these conditions will result in the expected benefits. In addition, there is evidence that increasing the size limit will likely increase incidental fishing mortality as fishers remove red abalone searching for larger animals that are less common. Red abalone have no blood clotting mechanisms and so injury with an abalone iron can lead to mortality even when sublegal red abalone are returned to the ocean. Another potential negative effect of an increased size limit is that fishing effort will focus on larger animals, which produce exponentially more gametes, and would therefore hinder the recovery of populations once ocean conditions improve.

This option is often proposed as a way to lower the number of red abalone taken without reducing daily or annual limits. While the total number of red abalone taken would be lower, the number of larger red abalone taken will increase along with the mortality of sublegal red abalone; the overall effect would be reduced reproductive capacity of the population. A reduction in daily/possession and annual limits should also be included with an increase in size limit to reduce the negative effects.

Pros

- See Option 2 pros above

Cons

- See Option 2 cons above
- Allows fishing on a resource that is not self-sustaining
- Increases fishing-related injuries and incidental mortality to red abalone
- Targets most valuable (large) red abalone needed for recovery when conditions improve
- Requires every fisher to buy or make new fixed gauges, increasing compliance costs

Sub-Option D: Limit the Number of Report Cards to within a range of 5,000 to 25,000.

The number of fishery participants since the 2014 regulation change has averaged around 25,500 annually. The estimated total catch for 2016 was

154,000 red abalone (25,129 participants). Limiting the number of report cards sold is one alternative to potentially reducing the fishery catch and still allow a limited fishery under current conditions. Current regulations limit the number of cards an individual can purchase per season to one. There is also a provision for limited replacement due to lost cards.

Table 3 shows estimated catch for various limits on abalone report cards sold. The estimated catch is based on a season with an annual limit of 18, but the actual estimate of catch may be lower with a lower annual and/or bag/possession limit. Similar to Sub-option B, the estimates are based on data from abalone report cards returned in 2016 and provide a framework of the potential take that could occur. As with Sub-option B, behavior of the fishers under these regulations are unknown and assume that people will not increase or decrease the number of trips they made in 2016. Actual reductions in catch could be significantly different because of changes in availability of red abalone or the demographic group of fishers that are likely to purchase a limited number of cards on a first-come-first-serve basis (i.e., fishery highliners versus casual participants).

Table 3. Examples of estimated catches from limiting report cards (Sub-Option D) using straight percentage reductions (2016 catch is the basis for catch estimate)

Number of Report Cards	Estimated Catch
5,000 (20%)	30,800
10,000 (40%)	61,600
15,000 (60%)	92,400
20,000 (80%)	123,200
25,000 (2016)	154,000

Pros

- See Option 2 pros above

Cons

- See Option 2 cons above
- Allows fishing on a resource that is not self-sustaining
- The fishery is no longer an open access fishery and access will be first-come-first-serve until the report card sales quota is reached
- May increase illegal fishing. The demand for black market red abalone is already high and any further restrictions that limit take will increase the value of black market red abalone creating a greater incentive for poaching. In particular, poaching under the guise of recreational fishing (i.e., altering report card information) may increase.

Necessity of Regulation Changes

This regulatory proposal is necessary to facilitate the red abalone population's recovery from the multi-year poor environmental conditions and massive losses of red abalone in both shallow and deep-water habitats. The Department finds the following detrimental red abalone resource conditions:

- (1) A dramatic decline in sea stars, important sea urchin predators, due to sea star disease.
- (2) A dramatic decline (93 percent) of the kelp canopy in Sonoma and Mendocino counties in 2014 which continues to persist.
- (3) A dramatic increase (60 times) in the density of purple sea urchins in 2015, increasing competition with red abalone for food.
- (4) An increased efficiency of fishing efforts in shallow habitats due to the lack of kelp and movement of red abalone into shallow fishing areas.
- (5) A decline in deep-water red abalone densities.
- (6) Continued decline in overall average red abalone densities in spite of significant take reductions implemented in 2014 and in 2017.
- (7) Visual body health scores for red abalone taken in the fishery during the spring of 2016 show that more than 25 percent of red abalone were shrunk in body mass at sites in northern California. Similar body health scores have been seen in the fishery in the spring of the 2017.
- (8) Body condition index was very low in both Sonoma and Mendocino county sites in 2016 and 2017 (60 red abalone per county per year).
- (9) Department staff and red abalone fishermen have observed weak red abalone washed up on shore and easy to remove from the rocks.
- (10) Department staff and red abalone fishermen have observed many new shells of all size classes, indicating significant increases in natural mortality.
- (11) Gonad index was very low in both Sonoma and Mendocino county sites in 2016 and 2017 (60 red abalone per county per year).
- (12) Low numbers of larval red abalone observed in plankton surveys in Sonoma and Mendocino counties in 2015.
- (13) Low numbers of newly settled red abalone observed in coralline-covered rock samples from Sonoma and Mendocino counties in 2015 and 2016.
- (14) No juvenile (< 21 millimeter) red abalone observed in artificial reefs in Van Damme State Park in 2016 and 2017.

Department Recommendation

The red abalone fishery is in an unprecedented state and its future is at risk. The possibility of a complete fishery collapse is unknown; however, this period of extreme natural mortality (>50%) is ongoing and has not yet begun to subside.

The risk of fishery collapse increases when abalone densities fall below levels identified in the ARMP at the fishery closure density trigger. For example, Southern California's abalone fisheries collapsed after densities fell below 0.3 abalone per m². MLMA requires that fisheries are managed to meet specific objectives, including that the fishery is conducted sustainably so that the long-term health of the resource is not sacrificed in favor of short-term benefits (Fish and Game Code Section 7056(a)).

Based on the sustainability mandates in the MLMA and the fishery management measures outlined in the ARMP, the Department's recommendation is to close the fishery (Option 1) which is consistent with the management triggers of the ARMP.

Option 2 consists of four sub-options for a limited fishery that are not consistent with the management triggers in the ARMP; as such, the Department does not recommend Option 2.

Updates to Authority and Reference Citations Based on Recent Legislation

Senate Bill 1473 (Stats. 2016, Ch. 546) made organizational changes to the Fish and Game Code that became effective January 1, 2017. The changes included moving the Commission's exemptions from specified Administrative Procedure Act time frames from Section 202 to Section 265 of the Fish and Game Code, moving the Commission's notice requirements from Section 210 to Section 260 of the Fish and Game Code, and moving the Commission's authority to adopt emergency regulations from Section 240 to Section 399 of the Fish and Game Code. These were organizational changes only. In accordance with these changes to the Fish and Game Code, sections 202, 210 and 240 are removed from, and sections 260, 265 and 399 are added to, the authority and reference citations for Section 29.15. Senate Bill 1473 also repealed subdivision (b) of Section 220 of the Fish and Game Code; therefore, Section 220 is removed from the list of authority and reference citations in Section 29.15.

- (b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 200, 205, 260, 265, 399, 5520, 5521, and 7149.8, Fish and Game Code.

Reference: Sections 200, 205, 265, 5520, 5521, 7145 and 7149.8, Fish and Game Code.

- (c) Specific Technology or Equipment Required by Regulatory Change:

None.

- (d) Identification of Reports or Documents Supporting Regulation Change:

Abalone Recovery and Management Plan
<https://www.wildlife.ca.gov/Conservation/Marine/ARMP>

- (e) Public Discussions of Proposed Regulations Prior to Notice Publication:

November 5, 2016, Cotati, California
December 3, 2016, Fort Bragg, California
December 7, 2016, San Diego, California
February 8, 2017, Rohnert Park, California
March 18, 2017, Sacramento, California.
March 23, 2017, San Clemente, California
June 22, 2017, Crescent City, California
July 20, 2017, Petaluma, California
August 16, 2017, Sacramento, California

IV. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change:

Site closures were considered but rejected because it would concentrate fishers to a smaller number of locations, be complicated and confusing to enforce, and would most likely put excessive pressure on the open sites.

- (b) No Change Alternative:

Without the proposed regulatory change, red abalone fishery regulations will revert back to those that existed before the 2016 emergency rulemaking. Evidence exists that levels of take prior to the emergency rulemaking will be unsustainable under current environmental and stock health conditions. The no change alternative is not consistent with established ARMP triggers and management measures.

- (c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purpose for which

the regulation is proposed, would be as effective and less burdensome to affected private persons than the proposed regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because the regulatory action is not likely to significantly increase compliance costs, may or may not significantly impact fishery activity, and only applies to a fishery that is unique to the state of California.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission anticipates limited impacts on the creation or elimination of jobs within the state; no impact on the creation of new businesses or the elimination of existing businesses; generalized benefits to the health and welfare of California residents; no effects on worker safety; and benefits to the State's environment. The proposed action is designed to ensure the sustainability and quality of the fishery, promoting participation, fishing activity, and economic activity. However, a complete closure of the red abalone fishery could result in up to 250 direct job losses.

(c) Cost Impacts on a Representative Private Person or Business:

Except for Option 2, Sub-Option C: Increase Minimum Size Limit, wherein

fishers may have to spend from \$5 -\$15 to purchase a new abalone measuring gauge, the agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

No costs or savings; however, the Department has the potential to lose revenue from abalone report card sales, from \$103,750 to \$520,825. Federal funding to the state would not be impacted by this proposed change in recreational abalone fishing regulations.

- (e) Nondiscretionary Costs/Savings to Local Agencies:

No costs or savings, however local governments have the potential to receive less sales tax and transient occupancy tax revenue.

- (f) Programs Mandated on Local Agencies or School Districts:

None.

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code:

None.

- (h) Effect on Housing Costs:

None.

VII. Economic Impact Assessment:

The proposed regulations are designed to serve the objectives of resource management and the interests of the recreational fishing community, while minimizing the potential for adverse economic impacts to fishery area businesses and throughout the state. Restrictive actions are only proposed to preserve the sustainability of the resource and thus the long-term viability of the fishery that should continue to draw economic benefits to the relatively isolated coastal communities in the fishery area.

The proposed Full Fishery Closure (Option 1) is anticipated to eliminate all recreational abalone fishers' visits, along with their spending traveling to and spending in the fishery areas on food and accommodations, equipment, and

other retail. In the absence of the unique draw of recreational abalone fishing, a 100% drop in direct expenditures of \$18.6 million is estimated; this drop is estimated to reduce the total (direct, indirect, and induced) economic impact by \$26.7 million. A maximum of 250 direct jobs could be eliminated.

The Limited Fishery (Option 2) with an array of sub-options that may be applied singularly or combined is anticipated to reduce direct expenditures by varying degrees. The degree by which each sub-option impacts fishing trips, days and spending is difficult to predict. Conjecture about the extent to which abalone fishers reduce fishing trips, days, overnight stays, and/or opt out of abalone fishing for the entire season would be speculative. Additionally, the combination of sub-options that may be chosen is not known. Given that, we present estimates for how a 25%, 50%, 75% and 100% decline in fishery activity could impact the local and statewide economies.

Table 4. Economic Impact of Incremental Reductions in Abalone Fishing

Percent Change in Direct Expenditure	Total Seasonal Direct Expenditure	Total Economic Output	Change in Total Output	Job Direct Impacts
2014*	\$18.6	\$26.7	\$0.0	250
-25%	\$14.0	\$20.0	-\$6.7	-63
-50%	\$9.3	\$13.4	-\$13.4	-125
-75%	\$4.7	\$6.7	-\$20.0	-188
-100%	\$0.0	\$0.0	-\$26.7	-250

* 2014 season had a reduced bag/possession limit, later start time, and the closure of Fort Ross (Reid, et al., 2016). Dollar figures are in millions of 2016\$.

While reaction of abalone fishers to Option 2 sub-options is difficult to predict, previous emergencies and restrictive actions taken in 2014 and 2016 have shown drops in abalone report cards sales only as large as 15.6%. If sub-option C, a limit on the number of cards, is implemented alone, then the anticipated economic impact could be more predictable. However, the reduction in daily and/or annual bag/possession limits, the opening of Fort Ross, and/or the increase in size limits may have various influences on the extent that fishery participants may be inclined to reduce fishing trips. Other factors may also influence participation in the fishery, such as the quality of the red abalone, the weather, gas prices, and other unknowns. That said, the impacts may range from a \$6.7 to \$20 million reduction in red abalone-associated spending and 63 to 188 potential job losses.

Fiscal Impact Assessment

Local Government Tax Impact

Abalone regulatory options were evaluated as if visits and spending to the fishery

areas were to drop by 25%, 50%, 75%, or 100%. Abalone fishers introduce expenditures in the retail, food and accommodations, automotive service and fuel, sporting equipment sales/rent/lease, and recreational services sectors; these direct expenditures generate local sales taxes and transient occupancy taxes for the fishery area local governments. The California State Board of Equalization reports local sales tax rates for the areas under evaluation. Local sales tax rates in Sonoma, Marin, Mendocino, Humboldt, and Del Norte counties range from 1.5% to 2.5%. Reduced spending due to reduced numbers of visits and reductions in the length of stay could result in sales tax revenue losses that range from \$66,750 to \$267,000 over the season.

Transient occupancy tax (TOT) fishers' survey responses reveal that those who travel a greater distance to the fishery area are more likely to choose to stay overnight in the area. Those who live in the closest proximity to harvest sites and those who harvest in the earliest hours of the day show a lower likelihood of staying overnight. Overnight stays are often at private campgrounds, motels, and hotels, all of which collect TOTs. County treasurer tax collectors report the county transient occupancy taxes. TOT rates in Sonoma, Marin, Mendocino, Humboldt, and Del Norte counties range from 9% to 10%. The projected losses in overnight stays range from 1,000 to 10,000 nights, which could result in losses in local TOT revenues to local governments from \$7,600 to \$76,000 over a season.

State Government Fiscal Impact

Fiscal impacts to the state via Department revenue could occur through reduced abalone report card sales, with limits on card sales (Option 2, Sub-option D), declines due to changes in bag/possession and size limits (sub-options B, C), and/or the full closure of the fishery (Option 1).

Abalone report card sales from 2012 to the partial year 2017 show that the 2016 emergency action did not precipitate a substantial drop in abalone report card sales revenue to the Department. Notably, the 2014 regulation change that targeted a 25% reduction in red abalone take elicited the largest drop of 15.6% in card sales.

Table 5. Abalone Report Card Sales 2012 – 2017

Abalone Report	2012	2013	2014	2015	2016	2017
Cards Sold	29,202	30,579	25,798	25,542	25,129	21,062*
% Change	-6.35%	4.72%	-15.63%	-0.99%	-1.62%	N/A

*Partial 2017 data – as of 6/30/2017.

Reductions in abalone report card sales are estimated to range from about 5,000 to 25,000 cards, which could result in card sales revenue losses from \$103,750 to \$520,825 at the 2017 card price of \$20.75. Assuming similar decreases in report card sales both years, potential losses in revenues for fiscal years 2018 and 2019 are projected below.

Table 6. Projected Revenue Loss

Fiscal Year	Projected Report Card Revenue Loss
2018	\$103,750 to \$520,825
2019	\$131,775 to \$527,100

Federal funding to the state would not be impacted by this proposed change in recreational abalone fishing regulations.

(a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State:

The Commission anticipates limited negative impacts on the creation or elimination of jobs within the state. The proposed action is designed to ensure the sustainability and quality of the fishery, promoting participation, fishing activity, and economic activity. However, a complete closure of the red abalone fishery could result in up to 250 direct job losses.

(b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State:

The Commission does not anticipate the impact of take limitations or potential seasonal closure of the red abalone fishery to be a principle impetus for the creation of new businesses or the elimination of existing businesses within the state. Restrictive seasonal actions are only proposed to preserve the sustainability of the resource and thus the long-term viability of the fishery that may then continue to support fishery-related businesses.

(c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State:

The Commission does not anticipate the impact of take limitations or potential seasonal closure of the red abalone fishery to have a significant impact on the expansion of businesses currently doing business within the state. Restrictive seasonal actions are only proposed to preserve the sustainability of the resource and thus the long-term viability of the fishery that may then continue to support fishery-related businesses.

(d) Benefits of the Regulation to the Health and Welfare of California Residents:

The Commission anticipates generalized benefits to the health and welfare of California residents through the sustainable management of the red abalone fishery.

(e) Benefits of the Regulation to Worker Safety: None

(f) Benefits of the Regulation to the State's Environment:

The Commission anticipates benefits to the State's environment. It is the policy of this State to ensure "the conservation, sustainable use, and, where feasible, restoration of California's marine living resources for the benefit of all the citizens of the State" (Fish and Game Code sections 1700, 7050(b)).

(g) Other Benefits of the Regulation: None

Informative Digest (Plain English Overview)

The recreational red abalone (*Haliotis rufescens*) fishery is one of California's most successful and popular fisheries, and is economically important, particularly to Sonoma and Mendocino counties where approximately 95 percent of the multi-million dollar fishery takes place. Over 25,000 fishermen participate in the fishery each year. Red abalone may be taken with a sport fishing license subject to regulations prescribed by the Fish and Game Commission (Commission).

Under existing statute (Fish and Game Code Section 5521) and regulation (Section 29.15, Title 14, CCR), red abalone may only be taken for recreational purposes north of a line drawn due west magnetic from the center of the mouth of San Francisco Bay, except in the closed Fort Ross area. The current regulation also specifies the season, hours, a combined daily and possession limit, daily limit, special gear provisions, measuring devices, abalone report card requirements, and minimum size. Red abalone may only be collected by skin diving (without SCUBA) or rock picking during low tides. The recreational red abalone season is scheduled to open April 1, 2018.

The California Department of Fish and Wildlife (Department) has identified major changes in the density, occurrence, size and health of red abalone and the kelp upon which it depends for food. Specifically, the Department has found no meaningful changes in three red abalone resource conditions: fishing grounds, health and reproduction.

Critical negative impacts to red abalone fishing grounds:

- (1) A dramatic decline in sea stars, important sea urchin predators, due to sea star disease.
- (2) A dramatic increase (60 times) in the density of purple sea urchins in 2015, increasing competition with red abalone for food.
- (3) A lack of kelp, a vital food for red abalone and which has resulted in increasing the efficiency of fishing efforts in shallow habitats.
- (4) A decline in deep-water red abalone densities.
- (5) Continued decline in overall average red abalone densities in spite of significant take reductions implemented in 2014. 2017 Department surveys in Sonoma and Mendocino counties show a dramatic decline in densities at seven of the 10 index sites, to an average of 0.16 per m². This average is below the ARMP fishery closure trigger of 0.3 per m²

Critical negative impacts to red abalone health:

- (1) Visual red abalone body health scores for red abalone taken in the fishery during the spring of 2016 show that more than 25 percent of red abalone were shrunk in body mass at sites in northern California.

- (2) Body condition index declined at Van Damme State Park by 20 percent, but no significant difference was observed at Fort Ross in summer of 2016 (60 red abalone per site).
- (3) Department staff and abalone fishermen have observed weak red abalone washed up on shore and easy to remove from the rocks as well as many new shells of all size classes, indicating increased natural mortality.

Critical negative impacts to red abalone reproduction:

- (1) Gonad index declined significantly at Van Damme State Park and at Fort Ross in the summer of 2016 (60 red abalone per site).
- (2) Small numbers of larval red abalone observed in plankton surveys in Sonoma and Mendocino counties in 2015.
- (3) Small numbers of newly settled red abalone observed in coralline-covered rock samples from Sonoma and Mendocino counties in 2015.
- (4) No juvenile (< 21 millimeter) red abalone observed in artificial reefs in Van Damme State Park in 2016 and 2017.

Proposed Regulatory Action

At the August 16, 2017 Commission meeting, the Department presented its recommendation that the fishery be closed due to hitting the trigger as set forth in the ARMP (Option 1). The Commission added additional regulatory options to protect the tradition of abalone fishing. These additional options are presented as Option 2 with sub-options that can be selected individually or in any combination. Some of the sub-options have ranges that must be selected from at the adoption hearing. Option 2 is not consistent with the ARMP.

Option 1 is consistent with the ARMP and protects the fishery during poor environmental conditions without the addition of fishing mortality. The Department recommends this regulatory proposal as a necessary step to facilitate the red abalone population's recovery from the multi-year poor environmental conditions and massive losses of red abalone fishery stock.

Option 2 is a set of regulatory options to maintain some fishing opportunity to maintain the tradition of abalone fishing. This option is divided into sub-options that allow limited take as follows:

Sub-Option A: Open Fort Ross to abalone fishing

Sub-Option B: Reduce the daily bag/possession limits within the range of [1 to 3] and the annual limit within the range of [2 to 9]

Sub-Option C: Increase the size limit to 8 inches

Sub-Option D: Limit the number of report cards sold annually within the range of [5,000 to 25,000]

The Commission may adopt one or more sub-options from Option 2 and must specify a specific number for sub-options B and D.

Updates to Authority and Reference Citations Based on Recent Legislation

Senate Bill 1473 (Stats. 2016, Ch. 546) made organizational changes to the Fish and Game Code that became effective January 1, 2017. The changes included moving the Commission's exemptions from specified Administrative Procedure Act time frames from Section 202 to Section 265 of the Fish and Game Code, moving the Commission's notice requirements from Section 210 to Section 260 of the Fish and Game Code, and moving the Commission's authority to adopt emergency regulations from Section 240 to Section 399 of the Fish and Game Code. These were organizational changes only. In accordance with these changes to the Fish and Game Code, sections 202, 210 and 240 are removed from, and sections 260, 265 and 399 are added to, the authority and reference citations for Section 29.15. Senate Bill 1473 also repealed subdivision (b) of Section 220 of the Fish and Game Code; therefore, Section 220 is removed from the list of authority and reference citations in Section 29.15.

Benefits of the Regulation

The proposed reduction within the red abalone fishery will benefit the valuable red abalone resource by protecting it from excessive fishing mortality during the current poor environmental conditions. Further conserving the red abalone resource now will allow it the opportunity to rebuild and be sustainable for the future.

Consistency and Compatibility with Existing State Regulations

The Legislature has delegated authority to the Commission to promulgate recreational fishing regulations (Fish and Game Code, sections 200, 205, and 265); no other state agency has the authority to promulgate such regulations. The Commission has conducted a search of Title 14, CCR and determined that the proposed regulation is neither inconsistent nor incompatible with existing State regulations and that the proposed regulations are consistent with other recreational fishing regulations and marine protected area regulations in Title 14, CCR.

Regulatory Language

OPTION ONE

Section 29.15, Title 14, CCR is amended to read:

§ 29.15. Abalone.

~~(a) Open Area: Except in the area described in subsection (a)(1) below, abalone may only be taken north of a line drawn due west magnetic from the center of the mouth of San Francisco Bay. No abalone may be taken, landed, or possessed if landed south of this line.~~

~~(1) No Abalone may be taken in the Fort Ross area bounded by the mean high tide line and a line drawn due south true from 38°30.63' N, 123°14.98' W (the northern point of Fort Ross Cove) and a line drawn due west true from 38° 29.45' N, 123°11.72' W (Jewel Gulch, south boundary Fort Ross State Park).~~

(a) Effective April 1, 2018, all ocean waters are closed to the take of abalone. Abalone may not be taken or possessed. The following exceptions are for abalone in possession prior to April 1, 2018:

(1) Minimum Abalone Size: All red abalone must be seven inches or greater measured along the longest shell diameter.

(2) Abalone Possession and Transportation: It shall be unlawful to possess any untagged abalone or any abalone that have been removed from their shell, except when they are being prepared for immediate consumption.

~~(b) Open Season and Hours:~~

~~(1) Open Season: Abalone may be taken only during the months of May, June, August, September and October.~~

~~(2) Open Hours: Abalone may be taken only from 8:00 AM to one half hour after sunset.~~

~~(c) Bag Limit and Yearly Trip Limit: Three red abalone, *Haliotis rufescens*, may be taken per day. No more than three abalone may be possessed at any time. No other species of abalone may be taken or possessed. Each person taking abalone shall stop detaching abalone when the limit of three is reached. No person shall take more than 12 abalone during a calendar year. In the Open Area as defined in subsections 29.15(a) and 29.15(a)(1) above, not more than 9 abalone of the yearly trip limit may be taken south of the boundary between Sonoma and Mendocino Counties.~~

~~(d) Minimum Abalone Size: All legal size abalone detached must be retained. No undersized abalone may be brought ashore or aboard any boat, placed in any type of receiver, kept on the person, or retained in any person's possession or under his control. Undersize abalone must be replaced immediately to the same surface of the rock from which detached. Abalones brought ashore shall be in such a condition that the size can be determined.~~

~~(e) Special Gear Provisions: The use of SCUBA gear or surface supplied air to take abalone is prohibited. Abalone may not be taken or possessed aboard any boat, vessel, or floating device in the water containing SCUBA or surface supplied air. Abalone may~~

~~be taken only by hand or by devices commonly known as abalone irons. Abalone irons must be less than 36 inches long, straight or with a curve having a radius of not less than 18 inches, and must not be less than 3/4 inch wide nor less than 1/16 inch thick. All edges must be rounded and free of sharp edges. Knives, screwdrivers and sharp instruments are prohibited.~~

~~(f) Measuring Device. Every person while taking abalone shall carry a fixed caliper measuring gauge capable of accurately measuring seven inches. The measuring device shall have fixed opposing arms of sufficient length to measure the abalone by placing the gauge over the shell.~~

~~(g) Abalone Possession and Transportation:~~

~~Abalones shall not be removed from their shell, except when being prepared for immediate consumption.~~

~~(1) Individuals taking abalone shall maintain separate possession of their abalone. Abalone may not be commingled in a float tube, dive board, dive bag, or any other container or device, until properly tagged. Only after abalones are properly tagged, as described in Section 29.16(b), Title 14, CCR, may they be commingled with other abalone taken by another person.~~

~~(h) Report Card Required: Any person fishing for or taking abalone shall have in their possession a nontransferable Abalone Report Card issued by the department and shall adhere to all reporting and tagging requirements for abalone defined in Sections 1.74 and 29.16, Title 14, CCR.~~

OPTION TWO

There are 4 Sub-Options for subsections (a), (c), (d) and (h)

Section 29.15, Title 14, CCR is amended to read:

§ 29.15. Abalone.

[Sub-Option A – Opens Fort Ross for no site closures in Northern California]

~~(a) Open Area: Except in the area described in subsection (a)(1) below,~~
Abalone may only be taken north of a line drawn due west magnetic from the center of the mouth of San Francisco Bay. No abalone may be taken, landed, or possessed if landed south of this line.

~~(1) No Abalone may be taken in the Fort Ross area bounded by the mean high tide line and a line drawn due south true from 38°30.63' N, 123°14.98' W (the northern point of Fort Ross Cove) and a line drawn due west true from 38° 29.45' N, 123°11.72' W (Jewel Gulch, south boundary Fort Ross State Park).~~

~~(b) Open Season and Hours:~~

- (1) Open Season: Abalone may be taken only during the months of April, May, June, August, September, October, and November.
- (2) Open Hours: Abalone may be taken only from 8:00 AM to one-half hour after sunset.

[Sub-Option B – Reduces daily bag/possession and/or annual limits]

(c) Bag Limit and Yearly Trip Limit: ~~Three~~^[1-3] red abalone, *Haliotis rufescens*, may be taken per day. ~~No more than three abalone may be or~~ possessed at any time. No other species of abalone may be taken or possessed. Each person taking abalone shall stop detaching abalone when the limit of ~~three~~^[1-3] is reached. No person shall take more than ~~48~~^[2-9] abalone during a calendar year. ~~In the Open Area as defined in subsections 29.15(a) and 29.15(a)(1) above, not more than 9 abalone of the yearly trip limit may be taken south of the boundary between Sonoma and Mendocino Counties.~~

[Sub-Option C – Increases minimum size limit for take]

(d) Minimum Abalone Size: All red abalone must be ~~seven~~^{eight} inches or greater measured along the longest shell diameter. All legal size abalone detached must be retained. No undersized abalone may be brought ashore or aboard any boat, placed in any type of receiver, kept on the person, or retained in any person's possession or under his or her direct control. Undersize abalone must be replaced immediately to the same surface of the rock from which detached. Abalones brought ashore shall be in such a condition that the size can be determined.

[...No changes to subsections (e) through (g)]

[Sub-Option D – Provides limit on report card sales]

(h) Report Card Required: Any person fishing for or taking abalone shall have in their possession a nontransferable Abalone Report Card issued by the department and shall adhere to all reporting and tagging requirements for abalone defined in Sections 1.74 and 29.16, Title 14, CCR.

(1) Starting January 1, 2018, a total of not more than [5,000-25,000] Abalone Report Cards may be issued by the department per season.

(2) Abalone report cards will be available on a first-come, first served basis no earlier than 45 days prior to the first day of the abalone season.

Note: Authority cited: Sections 200, ~~202~~, 205, ~~240~~, ~~220~~, ~~240~~²⁶⁰, ~~265~~, 399, 5520, 5521 and 7149.8, Fish and Game Code. Reference: Sections 200, ~~202~~, 205, ~~220~~²⁶⁵, 5520, 5521, 7145 and 7149.8, Fish and Game Code.

Notice of Exemption

Appendix E

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

County Clerk

County of: N/A

From: (Public Agency): CA Fish and Game Commission
1416 Ninth Street, Room 1320
Sacramento, CA 95814

(Address)

Project Title: Amend § 29.15, Title 14, CCR, Abalone take reduction due bad environmental conditions

Project Applicant: N/A

Project Location - Specific:

Statewide

Project Location - City: N/A

Project Location - County: N/A

Description of Nature, Purpose and Beneficiaries of Project:

A combination of environmental and biological stressors has greatly reduce abalone populations due to starvation conditions. In 2016, the Commission took emergency action to reduce the annual take limit and close the season in April and November. This project will continue the emergency regulations protection.

Name of Public Agency Approving Project: California Fish and Game Commission

Name of Person or Agency Carrying Out Project: California Department of Fish and Wildlife

Exempt Status: **(check one):**

- ☐ Ministerial (Sec. 21080(b)(1); 15268);
- ☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
- ☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- ☒ Categorical Exemption. State type and section number: Cal. Code Regs., tit. 14, §§ 15307, 15308
- ☐ Statutory Exemptions. State code number: _____

Reasons why project is exempt:

See attached.

Lead Agency

Contact Person: Valerie Termini

Area Code/Telephone/Extension: (916) 653-4899

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? ☒ Yes ☐ No

Signature: _____ Date: 12/7/2017 Title: Executive Director

☒ Signed by Lead Agency ☐ Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: _____

December 7, 2017

**ATTACHMENT TO NOTICE OF EXEMPTION
Adoption of Red Abalone Take Reduction
Due to Harmful Environmental Conditions**

The California Fish and Game Commission (Commission) has taken final action under the Fish and Game Code and the Administrative Procedure Act (APA) with respect to the proposed project on December 7, 2017. In taking its final action for the purposes of the California Environmental Quality Act (CEQA, Pub. Resources Code, § 21000 *et seq.*), the Commission adopted the regulations relying on the categorical exemption for “Actions by Regulatory Agencies for Protection of Natural Resources” contained in CEQA Guidelines section 15307, and the categorical exemption for “Actions by Regulatory Agencies for Protection of the Environment” contained in CEQA Guidelines section 15308. (Cal. Code Regs., tit. 14, §§ 15307, 15308.)

Categorical Exemptions to Protect Natural Resources and the Environment

In adopting the sport fishing regulations for red abalone take reduction due to harmful environmental conditions, the Commission relied for purposes of CEQA on the Class 7 and 8 categorical exemptions. In general, both exemptions apply to agency actions to protect natural resources and the environment. The regulations define annual fishing seasons and daily and yearly bag limits. A combination of unprecedented environmental and biological stressors began to take their toll on abalone populations, including warmer-than-normal waters and decreasing food resources, leading to starvation conditions. The Department of Fish and Wildlife (Department) has identified wide-sweeping changes in the density, occurrence, size and health of red abalone and the kelp upon which it depends for food. Because these regulations are intended to protect the sustainability of the fishery as a natural resource, Commission adoption of these regulations is an activity that is the proper subject of CEQA’s Class 7 and 8 categorical exemptions.

From:
Sent: Friday, September 15, 2017 11:58 AM
To: FGC
Subject: Future Red Abalone Regulations

To Whom It May Concern,

If at all possible I'd like to submit some feedback regarding current Red Abalone Regulations and also contribute some input toward future management.

This past season from what I have observed there has been some positive effect upon the pressure to the fishery but I have also seen a negative impact upon those communities whose economy depends heavily on tourism and in particular the draw of the Abalone fishery. For their sake I would like to see the open season remain status quo or go back to previous length.

Personally the new regulations have had very little impact upon the quality of my experience and fulfillment of my take. It is more conservative but a very reasonable compromise if it at all ensures the continued health/recovery of our fishery.

If there are any additional adjustments to be made I would like to make two suggestions for consideration:

1. Increase the minimum size to at least 8 inches. If all I wanted to do is pull 3 Abalone, at 7 inches I can find 3 legal size Abalone with little effort in almost no time at all. By increasing the size I think we can influence the take and force divers to be more selective.
2. Reduce the daily bag limit to two per day. Personally I find it very difficult to consume more than two Abalone per day even with company. Taking more than that is beyond my needs.

That's my two cents.

Brandon Earhart

Tiemann, Sheri@FGC

From:
Sent: Tuesday, September 26, 2017 1:08 PM
To: FGC
Subject: Red Abalone Fishery

Good afternoon,

In regards to the evaluation of the Red Abalone Fishery and Potential Closure.

I would like to recommend that a solution other than a full closure be pursued. With respects to what that might look like, I offer the following suggestion:

2 abalone per day
8 per year
Leave the size at 7 inches
Do not limit the sale (plenty of people will not purchase tags at 2 abs per day)

Thank you,

Alex Reynaud
Sea Sniper Team

Tiemann, Sheri@FGC

From: Whitney Hitaz
Sent: Tuesday, September 26, 2017 5:43 PM
To: FGC
Subject: Abalone

I dive every year, every year i am only able to get a small portion of my limit due to weather, surf, rain ect, but everytime I do go I have my choice of dozens of leagl abalone. The current regs are good. Please do not change them there are plenty of abalone!

Aloha!

September 28, 2017

Mr. Eric Sklar, President
California Fish and Game Commission
1416 Ninth Street, Room 1320
Sacramento, CA 95814

RE: Agenda Item 22, Discuss proposed changes to recreational abalone regulations

Dear President Eric Sklar and Commission Members,

Although the California Department of Fish and Wildlife (CDFW) has been working diligently on emergency regulations to improve the trajectory of red abalone along our coasts, we the undersigned (representatives from the non-profit, academic, and recreational sectors) wish to highlight the need to simultaneously continue exploring long-term solutions to improve outcomes for harvesters and ensure conservation of this high value resource. As CDFW explores a permanent framework for management of red abalone in the Northern California recreational red abalone fishery management plan (FMP), they should consider the use of more nimble and adaptive management strategies to ensure this resource is available to support thriving coastal fishing communities under changing ocean conditions. **In the attached document, we provide a science-driven management strategy to address the need for a long-term solution to address conservation and sustainable management of this iconic fishery.**

Limitations of the Existing Management Approach

The current management framework utilized by CDFW to manage the recreational red abalone fishery, which relies exclusively on limited data generated from state-led density and recruitment surveys, is cost ineffective and does not represent the best available science or the latest thinking on managing benthic invert fisheries. Since 2005 when status quo management approaches were formalized in the Abalone Recovery and Management Plan, stakeholders have raised continuous concerns regarding the lack of transparency, consistency, and effectiveness in regulatory measures used to manage red abalone. Based on the 2014 recommendation from the Ocean Science Trust to fundamentally improve the approaches used to assess and manage abalone, and an invitation from CDFW to help them develop a next generation FMP, we present the following adaptive management framework.

Our Proposed Harvest Control Rule

We the undersigned believe that the management solution for this fishery must be cost-effective, based on the best available scientific methods and data, and provide transparency in decision-making, to gain substantial stakeholder support. **As such, we are submitting a multi-indicator, decision-tree based harvest control rule (HCR) for inclusion as a science-driven alternative in the FMP currently in development.** It is structured hierarchically, uses multiple indicators provided from all 56 landing sites, assesses stock status, and then recommends a corresponding adjustment to the previous year's catch limit. We have utilized two indices in the proposed HCR – landings and length data. Landings have been incorporated from each of the 56 sites, and length data has been incorporated from 17 sites and counting. As described in the attached document, there is precedent from both domestic and internationally recognized scientific and management bodies to use length and landings data to estimate sustainable yield and reproductive potential of a population. **This**

harvest control rule can be specified to be more or less precautionary than status quo, and provides a pathway to make clear and transparent management decisions.

There are a number of significant benefits associated with our proposed HCR including –

- Integration of multiple streams of information to mitigate against unmet assumptions of each of the individual methods
- Increased transparency in decision-making by explicitly stating by how much annual catch limits will be modified based on the stock status determination
- The ability to accommodate levels of risk that managers are comfortable with by choosing more or less conservative percentages by which the TAC would be modified
- Significant cost savings by transitioning away from the use of costly density surveys (on the order of hundreds of thousands of dollars) that are almost not usable to inform resource management
- Increased stakeholder support facilitated by collaborative engagement with recreational divers and citizen scientists to collect high quality, timely data that informs management

We have developed a management strategy evaluation (MSE) to evaluate the performance of our proposed HCR under normal and extreme environmental conditions. Initial results suggest that the **proposed HCR performs best when only landings and length data are included and that use of multiple streams of data in the proposed harvest control rule help to reduce the risk of stock collapse while maximizing yields and maintaining stability under a range of normal and extreme environmental conditions.**

Our Recommendation to the Commission

Adoption of such a harvest control rule by the state of California will represent a significant step forward in advancing climate-driven fisheries and present a valuable model for how we can improve the management of other fisheries in California. The decision-tree based HCR outlined in the attached document represents an adaptive management framework that incorporates robust, multi-indicator parameters, provides transparency in decision-making, and has been conceived via a multi-stakeholder collaborative process. Thus, **we ask that the Fish and Game Commission recommend including this harvest control rule for inclusion in the red abalone FMP, and we look forward to continuing to work with the State's managers, harvesters, and scientists to ensure the long-term sustainability of this fishery.**

Sincerely,

Bill Harford, Ph.D.
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University of Miami

Jeremy Prince, Ph.D.
Adjunct Associate Professor
Murdoch University

Jack Shaw
Recreational Diver

Jono Wilson, Ph.D.
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The Nature Conservancy

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Red Abalone Harvest Control Rule

For consideration as an alternative in the California Red Abalone Fishery Management Plan.

September 28th, 2017



Prepared by:

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Executive Summary

California's Marine Life Management Act (MLMA) allows for the development and proposal of fishery management plan (FMP) amendments. Specifically, Section 7075(d) of the MLMLA states that "Fishery participants and their representatives, fishery scientists, or other interested parties may propose plan provisions or plan amendments to the department or commission. The commission shall review any proposal submitted to the commission and may recommend to the department that the department develop a fishery management plan or plan amendment to incorporate the proposal." This document is a proposal made pursuant to 7075(d) from a diverse group of fishermen, scientists, and NGOs that seeks to integrate a Harvest Control Rule (HCR) into the developing FMP for recreational red abalone (*Haliotis refuscens*).

A Harvest Control Rule (HCR) is a set of well-defined management actions to be taken in response to changes in stock status. Motivated by a need to improve adaptive management of the California Recreational Red Abalone Fishery using best-available science, the proposed HCR was developed in association with recreational abalone fishermen, the California Department of Fish and Wildlife (CDFW) and international fisheries scientists, for consideration in the management of the fishery. The HCR is structured as a decision tree that integrates catch histories and length frequency data into a transparent decision-making framework. Together, these two indicators are used to determine stock status and guide decision-making.

To understand how the HCR functions, the catch data is first analyzed using an estimation routine called Catch-MSY, which determines whether the harvest rate from a particular area is above or below that which would result in meeting the limit reference point of Maximum Sustainable Yield (MSY). The length frequency data are combined with biological information and analyzed using an estimation routine called Length-Based Spawning Potential Ratio (SPR) which determines whether the SPR – a proxy for the fishing mortality rate (F) – is above or below a pre-determined, conservative SPR reference point of 0.6.

The HCR does not use density data due to the extreme variability of the data and the high cost of these sampling efforts. This is a departure from status quo, yet will yield significant cost savings to the CDFW and improve management outcomes. Removal of the density surveys from the decision-making process is supported by the scientific evidence within our analysis and from evaluations conducted within multiple independent reviews of the survey data, including the Ocean Science Trust Review (OST 2014).

In order to design and test the utility of the HCR, we utilized Management Strategy Evaluation (MSE), a simulation approach that is a prerequisite for many fisheries agencies when developing HCRs. MSE represents the state of the art in evaluating the tradeoffs of particular approaches to fisheries management. We conducted a MSE that shows the HCR is a viable means to set precautionary total allowable catches (TAC) at any spatial scale deemed appropriate for enforcement. Under normal conditions, the HCR ensured the stock biomass fluctuated around the Biomass that achieves MSY (B_{MSY}) and catches around MSY. Following severe environmental events including high natural mortality and El Nino conditions, the HCR responds conservatively

and lowers TACs. The following table demonstrates how TAC adjustments are made for each possible combination of the two indicators (SPR and Catch-MSY).

Table 1. Combinations of indicators in the Red Abalone Decision Tree and the recommended management decision (TAC adjustment) for each possibility. Different combinations of the two indicators (SPR and Catch-MSY) indicate exploitation status, which can be used to inform adjustments to the total allowable catch (TAC).

SPR indicator	Catch-MSY indicator	Exploitation status	TAC adjustment	Explanation
Stable	High	Over exploited	-10%	SPR stable around reference, but increasing fishing pressure.
Stable	Stable	Fully exploited	0%	SPR stable around reference.
Stable	Low	Under exploited	+10%	SPR stable, possibly restrictive management.
Low	High	Depleted	-20%	Recruitment overfishing likely.
Low	Stable	Over exploited	-10%	Recruitment overfishing likely.
Low	Low	Fully exploited	0%	Recruitment overfishing likely.
High	High	Over exploited	-10%	Although SPR high, catches also high. Watch and wait.
High	Stable	Under exploited	+10%	SPR high under stable catches.
High	Low	Under exploited	+10%	SPR high under possibly restrictive management.

Recommendations

Overall, the proposed harvest control rule for the Recreational Red Abalone Fishery represents an opportunity to greatly improve the management of the fishery, provides a science-based method for incorporating multiple streams of information, and ensures that best-available science is efficiently incorporated into decision-making.

We recommend the following:

- The Fish and Game Commission consider this proposed Harvest Control Rule in the Fishery Management Plan for Red Abalone.
- The proposed Harvest Control Rule be compared to alternatives using Management Strategy Evaluation by an independent peer-review panel.

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Background

In 2014, the CDFW began developing a Fishery Management Plan (FMP) to guide the management of the red abalone fishery. A central component in any FMP is the decision-making framework - commonly called a Harvest Control Rule (HCR). A HCR is a set of well-defined management actions to be taken in response to changes in stock status. A HCR is objective and transparent, allowing all stakeholders to clearly see how and why decisions are being made. Consequently, a HCR increases efficiencies in management and reduces subjectivity and politics in the decision-making process. As such, HCRs can stabilize business operations and enhance trust in management bodies.

Given the cultural and economic importance of the red abalone fishery in Northern California, it is critical that the development of a HCR be supported by stakeholders in the fishery and reflect the best available science. The HCR should therefore be thoroughly vetted and tested so that all stakeholders can evaluate the costs and benefits of the approach and evaluate the scientific rationale for the decision-making process.

The vulnerability of red abalone to changing ocean conditions requires that data feeding into the HCR be able to detect variability across space and time. It also requires that managers be able to cost-effectively collect the information needed to quickly respond to changes in stock status. Only two such data sources are currently collected across a broad range of the stock on annual time scales: length frequency and catch data.

Incorporating multiple, scientifically defensible indicators (data streams) into a decision-making process has been shown to provide substantial benefits to management (Hilborn et al. 2002; Caddy et al. 2004). This is especially true when utilizing data-limited methods as these methods include several known assumptions. Integrating multiple indicators and methods into a decision tree structure is advantageous, since what one indicator or method may assume, or fail to overcome, may be countered by the inclusion of additional, independent indicators or methods.

This document provides an overview of a multi-indicator HCR developed in collaboration with stakeholders in the red abalone fishery. The HCR utilizes length frequency and catch data to recommend scientifically defensible TAC adjustments in the red abalone fishery.

Characteristics of The Red Abalone Decision Tree (Harvest Control Rule)

The proposed Recreational Red Abalone Fishery Harvest Control Rule takes the form of a decision tree that evaluates multiple sources of information to ultimately make transparent recommendations to adjust the total permitted amount of abalone to be taken annually, or the Total Allowable Catch (TAC). A decision tree is a type of HCR that navigates users through a simplified and efficient decision-making process. Each branch of the tree represents a unique combination of indicator values that reflect stock status, and the selected branch determines the decision to be made.

Decision trees require relationships to be explicitly stated between performance indicator values and the underlying status of the stock because these relationships form the basis for directionality and magnitude of TAC adjustments. The decision tree proposed here was developed with three practical considerations in mind. First, development was constrained to the use of existing data streams, along with their inherent data limitations, rather than proposing new data streams or evaluating alternate sampling schemes. Second, a functional decision tree was needed that could accommodate site-specific signals about resource changes, while also successfully guiding adjustment of TACs along the entire coast. This consideration reflected the problem that less than 30% of sites along the coastline where fishing occurs are formally monitored, aside from recording of catches. Third, the decision tree needed to be flexible to accommodate future monitoring at additional sites, as citizen science groups and State agencies potentially expand or modify monitoring programs. The use of the term ‘sites’ throughout this document refers to the 56 abalone report card locations established across four counties.

The decision tree presented here incorporates relevant, existing data streams collected by CDFW, Reef Check California, and recreational fishermen. Specifically, the red abalone decision tree incorporates two indicators of stock status gleaned from 1) length frequency distributions from animals observed underwater and 2) catches by site recorded in report cards. Based on analysis of stock status using each respective data source, the resulting indicators determine which branch should be used to adjust (or maintain) the Total Allowable Catch (TAC; **Box 1**; Table 1).

Assessment Methods Used in the Decision Tree

The decision tree utilizes catch histories and length composition data in calculating indicators that inform TAC adjustments (**Box 1**). Indicator values are calculated using established data-limited fisheries assessment methods. Length composition data are used to estimate the Spawning Potential Ratio (SPR) based on a model developed by Hordyk et al. (2015). Site-specific catch histories are used to estimate current harvest rates based on the Catch-MSY method developed by Martell and Froese (2012).

Spawning Potential Ratio (SPR)

SPR is synonymous with Eggs Per Recruit (EPR), and is the proportion of eggs produced by a fished cohort over a lifetime, relative to the eggs produced by an unfished cohort over a lifetime. Simply put, SPR reflects the influence of mortality from all sources on the stock’s ability to successfully reproduce on a continual basis. Thus, a highly-depleted stock will have a low SPR and low reproductive output and a nearly unperturbed stock will have a high SPR and high reproductive output. SPR is used in U.S. Federal Fisheries Management, the CA spiny lobster FMP (CA) and is an internationally accepted metric for assessing fishery stock health.

The method for calculating SPR in the proposed decision tree is termed Length-Based SPR and requires little information beyond basic biology and length information (Hordyk et al. 2015). CDFW biologists have collected basic biological information such as the size at reproductive maturity, published in the peer reviewed literature that is useful to this analysis.

Catch-MSY

The Catch-MSY assessment (Froese et al. 2017) estimates quantities such as MSY from a time series of catch data, resilience of the species being assessed, and expert judgment regarding stock size during the first and terminal year of the time series. Upon completion of the method, estimates are provided for MSY, F_{MSY} , B_{MSY} , relative stock size (B/B_{MSY}), and relative harvest rate (F/F_{MSY}). The method partially relies on a Schaefer production model and priors on depletion and resilience, and can be used in accordance with precautionary management practices. Catch histories beginning in 2002 at each of 56 sites are used in applying the Catch-MSY method within the decision tree, thus allowing managers a mechanism to integrate the entire fishery into the decision-making process rather than relying on a limited sampling of index sites.

Data Collection Programs

Length Data

Over the past three years, stakeholders in the recreational red abalone fishery have collaborated with Reef Check CA to develop an underwater dive survey protocol to cost effectively collect abalone length composition data in a manner that moves towards spatially expansive monitoring along the northern California coastline (Freiwald et al., 2016). This new data stream can be combined with CDFW length sampling to boost the sample size and inform management decision-making. In addition to these two data sets, the CDFW possesses an additional length frequency data set collected from creel surveys, that is thought to be even more spatially expansive. Consideration should be given to incorporating this data set into the analysis. In the current sampling protocol which combines Reef Check and CDFW dive surveys, 17 sites have length composition data. For sites where length composition monitoring does not occur ($n = 39$), the average current SPR at monitored sites is used as a proxy SPR value. Such an approach dramatically improves the spatial coverage of data collection and management relative to the status quo.

Catch/Landings Data

The CDFW currently records total landings data from report cards submitted by permit holders. The coast is divided into 56 landing sites for which report card holders must log individual abalone. At the end of the season, report card holders submit their landings data to CDFW. These data are summed at the end of the year and inform estimates of total landings. Our decision tree utilizes these data at each site to estimate CatchMSY as described above.

Is Density Information Useful?

Based on the scientific review convened by OST as well as our own simulation testing, we opted to recommend a decision tree that does not include the use of density surveys that are based on the current sampling design conducted by CDFW. Two important assertions made in the OST scientific review led to this recommendation. First, “[t]his sampling method was not designed to

represent or estimate the density of the entire abalone population” (OST, 2014). Second, the OST scientific review points to the possibility that density surveys are unreliable due to the variability of the observations, especially as it pertains to observation of site-level density changes. Taken together, these two considerations suggest that density surveys lack utility for use in informing coast-wide, county, or site level abalone stock status.

Density surveys were also excluded because simulation testing revealed that density indicators derived from the observed variance structure of actual CDFW surveys had a propensity for poor management outcomes, as imprecise surveys often caused the decision tree to adjust TACs in response to noise, rather than signals about red abalone abundance (Harford et al., 2017). Finally, density surveys were excluded due to a lack of consistency in the detectability of animals due to environmental conditions. On several occasions, CDFW biologists and managers have publicly stated that density counts increase during periods of low kelp (poor conditions), and decrease during periods of abundant kelp (good conditions). Furthermore, sampling at each of the density survey sites (n = 10) only occurs once every 3-5 years, severely limiting the ability to detect changes across the fishery.

The simulation testing also evaluated the use of environmental signals as indicators of abalone stock status (i.e., El Nino Southern Oscillation anomalies), but did not recommend their further use, as establishing the strengths of mechanistic linkages between red abalone biology and environmental conditions was tenuous, and the efficacy of such indicators was weak.

Using the Decision Tree

The decision tree is applied at each of 56 sites on a repeated basis (e.g. annually). Branches of the tree correspond with a specific TAC adjustment (relative to the previous year) for each site, ranging between a decrease of 20% to an increase of 20%. While calculation of site-specific TACs are an important technical step, they are impractical as management tools. Site-specific TACs are used to calculate regional aggregate TACS (e.g., county level TACs), which support specification of regulatory tactics (e.g., daily and annual bag limits, etc.) and accommodate fishery enforcement. A full technical description of the decision tree is found in Harford et al. (2017). Also, see Box 1 for more information.

Simulation Testing Via Management Strategy Evaluation

Considerable complexity is involved in developing a decision tree for red abalone, and accordingly, development of such fisheries management frameworks should not be based on expert judgement alone (Butterworth et al., 2010). The decision tree recommended here was subject to simulation testing using management strategy evaluation (MSE). MSE simulates the combined performance of data collection, data analysis, and decision-making (**Box 2**) and produces outputs in currencies that are meaningful to managers – that is, quantities that directly reveal whether fishery objectives are achievable. By comparison, the isolated treatment of any management component is an abstraction from determining whether integration of components will lead to successful fishery management. MSE is the most widely established approach for informing selection of management strategies and quantifying fishery management tradeoffs (Punt et al., 2016).

Our MSE is structured in two stages. In the first stage, a completed MSE (Harford et al., 2017) was aimed at evaluating the decision trees that used various indicators, including density, catches, and length composition within a multi-indicator framework. Our simulations suggested that catch histories and length frequency distributions were the most informative indicators of abalone exploitation status. The use of density surveys reduced the ability for the HCR to guide decisions towards the achievement of management targets and avoid management limits (e.g. biomass levels below 50% of B_{MSY})

This MSE also importantly evaluated red abalone vulnerability to environmental conditions (i.e., climate variability, harmful algal blooms) in conjunction with fishery exploitation and poaching (**Box 2**). The MSE results suggest that under normal environmental conditions and fishing operations, the HCR was able to maintain biomass levels approaching that which achieves maximum sustainable yield (B_{MSY}) and catches that approach MSY (**Box 2**). Under scenarios involving harsh environmental circumstances, the HCR maintained biomass levels commensurate with 2015 levels or led to slight biomass increases, depending on SPR reference points (0.4 or 0.6) and minimum harvest lengths (178 or 203 mm).

By simulating the effectiveness of the decision tree under environmental conditions that were severely detrimental to the simulated abalone stock, we demonstrated the ability for the HCR to operate in a precautionary manner by selecting conservative biological reference points (e.g. SPR of 0.6 rather than 0.4) that are used in these indicators. Importantly, we were able to show that estimates of SPR respond to both natural and fishing mortality suggesting that SPR can be a useful indicator in the face of extreme environmental perturbations unrelated to fishing pressure.

Feedback on this MSE has been offered by stakeholders, academic scientists involved in the original OST report, and CDFW scientists. This feedback is being incorporated into the second stage of MSE development. The second stage MSE will provide an updated technical description of the decision tree and will be provided to the Commission no later than November 23rd, 2017.

Conclusion

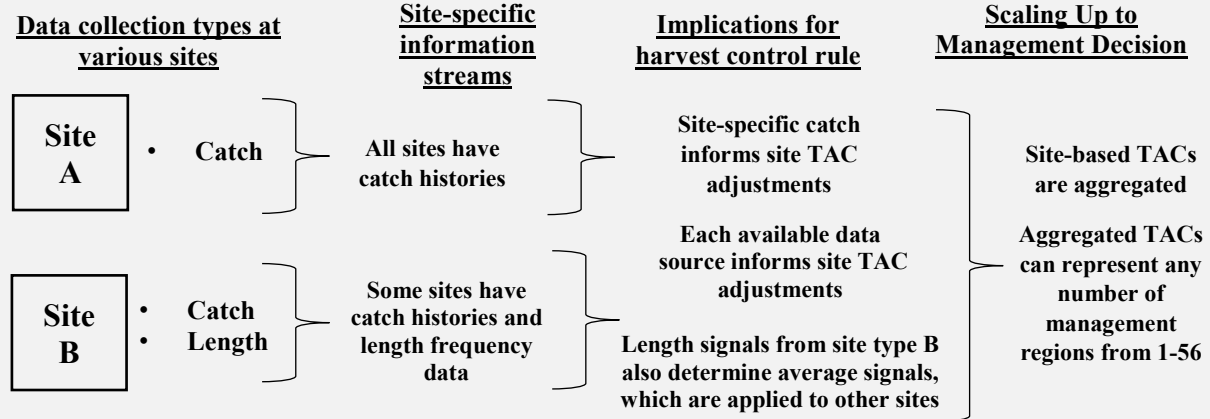
The Harvest Control Rule provided here represents an adaptive management framework that incorporates robust, multi-indicator parameters, provides transparency in decision-making, and has been conceived via a multi-stakeholder collaborative process. Adoption of such a harvest control rule by the state of California could represent a significant step forward in advancing climate-driven fisheries and present a valuable model for how we can improve the management of other fisheries in California.

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Box 1. Design of a Multi-indicator Decision Tree For California Red Abalone

Part A: Practical considerations for decision tree design are depicted conceptually using a representation of information types available at fishing sites. Where possible, site-specific indicators inform decision-making, while also guiding catch adjustments along the entire coastline. Existing data streams are considered, along with their inherent data limitations.

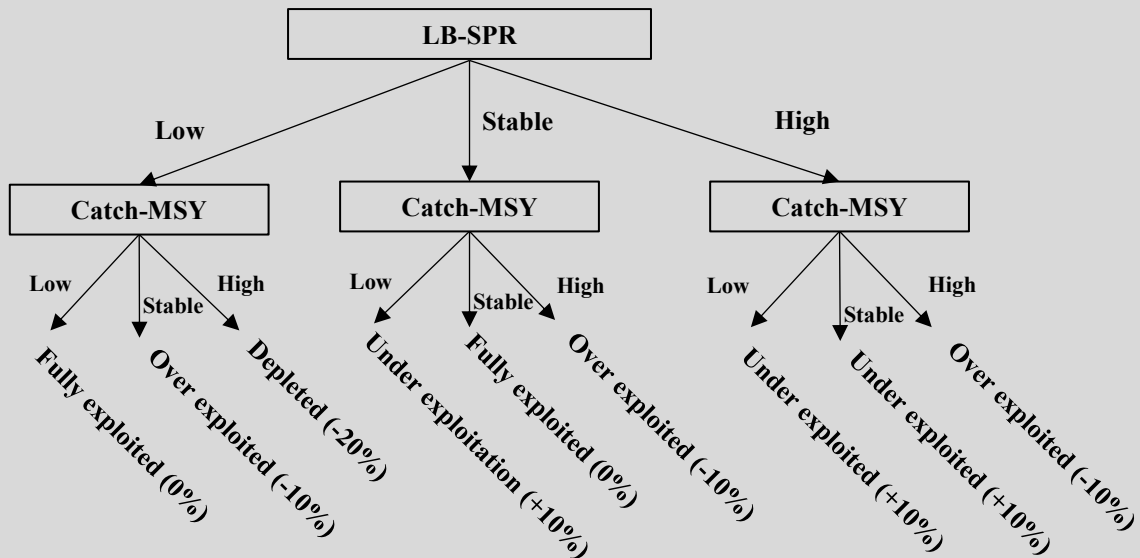


Part B: Multi-indicator decision tree. Data-limited assessment tools are used to produce indicator values.

LB-SPR Tool: Length composition used to estimate current spawning potential ratio (SPR)

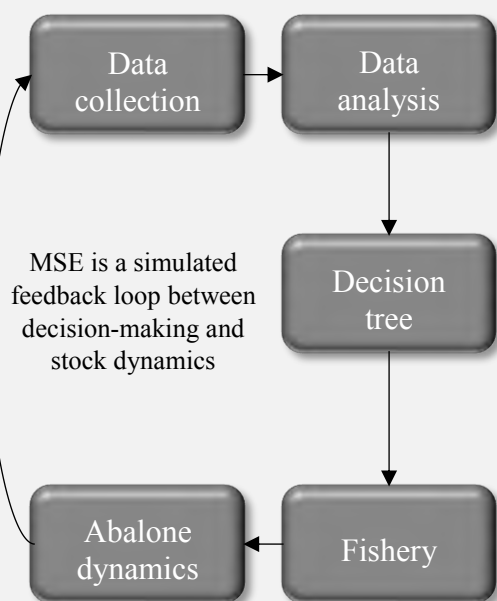
Catch-MSY Tool: Catch histories used to estimate current fishery exploitation rate

Current values of these two indicators are compared to corresponding reference points. Tolerances around reference points determine Low, Stable, or High criteria. These criteria (Low, Stable, High) then trigger which branch of the tree is selected and guide percent change in TAC, relative to previous year's TAC.

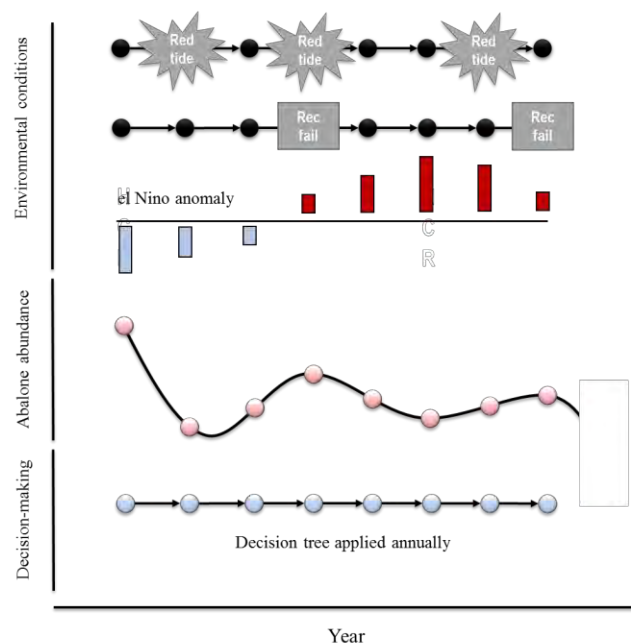


Box 2. Overview of management strategy evaluation (MSE) and its application to California red abalone

Part A: MSE simulates the linkages between a fish stock, its fishery, monitoring, and fishery management decision-making.



Part B: MSE can be used to simultaneously simulate the effects of fishing regulations and environment on sustainability of the stock.



Part C: Example of MSE outcomes.

Performance is reported as biomass relative to unfished biomass (horizontal axis) and catch relative to maximum sustainable yield (MSY; vertical axis).

Median outcomes (points) and 50% centered observations (lines) represent uncertainty in outcomes.

Upper right: Outcomes under typical El Nino climate variability that affects red abalone. Labels *SPR ref 0.4* and *SPR ref 0.6* illustrate effect of fishery reference point selection on performance.

Lower left: Outcomes under severely detrimental environmental conditions, demonstrating how MSE can be used to evaluate combined effects of environment and fishery on abalone biomass and catches.

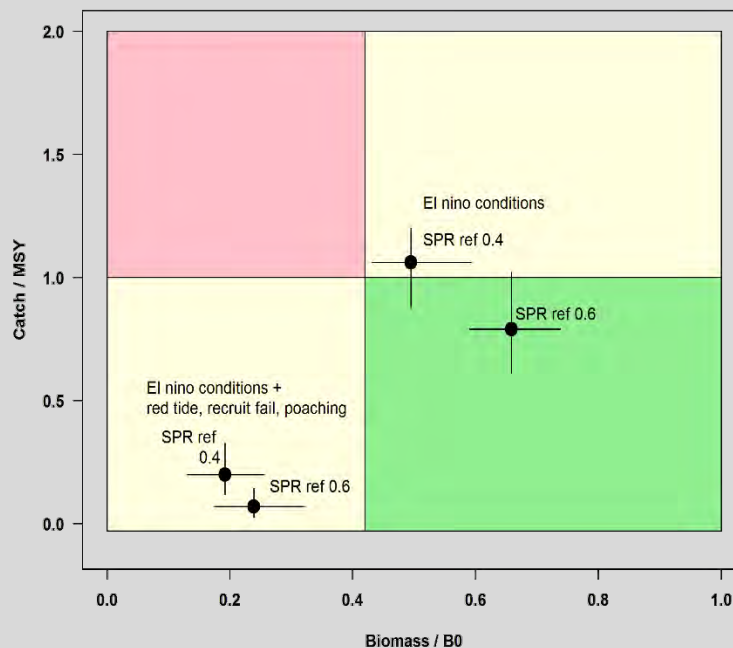


Table 1. Combinations of indicators in the Red Abalone Decision Tree and the recommended management decision (TAC adjustment) for each possibility. Different combinations of the two indicators (SPR and Catch-MSY) indicate exploitation status, which can be used to inform adjustments to the total allowable catch (TAC).

SPR indicator	Catch-MSY indicator	Exploitation status	TAC adjustment	Explanation
Stable	High	Over exploited	-10%	SPR stable around reference, but increasing fishing pressure.
Stable	Stable	Fully exploited	0%	SPR stable around reference.
Stable	Low	Under exploited	+10%	SPR stable, possibly restrictive management.
Low	High	Depleted	-20%	Recruitment overfishing likely.
Low	Stable	Over exploited	-10%	Recruitment overfishing likely.
Low	Low	Fully exploited	0%	Recruitment overfishing likely.
High	High	Over exploited	-10%	Although SPR high, catches also high. Watch and wait.
High	Stable	Under exploited	+10%	SPR high under stable catches.
High	Low	Under exploited	+10%	SPR high under possibly restrictive management.

Appendix I. Definitions.

Biomass (B): Total weight of organisms at a given point in time in a defined fish stock or area.

Biomass at Maximum Sustainable Yield (B_{MSY}): Biomass that corresponds to Maximum Sustainable Yield from a production model or from an age-based analysis using a stock recruitment model. Often used as a biological reference point in fisheries management, it is the calculated long-term average biomass value expected if fishing at F_{MSY} .

Catch-Maximum Sustainable Yield (Catch-MSY): An estimation method which determines whether the harvest rate from a particular area is above or below that which would result in meeting the limit reference point of Maximum Sustainable Yield (MSY).

Harvest Control Rule (HCR): A rule that describes how harvest is intended to be controlled by management in relation to the state of some indicator of stock status. Predetermined adjustments are agreed upon in an actionable plan, which are then activated in response to changes relative to reference points.

Length-Based Spawning Potential Ratio (SPR): The LB-SPR assessment method estimates spawning potential ratio (SPR, the ratio of reproductive potential of a fished vs. unfished population) using only length-frequency data from a fishery and some basic life history information on the species. In total, the method requires length composition, an estimate for the ratio M/k , maximum size (L_{∞}), the coefficient of variation (CV) of L_{∞} , and knowledge of maturity at size. The relative fishing rate F/M is then estimated and SPR is calculated.

Management Strategy Evaluation (MSE): Management Strategy Evaluation simulates the linkages between a fish stock, its fishery, monitoring, and fishery decision-making. It is a simulated feedback loop between decision-making and stock dynamics.

Maximum Sustainable Yield (MSY): The highest theoretical equilibrium yield or catch that can be continuously taken (on average) from a stock assuming existing (constant) environmental conditions. MSY is usually represented as an annual catch that can be removed indefinitely, but may be adjusted given changing environmental conditions.

Reference points: A benchmark against which the abundance of the stock or the fishing mortality rate can be measured in order to determine its status. These reference points can be used as limits or targets, depending on their intended usage.

Spawning Potential Ratio (SPR): Spawning Potential Ratio (SPR), also known as Eggs Per Recruit (EPR), is the proportion of eggs produced by a fished cohort over a lifetime, relative to the eggs produced by an unfished cohort over a lifetime. SPR is commonly utilized to understand the impact that fishing has on the reproduction ability of a population.

Total Allowable Catch (TAC): The total specified catch of a species for each fishing season or time period.

September 28, 2017

California Fish and Game Commission
1416 Ninth Street, room 1320
Sacramento, CA 95814

RE: TITLE 14. Fish and Game Commission Notice of Proposed Changes in Abalone Regulations for 2018.

Dear Commissioners:

I would like to encourage you to allow the 2018 abalone season to remain open pending adoption of the new abalone Fisheries Management Plan (FMP) due for implementation in 2019. In the above referenced notice, the Department is abdicating its responsibility for abalone management to the Commission by blindly following the flawed Abalone Recovery and Management Plan (ARMP) and recommending full closure of the fishery. In the last Commission Meeting Director Bonham said that he was going to direct his DFW invertebrate staff to have a new FMP available within the next 6 months, to be adopted for the 2019 season. With the Department's history of never having reopened a closed abalone fishery, it doesn't make sense to close the 2018 season when the new plan, which might indicate a different response than the ARMP, will be ready for the 2019 season.

As you well know there are several scientific, social, economic and political reasons why a 2018 closure is not a prudent action. The most compelling reason not to close the fishery is the fact that the proposed closure is based on the ARMP which both Director Bonham and Doctor Shuman agree is "flawed". They said, in the August Commission meeting, that they recognized the flaws in the ARMP and that it was their intent to correct the flaws during the development of a new FMP.

The most flagrant flaw in the ARMP is that it relies almost completely on inconsistent density surveys for making decisions about the fishery. In the DFW's "notice" they cited "critical negative impacts" to abalone's health,

reproduction and habitat which have little foundation in science and should only be considered as anecdotal indications, if used at all. While some of these indicators might be developed in the future to be useful, they are currently not well enough proven or accepted by the scientific community to be used as objective indicators. At the very least, before any decision is made to close the fishery, the closure decision recommended by the state biologists and its basis should be reviewed by outside, independent scientists.

Again, the main indicators specified in the ARMP are density surveys which are generally seen by scientists, statisticians, fishermen and even the DFW to be weak indicators of abalone health or even relative abundance. There are two important assertions made by the OST (Ocean Science Trust) scientific review of the DFW's density transect surveys. First, the DFW's *"sampling method was not designed to represent or estimate the density of the entire abalone population"*. Second, the OST scientific review points to the fact that density surveys are unreliable due to the large variances in observations, especially as it pertains to observations of site-level density changes. Taken together, these two considerations suggest that density surveys lack usefulness for informing coast-wide, county, or site level abalone stock status. More recently there has been simulation testing done by Dr. Bill Harford at the University of Miami in collaboration with The Nature Conservancy (TNC) which "revealed that abalone density indicators derived from the observed variance structure of actual CDFW surveys had a propensity for poor management outcomes."

Most divers and scientist agree that there are areas and groups of abalones which are currently suffering from environmental conditions that are not conducive to maintaining abalone densities at levels the DFW biologists call a "Cadillac fishery" at current index sites, but it is not at all clear that the overall abalone fishery or stock is in jeopardy or that the ARMP reference points are appropriate for a sustainable fishery. Furthermore, I think most scientists and divers also agree that environmental conditions (water temperature, starfish, kelp and urchins) are improving this year. While it's obvious that the high density "Cadillac fishery" will decline in the heavily fished index sites, most fishermen would much rather have a limited fishery than no fishery.

There were several good alternatives to full closure suggested by the public and the Commissioners at the last Commission meeting which warrant further consideration. These alternatives, if implemented wisely, would not overly stress the resource, would leave the 2018 season open and would give the Department the year to design a better FMP.

On the topic of the new FMP, I encourage the Department to take advantage of the outside scientific help offered by TNC and fishermen in the formulation of the new FMP. There have been some very good, well researched tools and fishery status indicators suggested by TNC to be used in the new FMP. These tools and indicators are proven, science-based and are currently ready to be used with existing data to help make the decision for 2018. The better science we use, the better decisions we can make.

Sincerely,

Jack Likins
Abalone Fisherman



Red Abalone Fishery Regulations



Sonke Mastrup
Program Manager, Marine Region
Fish and Game Commission Meeting
October 12, 2017



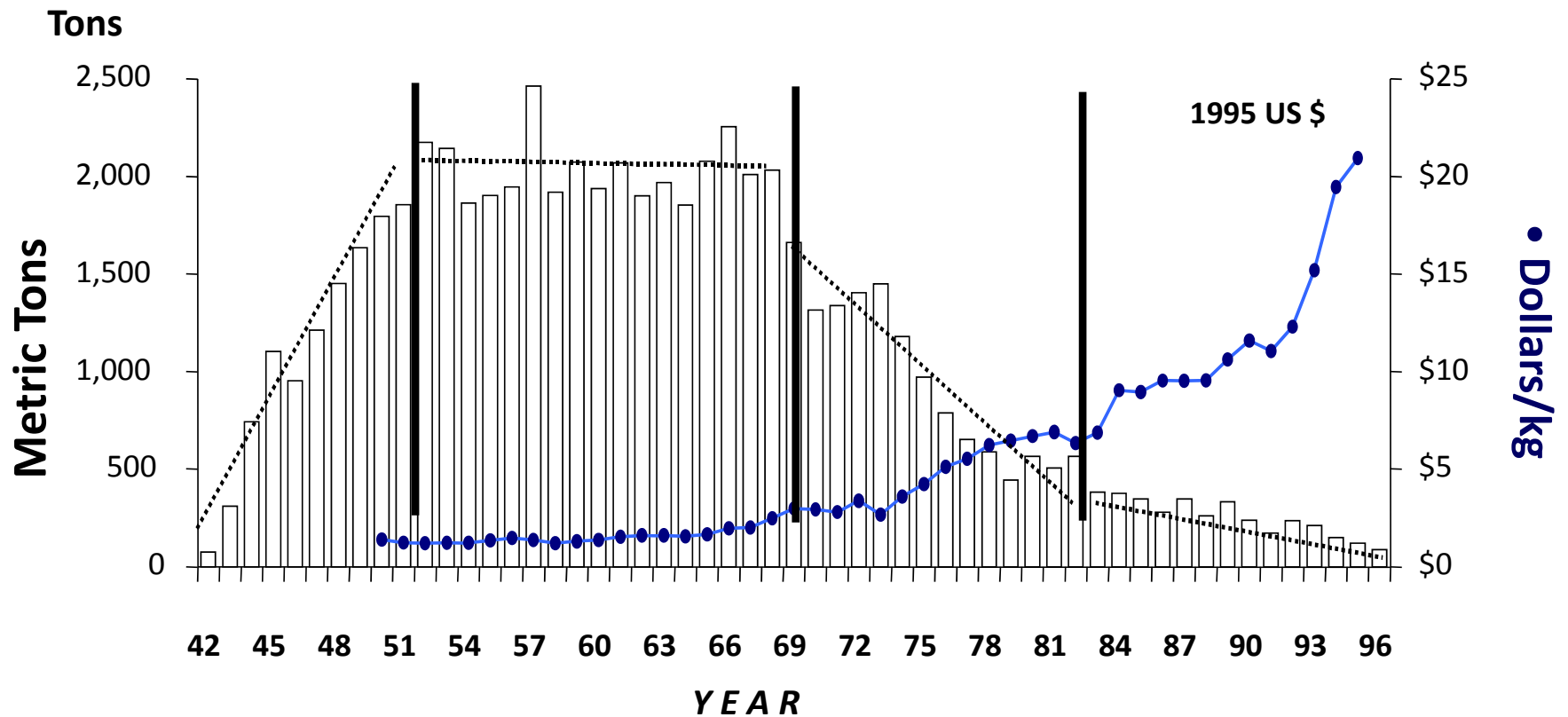
Overview

- Past Fishery History
- Current Status of Abalone Species
- ARMP History
- ARMP Fishery Triggers
- Current Impacts to Red Abalone and Causes
- Current Fishery Densities
- Regulatory Options
- Department Recommendation
- Fishery Conditions and Implications



Commercial Abalone Landings (1942-1997)

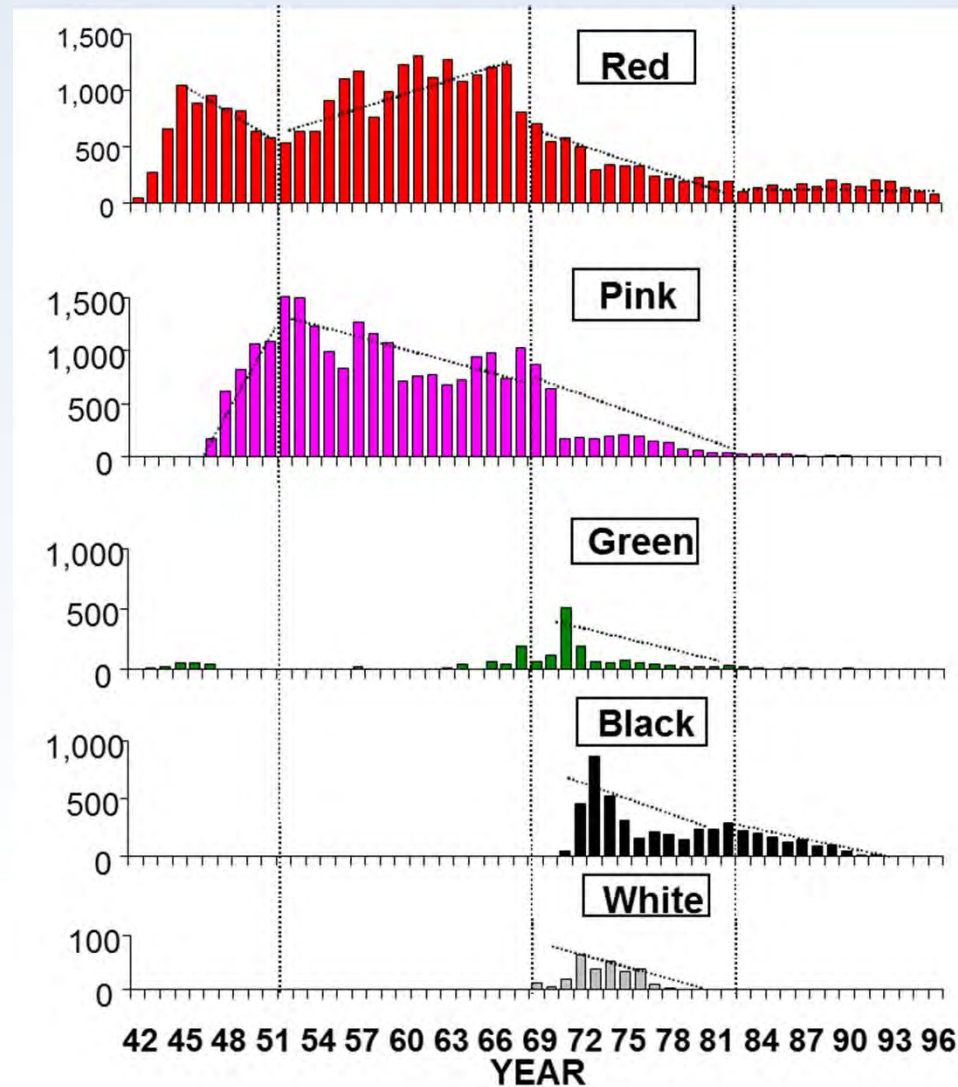
Five Species Combined



Karpov et al 2000



Southern Ca. Abalone Fishery



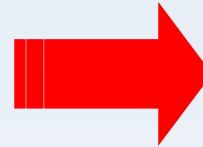
Karpov et al. 2000



Current Status of Abalone in California

White Abalone (*Haliotis sorenseni*)

Black Abalone (*H. cracherodii*)

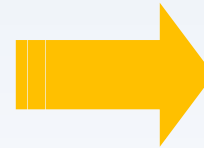


Endangered Species
(Federal ESA)

Pink Abalone (*H. corrugata*)

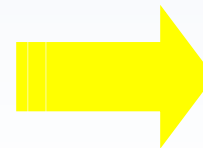
Green Abalone (*H. fulgens*)

Pinto Abalone (*H. kamtschatkana*)



NOAA Species of
Concern List
(in need of conservation)

Red Abalone (*H. rufescens*)



Sport fishery north of
San Francisco, Closed
South

Flat Abalone (*H. walallensis*)

Status Unknown



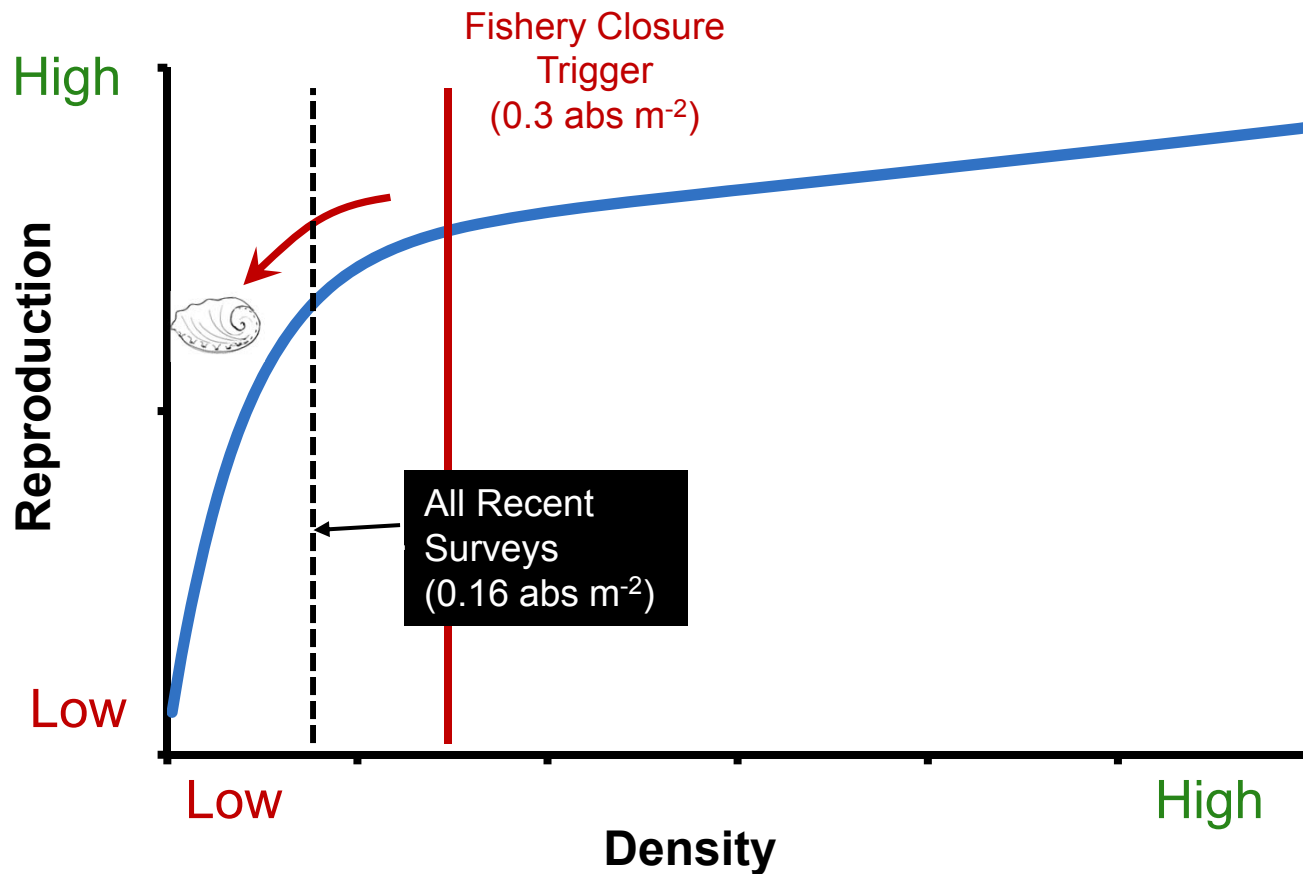
Abalone Recovery and Management Plan

- ARMP (FG Code §5522): five year development process
- Comprehensive and cohesive plan
 - Recovery actions in the south
 - Management of the fishery in the north
- Adaptive management based

<https://www.wildlife.ca.gov/Conservation/Marine/ARMP>



Why Density Matters





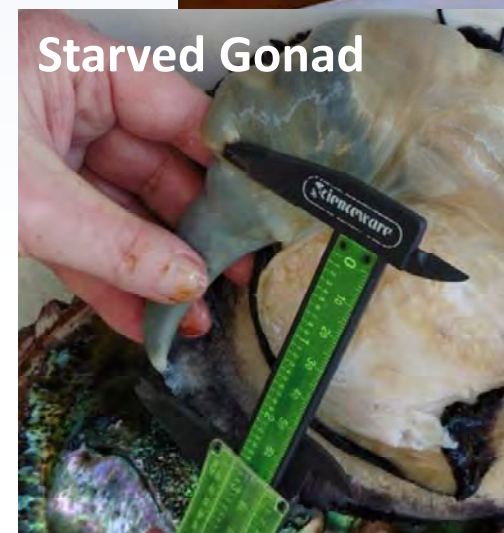
ARMP Fishery Triggers

- Fishery Wide Trigger 1
 - Fishery Density <0.375 abalone/m²
-- 25% reduction in TAC
- Fishery Wide Trigger 2
 - Fishery Density <0.3 abalone/m²
-- Fishery wide Closure
- Site Trigger.
 - Site Closure Trigger = 0.25



Causes and Impacts to Red Abalone

- Persistent Urchin Population Explosion
- Little to No Recovery of kelp
- Abalone Starvation for 4 years
- Reproduction Failure
- Significant Abalone Death
- Weakened Surviving Abalone





Current Density Data

Index Site (Sonoma-SC or Mendocino-MC)	Past Density (abalone/m ²) (year sampled)	2017 Density (abalone/m ²)	% Decline In Density
Fort Ross (SC)	0.44 (2015)	0.20	54%
Timber Cove (SC)	0.38 (2015)	0.15	60%
Ocean Cove (SC)	0.44 (2016)	0.17	61%
Salt Point (SC)	0.38 (2016)	0.06	79%
Sea Ranch (SC)	0.37 (2012)	0.27	27%
Sonoma Average	0.39	0.17	56%
Point Arena (MC)	0.66 (2014-15)	0.25	62%
Van Damme (MC)	0.33 (2016)	0.14	58%
Russian Gulch (MC)	0.60 (2014)	0.07	88%
Caspar Cove (MC)	0.35 (2013)	0.05	86%
Todd's Point (MC)	0.47 (2013)	0.16	66%
Mendocino Average	0.49	0.15	69%
OVERALL AVERAGE	0.44	0.15*	65%

- The ARMP fishery closure trigger is 0.30 abalone/m². The overall average is 0.15.



Abalone Regulatory Options

- Option 1: Close the Fishery per ARMP guidance
- Option 2: Limited Fishery Option
 - Sub-option A: Reopen Fort Ross
 - Sub-option B: Reduce Daily Bag/Possession and Annual limits
 - Sub-option C: Increase Size Limit to 8 inches
 - Sub-option D: Limit the number of Report Cards



CDFW Recommendation

- 2017 survey densities are below the ARMP fishery Closure trigger of 0.3 abalone/m²
- Recommend closing the fishery per ARMP guidance



Fishery Condition and Implications

- Indicators are still negative
 - High abalone mortality continues
- Previous reductions appear ineffectual
- Extreme precaution warranted
- Fishery collapse due to perfect storm
 - Fishing the survivors is adding to the problem
- Consequence of failure could be generations as current experience in Southern California



Thank You



CDFW Invertebrate Program

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State of California
Department of Fish and Wildlife

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COMMISSION

2017 JUL 25 PM 1:23

M e m o r a n d u m

Date: July 26, 2017

To: Valerie Termini, Executive Director
Fish and Game Commission

From: Charlton H. Bonham
Director

Subject: **Submission of Initial Statement of Reasons Amend Sections 120.7 and 705, Title 14, California Code of Regulations, Re: Commercial Taking of Sea Urchin**

The Department of Fish and Wildlife (Department) requests the Fish and Game Commission authorize publishing notice of its intent to amend Section 120.7 of Title 14, California Code of Regulations concerning commercial take of sea urchins; and, to amend subsection 705(c)(4), Commercial Fishing Applications, Permits, Tags and Fees: Sea Urchin Diving Permit Drawing Application and Fee, adding a minor administrative fee of \$4.38 for future applications for entering the drawing. Authorization of this request to publish notice will allow for discussion and possible adoption at the October 12 and December 7, 2017 Commission meetings, respectively.

Nearly half of the limited-entry sea urchin permit holders have remained inactive in the last decade. This high level of latent capacity raises both management and economic concerns. As a result, the California Sea Urchin Commission (CSUC) has been contemplating reducing capacity in the fishery for a number of years.

In the spring of 2017, the Department began providing support for the CSUC to help develop and finalize the proposed capacity reduction from 300 to 150 permits. In addition, the proposed changes include allowing the commercial take of urchins on Fridays south of Point Conception from June through October and several amendments to improve the structure of Section 120.7. The proposed take of urchin on Fridays, which is supported by CSUC, is in response to evolving market dynamics where having sufficient fresh supply of urchin on Saturdays has become increasingly important for the U.S. domestic market.

If you have any questions regarding this item, please contact Dr. Craig Shuman, Regional Manager, Marine Region, at (805) 568-1246. The public notice for this rulemaking should identify Anthony Shiao as the lead contact at (805) 568-1221, or Anthony.Shiao@wildlife.ca.gov.

Attachments

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Valerie Termini, Executive Director
Fish and Game Commission
July 26, 2017
Page 2 of 2

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STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

Amend Sections 120.7 and 705
Title 14, California Code of Regulations
Re: Taking of Sea Urchin for Commercial Purposes, and
Commercial Fishing Applications, Permits, Tags and Fees

I. Date of Initial Statement of Reasons (ISOR): July 11, 2017

II. Dates and Locations of Scheduled Hearings:

(a) Notice Hearing: Date: August 16, 2017
 Location: Sacramento

(b) Discussion Hearing: Date: October 12, 2017
 Location: Atascadero

(c) Adoption Hearing: Date: December 7, 2017
 Location: San Diego

III. Description of Regulatory Action:

(a) Statement of Specific Purpose of Regulation Change and Factual Basis
for Determining that Regulation Change is Reasonably Necessary:

Section 9054 of the Fish and Game Code authorizes the Fish and Game Commission (Commission) to set the conditions for issuing commercial sea urchin diving permits to prevent overutilization of the sea urchin resource and to ensure that the fishery is efficient and economic on both a state-wide basis and in specific geographic areas. Data collected by the Department of Fish and Wildlife (Department) from fishing reports submitted by sea urchin divers indicates that the potential for overharvesting is a major issue in the fishery. It is necessary that the Commission consider a reduction in the number of divers permitted to take sea urchin in order to ensure a stable population and harvest in future years.

(1) Delete the Submission Requirement for 2008 in subsection (c)(2)

The provision in subsection (c)(2) specifies that for 2008 (only) applications for renewal of sea urchin diving permits shall be received by the Department or, if mailed, postmarked no later than June 30. After 2009, this was no longer in effect and is therefore deleted.

(2) Diver Capacity Reduction, Amend subsection (d)

Present Regulations

The Commission regulation in subsection (d) currently limits the number of annual sea urchin diving permits to 300. All qualified prior sea urchin diving permittees shall be eligible to receive diving permits regardless of the number issued. Any permit that is not renewed is retired. If the total number of renewed permits is less than 300, new permits will be issued to applicants up until the 300-permit cap is filled. Individuals can apply for a sea urchin diving permit only if they have held a valid sea urchin crewmember permit in the two preceding years.

Proposed Regulations

The proposed change to subsection (d) would reduce the capacity level of sea urchin diving permits from the current level of 300 to 150 gradually over a period of several years. The proposed change in subsection (d)(3) specifies that while the number of diving permits issued to prior permittees is greater than 150, only one new sea urchin diving permit shall be available for every 11 permits that are retired pursuant to Fish and Game Code subsection 7852.2(c). Thereafter, the permits will be replaced 1:1 but never over 150 total.

Rationale

Both the sea urchin industry and the Department have been considering revisiting the current capacity goal of the fishery for many years. The fishery has high latent harvest potential from non-active sea urchin permit holders, which has been more evident during recent decades. In addition, the resource has been subject to an increasing effort compression because harvest areas are more limited due to marine protected areas (MPA) and environmental conditions have been persistently poor in recent years. Recent landings in both the northern and southern regions of the fishery are dramatically lower from yearly averages. Commercial divers have been expressing to the Department for many years that quality sea urchin are increasingly more difficult to find, which is further supported by a lower catch per unit effort in the landings data.

The potential for overharvesting due to latent effort is a major issue in the sea urchin fishery. During the years of 2007-2016, when the number of sea urchin permits was near 300 permits, 97-100 percent of the landings were made by 150 divers (Figure 1). During that same period, 92-98 percent of the landings were made by 125 divers and 84-93 percent of the landings were made by only 100 divers. A significant portion of the fishery has not been contributing to the total landings, and this latent capacity should be reduced to protect the industry and resource in the event of sudden shocks, such as a spike in market demand and an associated increase in fishing effort.

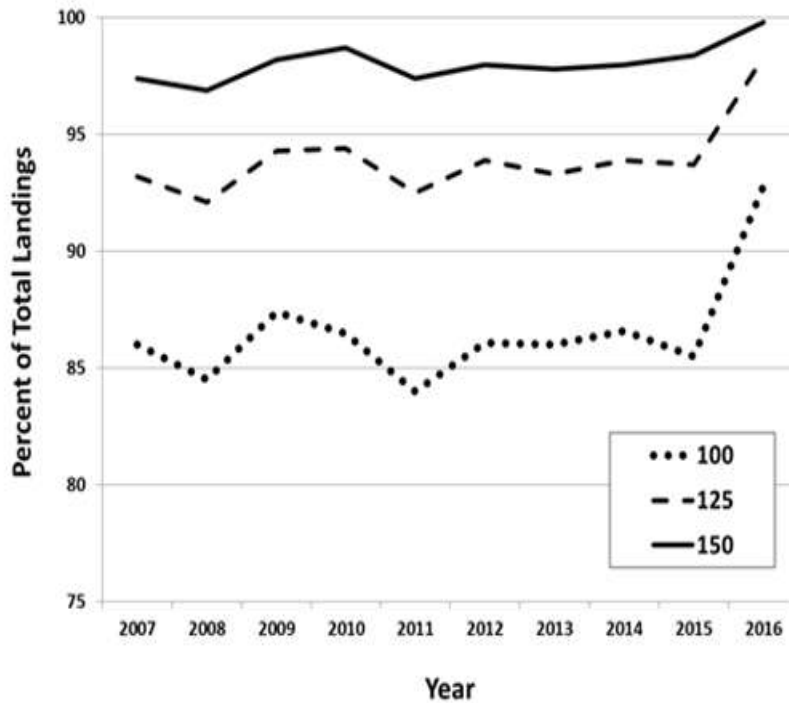


Figure 1. The percent of total landings taken by three levels of sea urchin divers (100, 125, and 150) from 2007-2016, a period when the number of permits was near or at 300 sea urchin permits.

The impact of divers is also concerning to the fishery. Divers are finding it more difficult to sustainably harvest sea urchins due to increased concentration of divers in smaller harvest zones. This in part can be attributed to the establishment of statewide MPAs, most of which were created after 1994 when the sea urchin industry instituted the 300-permit capacity goal. The MPAs have excluded divers from historically prime sea urchin grounds in terms of poundage and quality. Three reports written for the California Marine Life Protection Act Initiative (Ecotrust 2008, 2010, and 2011) estimates that MPA reduction of total commercial sea urchin fishing grounds by percent of area, by port, to be the following: South Coast, 2.0-19.3 percent for six ports; North Central Coast, 8.4-29.9 percent for four ports; and North Coast 8.2 percent for two ports. Recent military closures at San Clemente and San Nicolas islands further compressed the fishing ground by acting as reserves much of the year. As a result, the production and roe quality from many reefs have dropped substantially from the excessive harvest pressure.

Changing environmental conditions have significantly reduced the statewide abundance of bull kelp (*Nereocystis luetkeana*) and giant kelp (*Macrocystis pyrifera*), the main food sources for red sea urchin. The sea urchin fishery is based on quality of the product where only animals with gonads, known as “uni”, of specific size and taste are marketable, and this quality is directly correlated to food availability. Increased water temperature caused by the 2016 El Niño and

warm water 'blob' has reduced the bull kelp beds in northern California by 93 percent from previous years and greatly reduced the giant kelp beds in southern California. Without enough food and desirable habitat, many red sea urchins have become unmarketable.

The purple sea urchin explosion in northern California has further stressed the red sea urchin fishery. This event, in conjunction with the other factors mentioned has been described by the Department as the "Perfect Storm" in the March 2016 issue of *CDFW Marine Management News*. The explosion of purple sea urchin, a smaller and much less desirable sea urchin, is out-competing red sea urchin for food and suitable habitat typically used for red sea urchin larval settlement. As a consequence, the number of red sea urchin with quality roe in traditionally fished depths has greatly decreased, forcing divers to harvest in deeper waters to find harvestable red sea urchin, further stressing the resource, diminishing productivity, and creating more diver related safety concerns.

Another concern that has yet to manifest itself is the potential range expansion of the sea otter south of Point Conception and north of Monterey Bay. Divers are concerned that a range expansion to the north or south would have a high impact on the fishery, which has been observed at San Nicolas Island where divers believe the densities of commercially valuable invertebrate species has already seen a decline.

The statewide red sea urchin landings in 2016 dropped to a new low of 5.3 million pounds, something not seen since the 1970s when the fishery was in its beginnings. Northern California only accounted for 548,000 pounds in 2016, which is only 20 percent of the ten-year average of 2.7 million pounds. Southern California landings were only 56 percent of the ten-year average of about 8.4 million pounds. At the same time, the weight in pounds of sea urchin landed per fish receipt, used as a proxy of catch per unit effort (CPUE) also appears to be declining (Figure 2). While the proxy may not be a perfect representation due to potentially confounding factors (e.g. divers picking for quantity vs. quality, and efficiency of individual divers), the downward trend arguably warrants further attention.

Reducing the number of sea urchin diving permits by 50 percent should improve the chances of maintaining a sustainable fishery in the event of an unforeseen increase in market demand or other economic shocks that would cause the latent divers to re-enter the fishery. However, permit reduction to 150 does not guarantee the resource will not be overfished. A 2015 Department examination of the total revenue in relation to the number of permittees from a period of stability (2009-2013) shows that the per-diver marginal revenue is at its highest when only the 99 most productive fishermen are accounted for (Figure 3). This conclusion is based on various assumptions that may require further refinement, but it does suggest potential economic benefit for a lower capacity goal. The industry presently believes that a capacity goal of 150 permits is a reasonable compromise between the optimal theoretical goal of 99 permits and

the current capacity goal of 300 permits. Over time, a responsible capacity should align the number of divers with the size of the harvesting grounds and ensure a sustainable fishery in the years ahead.

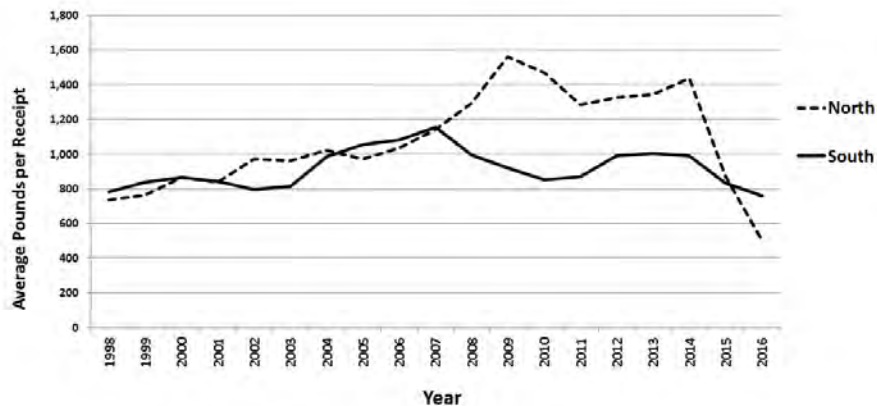


Figure 2. Catch per unit effort (pounds landed per landing receipt) for northern and southern areas of the California sea urchin fishery since 1998.

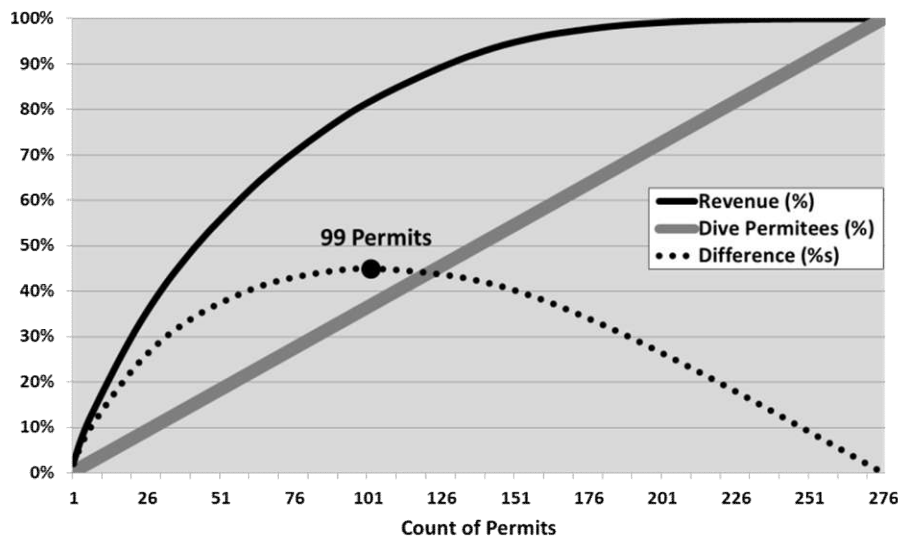


Figure 3. Optimal number of sea urchin divers based on ex-vessel revenues (paid to the diver) from 2009-2013 landings, a period of stability in the fishery. This approach selects the number of divers at peak economic efficiency, 99 permits, representing the optimal point. After that, there is a less than 1 percent increase for each added permit. The law of diminishing returns, after the 99 point, while holding all others constant, will yield diminishing returns.

The California Sea Urchin Commission (CSUC) has taken the initiative to conduct self-funded and fisherman-based studies of the sea urchin resource.

The CSUC has been collecting data by underwriting an independent study by the University of California Santa Barbara to analyze recruitment of red and purple urchins since 1991, which has been an effective and useful method for monitoring sea urchin recruitment. Some divers on their own initiative collect abundance data prior to harvest so they can measure resource trends. The 150 permit capacity goal is arguably the most cost-effective and feasible alternative to maintain a sustainable fishery. This option would ultimately better align with the available management funding than other alternatives (e.g. Total Allowable Catch, additional seasonal closures), which require more funding to implement.

At the October 8, 2014, Commission meeting in Mt. Shasta, testimony was given by a processor representing six other processors opposing the need to reduce capacity. In support of their position, the processors relied on a 2010 Maximum Sustainable Yield (MSY) study conducted by the Department, which indicated that the harvest level in southern California was lower than the MSY at that time. The processors argued that a capacity reduction was unwarranted since the fishery was not able to meet the stock's MSY even with 300 active permittees.

However, it is important to note that the 2010 Department study was made before additional MPAs were established in 2012. In addition, the model used for the analysis (McCall 2009) may not be suitable to inform current management needs in that it does not consider the impact of environmental conditions on gonad quality and the divers' decisions to harvest urchins. Given the declining status of the fishery at its current state, this MSY analysis is most likely not appropriate for the current status of the fishery.

The Department subsequently requested that the CSUC invite the processors to a special meeting to discuss their differences and seek a compromise. On November 21, 2014 the CSUC Board of Directors and seven of the largest sea urchin processors representing 95 percent of the urchins marketed in California met to discuss their differences. At that meeting, a capacity goal of 225 sea urchin divers was offered as a compromise to the processors; however, no follow-through materialized. Since then, a few processors have expressed support for the currently proposed 150 permit capacity goal. On July 13, 2015, the CSUC sent a letter to the Commission requesting to re-initiate a regulatory change despite not having the full support of the processing sector for the proposed revised capacity level.

Most sea urchin divers support achieving capacity reduction in the fishery. In 2012, the CSUC conducted a referendum of all current sea urchin diving permit holders. In total, 142 sea urchin divers representing a wide range of experience, age, and geographic areas participated in the survey. These divers overwhelmingly supported the proposed capacity reduction (81 percent in favor) and reducing capacity by a 10:1 drawing system (79 percent in favor). Ultimately, the industry wishes to continue to be proactive, as it has for the past

decade and a half, by contending that a capacity reduction is the most cost-effective way to ensure sustainability and viability.

(3) **Modified-Preference Point Drawing System, subsections (d) – (f)**

Present Regulations.

As currently set forth in subsections (d) and (e), the drawing system is based on opportunity with a baseline of 300 permits. The current drawing system gives minimal preference to applicants that have been attempting to obtain a sea urchin permit for many years. Although repeat applicants have more drawing chances, they still have to compete with many more applicants with fewer drawing chances. The CSUC desires a system in which applicants with multiple attempts in the drawing have a higher chance of entering the fishery as a sea urchin diver.

Proposed Regulations

The proposed change in subsection (d) would reduce the permit capacity from 300 to 150 over a period of years. In order to assure some opportunity for new divers to obtain permits, the Department proposes to amend the present drawing application in subsection (e) and add new drawing procedures in (f).

The proposed changes under subsection (e) would specify the application process for participating in the annual drawing. The process is fully automated and fairly distributes available permits to successful applicants. Although the application is limited to one application per qualified individual, the automated process adds in the preference points that have accumulated for each applicant based on their years of participation in the drawing.

The proposed addition of a new subsection (f) specifies the drawing process, assigns the proper number of chances, and randomly selects the successful applicant(s). The new system replaces the current drawing system for retired permits with a new Modified-Preference Point drawing system where the number of available permits would be offered on a 4 to 1 basis. The first four permits would be offered to a *Preference Group* and the next one permit would be offered to the *Random Group*. This method would carry over to subsequent years and would continue even when the capacity goal is met. Only one new permit will be made available for every eleven permits that are retired. This will continue until the lower capacity goal of 150 is reached. This method is further demonstrated in Table 1 and shows the milestones in which new permits would be issued based on the permit count after the March 31 renewal deadline.

The distribution of permits to both groups is further described in Table 1.

Table 1. This table explains in simple terms when a new sea urchin permit would be issued and to which group (Preference or Random).

Red Sea Urchin Fishery Modified-Preference Point Drawing System															
Permit Count	289	279	269	259	249	239	229	219	209	199	189	179	169	159	149 or less
Preference Group	1	1	1	1	-	1	1	1	1	-	1	1	1	1	One new permit issued when one retired
Random Group	-	-	-	-	1	-	-	-	-	1	-	-	-	-	
New permits issued to <i>Preference</i> or <i>Random</i> groups when the permit count at March 31 renewal deadline is at or below the listed permit count. This group ratio of four Preference Group to one Random Group continues even when the permit count is 149 or less.															

Each applicant would first be assigned a computer-generated random number then sorted from highest to lowest by the total preference points. One preference point would be awarded for each year they have applied for an urchin diving permit since 2006. The first four available permits, regardless of which year they become available, would be offered to the applicants with the highest number of preference points. The assigned random number would break any tie in preference points if there are fewer permits available than applicants. Any rewarded permit not purchased by the successful applicant would be offered to the next highest applicant in the preference point list. After the first four permits are awarded, the next available permit would be offered to the applicant with the lowest random number. Random numbers would be re-assigned for each year there is a drawing to adjust for added and removed applicants.

Rationale

As of 2016, there are eight applicants that fall under the group with the highest preference points. These eight applicants would be awarded 8 of the 10 first available permits, or earlier if they are chosen within the random draw. Since all applicants are pooled into the Random Group, there would be two independent opportunities for an applicant with a high preference point to obtain a permit. This system still gives applicants with fewer preference points a chance to obtain a sea urchin permit. Only 14 new sea urchin permits will be issued until the new capacity goal of 150 permits is reached. Of these, only two permits will be awarded to the Random Group and 12 would be awarded to the Preference Group. 2006 was chosen as the beginning of the reference period because it accounts for the more recent pool of applicants and the period encompasses a timeframe in which capacity was near 300 sea urchin divers.

The 11:1 ratio for capacity reduction allows a chance of entry for new divers into the fishery while meaningfully decreasing the permit count. This ratio of 11:1 was chosen instead of 10:1 to compensate for the one new permit that is added to the fishery during the reduction process. The newly issued permit would still be used in the total permit count calculation to determine when to give out a new permit, thus simplifying the process.

(4) Amend Subsection 120.7(l), Fishing Season, Add Fishing Days in Southern California

Present Regulations.

Current regulations in subsection (l) allow sea urchins to be harvested seven days a week from November through May and Monday through Thursday from June through October.

Proposed Regulation

The proposed amendment to subsection (l), renumbered to (n), would allow the harvest of sea urchin on any weekday (Monday-Friday) from June-October in southern California south of the Monterey-San Luis Obispo county line. This will add 21 additional days of fishing during the summer season. The CSUC is not proposing to add fishing days north of the Monterey-San Luis Obispo county line because it is not supported by the CSUC and the north coast divers.

Rationale

The current closures for the sea urchin fishery were instituted in 1993 to curb resource depletion and did not account for evolving market dynamics. Long-term market trend of sea urchin roe has since evolved from large-scale international exports to one encompassing significant domestic consumption. A reliable supply of a quality product at a fair price is now essential to maintaining and expanding the market share of California's urchin gonads. The current June-October harvest schedule of Monday through Thursday is resulting in delayed market replenishment at the beginning of each week. Sea urchins held over for shipments from the previous Thursday also lose some of their freshness and thus quality.

In addition, an increasing number of fishermen are selling sea urchins directly to the end users at local ports. These markets tend to be open during weekends, and are more amenable to products obtained the day before as opposed to ones that have sat in storage for over a day.

The extended weeks are not expected to increase fishing pressure on the red sea urchin resource in total. Most urchin divers do not currently dive for more than 75 percent of his/her available dive days during the restricted season. Making Fridays available to commercial divers would allow them to further exploit the high-end niche market catered to specific restaurants and end consumers. Divers are expected to divert more time and effort into marketing their catch, preserving the products, and interacting with end users. The extended fishing week is also expected to benefit fishermen by giving them more flexibility in selecting dive days with safer water conditions.

The changes in the market require a smaller but steadier supply of urchin roe. The domestic market for California red sea urchin has grown dramatically during the last decade and is continuing to expand, helping to offset the economic damage the fishery suffered with the loss of a substantial portion of its sales to the Japanese market. The U.S. market experiences its highest product demand during the summer months into early fall. By adding one day a week to the current harvesting schedule (June through October), the fishery will be on a more equal footing with the rest of the world. The additional day would also bring an added benefit of giving divers more flexibility to manage their dive schedules.

The reason for renumbering (l) to (n) is to maintain the logbook requirement as set forth in subsection 120.7(m). The Department is currently updating its regulation for the commercial sea cucumber dive fishery, and the pending regulation would cross-reference subsection 120.7(m) for the purpose of establishing its own logbook requirement. Renumbering subsection 120.7(l) would ensure that the logbook requirement remains as subsection 120.7(m) and minimize potential confusion and complication.

(5) **Amend Subsection (m), Sea Urchin Diving Logbook**

Proposed Change

The subsection phrase “before the sea urchins are landed” would be deleted.

Rationale

The current regulation requires dive logs to be completed and submitted before sea urchins are landed. Since urchins could be landed right as a fishing vessel docks, a fisherman may have to reach the nearest mail box to drop off a dive log before returning immediately back to his or her vessel to land the urchins while the buyer waiting idly at the dock. Furthermore, subsection 190(c) already prescribes a set of condition of when logs must be submitted to the Department. Removing the extra language in subsection 120.7(m), which is not found in the regulations for any other fishery, clarifies the required log requirements.

(6) **Remove Subsection (n)(2), Closed Areas**

Proposed Change

The proposed amendment would delete the current subsection (n)(2), which prohibits commercial sea urchin take inside Gerstle Cove, California. Subsection (n) is renumbered (o).

Rationale

The subsection restricting commercial sea urchin take is unnecessary, since subsection 632(b)(36) already prohibits all commercial take in Gerstle Cove.

(7) **Amend Subsections (o)(1)-(3); Size Limit**

Proposed Change

The proposed amendment to subsection (o), renumbered (p), and reword subsections (o)(1) & (2) to be more streamlined and compact. It would also remove subsection (o)(3).

Rationale

Subsection (o)(1) prescribes a slot size limit for red sea urchin in southern California and subsection (o)(2) prescribes a similar slot size limit in northern California. Red sea urchins within these respective size ranges cannot be taken. However, both subsections then proceed to provide a 30-urchin per-load allowance for all commercial urchin fishermen. The language can be streamlined by integrating the allowances directly into the prohibitions.

Delete subsection (o)(3) which specifically allows the take of red sea urchins below the slot size limits. This language is moot, since an inclusive slot size limit by definition means that fishermen may take individuals smaller than the limit.

(8) **Amend Subsection (p), Authorization of an Assistant for a Sea Urchin Diver Permittee.**

Proposed Change

The proposed changes would rephrase subsection (p), renumbered (q). The proposed changes would make several minor edits throughout subsection (p), and delete (p)(5), to help improve the clarity of the regulation.

Rationale

The current phrasing of subsection (p)(1) needs clarification. Separating the current requirements into subparagraphs will improve the overall flow of the language.

The current provision in (p)(5) was adopted more than 18 months ago and therefore the term of this provision has lapsed and is deleted for clarity.

(9) **Amend Subsection 705(c)(4), Commercial Fishing Applications, Permits, Tags and Fees: Sea Urchin Diving Permit Drawing Application and Fee.**

Present Regulations.

Current applicants for the sea urchin diving permit drawings are required to fill out a paper application form (FG 1440 (Rev. 1/13)) in order to enter the drawing for a sea urchin diving permit. The application does not incur any cost on the part of the applicant.

Proposed Regulations

The proposed regulation would remove reference to the current drawing application form from the regulations and add a minor administrative fee of \$4.38 for future applications for entering the drawing.

Rationale

The new drawing system would be migrated to an online system, making the paper application form obsolete. Any reference to the old application form would be removed. A new application fee is imposed because the Department must expend resources every year in order to track the qualified pool of diving permit applicants. The Department must also review the eligibility of successful applicants when new permits are issued. Under Fish and Game Code Section 710.5(b), it is the legislature's intent for the Department's operation to be funded by the fees collected from the users of wildlife resources. The calculation of the proposed fee is provided for in Attachment 1 of this ISOR.

- (b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 713, 1050, 9054 and 9055, Fish and Game Code.

Reference: Sections 713, 1050, 7850, 7852.2, 7857, 9054 and 9055, Fish and Game Code.

- (c) Specific Technology or Equipment Required by Regulatory Change: None

- (d) Identification of Reports or Documents Supporting Regulation Change:

1. Ecotrust, Report to the Marine Life Protection Act Initiative: Commercial and recreational fishing grounds and their relative importance off the North Central Coast of California, 2008; South Coast of California, 2010 and North Coast of California, 2011.
2. 2010 CDFW Urchin MSY Power Point Presentation
3. Attachment 1: Item Fee Calculation & Cost Recovery Sheet for Sea Urchin Diving Permit Drawing

- (e) Public Discussions of Proposed Regulations Prior to Notice Publication:

1. October 8, 2014 Commission Meeting
2. November 21, 2014 California Sea Urchin Commission Meeting
3. October 7, 2015 Commission Meeting
4. April 28, 2017 Oxnard Port Meeting

IV. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change:

Total Allowable Catch in place of a Capacity Reduction

A Total Allowable Catch (TAC) could be used to limit the amount of sea urchin harvested per year by quota in lieu of reducing the number of sea urchin divers. The TAC allotment could be based on historical catch, maximum sustainable yield, stock assessments, and/or model simulations. It would take in account the potential latent effort from inactive sea urchin divers, which is currently about 50 percent of the permits. Given the fact that 150 divers could still potentially overharvest the resource of sea urchin, a TAC would limit the amount of poundage harvested based a sustainable estimation of take and could be adjusted based on the status of the fishery each year or as needed.

Harvest restrictions such as a TAC would prove to be very expensive and cumbersome for the Department to carry out and operate because it depends on staff to track the fishery in real time in order to shut down the fishery when the quota is filled. Similarly, an Individual Fishery Quota, which limits harvest per fisherman, would be just as expensive and cumbersome to enforce and track.

TAC fisheries invariably lead to a rush for the fish, resulting in an increase in competition in a shorter amount of time. Divers would inevitably be taking more chances to get their share of the catch by diving longer and deeper, or going out in inclement weather. This type of fishery could also be very impactful to the economic viability of the active sea urchin divers, limiting them on when they can make their landings thus making it more difficult to compete with worldwide markets.

For the reasons stated above, a TAC is rejected as an alternative to capacity reduction for this fishery.

(b) No Change Alternative:

The no change alternative would keep the existing regulations in place. Currently, the number of annual renewed permits cannot exceed 300, if less than 300, replacement permits would be issued on a one-for-one basis. With the high average age and high latency of the current permit holders, the fishery contains significant latent effort. As older, less active fishermen retire, they will gradually be replaced by younger, more active ones. Such increase in fishing effort can potentially create shocks to both the red sea urchin population and the sea urchin fishery.

Under a no change alternative, the open season June - October would remain at four days per week. Urchin fishermen in California will continue to face a market handicap against other urchin fisheries, which can provide the market with fresh urchin every day of the week. In addition, consumers in California who buy urchins from local fish markets, which tend to occur on Saturdays, would not be able to access the freshest possible urchin.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the proposed regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action have been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because the proposed action will not increase costs or reduce harvest quotas. The gradual reduction in the number of permits issued to 150 will accommodate the 125 average number of active urchin divers. Over time, a reduction in permits issued should align the number of divers with the size of the harvesting grounds, increase the average catch per unit of effort and ensure the long-run sustainability of the fishery.

The addition of one more day per week of fishing during the months of June through October is anticipated to enable sea urchin divers more flexibility to harvest and bring fresh product to market at peak demand. This change should assist California sea urchin businesses in remaining competitive.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

No impacts on the creation or elimination of jobs within the state, the creation of new businesses or the elimination of existing businesses are anticipated because the proposed action will not increase costs or reduce harvest quotas.

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The Department may experience a reduction in permit sales revenue with the gradual decline in the number of permits issued from the current 300 to 150 over time. Permits are \$461 per diver annually. If some of the sea urchin diving permittees choose not to renew at a rate of five percent each year, and an estimated 80 applicants enter the annual draw for a new permit, the Department could have revenue losses of about \$6,575 in the current year and an estimated \$6,229 - \$5,901 in the next two fiscal years.

Table 2. Estimated Revenue Impact to the State

Fiscal Year	Inactive Permits Retained	10% Permits Retired	Department Fee Revenue Loss
2018/19	150	15	\$ 6,915
2019/20	135	14	\$ 6,224
2020/21	122	12	\$ 5,601

No change to federal funding to the State is anticipated.

(e) Nondiscretionary Costs/Savings to Local Agencies: None.

(f) Programs Mandated on Local Agencies or School Districts: None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.

(h) Effect on Housing Costs: None.

VII. Economic Impact Assessment:

The sea urchin industry has expressed concern about possible excess capacity in the fishery that may result in overutilization or interfere with efficient and economic operation of the fishery. The proposed regulatory action is intended to reduce the number of permits sold to prevent overutilization and to ensure the

efficient and economic operation of the fishery. A 2015 Department study found that the per-diver marginal revenue is the highest when only 99 of the most active fishermen are counted suggesting the potential economic benefit of fewer fishery participants. The industry has agreed with the capacity goal of 150 permits from the current 300 permits.

The addition of one more day per week of fishing during the months of June through October is anticipated to enable sea urchin divers more flexibility to harvest and bring fresh product to market at peak demand. This change should assist California sea urchin businesses in remaining competitive.

(a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State:

No impacts on the creation or elimination of jobs within the state are anticipated because the proposed action will not increase costs or reduce harvest quotas. These actions are intended to align the number of permits issued, which should increase the average catch per unit of effort and ensure the long-run sustainability of the fishery.

(b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State:

No impacts on the creation of new businesses or the elimination of existing businesses are anticipated because the proposed action will not increase costs or reduce harvest quotas. These actions are intended to align the number of permits issued, which should increase the average catch per unit of effort and ensure the long-run sustainability of the fishery.

(c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State: None.

(d) Benefits of the Regulation to the Health and Welfare of California Residents: None.

(e) Benefits of the Regulation to Worker Safety:

The addition of another weekday during June through October will give sea urchin divers greater flexibility in working around dangerous ocean conditions, and military training activities, thus providing greater safety to the divers.

(f) Benefits of the Regulation to the State's Environment:

The proposed capacity reduction actions are anticipated to be the most cost-effective way to ensure sustainability and viability of the red sea

urchin fishery.

(g) Other Benefits of the Regulation: None.

Informative Digest/Policy Statement Overview

Currently, subsection 120.7(d), Title 14 of the California Code of Regulations (CCR) sets the total number of sea urchin diving permits at 300. Subsection 120.7(e) further prescribes a random drawing system for distributing new permits as they become available. Under the current system, applicants who have held a sea urchin crewmember permit for more than two years would have his/her name entered into the draw one additional time for each additional year he/she has held such permit. However, this advantage is very small in practice due to a maximum cap of five times that a name may be entered into a draw.

Currently Section 750(c)(4) requires no fee for the random drawing application.

SUMMARY OF THE PROPOSED AMENDMENTS

The proposed amendments to subsection (d) would decrease the sea urchin fishery's capacity goal to 150 permittees. This capacity goal will be achieved by issuing one new permit only once 11 permits have been retired. This ratio was chosen to simplify the calculation in which new permits would be issued, taking in account the new permit that is added to the fishery.

The lottery system proposed in subsection (e) and (f) will ensure that the most qualified applicants would enjoy a realistic advantage over less-qualified applicants. Under the new system, most of the new permits would be given to applicants with the most experience in the fishery as crewmembers. The remaining percentage of the new permits would be distributed under a drawing system where every remaining applicant stands the same chance.

The proposed amendment to Section 750(c)(4) would remove reference to the current drawing application form and add a minor administrative fee of \$4.38 for future applications to enter the drawing.

Other amendments to Section 120.7 include:

- Add one extra fishing day per week in the months of June to October in Southern California.
- Clarify the requirements for authorization of an assistant for a sea urchin diver permittee.
- Remove language that no longer has any effect and clarify other regulatory text.

BENEFITS OF THE PROPOSED REGULATIONS

The proposed amendments would significantly decrease the latent fishing capacity within the current sea urchin fishery due to a large number of unused permits. The

changes would also strike a better balance for the future succession of the fishery by ensuring that the most qualified candidates would receive sea urchin diving permits in due course. At the same time, those who may not be as qualified but nonetheless are still willing and able would still have a chance of receiving one of these permits.

The additional dive days during the summer and fall months would allow divers to dive on days with the safest weather condition. The additional days would also help the industry meet the demand of Saturday dock markets and weekend demand. The added harvesting pressure is anticipated to be minimal, but the quality will be greatly enhanced to the consuming public.

CONSISTENCY WITH STATE REGULATIONS

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. Commission staff has searched the California Code of Regulations and statutes and has found no other State regulations related to take of sea urchin for commercial purposes and no other State agency with authority to promulgate regulations concerning take of sea urchin for commercial purposes.

REGULATORY TEXT

Section 120.7, Title 14, CCR, is amended to read as follows:

§ 120.7. Taking of Sea Urchins for Commercial Purposes.

(a) Permit Required.

(1) Any person taking or assisting in the taking of sea urchins for commercial purposes shall have obtained a valid sea urchin permit and shall be in possession of said permit when engaged in such activities. A sea urchin diving permit is not required to operate or assist in operating a vessel used to take sea urchins, however, no person without a valid sea urchin diving permit shall engage in diving from a vessel from which sea urchins are being taken or possessed for commercial purposes, unless authorized by the department's marine region regional manager or his or her designee for the purposes of sea urchin management or research.

(2) To provide an economic incentive for cooperative sea urchin management and research activity, and notwithstanding any other portion of this section, the department may authorize the holder of a valid sea urchin diving permit to harvest (take, possess, land and/or sell) red sea urchins during a closed season or in a closed area, subject to such restrictions regarding date(s), location(s), time(s), size, poundage or other matters as specified by the department. Any data collected during such harvest activity shall be made available to the department. The form of this authorization shall be a letter from the department's marine region regional manager or his or her designee issued to the permittee and containing all conditions of use.

(b) Classes of Permits.

(1) Sea Urchin Diving Permit. Sea urchin diving permits will be issued to licensed commercial fishermen 16 years of age or older who have qualified for permits pursuant to subsection (c).

(2) Sea Urchin Crewmember Permit. Sea urchin crewmember permits will be issued to licensed commercial fishermen 16 years of age or older who do not qualify for sea urchin diving permits.

(c) Permit Renewal.

(1) Applicants for renewal of sea urchin diving permits must have held a valid, unrevoked sea urchin diving permit in the immediately preceding permit year (April 1-March 31).

~~(2) In 2008, applications for renewal of sea urchin diving permits shall be received by the department or, if mailed, postmarked no later than June 30. In 2009, and thereafter,~~
applications Applications for renewal of sea urchin diving permits shall be received by the department or, if mailed, postmarked no later than April 30. Late fees, late fee deadlines, and late renewal appeal provisions are specified in Fish and Game Code Section 7852.2.

(d) Number of Permits.

(1) All qualified prior sea urchin diving permittees shall be eligible to receive diving permits regardless of the number issued.

(2) If the number of diving permits issued to prior permittees is less than ~~300~~ 150, the number of new sea urchin diving permits to be issued shall only be the difference between the number of diving permits issued to prior permittees in the immediately preceding permit year (ending March 31) and ~~300~~ 150. ~~If the number of permits issued to prior permittees is 300 or more, no new sea urchin diving permits shall be available.~~

(3) While the number of diving permits issued to prior permittees is greater than 150, only one new sea urchin diving permit shall be available for every 11 permits that are retired pursuant to Fish and Game Code subsection 7852.2(c).

(e) New Permittees Applications for New Permits:

~~(1) Applications as specified in Section 705 for the issuance of any new sea urchin diving permits that may become available each year shall be received by the department or, if mailed, postmarked no later than June 30. Applications shall be submitted to the department's License and Revenue Branch office in Sacramento. If any new sea urchin diving permits are available for issuance, as provided in subsection (d)(2), they shall be issued to licensed commercial fishermen who held, for each of the two immediately preceding permit years, a valid sea urchin crewmember permit.~~

~~(2) If there are more applicants for sea urchin diving permits than there are permits available, a drawing will be held to determine which applicants will be eligible to purchase permits. Any person who submits more than one application for a new sea urchin diving permit in any one permit year will be excluded from the drawing. Each applicant who meets the criteria in subsection (e)(1) shall be entered into the drawing once. In addition, each applicant shall be entered into the drawing one more time for each additional year, above the minimum required two years, that the applicant possessed a valid sea urchin crewmember permit. No applicant shall be entered more than five times for each drawing. The drawing will be held on the third Wednesday in August each year. Permits will be issued to successful applicants in the order drawn. Payment of the fee for the sea urchin diving permit must be received at the department's License and Revenue Branch office in Sacramento on or before September 25.~~

(1) A drawing shall be held annually for any new sea urchin diving permits that become available for issuance.

(2) Applications for new sea urchin diving permits shall be made available each year through the department's Automated License Data System, at department license sales offices, the department's Internet Sales site, and at department's license agents authorized to sell commercial fishing licenses.

(3) Applicants shall apply by March 31 of each year.

(4) Applicants shall possess a valid Commercial Fishing License and a valid sea urchin Crewmember permit for each of the two permit years immediately preceding the permit year when drawing is done.

(5) Applicants shall pay the nonrefundable processing fee as specified in Section 705 for each drawing application.

(6) Each applicant shall receive a drawing receipt printed from the terminal or downloaded from the Internet. The receipt shall contain the applicant's name and permanent identification number, proof of entry into drawing, and their current preference points for the drawing.

(7) Applicants shall not submit more than one drawing application for the same license year.

(f) Drawings for New Permits

(1) The department shall award any new permits using a Modified-Preference Point drawing system.

(2) The Modified-Preference Point drawing system shall award proportions of permit quota using the following drawing methods:

(A) Preference Point Drawing: Permits in the preference quota are awarded based on the following order of priority: accumulated preference point totals (highest to lowest), and computer-generated random number (lowest to highest).

(B) Random Drawing: Permits in the random quota are awarded according to computer-generated random number (lowest to highest), without consideration of accumulated preference points.

(3) The available new permit quantity shall be split into separate quotas. Every fifth permit that becomes available shall belong to the random quota while all other permits shall belong to the preference quota. This four-to-one ratio for sorting will continue indefinitely.

(4) Successful applicants and a list of alternates shall be determined by drawing within 20 business days following the application deadline date. If the drawing is delayed due to circumstances beyond the department's control, the department shall conduct the drawing at the earliest date possible.

(5) Alternates shall be selected using a Preference Point Drawing.

(6) Successful applicants will be notified as soon as practical. Successful applicants shall submit the fee for a Sea Urchin Diving Permit, as specified in Fish and Game Code Section 9055 to the department's License and Revenue Branch by 5:00 p.m. on or before or, if mailed, postmarked no later than May 15 each year. If the deadline to submit the fee falls on a weekend or holiday payment will be accepted until the close of business on the first state business day following the deadline to submit payment.

(7) Should the available permit quota remain unfilled after that date, the alternate list shall be used to award any available permits.

(8) An applicant shall earn one (1) preference point each time the applicant participates in a drawing for sea urchin diving permit.

(9) Successful applicants or alternates that are issued a sea urchin diving permit shall lose all accumulated preference points for the drawing.

(10) Preference points shall not be transferred to another person.

(11) The department shall maintain records of preference points earned by each applicant based on the identification number assigned to each customer by the department's Automated License Data System. The customer's identification number, Get Outdoors ID (GO ID) will be printed on each drawing receipt issued by the Automated License Data System. Applicants shall notify the department's License and Revenue Branch in Sacramento in writing of any changes or corrections regarding name, mailing address, or date of birth.

(12) Persons not applying in the sea urchin diving permit drawing for five (5) consecutive years starting in 2018 shall have their preference points for the sea urchin drawing reduced to zero (0). For the purposes of this subsection, persons whose

applications are disqualified from drawing shall be considered the same as persons not applying.

(13) Eligible commercial fisherman that applied in the sea urchin diving permit drawing from 2006-2017 and were not awarded a sea urchin diving permit in any of these years shall be assigned one preference point for each year they applied in these drawings.

~~(f)-(g)~~ Fee. The applicant for a sea urchin crewmember permit shall submit the fees and the completed application, as specified in Section 705, to the address listed on the application.

~~(g)-(h)~~ Renewal Appeals. Late renewal appeal provisions are specified in Fish and Game Code Section 7852.2.

~~(h)-(i)~~ Vessel Identification. When sea urchins are taken under these regulations, the vessel's commercial registration number shall be displayed on both sides of the boat. The number shall be black, at least 10 inches high, and on a white background. All permittees aboard the boat shall be mutually responsible for the proper display of the vessel's commercial registration number.

~~(i)-(j)~~ Conditions of the Permit:

(1) No person shall take or possess lobsters or abalone aboard any boat used to take sea urchins under these regulations on any day that sea urchins have been taken or are to be taken.

(2) Hydraulic lifts and air lifts shall be used only in such a manner that no rocks or other mineral matter, aquatic plants, fish or other aquatic life except sea urchins, shall be removed from the bottom or otherwise disturbed.

~~(j)-(k)~~ Revocation of Permits. Any permit may be suspended, revoked, or canceled by the commission upon breach or violation of any fish and game regulation pertaining to the take of sea urchins or abalone; or violation of the terms or conditions of the permit by the holders thereof, their agents, servants, employees or those acting under their direction and control.

~~(k)-(l)~~ Exemption from Tidal Invertebrate Permit. A sea urchin diver or sea urchin crewmember operating under the provisions of this section is not required to possess a Tidal Invertebrate Permit, but is subject to the provisions of ~~section 123, Title 14, CCR~~ Section 123.

~~(l)~~ Fishing Season.

~~(1) From November through May, the open season for red sea urchins is seven days per week.~~

~~(2) From June through October, the open season for red sea urchins is Monday,~~

~~(3) During any closed period, no red sea urchins may be possessed on any commercially registered vessel, except that any commercially registered vessel may transport red sea urchins after any closure goes into effect, provided that the vessel is in port no later than 0800 hours on the first day of the closed period.~~

(m) Logbooks. Pursuant to Section 190 of these regulations, each permittee shall complete and submit an accurate record of all sea urchin fishing activities on a form (DFG-120.7 (2/08)), incorporated herein by reference, provided by the department ~~before the sea urchins are landed~~. The completed daily records shall be sent to the department address specified on the logbook on or before the tenth day of each month following the month to which the records pertain.

(n) Fishing Season.

(1) Red sea urchin shall not be taken for commercial purposes on Friday, Saturday, and Sunday north of the Monterey-San Luis Obispo county line from June 1 through October 31.

(2) Red sea urchin shall not be taken for commercial purposes on Saturday and Sunday south of the Monterey-San Luis Obispo county line from June 1 through October 31.

(3) During any closed period, no red sea urchins may be possessed on any commercially registered vessel, except that any commercially registered vessel may transport red sea urchins after any closure goes into effect, provided that the vessel is in port no later than 0800 hours on the first day of the closed period.

(n)-(o) Closed Areas.

(1) Sea urchins shall not be taken for commercial purposes in state marine reserves or state marine parks. Specific regulations in state marine conservation areas may prohibit the commercial take of sea urchins as per subsection 632(b).

~~(2) The Gerstle Cove area in Salt Point State Marine Conservation Area (Sonoma County) is closed to all commercial fishing for sea urchins. This area is delimited as all the ocean waters east of a line extending 180° true from the southernmost point of Salt Point (38° 33.92' N. lat. 123° 19.89' W. long.) and north of a line extending 270° true from the westernmost point of land of the unnamed point at the southern end of Gerstle Cove (38° 33.6' N. lat. 123° 19.37' W. long.).~~

~~(3)~~ (2) The South Caspar Point area in Mendocino County is closed to all commercial fishing for sea urchins. This area is bounded on the north by a line extending 90° magnetic from sea to the mouth of Caspar Creek (north bank) in Caspar Cove, on the south by the northern boundary of the Point Cabrillo State Marine Conservation Area and its westward extension to the 120-foot depth contour, on the west by 120-foot depth contour line connecting the north and south boundary lines, and on the East by the mainland shore. The Point Cabrillo State Marine Conservation Area remains closed to the take of all forms of marine life except as permitted in subsection 632(b).

(e)-(p) Size Limit.

(1) In southern California (south of the Monterey-San Luis Obispo county line) no more than thirty (30) red sea urchin-urchins between one and one-half (1 1/2) and three and one-quarter (3 1/4) inches in shell diameter, not including the spines or any portion of their ball-and-socket attachment to the shell, per permittee per load, may be taken, possessed, sold, or purchased, ~~except that not more than thirty (30) such red sea urchins per permittee per load may be taken, possessed, sold or purchased.~~

(2) In northern California (north of the Monterey-San Luis Obispo county line) no more than thirty (30) red sea urchin-urchins between one and one-half (1 1/2) and three and one-half (3 1/2) inches in shell diameter, not including the spines or any portion of their ball-and-socket attachment to the shell, ~~may be taken, possessed, sold or purchased, except that not more than thirty (30) such red sea urchins per permittee per load,~~ may be taken, possessed, sold or purchased.

~~(3) Red sea urchins less than one and one-half (1 1/2) inches in shell diameter shall not be considered as part of the thirty (30) undersized red sea urchins per permittee per load that may be taken, possessed, sold or purchased.~~

~~(4)~~ (3) Every sea urchin permittee shall carry and use an accurate measuring device, to determine the size of red sea urchins being taken as specified in ~~subsections (o)(1) and (o)(2) above herein~~, while diving for sea urchins for commercial purposes.

~~(p)~~ (q) Authorization of an Assistant for a Sea Urchin Diver Permittee.

~~(1) Authorization by Department. The holder of a sea urchin diving permit, who, after entering the sea urchin fishery, becomes, due to a severe unforeseen or catastrophic long term (expected to be for one year or longer) or permanent injury or disease, physically unable to dive, may designate a specific individual as an assistant, upon written approval from the department. The department may authorize, in writing, any one specific individual to be designated by the permittee as an assistant, providing the following conditions have been met:~~

(1) The holder of a sea urchin diving permit may designate a licensed commercial fisherman as a sea urchin diver assistant upon written approval from the department, provided that:

(A) The sea urchin diving permit has not been suspended or revoked;

(B) The permittee has become physically unable to dive due to a severe unforeseen or catastrophic long-term (expected to be for one year or longer) or permanent injury or disease; and,

(C) The injury or disease occurred after entering the sea urchin fishery.

(2) The department may authorize, in writing, the particular licensed commercial fisherman to be designated by the permittee as a sea urchin diver assistant, providing the following conditions have been met:

(A) ~~the~~ The permittee provides documentation within 90 days of the request to the department from a qualified physician that the permittee suffers from ~~the a~~ disease or injury and it will prevent the permittee from diving. Such conditions shall not include short or long-term common illnesses, conditions caused or primarily exacerbated by aging, or any other condition which appears to be marginal or common, such as routine back or neck problems;

(B) ~~the~~ The permittee has no violations or pending violations for which his or her permit could be revoked; and,

(C) ~~the~~ The proposed sea urchin diver assistant has a current valid California commercial fishing license and has not had any California commercial fishing license or permit suspended or revoked; has never been convicted, and no charges are pending for a violation of any provision of the Fish and Game Code or Title 14, California Code of Regulations.

~~(2)~~ (3) Special Provisions:

(A) The authorized sea urchin diver assistant may take or assist in the taking of sea urchin only when in the company of the permittee and only for the duration of the permit year in which the authorization is issued.

(B) The permittee shall have no authority to, and shall not dive for sea urchin while a valid letter authorizing the permittee to designate an assistant exists, regardless of whether or not the assistant is actively diving.

(C) The authorized sea urchin diver assistant shall have no right to ownership or transfer of the permit beyond that which is otherwise provided by law.

(D) The sea urchin diving permit, in addition to the sea urchin diver assistant authority shall be subject to revocation, suspension or other actions provided in law or regulation, upon violations committed by the sea urchin diver assistant, when acting under the authority of a sea urchin diver assistant. The assistant shall take no actions authorized pursuant to a sea urchin diver permit without the consent of the permittee.

(E) The department shall review the authority authorized pursuant to this section at least once every year and may withdraw the authority if any of the conditions are not met.

~~(3)-(4)~~ (4) Fee Requirement. Any person authorized as a sea urchin diver assistant pursuant to this subsection shall annually pay a fee to the department equal to the amount required of permittees pursuant to Fish and Game Code Section 9055. The fee shall be submitted with the request for the assistant.

~~(4)-(5)~~ (5) Required Possession of Department Authorization. The sea urchin diver assistant shall carry the department's letter of authority whenever conducting activities authorized pursuant to the subsection.

~~(5) The department shall report to the commission within 18 months of the enactment of these provisions on the merits of the program. The department shall make a recommendation to the commission to either continue or discontinue the program, based on achievements and problems associated with the administration of these provisions.~~

Note: Authority cited: Sections 713, 1050, 9054 and 9055, Fish and Game Code.
Reference: Sections 713, 1050, 7850, 7852.2, 7857, 9054, and 9055, Fish and Game Code.

Section 705, Title 14, CCR, is amended to read:

§ 705. Commercial Fishing Applications, Permits, Tags and Fees.

... [No changes to subsections (a) through (c)(3)]

(4) ~~2013 Sea Urchin Diving Permit Drawing Application FG 1440 (Rev. 1/13), incorporated by reference herein.~~

No Fee 4.38

... [No changes to subsections (c)(5) through (d)]

Note: Authority cited: Sections 713 and 1050, Fish and Game Code.
Reference: Sections 713 and 1050, Fish and Game Code.



2013 SEA URCHIN DIVING PERMIT DRAWING APPLICATION

COMMERCIAL FISHING ID# L

Form Deleted From 705(c)(4)

IT IS MANDATORY TO COMPLETE ALL ITEMS UNLESS SPECIFIED AS VOLUNTARY.
INCOMPLETE APPLICATIONS WILL NOT BE ENTERED IN THE DRAWING. TYPE OR PRINT CLEARLY.

FIRST NAME	M.I.	LAST NAME	DATE OF BIRTH
MAILING ADDRESS			
CITY	STATE	ZIP CODE	DAY TELEPHONE (Voluntary)

Each applicant may only submit one application. Applicants submitting more than one application will be disqualified from the drawing (Section 120.7, Title 14, of the California Code of Regulations (CCR)). **A drawing will not be held if no new permits are available.**

NUMBER OF NEW PERMITS AVAILABLE: Section 120.7, Title 14 of the CCR, provides for the issuance of new Sea Urchin Diving Permits when the number of Sea Urchin Diving Permits issued prior to August 1 is either more than or less than 300. If the number of Sea Urchin Diving Permits issued to prior permittees is more than 300, the total number of Sea Urchin Diving Permits available for issuance is one-tenth of the difference between the number of Sea Urchin Diving Permits issued during the current permit year and the total number of Sea Urchin Diving Permits issued during the immediately preceding permit year (April 1, 2012 through March 31, 2013). If the number of diving permits issued to prior permittees is less than 300, the number of new Sea Urchin Diving Permits available is the difference between the number of permits renewed by prior urchin permittees and 300. Individuals who had a valid 2012-2013 Sea Urchin Diving Permit are eligible to renew their permits regardless of the number issued. New divers will be selected by random drawing on Wednesday, August 21, 2013. Successful applicants will be notified by certified mail. Payment of the \$456.75 fee is due by September 25, 2013.

TO ENTER THE DRAWING: Applicants must possess a valid 2013-2014 California Commercial Fishing License, and have possessed a valid 2011-2012 and 2012-2013 Sea Urchin Crewmember Permit. Each applicant who meets the above stated requirements shall be assigned one random number. One additional random number shall be assigned to each applicant for each additional year they possessed a valid Sea Urchin Crewmember Permit. Not more than five random numbers shall be assigned to any applicant for each drawing.

DEADLINE TO APPLY—Mail this application with a copy of your 2013-2014 California Commercial Fishing License along with copies of required Sea Urchin Crewmember Permits to the California Department of Fish and Wildlife, License and Revenue Branch, 1740 N. Market Blvd., Sacramento, CA 95834, (916) 928-5822. **Applications must be received at the License and Revenue Branch in Sacramento or, if mailed, be postmarked on or before June 30, 2013.**

DO NOT SEND PERMIT FEE WITH APPLICATION.

I hereby certify that all information contained on this application and/or submitted to meet the requirements of this permit is correct and true. I understand that, in the event that this information is found to be untrue or incorrect, the permit issued will be considered invalid and must be surrendered to the California Department of Fish and Wildlife and that I will be subject to criminal prosecution. This permit may be revoked or suspended by the Fish and Game Commission if you are convicted of, or plead guilty or nolo contendere to, a Fish and Game violation. If drawn, I am eligible to receive this permit and I am not under revocation or suspension nor is there a case pending that would restrict me from obtaining this permit.

APPLICANT'S SIGNATURE X	DATE
----------------------------	------

FOR CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE USE ONLY

DRAWING ELIGIBILITY VERIFIED BY	<input type="checkbox"/> 2013-2014 CFL <input type="checkbox"/> 2011-2012 and 2012-2013 Sea Urchin Crewmember Permits
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Tiemann, Sheri@FGC

From:
Sent: Wednesday, August 16, 2017 6:53 AM
To: FGC
Cc: Ashcraft, Susan@FGC; Stein, Derek@Wildlife; Shuman, Craig@Wildlife;
Mastrup, Sonke@Wildlife
Subject: Agenda item 17 FGC Meeting, August 16, 2017

Greeting to everyone,

Unfortunately I can't be present at today's FWC Meeting for personal reasons. I would like to, however, comment on agenda item 17.

It has been my goal in the 3.5 years that I've been elected chairman of the CSUC to shift through all the various proposals from all the previous chairman, board members, executive directors current and past as well as all industry participants to come up with a proposal for capacity reduction that would to its best, speak to all the concerns of all parties involved through all the years that some form of this proposal was brought forth 11 years ago.

This proposal has benefited from input from a variety of DFW staff including Susan Ashcraft, Derek Stein, Sonke Malstrup as well Bob Trainor who consulted with the CSUC on ISOR structure. Without the guidance of these individuals the proposal would not have attained even the structure that would provide a comprehensive document for everyone involved to view. For this we are grateful.

Within the industry this document has evolved through years of vetting at port meeting where it was subjected to many changes that were voted on, mailer that were adjusted to reflect the changes, mail surveys and port meetings that were often contentious but not without positive input that all had a part to play in the evolution of and acceptance by a vast majority of CSUC members that is this document before you.

In the interest of preserving and furthering a sea urchin industry, to be able to work toward becoming a sustainable fishery and be able to adapt to the uncertainty that is the future in front of us and the changes that will be brought upon us by that future, I believe that this action we request to be noticed here today is a step in the right direction and should be allowed to move forward.

Sincerely
Charles Kavanagh
Chairman, CSUC

Sent from my iPad



September 29, 2017

Mr. Eric Sklar, President
Mrs. Jacque Hostler-Carmesin, Vice President
Mr. Anthony C. Williams, Member
Mr. Russell Burns, Member
Mr. Peter Silva, Member
California Fish and Game Commission
1416 Ninth Street
Box 944209
Sacramento, CA 94244-2090

Re: **Support** - § 120.7. and 705 Title 14, CCR Taking of Sea Urchins for Commercial Purposes

Dear Commissioners:

The California Sea Urchin Commission (CSUC) urges support for the proposed changes to the commercial sea urchin regulations Sections 120.7 and 705 Title 14, CCR. We have worked cooperatively with staff from the Fish & Game Commission and the California Department of Fish & Wildlife (Department) over twelve years to fine tune these proposed changes. During that time, we held numerous industry and port meetings with divers and processors. We have coordinated three industry wide surveys that have been analyzed and cross referenced by Department staff. In addition, we held a special Board of Directors meeting November 2014 to address specific concerns voiced by a number of sea urchin processors. We waited nearly a year for their response while the proposal idled. Concluding they were not seriously prepared to work out their differences, we re-petitioned the Department to resume the regulatory changes. Finally, we publicly agenzized and discussed the capacity reduction proposal at each of the quarterly California Sea Urchin Commission Board of Directors meetings. We therefore believe we have fully vetted the very best compromise position to carry the commercial sea urchin industry forward into the foreseeable future.

Capacity reduction is necessary to maintain a sustainable sea urchin fishery. There are 300 commercial sea urchin permits, of which less than a hundred are truly active. The fishery is not well served when two-thirds of the permit holders do not participate. For the past 12 years nearly all landings were conducted by 150 divers. Due to recent warm ocean conditions there has been a reduction of kelp which is the key food source for urchins. This has resulted in 90

percent of the urchins harvested by 85 divers while there has been a 40 percent reduction in pounds landed. In addition, the enactment of the Marine Protected Areas (MPA) has further compacted the industry into smaller areas, causing further pressure upon active divers.

To determine if harvest negatively impacts recruitment, the CSUC engaged the University of Santa Barbara in 1990 to conduct a bi-weekly settlement study in Southern and Northern California. The ongoing independent research indicates that harvest does not impact recruitment and serves to support the fishery is being managed sustainably with current harvest levels. The industry cannot economically support 300 active divers considering the reduction of harvests and compaction put upon the industry by MPA's. Therefore, the recommendation of reducing capacity to 150 is the most reasonable and best alternative.

One of the most difficult provisions to propose was the introduction of new divers. We vigorously evaluated various concepts of 10:1, 5:1, for example. One of the overarching goals was to not regulate divers out of the fishery, but let them decide individually whether it was right for each individual to remain or retire their permit. We did not want to force anyone out. Consequently, it may take many years for capacity to reach 150. Adding more divers at a rate greater than 10:1 can cause undue economic pressure to active divers and those new individuals added due to their anticipated need to recoup their initial capital investments. We spent considerable time polling and debating the addition of new divers. The majority of divers voted to recommend one new diver added by a lottery for each ten that retire (10:1). Subsequently, the Department recommended, and the industry agreed to change the recommendation to 11:1 since the intent was to replace one new permit for each ten that leave. Therefore, eleven minus one results in a reduction of ten. We further recommended that if less than ten divers retire in a year, the number shall carry forward to the following year and a new diver added when the threshold of eleven is met. We further support the Department's recommendation in a tiered lottery model as proposed in the Initial Statement of Reasons (ISOR).

The addition of one-day fishing from June to October in Southern California and not Northern California was the result of many factors. For one, when the proposal was under development the Department recommended that Northern California harvests were sustainable, but felt that additional pressure could potentially cause population levels to exceed maximum sustainable yield (MSY). The recommendations were based on an old MSY study that hadn't been updated since MLP's were instituted. Independent of the MSY study, the industry divers in Northern California were nearly universally in agreement they did not want the additional fishing day based on port meetings and polling survey results.

Southern California practices and MSY showed a different set of results. There are many divers who have developed a Saturday market or direct sales at ports. They need a fresh supply of urchins to fulfill consumer demand. Friday harvests allows the opportunity to meet this new and increasing market, providing higher economic returns for those who engage in this practice. Currently, divers must hold over their urchins from a Thursday harvest, causing loss of quality to their catch.

Weather conditions are often unpredictable causing loss of diving days during the week. From June to October season, divers must make decisions whether to venture out when conditions

are less favorable to meet their deliveries or market demands. Allowing one additional day could mean the difference for better weather and thus a greater margin of safety. The addition of one day could mean a maximum of an extra 21 days per year. Considering the drop in diver participation, it's doubtful the additional day would cause additional harvest pressures. The margin of safety for the divers considerably outweighs the economic or harvest pressures. Northern California ports do not conduct off boat sales. Therefore, there is less reason to add a day back.

The proposed ISOR adequately defines the reasons for the regulatory changes and recognizes the enormous time and effort the Department, the Fish & Game staff and the industry have put into this joint proposal. The proposal caps twelve years of research, meetings, surveys and debates. It is a product of compromise and agreements. We firmly support and request your vote to adopt the ISOR as proposed and recommended by all three organizations.

Sincerely,

A handwritten signature in black ink, reading "David Goldenberg". The signature is fluid and cursive, with the first name "David" and last name "Goldenberg" clearly legible.

David Goldenberg
Executive Director

cc: Valerie Termini, Executive Director
Susan Ashcraft, Marine Advisor

2017 MAY 26 AM 11:26

Memorandum

Date: May 18, 2017

To: Valerie Termini
Executive Director
Fish and Wildlife Commission

From: Charlton H. Bonham
Director



Subject: **Agenda item for the June 21-22, Fish and Game Commission Meeting**
Re: Request to Publish Notice of the Commission's Intent to Add Section 197, Title 14, California Code of Regulations (CCR), Commercial Fisheries Landing Requirements

The Department of Fish and Wildlife (Department) requests that the Fish and Game Commission (Commission) authorize publication of notice of its intent to consider adding regulations for activities associated with commercial fisheries landings and electronic reporting (Section 197, Title 14, CCR).

The Department is proposing these regulations since no regulations exist and activities are currently governed by statutes alone. In addition, the Department is transitioning from a paper-based reporting system to electronic reporting and these regulations will guide that transition. The Department is working closely with the Pacific States Marine Fisheries Commission (PSMFC) to streamline and integrate state electronic reporting with the PSMFC electronic reporting system currently in use in Washington, Oregon and California for certain federally-managed fisheries. This will allow fish receivers to use one system to meet both federal and state reporting requirements and will transition all state fisheries landings to electronic reporting.

If you have any questions regarding this item, please contact Dr. Craig Shuman, Regional Manager, Marine Region, at (805) 568-1246. The public notice for this rulemaking should identify Environmental Program Manager, Katie Perry as the Department's point of contact. Ms. Perry can be reached at (916) 445-6456 or Katie.Perry@Wildlife.ca.gov.

Enclosures

ec: Stafford Lehr, Deputy Director
Wildlife and Fisheries Division
Stafford.Lehr@wildlife.ca.gov

Valerie Termini, Executive Director
Fish and Game Commission
May 18, 2017
Page 2

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STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

Add Section 197
Title 14, California Code of Regulations
Re: Commercial Fisheries Landing Requirements

- I. Date of Initial Statement of Reasons: April 27, 2017
- II. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: June 22, 2017
Location: Smith River, CA
 - (b) Discussion/Adoption Hearing: Date: October 12, 2017
Location: Atascadero, CA
- III. Description of Regulatory Action:
 - (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

The purpose of the addition of Section 197 is the management of activities associated with commercial fisheries landings and the reporting of these landings. A “landing” is generally characterized as the transfer or offloading of fish from a vessel for the purpose of selling or delivering those fish to a licensed fish receiver. The proposed regulations are necessary to manage this transaction and to clarify the applicable statutes for the participants and law enforcement. To date, there are no regulations guiding this activity. Statutes authorizing commercial fisheries licenses and landing taxes are found in Article 7 and Article 7.5 of Fish and Game Code. Commercial fish receivers are engaged in business for profit and are required to be licensed and to report all landing receipt records on a form furnished by the Department of Fish and Wildlife (Department) pursuant to Fish and Game Code sections 8043 and 8047. In addition, Fish and Game Code subsection 1050(b) authorizes the Fish and Game Commission (Commission) to determine the forms to be used for commercial fisheries entitlements.

The proposed regulations implement a transition from the current paper-based reporting system to electronic forms via a new electronic reporting system for commercial fisheries landings.

Transitioning from paper landing receipts to electronic fish tickets, as the electronic forms are known, is appropriate at this time as advances in computer and Internet technology and the use of electronic devices by many businesses, including the fishing industry, is widespread. It is necessary that the Department update its processes, including proposing regulations to ensure the benefits of switching from paper landing receipts to electronic fish tickets are realized. Benefits to commercial fishermen, fish receivers and the Department include:

1. Time savings and reduced costs to the Department by reducing the amount of time and money spent designing, printing, packaging and mailing landing receipts to the fish businesses.
2. Transition of Department data entry staff to other priority tasks associated with landings data as data entry of paper forms is eliminated.
3. Ease of record storage and maintenance of electronic records by the Department.
4. Built-in checks and validations in electronic fish tickets will result in more accurate fisheries data on which the Department and the Commission can base management decisions.
5. Use of electronic fish tickets will result in more timely submission of fisheries data for both management and law enforcement.
6. Electronic fish tickets will provide for ease of information storage, data manipulation for research, production for legal reasons and information sharing with other fishery management agencies and law enforcement.
7. Availability of landing data and reporting tools for fish receivers.
8. Provides consistency with federal regulations for certain fisheries that also require electronic reporting via the same web-based application.

Landing receipts are legal documents that are completed and submitted to the Department by licensed fish businesses in California to document the fish they purchase from fishermen and the price paid. The Department uses the data for verification of quarterly taxes paid to the Department and for resource assessment, including the development of fishery management plans for ensuring the sustainable use of marine resources. While statute specifies the information contained on the landing receipt, it also allows for other information the Department may prescribe (Fish and Game Code subsection 8043(b)). The proposed regulations include all the information required on the landing receipt including the additional items.

In some instances, fish must be transported from the point of landing to a fish receiver where the purchase of the fish occurs. In the event that a licensed fish receiver is not available to document the fish landing, a fish transportation receipt is required to transport these fish to a fish receiver to maintain a legal chain-of-custody (Fish and Game Code Section 8047). While statute specifies the information required on the transportation receipt (Fish and Game Code subsection 8047(d)(10)), the information is included in the proposed regulations for completeness and allows the commercial fishermen and fish receivers to find the information in one place. In addition, the proposed regulations describe the additional items for inclusion on the fish transportation receipt when it is used as a dock ticket.

There are currently 17 different paper landing receipt forms, many of which have been used for decades to comply with reporting requirements specified in statute. Each landing receipt is used for a fishery, gear type, and/or area specific to California. There is one fish transportation receipt form, currently in paper format.

The electronic fish tickets will be submitted to the Department through the federal, web-based *E-Tix* system maintained by Pacific States Marine Fisheries Commission. The Department will continue to be the legal custodian of California landing receipt records. *E-Tix* has been a federal requirement for the individual fishing quota groundfish trawl fishery since its inception in 2011 and was expanded to include all sablefish landings as of January 1, 2017. Oregon has adopted *E-Tix* for all fisheries on a voluntary basis and Washington is working towards this as well. The Department's goal is to phase out the use of paper landing receipts and transition to electronic fish tickets using the PSMFC *E-Tix* application for data entry. This eliminates the issue of duplicate electronic reporting systems and provides consistency between federal and State agency reporting requirements. As the functional equivalent of a landing receipt, the electronic fish ticket also constitutes a weighmaster certificate for purposes of California Business and Professions Code Section 12713.

These regulations will provide for a phase-in period for all landing receipts to be submitted electronically via the *E-Tix* system. A phase-in period of 6 months to three years was estimated to be sufficient time to allow fish receivers to transition to electronic reporting. Based on a survey conducted by the Department in December 2016, approximately 74 percent of survey participants (223 responded) preferred a phase-in period of six months to one year to mandate the use of electronic fish tickets, while less than 23 percent of the survey participants preferred a longer phase-in period of up to three years. Phasing in the requirement to use electronic fish tickets is a reasonable approach to implementing a new reporting system, since there will likely be some receivers that need to purchase the hardware, obtain access to the Internet, and learn how to use a new Internet-capable device. The Department has determined that a one year phase-in period to fully adapt to a new system is reasonable and not

burdensome. These regulations are necessary to define the phase-in period and allow sufficient time for participants to fully comply with the requirement to use the *E-Tix* system.

PROPOSED REGULATIONS

Subsection 197(a) Definitions.

This subsection defines specific terms used within the proposed regulations. The definitions are necessary for three interrelated reasons:

1. To clarify to the public how those terms are used on the forms and regulations.
2. To clarify to the public and improve consistency within Department programs overseeing the fisheries using the landing receipts.
3. To clarify to the public the terms and language that make the regulations legally enforceable.

Certain terms and their definitions are consistent with terms and definitions used in federal regulations for electronic reporting (i.e., electronic fish ticket, functional, submit, record, dock ticket). Since these proposed regulations specify the use of the same electronic reporting system, this consistency will avoid confusion for the fish receiver.

Subsection 197(b) Landing receipts; form and contents.

This subsection describes the landing receipt forms that the Department prepares and issues to the fish receivers. It identifies the information to be included on the forms as specified in statute (Fish and Game Code subsection 8043(b)) and includes additional information required by the Department. Information from statute is repeated in the proposed regulations so that all information can be obtained in one place for the ease of the fish receivers. The additional information includes port of landing, condition of fish, use of fish, number of fish, permit number, signatures and note pad area. Port of landing provides information on where the fish are landed and is used in analyses of fishing catch and effort. It is also important information for economic analyses. Condition identifies how the fish are prepared prior to obtaining an accurate weight that is recorded on the landing receipt form. This is needed to compute the correct landing taxes pursuant to Fish and Game Code Section 8042. The information on the use of fish is needed to determine the end use of the fish (e.g., human food, animal food, bait, etc.). Number of fish is needed for certain species for which the number of individuals is needed for management purposes (i.e., salmon and lobster). Signatures of the commercial fisherman and fish receiver verify that each have reviewed and approved the accuracy of the information

contained on the landing receipt. The note pad area is used by fish receivers for their own purposes and for certain required information such as for rock crab used as bait (subsection 125.1(d), Title 14, CCR).

Subsection 197(c) Fish transportation receipts.

This subsection is necessary to clarify reporting requirements when a commercial fisherman or his designee transports fish from the point of first landing to a receiver who buys the fish and completes a landing receipt or electronic fish ticket. Transportation receipts are used to record key data (e.g., species caught, location catch occurred, poundage landed, etc.) and is a legal chain-of-custody document to ensure that the fish offloaded are the fish that are sold or delivered to the fish receiver. This subsection also describes how a fish transportation receipt may be used as a dock ticket for recording the information to be included in an electronic fish ticket. The term “dock ticket” is used in federal regulations and is used in these regulations to maintain consistent terminology and avoid confusion. Using a fish transportation receipt as a dock ticket has been accepted by the federal government for use in California to allow fish receivers to comply with recently enacted federal requirements. These require a paper record of the landing when an electronic fish ticket cannot be submitted immediately, such as when fish are being transferred from point of landing to the fish receiver or when fish are offloaded after hours. This regulation will authorize the use of a fish transportation receipt as a dock ticket, including additional items to be recorded, and eliminates unnecessary duplicative record keeping by commercial fishermen and fish receivers.

Subsection 197(d) Landing receipts and fish transportation receipts.

This subsection describes the use of sequentially numbered paper landing receipts and fish transportation receipts; the handling of voided landing receipts and fish transportation receipts; the return of unused landing receipts or fish transportation receipts and the delivery, distribution and retention of copies of both landing receipts and fish transportation receipts.

Subsection 197(e) Electronic fish tickets; implementation and required information.

This subsection is necessary to describe the timing of the transition from paper landing receipts to electronic fish tickets. It clarifies that during the phase-in period of one year fish receivers must use either a paper landing receipt or an electronic fish ticket, but not both. Once a fish receiver switches to electronic reporting they will no longer submit a paper landing receipt. This avoids duplication of data entry and allows fish receivers to meet both state and federal reporting requirements in one step for those who receive fish species that are also federally managed. This subsection identifies the date by which all fish

landings must be reported using electronic fish tickets. The proposed phase-in period of one year will give fish receivers sufficient time to comply with the requirement to switch from paper landing receipts to electronic fish tickets. This subsection also describes the information contained in the electronic fish tickets, the same information that is required on the paper landing receipts.

This subsection also describes the responsibilities of the fish receiver to use and maintain hardware and software that meets the requirements for submitting electronic fish tickets. The fish receiver must ensure Internet accessibility in a sufficient state to completely and effectively submit the electronic fish ticket. The proposed regulations also include procedures to follow in case of a power outage or device failure that could restrict access to *E-Tix*, including that the landing must be submitted to the *E-tix* system within 24 hours of landing the fish. Access to *E-Tix* is available from any Internet-capable device such as personal computers (desktops or laptops), tablets, or mobile devices. Additionally, a printer is required so that printed copies of the electronic fish tickets can be made for distribution to the commercial fisherman and the fish receiver.

Subsection 197(f) Electronic fish tickets; reporting and submission requirements.

This subsection specifies when an electronic fish ticket or dock ticket is completed, the review of the information prior to submission, the parties who sign the electronic fish ticket or dock ticket prior to submittal, and includes the process for retaining paper copies. All landing information must be recorded immediately either on the electronic fish ticket, or on a dock ticket should the *E-Tix* system not be accessible at the time of landing. In either case, an electronic fish ticket must be submitted within 24 hours of the landing. Fish receivers and state and federal fisheries managers benefit from timely landings information. The 24-hour time frame has been adopted in federal regulations for landings of federally managed species (Code of Federal Regulations Section 660.113(b)(4)(ii)(C)(6), Section 660.213(e)(2)(ii) and Section 660.313(f)(2)(ii)). The same time period is included in these proposed regulations for consistency since fish businesses will be using the same web-based application.

At the time of this Initial Statement of Reasons the Department has been notified that the Pacific Fishery Management Council, a body that recommends management measures for jointly managed fisheries operating in federal waters including electronic reporting, will discuss non-regulatory possibilities for resolving concerns about the 24-hour reporting requirement at their June meeting. Should the Pacific Fishery Management Council make changes to the 24-hour reporting requirement, the Department recommends that the Commission adopt the same reporting requirements. The Department's goal is to maintain consistency with federal regulations to avoid confusion for those using the same web-based application to meet both state and federal reporting requirements.

The dock ticket must include the same information as an electronic fish ticket and must also include the electronic fish ticket number. Receivers with limited to no Internet access at the docks must first obtain the electronic fish ticket number by going through the *E-Tix* system at their home, place of business or other Internet-capable location before they head to the dock to buy fish. This is consistent with federal regulations.

Subsection 197(g) Electronic fish tickets; waiver of submission requirements.

This subsection is necessary to allow for waivers of submission requirements in the event that a fish receiver is unable to submit an electronic fish ticket due to circumstances beyond the control of the fish receiver. The proposed regulations describe the process by which a fish receiver submits a request to the Department for a waiver including the reason for the request and identifies where to submit the request. The Department will either issue or deny the waiver request, and if granted, may include conditions such as the time period for submitting paper landing receipts, or any other criteria the department deems necessary. The waiver must be made available to the Department for inspection when conducting business under the terms of the waiver. This subsection specifies that a paper landing receipt must be sent to the Department within 24 hours of the landing following the instructions in the waiver. The use of a waiver under certain circumstances is consistent with federal regulations.

Subsection 197(h) Retention of electronic fish tickets and dock tickets.

This subsection specifies that electronic fish tickets and dock tickets must be retained for a period of four years and must be made available for inspection at any time by the Department. This is consistent with statutes governing the retention of paper landing receipts.

Subsection 197(i) Electronic fish ticket revisions.

This subsection specifies that final data must be submitted in an electronic fish ticket, but that an exception allows a correction after submission in the event there are data errors found on the fish ticket.

(b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority Cited: Sections 1050(b)), 8043, 8046, and 8047, Fish and Game Code.

Reference: Sections 1050(b), 8033, 8033.5, 8037, 8031, 8032, 8033, 8033.1, 8033.5, 8034, 8035, 8040, 8043, 8045, 8046, 8046.1, and 8047, Fish and Game Code; 50 CFR 660.113, 50 CFR 660.213 and 50 CFR 660.313.

(c) Specific Technology or Equipment Required by Regulatory Change:

The proposed regulations will require accessibility to Internet enabled devices, such as a mobile device, tablet, or computer. Transitioning from paper landing receipts to electronic fish tickets, as the electronic forms are known, is appropriate at this time as advances in computer and Internet technology and the use of electronic devices by many businesses, including the fishing industry, is widespread. Electronic reporting will improve the Department's ability to meet management needs of commercial fisheries by obtaining more accurate and timely data. However, the mandate to report landings electronically will be phased in over time so this is expected to reduce the burden on the regulated public by giving them time to find ways to access Internet enabled devices.

(d) Identification of Reports or Documents Supporting Regulation Change: None

(e) Public Discussions of Proposed Regulations Prior to Notice publication:

The Department's Marine Region sent out a notice and survey via an insert in the commercial license renewal packet to 1,135 fish businesses in November 2016. However, of these businesses, the Department was targeting the approximate 560 fish receivers that submitted a landing receipt between 2011 and 2015. The insert included two items: advance notification that planning was underway for this rulemaking and a survey. The survey was designed to query a fish receiver's access to the Internet and their ability or preference to comply with the mandate by offering a suite of time frames to phase in the mandatory electronic submissions.

The Department received 223 responses, with the majority of responders (83 percent) reporting Internet availability at their place of business, and 89 percent reporting Internet availability at home. Just over 7 percent of the respondents reported no Internet access at work or at home. Of the 223 fish receivers that responded to the survey, the majority (approximately 74 percent) preferred a phase in period of up to a year to mandate the use of electronic reporting.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

Alternative 1: A requirement to complete and submit electronic fish tickets the next business day.

As stated above, the Pacific Fishery Management Council will be discussing non-regulatory measures to address the requirement for the 24-hour submission of electronic fish tickets. However, a potential regulatory alternative for those fish businesses/receivers that are unable to complete

landings transactions over the weekend is to allow submission on the next business day.

This alternative may benefit some fish businesses/receivers, but may pose difficulties to state and federal agencies responsible for in-season management of certain fisheries that are restricted to specific quotas. Once a quota is reached the fishery is generally closed and a delay greater than 24 hours may result in fishing activity that exceeds the quota. As a precautionary approach, fisheries management agencies may close the fishery early to avoid exceeding the quota which may result in fish left on the table.

Alternative 2: Three-year phase in period.

This alternative would allow for a three year phase in period where fish receivers can use either paper landing receipts or electronic fish tickets after the effective date of these regulations. After this date, all fish receivers will be mandated to use electronic fish tickets through the online system known as *E-tix*. Paper fish transportation receipts would still be required to transport fish. No other modifications to the proposed regulations are included in this alternative.

Results from the survey distributed to commercial fish receivers revealed that few participants felt they needed three years or longer to comply with the mandatory requirement to use the electronic fish ticket system. Due to the fact that the system is already in use by some federal fisheries, and that the majority of survey participants felt they could comply within a year of implementation, waiting more years than necessary to mandate the use would be unnecessary and would add additional burden on the Department, due to the need to have staff to key in the fisheries data from the paper landing receipts. Therefore, the more time that passes, the more costs the Department incurs to handle paper landing receipts.

Alternative 3: Consideration of Performance Standards.

This alternative would create a performance standard of 24-hour reporting using existing paper-based system. This would require that fish receivers mail in their paper landing receipts within 24 hours of the landing to ensure that the landing data is received in a timely fashion.

This alternative would place a greater burden on fish receivers to ensure that landing receipts are mailed in daily. It would also pose a cost burden to the Department which currently pays for the postage to mail in those landing receipts as well as the cost of printing the envelopes. The Department would also still have staff overhead costs for entering and editing landing receipts. While changing from twice a month to daily submission of paper landing

receipts will reduce the time lag, there would still be delays due to mailing in the landing receipts and the time needed to edit and enter the landing receipts. This alternative also conflicts the requirement in Fish and Game Code section 8046(a) that landing receipts be delivered to the Department on or before the 16th or last day of the month.

(b) No Change Alternative:

If the new regulations are not adopted, fish receivers will continue to use paper landing receipts and fish transportation receipts to record their activities as required in Fish and Game Code and submission of data will remain twice a month. For many fish receivers this will mean complying with two separate reporting systems, an electronic one for the National Marine Fisheries Service and a paper one for the Department. The Department would continue to incur the costs associated with preparing, printing and mailing landing receipts and envelopes to fish receivers and entering the data manually.

(c) Consideration of Alternatives

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the proposed regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

(d) Description of Reasonable Alternatives that would lessen adverse impact on small business:

No alternatives were identified by or brought to the attention of Commission staff that would lessen the adverse impact on small businesses and be equally effective in implementing the proposed time- and cost-saving electronic reporting method. The Department has determined that a one year phase-in period to fully comply with the requirement to use the *E-Tix* system is reasonable and not burdensome.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulations will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The electronic application can be used on any Internet capable device, including personal computer, mobile device, or tablet. Such devices are common tools used to conduct business, so there should be minimal expense to an individual commercial fisherman who sells fish to persons not licensed as fish receivers and to fish businesses. If a commercial fisherman or fish business needs to maintain and/or upgrade their device or Internet connection, that will be their responsibility and they may incur some costs. Internet browsers can be downloaded onto an existing Internet-capable device free of charge (e.g., Google Chrome, Mozilla Firefox). The costs of purchasing an Internet-capable mobile device (e.g., cell phone) may range from free of charge with commitment to a service contract to several hundred dollars depending on the mobile device and service plan. The cost of a tablet ranges from \$50 to \$400. The cost of purchasing a computer starts at about \$200 for a basic model. The costs of an internet service provider vary depending on whether or not a phone is purchased, but generally runs about \$90 per month without any promotions. Offsetting these potential costs are the benefits to fish receivers with improved timeliness of catch data and ability by the Department to manage the fisheries. In addition, eliminating the requirement to complete paper receipts and for some to complete electronic fish tickets for both state and federally managed species at one time is a benefit. Finally, such expenditures are tax deductible business expenses.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The Department does not anticipate any impacts on the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses in California. The Department does not anticipate any benefits to the health and welfare of California residents or worker safety. The Department anticipates benefits to the environment in the sustainable management of commercial fisheries.

(c) Cost Impacts on a Representative Private Person or Business:

See (a) above.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The *E-Tix* is a federal application, and is owned and maintained by PSMFC. Therefore, the expense to the Department for implementation should be nominal. The cost savings by not printing landing receipt books, providing return reply envelopes, and postage would be significant. The average cost to the Department for printing, providing prepaid envelopes and return postage averages about \$100,000 per year. Additional cost savings would occur for the State due to the cessation of manually entering the fish ticket information into a data management system from the paper receipts.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None

- (f) Programs mandated on Local Agencies or School Districts: None

- (g) Costs Imposed on Any Local Agency or School District that is Required to Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.

- (h) Effect on Housing Costs: None

VII. Economic Impact Assessment:

The proposed regulations will revise procedures currently in place to report commercial landings.

- (a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State:

The proposed action will not affect the creation or elimination of jobs in the State because the proposed regulations only revise procedures currently in use by commercial fishermen and fish businesses. These changes are not expected to increase the time spent to complete a landing receipt and will not change the volume of economic activity. This change is administrative in nature and will not impact the volume of fishing activity or the purchasing of fish.

- (b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State:

The proposed regulations are not anticipated to result in the elimination of existing businesses in the State, nor spur the creation of new businesses because the proposed regulations only revise procedures currently in use by commercial fishermen and fish businesses. These changes are not expected to increase the time spent to complete landing receipts and will not change

the volume of economic activity. This change is administrative in nature and will not impact the volume of fishing activity or the purchasing of fish.

(c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State:

The proposed regulations are not anticipated to result in the expansion of businesses currently doing business in the State because the proposed regulations only revise procedures currently in place. These changes are not expected to increase the time spend to complete a landing receipt and will not change the volume of economic activity. This change is administrative in nature and will not impact the volume of fishing activity or the purchasing of fish.

(d) Benefits of the Regulation to the Health and Welfare of California Residents:

The Department anticipates generalized benefits to the health and welfare of California residents through the improved reporting of commercial landings data. The proposed regulations are intended to modernize reporting procedures and guide the transition from paper reporting to electronic reporting of commercial landings. The proposed regulations provide administrative clarity that should help to fulfill the goals set forth in the Marine Life Management Act (MLMA) of 1999 (Fish and Game Code Section 7050 et seq.).

(e) Benefits of the Regulation to Worker Safety:

The proposed regulations represent a neutral effect, offering neither benefits nor detriment to worker safety in the State.

(f) Benefits of the Regulation to the State's Environment:

The proposed regulations are consistent with the goals set forth in the MLMA; "to allow and encourage only those activities and uses of marine living resources that are sustainable and manage marine living resources on the basis of the best available scientific information and other relevant information on which to base management decisions (Fish and Game Code subsection 7050(b)). The Department anticipates benefits to the environment in the sustainable management of the commercial fisheries resources. The proposed regulations further support the MLMA which requires that "conservation and management programs prevent overfishing, rebuild depressed stocks, ensure conservation, facilitate long term protection and, where feasible, restore marine fishery habitats" (Fish and Game Code subsection 7055(b); see also subsections 7056(b) and (c)).

(g) Other Benefits of the Regulation:

The use of current information technology and web-based applications rather than paper-based reporting systems is consistent with the State of California's 'Going Green' initiative and the Department's policies to reduce the state's environmental footprint.

Informative Digest/Policy Statement Overview

The purpose of the addition of Section 197, Commercial Fisheries Landing Requirements, is the management of activities associated with commercial fisheries landings and the reporting of these landings. A “landing” is generally characterized as the transfer or offloading of fish from a vessel for the purpose of selling or delivering those fish to a licensed fish receiver. The proposed regulations are necessary to manage this transaction and to clarify the applicable statutes for the participants and law enforcement. To date, there are no regulations guiding this activity. Statutes authorizing commercial fisheries licenses and landing taxes are found in Article 7 and Article 7.5 of Fish and Game Code. Commercial fish receivers are engaged in business for profit and are required to be licensed and to report all landing receipt records on a form furnished by the Department of Fish and Wildlife (Department) pursuant to Fish and Game Code sections 8043 and 8047. In addition, Fish and Game Code subsection 1050(b) authorizes the Fish and Game Commission (Commission) to determine the forms to be used for commercial fisheries entitlements.

The proposed regulations implement a transition from the current paper-based reporting system to electronic forms via a new electronic reporting system for commercial fisheries landings.

Transitioning from paper landing receipts to electronic fish tickets, as the electronic forms are known, is appropriate at this time as advances in computer and Internet technology and the use of electronic devices by many businesses, including the fishing industry, is widespread. It is necessary that the Department update its processes, including proposing regulations to ensure the benefits of switching from paper landing receipts to electronic fish tickets are realized.

The electronic fish tickets will be submitted to the Department through the federal, web-based *E-Tix* system maintained by Pacific States Marine Fisheries Commission (PSMFC). *E-Tix* has been a federal requirement for the individual fishing quota groundfish trawl fishery since its inception in 2011. Oregon has adopted *E-Tix* for all fisheries on a voluntary basis and Washington is working towards this as well. The Department’s goal is to phase out the use of paper landing receipts and transition to electronic fish tickets using the PSMFC *E-Tix* application for data entry. This eliminates the issue of duplicate electronic reporting systems and provides consistency between federal and State agencies.

These regulations will provide for a phase in period of one year for all landing receipts to be submitted electronically via the *E-Tix* system. Phasing in the mandate to use electronic fish tickets is a reasonable approach to implementing a new reporting structure, since there will be a portion of the buyers or receivers that will have an adjustment period which will include a learning curve to learn the electronic program, and provides time for those that do not have access to the Internet or Internet capable devices to obtain access.

PROPOSED REGULATIONS

- Defines specific terms used within the proposed regulations.
- Includes information included on a paper landing receipt, fish transportation receipt and electronic fish ticket.
- Includes information on the transition from paper landing receipts to electronic fish tickets via the web-based application known as *E-Tix*, including the phase-in period until full implementation of electronic reporting. During the phase-in period either paper landing receipts or electronic fish tickets can be used, but not both.
- Includes procedures on fish transportation receipts from the point of landing to the fish receiver who buys the fish and fills out a paper landing receipt or electronic fish ticket.
- Describes the hardware and software requirements to fill out electronic fish tickets, the requirements to ensure Internet accessibility in a sufficient state to completely and effectively submit the electronic fish ticket, as well as what to do in case of a power outage or device failure that could restrict access to the *E-Tix* system.
- Provides details on when the electronic fish ticket should be submitted - specifically within 24 hours of the landing, who should review and verify the information by providing signatures prior to submission, and includes the process for retaining copies of the receipt to verify the signatories.
- Allows fish receivers to request a waiver from electronic reporting when circumstances exist that prevent a fish receiver from reporting landings via *E-Tix* and provides details on how to obtain a waiver from the Department.
- Ensures that submitted electronic fish tickets can be revised after submission in the event that data errors are found on the receipt.

BENEFITS OF THE PROPOSED REGULATIONS

The proposed regulatory action will benefit fishermen, fish receivers, the State's economy, and the environment by maintaining healthy and sustainable commercial fisheries. Specific benefits include:

1. Time savings and reduced costs to the Department by reducing the amount of time and money spent designing, printing, packaging and mailing landing receipts to the fish businesses.
2. Transition of Department data entry staff to other priority tasks associated with landings data as data entry of paper forms is eliminated.
3. Ease of record storage and maintenance of electronic records by the Department.
4. Built-in checks and validations in electronic fish tickets will result in more accurate fisheries data on which the Department and the Commission can base management decisions.
5. Use of electronic fish tickets will result in more timely submission of fisheries data for both management and law enforcement.

6. Electronic fish tickets will provide for ease of information storage, data manipulation for research, production for legal reasons and information sharing with other fishery management agencies and law enforcement.
7. Availability of landing data and reporting tools for fish receivers.
8. Provides consistency with federal regulations for certain fisheries that also require electronic reporting via the same web-based application.

CONSISTENCY WITH STATE REGULATIONS

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. Commission staff has searched the California Code of Regulations and statutes and has found no other State regulations related to the completion of landing receipt records and no other State agency with authority to promulgate regulations concerning landing receipt records.

Regulatory Text

Section 197, Commercial Fisheries Landings and Receipts, is hereby added to Title 14, California Code of Regulations:

Section 197. Commercial Fisheries Landing Requirements.

(a) Definitions. The following definitions apply to this section:

(1) "Commercial fisherman" has the same meaning as found in Fish and Game Code Section 8040.

(2) "Dock ticket" means written documentation that is legible and in English, for landing data as described in subsection (e)(3) of these regulations, and is used when submission of the electronic fish ticket cannot be performed immediately upon landing.

(3) "Electronic fish ticket" means a web-based form that is used to send landing data to the department via the Pacific States Marine Fisheries Commission. The web-based form is accessed at <https://etix.psmfc.org>.

(4) "Fish business" has the same meaning as found in Fish and Game Code section 8032.

(5) "Fish receiver" has the same meaning as found in Fish and Game Code Section 8033.

(6) "Fish transportation receipt" means a paper form provided by the department for recording commercial catch that is transported from the point of first landing to a fish receiver.

(7) "Functional" means that the software and hardware requirements are met and submission to Pacific States Marine Fisheries Commission can be executed effectively by the equipment.

(8) "Land" or "Landing" means to begin transfer of fish, offloading fish, or to offload fish from any vessel. Once transfer of fish begins, all fish aboard the vessel are counted as part of the landing.

(9) "Landing receipt" means a paper form provided by the department for recording the sale or delivery of commercial catch.

(10) "Record" means the action of documenting electronic fish ticket information on a dock ticket.

(11) "Submit" means to transmit via a web-based form final electronic fish ticket information.

(b) Landing receipts; form and contents. The department prepares and issues upon request landing receipt forms.

(1) Landing receipts shall be completed at the time of the receipt, purchase, or transfer of fish, whichever occurs first and shall include the following information:

(A) Accurate weight of the species;

(B) Common name of the fish species received;

(C) Date of the receipt;

(D) Department origin block number where the fish were caught;

(E) Department registration number of the vessel and name of the vessel;

(F) Name of the fish business and fish business license identification number;
(G) Name of the fisherman and the fisherman's commercial fishing license identification number;
(H) Number of individual fish, as applicable;
(I) Price paid; and
(J) Type of gear used.
(2) Additional information the department requires includes:
(A) Port of landing;
(B) Condition of the fish, as applicable;
(C) Use of the fish, as applicable;
(D) Fishery permit number, as applicable;
(E) Note pad area that may be used by the fish receiver at their discretion; and
(F) Signatures of the fisherman and the fish receiver.
(c) Fish transportation receipts; form and contents. The department prepares and issues on request fish transportation receipt forms.
(1) A commercial fisherman or his designee shall fill out a fish transportation receipt to transport fish to a licensed fish receiver, unless he is licensed as a fish receiver or acting under the authority of a fisherman's retail license.
(2) Fish transportation receipts shall be completed at the time of the receipt, purchase, or transfer of fish, whichever occurs first, and shall contain the following information:
(A) Accurate weight of the species;
(B) Common name of the fish species received;
(C) Date of the receipt;
(D) Department origin block number where the fish were caught;
(E) Department registration number of the vessel and name of the vessel;
(F) Name of the fish business and fish business license identification number;
(G) Name of the fisherman and the fisherman's commercial fishing license identification number;
(H) Port of landing.
(I) Name of the person transporting the fish;
(J) Corresponding landing receipt number or electronic fish ticket number issued by the fish business to the commercial fisherman; and
(K) Signature of the fisherman authorizing transportation.
(3) To use a fish transportation receipt as a dock ticket, the following information shall be added to the information contained in subsection (c)(2):
(A) Fishery permit number, as applicable; and
(B) Signature of the fish receiver.
(d) Landing receipts and fish transportation receipts.
(1) All numbered landing receipts and fish transportation receipts shall be completed sequentially.
(2) Any voided landing receipt or fish transportation receipt shall have the word "VOID" written across the face of the receipt and shall be submitted to the department with all other completed landing receipts.

(3) A fisherman or fish receiver who is no longer conducting business shall return all unused landing receipts or fish transportation receipts and receipt books to the department immediately upon terminating the business.

(4) The delivery, distribution and retention of copies of landing receipts is described in Fish and Game Code Sections 8046 and 8046.1.

(5) The delivery, distribution and retention of fish transportation receipts is described in Fish and Game Code Section 8047.

(e) Electronic fish tickets; implementation and required information.

(1) Beginning on July 1, 2018 any fish receiver or fisherman with a fisherman's retail license shall record the landing information as provided herein using either a paper landing receipt or an electronic fish ticket, but not both.

(2) Beginning on July 1, 2019 electronic fish tickets shall be the sole method of submitting the information as provided herein.

(3) Electronic fish tickets or dock tickets shall be completed at the time of the receipt, purchase, or transfer of fish, whichever occurs first, and shall contain the following information:

(A) Accurate weight of the species;

(B) Common name of the fish species received;

(C) Date of the receipt;

(D) Department origin block number where the fish were caught;

(E) Department registration number of the vessel and name of the vessel;

(F) Name of the fish business and fish business license identification number;

(G) Name of the fisherman and the fisherman's commercial fishing license identification number;

(H) Number of individual fish, as applicable;

(I) Price paid;

(J) Type of gear used;

(K) Port of landing;

(L) Condition of the fish, as applicable;

(M) Use of the fish, as applicable;

(N) Fishery permit number, as applicable;

(O) Note pad area that may be used by the fish receiver at their discretion; and

(P) Signatures of the fisherman and the fish receiver; and

(Q) Transportation receipt number, as applicable.

(4) To complete and submit an electronic fish ticket a fish receiver shall meet the following hardware and software requirements:

(A) A personal computer system, tablet, mobile device, or other device that has software (e.g. web browser) capable of submitting information over the Internet, such that submission to the department via the Pacific States Marine Fisheries Commission can be executed effectively; and

(B) A printer capable of printing copies of the electronic fish tickets submitted via a personal computer system, tablet, or mobile device.

(5) The fish receiver is responsible for:

(A) Maintaining Internet access sufficient to access the web-based interface and submit completed electronic fish tickets; and

(B) Insuring that all hardware and software required under this subsection are fully operational and functional whenever they receive, purchase, or transfer fish species for which an electronic fish ticket is required.

(C) In the event of an internet outage or failure of the device it is the responsibility of the fish receiver to record the landing on a dock ticket pursuant to subsection (f)(3) of these regulations. The electronic fish ticket shall be submitted within 24 hours of the landing, except as provided in subsection (g).

(f) Electronic fish tickets; reporting and submission requirements.

(1) At the time of the landing the fish receiver shall either immediately complete an electronic fish ticket or record on a dock ticket the information that will be used to complete the electronic fish ticket for submission within 24 hours.

(2) If the landing information is entered on an electronic fish ticket the following is required prior to submittal:

(A) The information shall be reviewed by the commercial fisherman or the person who transported the fish;

(B) After review, the fish receiver and the commercial fisherman or the person who transported the fish shall sign a printed hard copy of the electronic fish ticket documenting that both have verified the accuracy of the information contained therein; and

(C) The fish receiver shall keep the original paper hard copy and provide a copy to the commercial fisherman.

(3) If the landing information is recorded on a dock ticket for later submission as an electronic fish ticket, the following is required:

(A) The electronic fish ticket number, which can be generated remotely via any device with a web browser and internet connection prior to the landing;

(B) The information shall be reviewed by the commercial fisherman or the person who transported the fish;

(C) After review, the fish receiver and the commercial fisherman or the person who transported the fish shall sign the dock ticket documenting that both have verified the accuracy of the information contained therein; and

(D) The fish receiver shall keep the original paper hard copy and provide a copy to the commercial fisherman.

(E) The electronic fish ticket shall be submitted within 24 hours of the landing.

(g) Electronic fish tickets; waiver of submission requirements.

(1) Under a temporary waiver granted by the department, a fish receiver may submit electronic fish ticket information on paper when there are circumstances beyond the control of the fish receiver resulting in their inability to submit landing data using the electronic fish ticket system.

(2) A request for a waiver has been submitted in writing to the department's Marine Region, Regional Manager, c/o Marine Fisheries Statistical Unit, 4665 Lampson Avenue, Suite C, Los Alamitos, CA 90720, or via facsimile at 562-342-7137, or via email at ElectronicFishTicket@wildlife.ca.gov. The waiver shall include:

- (A) Reason the fish receiver cannot comply with the electronic submission requirements.
- (B) The name of the person making the request and their position within the company.
- (C) The name of the fish business and fish business identification number.
- (D) The physical address, phone number, and facsimile number or email address, as applicable, of the fish receiver, and
- (E) The proposed time period for the waiver to be in effect.
- (3) The department may request other related information prior to granting or denying the waiver.
- (4) The waiver may include conditions such as the time period for submitting paper receipts, or any other criteria the department deems necessary.
- (5) The fish receiver shall immediately make available a copy of the waiver approved by the department for inspection by the department when conducting business under the terms of the waiver.
- (6) Fish receivers that have been granted a temporary waiver from the requirement to submit electronic fish tickets shall submit on paper the same data as is required on electronic fish tickets, pursuant to subsection (e)(3) of these regulations, within 24 hours of the date of landing during the period that the waiver is in effect. Paper fish tickets shall be sent to the department according to the instructions provided in the waiver.
- (h) Retention of electronic fish tickets and dock tickets.
 - (1) The commercial fisherman and the fish receiver shall keep a copy of the electronic fish ticket and dock ticket, as applicable for a period of four years and shall make them available for inspection at any time by the department.
- (i) Electronic fish ticket revisions.
 - (1) Electronic fish tickets shall to be used for the submission of final data.
 - (2) In the event that a data error is found, electronic fish ticket submissions shall be revised by resubmitting the revised form electronically.

Note: Authority cited: Sections 1050(b), 8046, 8046.1, and 8047, Fish and Game Code.
Reference: Sections 8031, 8032, 8033, 8033.1, 8034, 8035, 8040, 8043, 8045, and 8047, Fish and Game Code. Title 50, Sections 660.113, 660.213 and 660.313, Code of Federal Regulations.

From: Mike Lucas <mlucas@northcoastfisheries.com>
Sent: Tuesday, July 25, 2017 8:47 AM
To: FGC
Cc: 'Rob Ross (robbiz@cwo.com)'
Subject: Proposed regulatory action relative to Section 197, Title 14

Dear Commission:

I am writing on behalf of North Coast Fisheries in regards to the proposed legislature to go from paper to paperless fish tickets. We use the E-Tix for Groundfish presently and we do have times (fairly often), where there is maintenance, or other interrupting events that bring the program down for periods of time. This is to be expected with any computer based program I suppose, however the restrictions and rules where applied to the fish dealer are unfair, unjust, and unwarranted.

As the rules are now we only have 24 hours to have the E-Tix entered. ***There is no allowance for weekends, holidays, or even breakdowns on our end.*** However the department has no workers on the other end on weekends or holidays so it is pointless that we are made to do so. ***This new system already brings a financial burden upon us. It relieves one upon the department, but upon the processors it adds more debt load. To further add insult to injury, you demand unreasonable expectations of 24 hour deadlines,*** meaning that if we unload a boat on Friday night, we then have to bring in people on overtime just to enter a fish ticket that could have, and should have, waited until Monday (a regular business day). There is not even an exception for Holidays. ***This is ridiculous and an overly bureaucratic rule that has a zero net gain for the department, while imposing a great financial penalty upon an industry which already faces enough challenges.***

Why should we be forced into overtime and Holiday pay-outs while there is nobody on the other end to interpret the feedback we supply? How in anyone's mind does that make sense? We are not a daily quota fishery and I implore the committee to use some common sense here when implementing these financial burdens upon the industry. While you consider your pocket, please also consider the industry's as well. ***I am asking you to please change the verbiage in the regulations proposed to allow a reasonable time for entry of the data into the E-Tix system.*** Many docks along the coastline are remote and as such either have no internet or very restricted internet access. This means that we still must generate paper tickets at these docks, then the fish moves on a truck into the main plants, the paper tickets travel with the fish, they are then loaded into the E-Tickets but the system must be reasonable. It is not reasonable to assume (wrongly) that we bring the loads of fish into the main plants each and every day. We often leave small deliveries in dock coolers until such time as more fish lands and it makes financial sense to then move it to the main plants.

I am asking for the language to allow "reasonable time". Reasonable time should be defined as a 24 hour business day. Business days are Monday through Friday, not weekends and not legal holidays.

So if a delivery comes into a port on a Friday that E-Tix deadline should be Monday of the following week not Saturday. It is very unfair for you to pass rules and regulations upon us that are intended to save you money, while costing us money, and not play by the same rules as you demand us to play by.

If we must work and pay overtime on weekends and holidays there should be:

1. A valid reason, there is not at this time
2. You also should be working these hours. If you are not than any reason for this stringent entry time of data is unwarranted at best and should be deemed unreasonable and overly burdensome to the fish dealers.



Michael Lucas | President
Desk :707-396-5882
Cell : 707-292-0302
Email: mlucas@northcoastfisheries.com

September 21, 2017

RECEIVED
CALIFORNIA
FISH AND GAME
COMMISSION

To: - VALERIE TERMINI, EXEC DIRECTOR
1418 NINTH STREET ROOM 1320
SACRAMENTO CA. 95814

2017 SEP 27 AM 9:10

HAVE RECEIVED YOUR NOTICE REGARDING CHANGES IN
THE COMMERCIAL FISHERIES LANDING REQUIREMENTS -
NAMELY GOING FROM PAPER LANDING RECEIPTS TO E-TIX -

AS KATIE PERRY DID NOT RETURN MY CALL I HAVE
INITIATED THIS LETTER - I AM NOT IN FAVOR OR WILLING
(FOR SEVERAL REASONS) TO CONDUCT THIS BUSINESS
USING ELECTRONIC FISH TICKETS -

I AM NOW APPROACHING 84 AND THE GAME FOR
ME IS CHANGING - MOST FISH I TAKE IS FOR MY OWN
PERSONAL USE - IF THE E-TIX SYSTEM IS FORCED
UPON ME AND I AM UNABLE OR WILLING TO COMPLY -
HOW WILL I LAND MY FISH? - IS THIS THE END OF
MY 60+ YEARS OF INVOLVEMENT IN THE COMMERCIAL
SALMON FISHERY?

WHY CAN'T WE DO WHAT OREGON AND WASHINGTON
ARE DOING? - WHATS THE MATTER WITH A
VOLUNTARY SYSTEM USING PAPER AND/OR E-TIX?

THOSE THAT PREFER PAPER CAN BE CHARGED
EXTRA FOR THE PAPER IF MONEY IS THE ISSUE -

SINCERELY

EDWARD R BOITANO (TONY 6-40307)

NOTE I NEVER DID LEARN TO TYPE - ALWAYS HAD A
SKILLED SECRETARY AVAILABLE -

California Fish and Game Commission
DRAFT Resolution Regarding Drift Gillnet Fisheries

WHEREAS, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) establishes the primary process for managing fisheries in U.S. federal waters and creates a system whereby individual regional fishery management councils, including the Pacific Fishery Management Council, and agencies develop fishery management plans, amendments, and implementing regulations for fisheries within their geographic jurisdiction; and

WHEREAS, the Magnuson-Stevens Act provides a streamlined process for the approval of regulations implementing fishery management plans that emphasizes the individual decision-making authority of the fishery management councils and limits the actions the U.S. Secretary of Commerce may take in response to council decisions; and

WHEREAS, specifically, upon transmittal of a proposed regulation change to the U.S. Secretary for Commerce, the secretary determines whether the proposed regulation is “consistent with the fishery management plan”; and

WHEREAS, the California drift gillnet fishery for swordfish and thresher shark is managed under the *Federal Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species*; and

WHEREAS, the Pacific Fishery Management Council expressed its intent to change management of the California drift gillnet swordfish fishery using tools available under the Magnuson-Stevens Act to create a new framework to advance the fishery including hard caps on interactions with protected species; and

WHEREAS, recognizing that actions taken by the Pacific Fishery Management Council, the National Marine Fisheries Service, fishermen, and partners over the past twenty years have greatly reduced the inadvertent catch of special status species and other non-target species, and have substantially reduced bycatch rates and improved fishery performance; and

WHEREAS, the National Marine Fisheries Service released a report in June 2017 announcing its withdrawal of a proposed rule implementing hard caps for the California drift gillnet swordfish fishery, the primary purpose of which would have been to create transparency, accountability measures, and incentives for best practices within the fishery; and

WHEREAS, the ruling from the National Marine Fisheries Service does not advance the drift gillnet fishery forward and, in fact, has jeopardized the effective functioning and viability of this fishery in California; and

WHEREAS, the state worked collaboratively for many years to develop these regulations in concert with the industry to develop solutions that would increase environmental sustainability without sacrificing economic performance and viability of the fishery;

NOW, THEREFORE, BE IT RESOLVED, in light of the decision by the National Marine Fisheries Service, the California Fish and Game Commission strongly disagrees with the withdrawal of the hard caps rule; and

FURTHER, BE IT RESOLVED, the California Fish and Game Commission will continue to push for transparent and innovative approaches to fisheries management plans; and

FINALLY, BE IT RESOLVED, that the California Fish and Game Commission will encourage the California Department of Fish and Wildlife to work with industry to further develop new gear types for an environmentally and economically sustainable swordfish fleet in California.

DATED: OCTOBER 12, 2017

DRAFT



GAVIN NEWSOM
LIEUTENANT GOVERNOR

Chuck Bonham
Director, CA Department of Fish and Wildlife
1416 9th Street, 12th Floor
Sacramento, CA 95814

Eric Sklar
President, CA Fish and Game Commission
1416 9th Street, Suite 1320
Sacramento, CA 95814

September 7, 2017

Dear Director Bonham and President Sklar,

I am writing to thank you for your commitment to use California's authority and expertise to develop a collaborative solution that results in an environmentally and economically sustainable swordfish fishery. Marine animals commonly caught as bycatch have more value if left alive rather than incidentally caught in drift gillnets. At the same time, the state's fishing industry is an important part of California's coastal heritage, and policies should encourage economically viable, sustainable fisheries.

The Fish and Game Commission and the Department of Fish and Wildlife's history of supporting bycatch reduction methods has contributed to progress in reducing the unintended mortality of marine animals, and I applaud your agencies' interest in continuing to pursue balanced policies for this fishery. Your relationship with stakeholders from both the NGO community and the fishing industry allows the unique opportunity to collaboratively develop solutions that reduce bycatch while simultaneously bolstering the fishery's viability for participants. Supporting the authorization of deep-set buoy gear by the Pacific Fishery Management Council will give fishermen the option to use more sustainable gear, and widespread adoption of this new gear can be facilitated by a transition or phase-out plan. Your interest in developing these options, which requires short and long-term planning at multiple levels of government, is commendable for its comprehensive approach and collaboration with stakeholders and agencies.

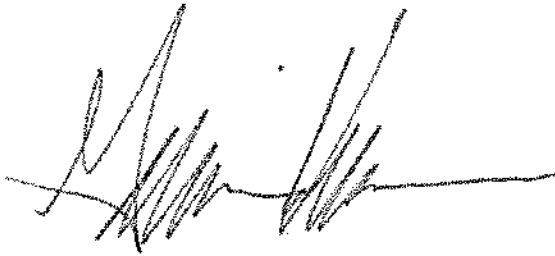
California's environmental policy seeks to attain environmental protections while preserving or creating economic opportunity. Just as the state's policy on climate change has enabled the state



to aggressively reduce greenhouse gas emissions while promoting economic growth, improving the environmental sustainability of the swordfish fishery should not happen at the expense of the fishery's economic sustainability. Your efforts to engage with stakeholders and represent their interests in decision-making at state and federal levels is a shining example of the state's ability to develop balanced, stakeholder-driven policy.

My office stands ready to support your efforts and I look forward to a progress report in the near future.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gavin Newsom', with a long horizontal line extending to the right.

GAVIN NEWSOM
Lieutenant Governor
State of California

CC: Phil Anderson, Chair, Pacific Fishery Management Council

-----Original Message-----

From: Tania Pollak

Sent: Thursday, September 28, 2017 11:09 AM

To: FGC <FGC@fgc.ca.gov>

Subject: Please Don't Miss Opportunity to End Driftnet Fishery & Protect Ocean Wildlife

Dear CA Department of Fish & Wildlife, and CA Fish & Game Commission,

I am writing to express my support for California to take all possible actions to end the driftnet fishery happening off our state's coast. For too long, this fishery has been allowed indiscriminately kill ocean wildlife, including endangered species.

Improvements to the fishery have not made the fishery acceptable. Driftnets are still curtains of death. With the advancement of deep-set buoy gear, regulators have a golden opportunity to end the driftnet fishery. I encourage California to do everything it can to stop the slaughter from driftnets.

Like many people, I was disappointed when federal regulators withdrew protections for some of the species most affected by driftnets. I want California to protect the environment, not abuse it. California has a chance now to continue its role of being an environmental leader. Please take action to end the driftnet fishery - California needs to live up to its reputation as a good environmental steward.

Thank you.

Ms. Tania Pollak

San Francisco, CA 94115

From: Nancy Flores
Sent: Wednesday, August 16, 2017 10:06 AM
To: FGC <FGC@fgc.ca.gov>
Subject: Fwd: Drift Gillnet Discussion Wednesday, 8/16/17

Dear Fish and Game Commission,

The Trump administration's removal of the proposed rule instituting strict limits on drift gillnets places protected and vulnerable species in grave danger. Any fish, bird or mammal crossing the path of a drift gillnet may be hopelessly tangled and perish in these nets or be thrown back injured as "by-catch." By-catch includes dolphins, whales, turtles, sea birds, sharks, seals and other mammals. Since these nets are not retrieved for days, air-breathing mammals drown if they cannot free themselves. .

More than 20 years ago, in 1994, the United Nations Food and Agriculture Organization estimated global by-catch to be as high as 27 million tons per year, simply discarded by fisheries. In 1987, David Roth Weiss' award-winning oceanographic film, "Incidental Kill" was the first to expose the horrors drift gill nets inflict. Divers found at the end of a mile-long, one hundred feet high net, 32 dead blue sharks, 2 hammer head sharks, a sea lion and a manta ray. Thirty small scale drift net fisheries in the Baltic Sea studies estimate 90,000 sea birds die annually in drift nets. As a result, many of these species are now endangered.

These hundreds of thousands of destroyed animals decompose, using oxygen to break down the organic matter, thus decreasing surrounding levels of dissolved oxygen. Fish, invertebrates, bacteria, and underwater plants need dissolved oxygen to respire and thus survive, thus compounding the effects on all sea life.

Finally, abandoned or lost drift nets become "ghost nets," often nearly invisible in the dim light and thus begin the entanglement/death cycle again, or they cause ecological damage to plant and substrate habitats as nets are dragged across the sea floor by currents.

Humans cannot exist, and most do not want to exist, alone on this planet. California should be at the forefront in demonstrating the respect that other life forms need and deserve. It is to our peril if we do not.

Nancy Oliver, Esq.

Concerned constituent

Submitted via email: fgc@fgc.ca.gov

September 28, 2017

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

RE: Agenda Item 25: Resolution on the National Marine Fisheries Service rejection of hard caps for the swordfish drift gillnet fishery

Dear President Sklar and Commissioners:

Oceana is writing the California Fish and Game Commission ("Commission") to support adoption of a resolution opposing the National Marine Fisheries Service (NMFS) decision to withdraw a proposed rule to establish bycatch hard caps for the California swordfish drift gillnet (DGN) fishery. We request the resolution also express support for 100 percent monitoring of the DGN fishery and opposition to the NMFS decision to not issue regulations requiring 100 percent monitoring by 2018. The NMFS decisions to withdraw the hard cap rule and to not implement 100 percent monitoring run counter to the September 2015 recommendations of the Pacific Fishery Management Council (PFMC)¹, which the State of California representatives proposed and championed as part of a comprehensive package to minimize bycatch and move toward a clean and sustainable West Coast swordfish fishery. We appreciate the Commission's September 13, 2017 letter supporting authorization of deep-set buoy gear as a new and effective method to catch swordfish with minimal bycatch.² Furthermore, we ask the Commission to continue to participate in state-led discussions to find a resolution to the ongoing conflict surrounding swordfish drift gillnets, support a transition to clean fishing gears, and request the PFMC take action to reduce bycatch in the DGN fishery.

I. Drift Gillnet Bycatch is a Significant and Ongoing Problem

Despite gear modifications and time and area closures, bycatch remains a major unresolved problem in the California drift gillnet swordfish fishery. Fishery data collected by onboard observers indicates that on average, the drift gillnet fishery discards 62 percent of all animals

¹ <http://www.pcouncil.org/2015/09/38641/california-large-mesh-drift-gillnet-fishery-management-final-preferred-alternatives/>

² Letter, September 13, 2017, Commission Executive Director Valerie Termini to PFMC Chair Phil Anderson and NMFS West Coast Regional Administrator Barry Thom. Pacific Fishery Management Council, September 2017 Agenda Item J.6.a, Supplemental CFGC Report 1. Available: http://www.pcouncil.org/wp-content/uploads/2017/09/J6a_Sup_CFGC_Rpt1_SEPT2017BB.pdf

caught, and that approximately 22% of these discarded animals are dead prior to being released.³ On average, for every swordfish landed – the primary target of this fishery – five other animals are discarded.⁴ Observers have recorded roughly 70 different species killed in this gear, including rare megamouth and basking sharks and endangered species like leatherback sea turtles, loggerhead sea turtles and sperm whales.⁵ A recent NMFS analysis estimates that between 2001 and 2015 the fishery entangled 1,460 marine mammals, sea turtles and seabirds.⁶ This same analysis estimated the DGN fishery killed or seriously injured 1.5 critically endangered Pacific leatherback sea turtles from 2011-2015, which exceeds a published biological reference point for delaying population recovery (0.8 leatherback sea turtles killed or seriously injured per five years).⁷ Pacific leatherback sea turtles are California's state marine reptile and they are recognized by NOAA to be among the eight marine species "most at risk of extinction in the near future."⁸ The PFMC's 2015 recommendation recognized these bycatch concerns and recommended further actions to minimize and control bycatch consistent with federal law.

II. Pacific Fishery Management Council Recommended Drift Gillnet Hard Caps

On June 12, 2017, NMFS withdrew a proposed rule that would have established protected species hard caps for the California-based swordfish drift gillnet fishery.⁹ The proposed hard caps¹⁰ were recommended by the PFMC in September 2015 following an extensive public process, including support from members of Congress, California lawmakers, the California Department of Fish and Wildlife (CDFW), businesses, sport fishing organizations, conservation NGOs, and tens of thousands of members of the public. CDFW took a lead role on the Council in developing and supporting the proposed bycatch limits. The hard caps were part of comprehensive package articulated in the Council's Swordfish Management and Monitoring Plan that included 100% monitoring of fishery catch and bycatch by 2018, removal of the observer exemption for "unobservable" DGN vessels, performance objectives on marine mammal and finfish bycatch, and reducing latent permits through the establishment of a new federal DGN permit regime.

The purpose of the hard caps was to set a clear standard and consequence for unacceptable bycatch and to provide an incentive for fishermen to fish more responsibly with drift gillnet gear, or, to voluntarily switch to more sustainable gear types. Deep-set buoy gear is a clean alternative for selectively targeting swordfish. In commercial and experimental gear trials off California, 81

³ National Oceanic Atmospheric Administration (NOAA) Observer Program, total observed discard rate (number of animals observed discarded divided by number of animals observed caught) from May 2004 to January 2017. Available: http://www.westcoast.fisheries.noaa.gov/fisheries/wc_observer_programs/sw_observer_program/info/data_summ_report_sw_observer_fish.html.

⁴ *Id.*

⁵ *Id.*

⁶ Carretta, J.V., J.E. Moore, and K.A. Forney. 2017. Regression tree and ratio estimates of marine mammal, sea turtle, and seabird bycatch in the California drift gillnet fishery: 1990-2015. NOAA Technical Memorandum, NOAA-TM-NMFS-SWFSC-568. 83 p.

⁷ Curtis et al. 2015. Estimating Limit Reference Points for Western Pacific Leatherback Turtles in the US West Coast. PLOSOne. Available: <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0136452>

⁸ NMFS. 2016. Species in the Spotlight: Survive to Thrive, web page: Accessed September 28, 2017.

http://www.nmfs.noaa.gov/stories/2015/05/05_14_15species_in_the_spotlight.html

⁹ 82 Federal Register 26902. <https://www.federalregister.gov/documents/2017/06/12/2017-12070/fisheries-off-west-coast-states-highly-migratory-fisheries-california-drift-gillnet-fishery>

¹⁰ 81 Federal Register 70660. <https://www.federalregister.gov/documents/2016/10/13/2016-24780/fisheries-off-west-coast-states-highly-migratory-fisheries-california-drift-gillnet-fishery>

percent of deep-set buoy gear catch to date has been swordfish, 98 percent of the catch has consisted of marketable fish species, and all discarded species have been released alive.¹¹

In addition to the hard caps, the Council recommended in September 2015 that NMFS implement 100 percent monitoring of the fishery by 2018 and remove an exemption for "unobservable vessels." Rather than require industry-funded observers, NMFS recently informed the Council they are delaying action on 100 percent monitoring due to the costs of such monitoring to the fishing industry. The Council also recommended in 2015 that the agency maintain a minimum 30 percent observer target until 100 percent monitoring was implemented. The agency failed to do so, monitoring only 10.8 percent of fishing effort in the 2015-16 fishing season and 22.4 percent of effort in the 2016-17 fishing season.¹² On average, more than 80 percent of drift gillnet fishing effort is unobserved. At its September 2017 meeting, the Council revised its purpose and need for new monitoring requirements in response to a request from NMFS.¹³

After NMFS informed the Council it had withdrawn the proposed hard cap rule, the Council expressed its disappointment "with the NMFS decision to halt implementation of the hard cap rule." The Council explained, "the hard cap rule was intended to provide an incentive to fishermen to further avoid interactions with protected species" and that the hard caps would promote "individual responsibility... communication and innovation by fishermen to avoid [protected species] interactions".¹⁴ Attached to this letter is a transcript from CDFW's representative on the Council, Ms. Marci Yaremko, who, among others, spoke to the Council's disappointment with the agency's proposed rule withdrawal.

Despite its decision not to move forward with the Council's 2015 hard cap and monitoring recommendations, NMFS is moving forward to establish federal DGN permits with the articulated purpose of quickly reducing the State of California's authority over this fishery.¹⁵ On September 15, 2017, NMFS released a notice of availability and initiated a 60-day comment period on Amendment 5 to the Highly Migratory Species Fishery Management Plan to accomplish the Council's recommendation to federalize the state permit program.¹⁶ Given this Council recommendation was predicated on NMFS' public commitment in March 2017 to implement hard caps by summer 2017 and 100 percent monitoring by 2018, the agency's continued push to federalize California's DGN permits amounts to a clear bait and switch. This expedited federal

¹¹ CA DSBG 2011- January 2017. Pflieger Institute of Environmental Research (PIER), Deep-set buoy gear trials and exempted fishing permit results. Available: http://www.pcouncil.org/wp-content/uploads/H3a_Att2_PIER_MAR2015BB.pdf and http://www.pcouncil.org/wp-content/uploads/2017/02/J2_Att2_PIER_2015-16_DSBG_EFP_SummaryRpt_Mar2017BB.pdf

¹² National Oceanic Atmospheric Administration (NOAA) Observer Program, observer coverage (number of observed sets divided by total sets) from May 2015 to January 2017. Available: http://www.westcoast.fisheries.noaa.gov/fisheries/wc_observer_programs/sw_observer_program_info/data_summ_report_sw_observer_fish.html.

¹³ <http://www.pcouncil.org/wp-content/uploads/2017/09/0917decisions.pdf>. Page 8

¹⁴ PFMC 2017. Pacific Fishery Management Council News. Summer 2017. Pages 7-8. <http://www.pcouncil.org/wp-content/uploads/2009/12/Newsletter-Summer-2017-final.pdf>

¹⁵ PFMC September 2016. Agenda Item J.5.a HMSMT Report, at 1. "The purpose of the proposed action is to rapidly and simply transition DGN permitting to MSA authority," and the stated need is to circumvent "state bills" that "have been introduced which would materially impair the Council's ability to manage the fishery."

¹⁶ <https://www.federalregister.gov/documents/2017/09/15/2017-19662/fisheries-off-west-coast-states-highly-migratory-fisheries-amendment-5-to-the-highly-migratory>

permitting process also complicates and potentially impedes state-led discussions to find solutions to the ongoing stakeholder conflicts regarding the DGN fishery.

Ultimately, NMFS's decision to withdraw the hard caps rule and not to require 100% monitoring by 2018 -- while moving forward on an expedited track to establish a federal permit system -- undermines the extensive public process and participation by stakeholders including the State of California. The Commission has an important opportunity to take a stand to defend California's voice in the Council process.

III. Requests for Commission Action

At this time, there are no catch or bycatch limits established for the drift gillnet swordfish fishery. What is more, there are no consequences or accountability measures for taking and killing protected marine life. The hard caps, however, would have established a clear standard for unacceptable bycatch, a clear consequence for exceeding those limits, and an incentive to clean-up this fishery.

The PFMC can and should take additional actions to minimize and control bycatch in this fishery and transition this fishery to using deep-set buoy and harpoon gears demonstrated to minimize bycatch, including allowing DGN permit holders to voluntarily trade in DGN permits and gear in exchange for deep-set buoy gear permits. We request CDFW and the Commission also take steps to achieve these goals.

We request the Commission adopt a resolution that strongly opposes NMFS' withdrawal of hard caps and delay of 100% monitoring. Because these decisions removed a powerful tool to reduce bycatch, the Commission should also support the Council taking commensurate measures to reduce DGN fishery bycatch and require 100% monitoring. We also request that the Commission adopt a policy of fully transitioning California's swordfish fishery to deep-set buoy and harpoon gears.

Thank you for your time and attention to this important issue.

Sincerely,



Geoffrey Shester, Ph.D.
California Campaign Director and Senior Scientist

Attachment: Yaremko, M. 2017. California Department of Fish and Wildlife statement on NMFS hard cap rule withdrawal. Pacific Fishery Management Council. June 2017.

June 12th 2017

Transcript of Marci Yaremko, California Department of Fish and Wildlife (CDFW)
June 2017 Pacific Fishery Management Council Meeting

Regarding the National Marine Fisheries Service (NMFS) report on the withdrawal of a proposed rule implementing hard caps for the California drift gillnet swordfish fishery.

Transcribed from Pacific Fishery Management Council audio file: 6-12-17pm1Copy.mp3, at 1:30. Audio file available at ftp://ftp.pcouncil.org/pub/R1706_June_2017_Recordings/

Thank you Mr. Vice Chair, and thank you for the time to address the Council on this important issue to California. It's our view that NMFS, and the Council, and the fishery lost an opportunity here. Thanks to all on the Council [Pacific Fishery Management Council], and all in the audience for your time on this issue and I appreciate the chance to express disappointment with the decision on behalf of the state.

This Council expressed its intent to change management of this fishery using tools available to us under Magnuson to create a new framework to move this fishery forward. Many are asking what comes next after this decision is made and we heard a lot in testimony. The answer that I thought I might give before doesn't appear to be viable. I wanted to see the fishery itself, have an opportunity to achieve the standards we imposed, perhaps to receive MSC [Marie Stewardship Council] or some other green label certification for performing within our standards and the chance to develop new markets as a result. And I wanted the Council to have a solid basis to look at next steps and other new and innovative approaches to redevelop the West Coast swordfish fishery with this gear. We had that pathway forward and now I just feel like the road fell out from under us and we're stuck in a sinkhole.

There were a number of reasons for the Council's recommendations on hard caps and as Michelle [Michele Culver, WDFW] artfully explained just a second ago, NMFS appears to have chosen to consider only one of them. What the additional protections would have afforded was benefit to the ESA [Endangered Species Act] listed marine mammals and turtles. The policy and social reasons for the rule apparently were not considered or were considered and dismissed. And yet, those reasons are strongly embedded in our MSA [Magnuson Stevens Fishery Conservation and Management Act] framework in our National Standards.

It is the Council's job to consider these elements when balancing competing interests to help us make difficult decisions and we did. The rule would have established a Bright Line Standard, one that when crossed would shut the fishery down just in the same way we manage our other fisheries domestically with applications of ACLs [annual catch limits] and accountability measures. Everyone - the public, the government, NGOs, and the fishermen themselves - are acutely aware of what the limits are and what happens when you exceed them. Yes, there is a TRT [take reduction team] process that gets in swing when PBR [potential biological removal] and ITS [incidental take statement] limits are exceeded and groups of scientists and representatives get together to talk but there's no immediate action that results. It's just a series of meetings, plans and negotiations that precede the development of new federal

rules designed to mitigate the consequences; actions, which often take years to fully develop and implement.

Equally important as the Bright Line Standard, some of you have mentioned this already, was the Council's goal in changing behavior with this rule. It was a way to ensure this fleet would take accountability for its actions and force operators to think before making a set to ensure that the risk of entanglements are low. NMFS has implemented hard caps in other fisheries under its jurisdiction, notably including the Hawaii longline fisheries for swordfish. It is pretty clear that those fisheries have maintained if not improved economic viability as landings from that fishery seem to be on a steep upward trajectory into California ports in recent years.

The administrative record will also show that the Council on its consideration of hard caps deliberately considered the potential economic impacts of the rule and if anyone looked at the record, the Council initially proposed hard caps that were only for one year in duration, rather than two. Our recommendation was refined following industries' unequivocal statement to us that a measure that invoked a one and done management response made the costs associated with gearing up to fish for a season too prohibitive. The Council considered that input and made adjustments such that the recommendation included cap levels that all had numbers greater than one animal and hence, we recommended the two year rolling cap alternative.

Meanwhile on the other side of the Sustainable Fisheries Division house- in the groundfish world, apparently a different standard is applied when viewing Council recommendations and prospective economic harm to individuals. As I think we all recall in the IFQ [individual fishing quota] program, if an individual exceeds their allowable individual quota level, they are immediately shut down and not allowed to re-enter the fishery until they can cover their overage, which can take years depending on the amount of overage and the cost. And during that time, they are not allowed to participate in any other federal groundfish fishery. The Council and NMFS stood firmly behind those rules and it has been clear that exceeding those limits has consequences. Nor have we deviated from that approach.

In the six years since the IFQ program's been in effect, three vessels have had lighting strikes and have had to leave the fishery. Despite requests for the Council to reconsider its position on the consequences of exceeding a quota limit and trying to find a way for those vessels to re-enter the fishery, the Council and NMFS stood firm. I hadn't forgotten the testimony we heard from Jeff Lackey when his vessel accidentally made a disaster tow with overfished rockfish, and the resulting consequences of that fish leaving the fishery, and last I checked they are still trying to pay down their debts on the overage. The negative economic consequences to these vessels is likely greater than what it would be seen on the entire drift net fishery where a hard cap effectively to close the DGN [drift gillnet] fishery.

So I have trouble understanding how NMFS can use two different sets of standards when it comes to economic harm. I also take issue with the statement that the participants in the DGN fishery do not have other viable alternatives. California fishermen rarely rely on one fishery for their sole source of income, but instead participate in multiple fisheries as part of their fishery portfolio in business plans. I haven't had the chance to review the 106 page final Environmental Assessment that was released after the

Council meeting started but I will do so. I will be paying close attention to the discussion of alternative fisheries available to the DGN fishermen upon a closure resulting from a hard cap attainment.

I don't recall CDFW being consulted on that analysis on that state managed fisheries opportunity, particularly fisheries that fall under the authority of the state's general gillnet permit. This permit is not specific to any fishery target, but it is required for the use of gillnet gear so all of the current DGN permittees have this state issued permit. These fisheries for California halibut, white seabass and angel shark are worth millions of dollars annually. The state requires DGN permittees to concurrently hold this permit so I am perplexed why NMFS doesn't consider this a viable alternative fishery to participate in should the DGN fishery close due to the attainment of a hard cap.

Moreover, I recall our DGN advisors from the Advisory Subpanel actually recommended a mitigation measure to the Council should hardcaps be attained. They suggested to us that in the event a cap was attained, the alternative of being able to fish using buoy gear might be an approach to mitigate the effects of the closure. While the council didn't take that up in its development of its FPA and its recommendations to NMFS, as far as I am aware, that recommendation is still a viable one that NMFS could have maybe considered putting back before the Council, before withdrawing the proposed action.

NMFS reported to us today on plans to implement the Council's recommendation for a 100% monitoring of the DGN fishery, which was the second part of the council's September 2015 motion. There is vagueness and uncertainty in the proposed rulemaking, which would include the rule to remove the unobservable exception that is currently applicable to DGN vessels. My discomfort is growing that this recommendation will be effective by regulation by next year. It's feeling more and more like NMFS is saying like it's only going to implement the HMS recommendations from the Council that it likes, such as the limited entry drift net permit.

The DGN fishery is a California fishery. We understood that the Council process was [the] venue for the state to provide management guidance on fishery activities originating out of and returning to California ports. CDFW has participated and contributed to discussions and developed management strategies and plans in the spirit of co-managing these fishery resources off our coast. The HMS FMP [Highly Migratory Species Fishery Management Plan] has been around for well over a decade now, yet we've only made a few amendments to the plan. Mostly administrative in nature and as required by NMFS for reasons such as compliance with the latest national standard and the omnibus amendment to include unmanaged forage fish protections and we'll take up the housekeeping amendment agenda item next.

Meanwhile the Council, its members, the stakeholders, NMFS staff and the public continue to invest millions in the Council process to support management under the HMS FMP. What I have to ask is what the point of all of that is and what is there to show for it other than a growing list of disapprovals and subliminal messages of, "no we can't"?

I thought the goal was to actively manage HMS under authority of the MSA but instead the letter from NMFS to the Council just encourages us to continue to participate in the TRT process if we wish to develop measure to reduce probability of marine mammal entanglement in the DGN fishery.

So after several years of investment in the HMS planning and Council process it just seems there's not much interest in doing much to regulate the fishery under MSA so I will just wrap this up with a few questions.

What is the value of the plan if we can't do anything under its authority? And how does NMFS justify applying different standards to West Coast fisheries under its jurisdiction regarding expected economic impacts of regulations?

And maybe just to end on a little brighter note: I would like to offer a comment on the management team report regarding the performance objectives and thank the management team for that analysis. The table shows the fishery largely attained our standards with just one exception and I'd like to thank the management team for reminding the Council what the goal is with our annual review of the standards, which is to evaluate if bycatch or protected species interaction levels are consistently at a level higher than one of the performance objectives the Council could consider whether additional management measures are necessary to minimize bycatch or reduce protected species interactions in the fishery. I guess I'd like to just note that in my view this simple and low workload analysis worked and apples to apples is good enough for me right now and in light of our goal of doing a general year by year review of performance against a clear standard I do support the discussion and adding this to our agenda for next year.

Thank you.

End transcript

Commissioners
Eric Sklar, President
Saint Helena
Jacque Hostler-Carmesin, Vice President
McKinleyville
Anthony C. Williams, Member
Huntington Beach
Russell E. Burns, Member
Napa
Peter S. Silva, Member
El Cajon

STATE OF CALIFORNIA
Edmund G. Brown Jr., Governor

Valerie Termini, Executive Director
1416 Ninth Street, Room 1320
Sacramento, CA 95814
(916) 653-4899
www.fgc.ca.gov

Fish and Game Commission



Wildlife Heritage and Conservation
Since 1870

September 13, 2017

Phil Anderson, Chair
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, OR 97220

Barry Thom, Regional Administrator
West Coast Region
NOAA Fisheries
7600 Sand Point Way NE
Seattle, WA 98115

Subject: Request to consider the range of alternatives for deep-set buoy gear, including linked buoy gear, and authorize use of this gear type

Dear Chair Anderson and Regional Administrator Thom:

It has come to the attention of the California Fish and Game Commission (Commission) that the Pacific Fishery Management Council (PFMC) is considering authorizing and permitting new gear types for the West Coast commercial swordfish fishery, and is poised to adopt a range of alternatives for this authorization at its September 2017 meeting. I am writing on behalf of the Commission to support your action to consider new gear authorization to open additional access for California fishermen to fish this healthy and sustainable fish stock. The Commission is aware that research on deep-set buoy gear (DSBG), which includes both standard buoy gear and linked buoy gear (LBG) types, is ongoing; the Commission has been tracking and supports advancing such research that could lead to the use of alternative gear types in the swordfish fishery.

Over the past twenty years, the number of U.S. West Coast, large-mesh, drift gillnet swordfish fishery participants and landings have significantly declined, attributed in large part to regulations implemented to mitigate bycatch in the fishery. There remain concerns regarding management measures implemented to address bycatch, and the subsequent economic impacts to fishermen and coastal communities, despite a healthy stock and high demand for swordfish. Through a combined effort of state, Federal and private sector funding, the ongoing research and development of DSBG has resulted from an effort to design a gear type that could reduce potential for interactions with

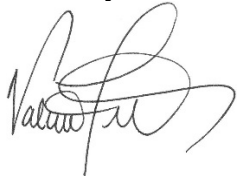
finfish and protected species to the extent practicable, while simultaneously increasing fishery opportunities and economic viability by more selectively targeting swordfish. The Commission appreciates the extensive time and effort expended by PFMC, its staff, and staff of the National Marine Fisheries Service, to facilitate this experimental research.

One of the Commission's goals is to support California's sustainable coastal fishing communities. To maintain a robust coastal fishing economy, fisheries need both adaptive management and flexibility to fish a variety of selective gear types to maximize potential catch and minimize bycatch under varying oceanographic conditions. One of the objectives articulated by the Magnuson-Stevens Fishery Conservation and Management Act for a healthy fishery stock, such as West Coast swordfish, is to provide for opportunity and to ensure the economic viability of the swordfish fishery with sustained participation of West Coast fishing communities while, to the extent practicable, avoiding and minimizing bycatch and bycatch mortality.

Results from collaborative research and experimental fishing permit trials of DSBG conducted thus far indicate that both configurations of this highly selective gear can minimize interactions with protected species and minimize finfish bycatch while expanding fishing opportunities, increasing domestic landings, and contributing to the profitability of the swordfish fishery.

Authorizing DSBG configurations will help to address bycatch concerns, while helping achieve optimum yield of a healthy swordfish stock and providing socioeconomic benefits for fishermen and coastal communities. As PFMC considers a range of alternatives for DSBG fishery authorization, the Commission asks that PFMC thoughtfully consider DSBG configurations while also including incentives and mechanisms for drift gillnet fishermen to trade in their gear and permits in exchange for DSBG permits.

Thank you,

A handwritten signature in black ink, appearing to read 'Valerie Termini', with a stylized, flowing script.

Valerie Termini
Executive Director

cc: Members, California Fish and Game Commission
Charlton Bonham, Director, California Department of Fish and Wildlife
Craig Shuman, Marine Region Manager, California Department of Fish and Wildlife
Marci Yaremko, State/Federal Marine Fisheries Program Manager, California
Department of Fish and Wildlife

Commissioners
Eric Sklar, President
Saint Helena

Jacque Hostler-Carmesin, Vice President
McKinleyville

Anthony C. Williams, Member
Huntington Beach

Russell E. Burns, Member
Napa

Peter S. Silva, Member
El Cajon

STATE OF CALIFORNIA
Edmund G. Brown Jr., Governor

Valerie Termini, Executive Director
1416 Ninth Street, Room 1320
Sacramento, CA 95814
(916) 653-4899
www.fgc.ca.gov

Fish and Game Commission



Wildlife Heritage and Conservation
Since 1870

August 17, 2017

Honorable Gavin Newsom
Lieutenant Governor and Chair
California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825

Via email to CSLC.CommissionMeetings@slc.ca.gov

Re: Comments on Poseidon Resources' proposed seawater desalination project at Huntington Beach (Poseidon Project)

Dear Lieutenant Governor Newsom:

I am writing on behalf of the California Fish and Game Commission (FGC) to offer comments for consideration on proposed desalination projects in general, and the proposed Poseidon Project in Huntington Beach specifically. FGC provided comments to the California Coastal Commission on its consideration of the proposed Poseidon Project in February 2017¹, and appreciates the opportunity to convey similar comments to you now.

With ongoing concerns about long-term water availability for California and less snow pack as the climate warms, seawater desalination is proposed as one solution to the water needs of California communities. FGC understands the need to explore new and alternative measures to meet resource demands in a sustainable manner, and recognizes that seawater desalination has the potential to be a valuable tool in California's water supply portfolio. FGC also recognizes that climate variability is an issue facing all resource management agencies, and that balancing the needs of human populations in the face of uncertain resource availability can be a difficult task.

At the same time, current seawater desalination technology also has the potential for significant detrimental impacts to California's marine ecosystems. The mission of FGC is to ensure the long-term sustainability of fish and wildlife in California. Thus, FGC would like to emphasize that seawater desalination projects must be carefully considered and analyzed by all permitting agencies, and ultimately designed in a way to avoid or minimize

¹http://www.waterboards.ca.gov/santaana/water_issues/programs/Wastewater/Poseidon/Letter_CFG_2017_02_01.pdf

adverse effects to living marine resources and habitats in the marine environment to the greatest extent possible.

Of particular relevance, in an effort to preserve marine ecosystem functions, buffer against uncertainty, and complement species-specific management, FGC adopted the nation's first coast-wide network of marine protected areas (MPAs). In place since 2012, California's globally-significant MPA network was created to help ensure that the natural diversity, marine ecosystem functions, and marine natural heritage of the state were protected while also helping to improve recreational, educational and study opportunities.² FGC, along with the California Department of Fish and Wildlife and numerous other agencies and non-governmental organizations, has invested significant time and resources to ensure that MPAs are managed in a manner consistent with legislative guidance, FGC and stakeholder intent, and ensuring that the system of MPAs functions as a robust network.

I understand that there are at least nine active proposals for seawater desalination plants along the California coast that would join the ten existing plants³, some in close proximity to MPAs. FGC seeks to strengthen the shared commitment of our partner coastal management agencies to help maximize MPA network functionality by considering actions that subject the MPA network to limited human disturbance. FGC valued the opportunity to work with the California State Lands Commission (SLC) and its staff during the MPA planning process and would like to acknowledge SLC's continued leadership in upholding standards for marine protection, specifically its role as a key member of the MPA Statewide Leadership Team convened by the California Ocean Protection Council. In particular, SLC committed in the leadership team's adopted work plan⁴ to update SLC's strategic plan to reflect commitments regarding MPAs, to assess pending agency regulations for potential impacts to MPAs, and to both consider data regarding, and identify opportunities for, mitigation and impact avoidance strategies in current regulatory/policy requirements pertinent to MPAs.

FGC reiterates its support of efforts to reduce impacts to marine resources by evaluating potential project impacts to individual MPAs, the MPA network as a whole, and site-specific marine resources during permitting and decision-making processes. As such, we urge SLC to require that proposals for seawater desalination facilities avoid or minimize impacts to MPAs and all marine resources through best available siting, design, and technology.

Minimizing impacts through thoughtful design is consistent with the State Water Resources Control Board's recently-adopted Ocean Plan Amendment, which requires desalination plants to use the best available site, design, technology and mitigation measures feasible to minimize intake and mortality of marine life *and identifies subsurface*

² Marine Life Protection Act, Fish and Game Code § 2853(b)

³ <http://pacinst.org/publication/key-issues-in-seawater-desalination-proposed-facilities/>

⁴ Marine Protected Area (MPA) Statewide Leadership Team Work Plan FY 15/16 – 17/18, Key Action Items 1.4, 2.4, and 4.3. Available at www.opc.ca.gov/programs-summary/marine-protected-areas/partnerships/

*intakes as the preferred technology.*⁵ Additionally, the board's policy contains requirements for protecting MPAs, including a prohibition on harmful intake and discharge structures *within* MPAs and a directive to site discharge and surface intakes at sufficient distances to minimize water quality and marine life impacts to protected areas.

Impacts to marine life from seawater desalination clearly can be avoided through current technology such as subsurface intakes, which pull ocean water through wells and/or galleries beneath the seafloor rather than through an open pipe in the water column. Subsurface technology eliminates impacts to marine life from being impinged on an intake screen or entrained in the source water from a screened open ocean intake, impacts that can result in significant injury and death of marine species. Despite this, the policy within the Ocean Plan Amendment also provides flexibility for alternative intake and disposal methods, with greater impacts to marine life, if it can be demonstrated that preferred technologies are infeasible. It is our understanding that an earlier feasibility evaluation, performed by an Independent Scientific Technical Advisory Panel jointly convened by the California Coastal Commission and Poseidon Water, found the nine sub-surface technologies it evaluated to be technically or economically infeasible; however, we also have been informed that the Santa Ana Regional Water Quality Control Board is currently seeking additional information to help determine if subsurface intakes are feasible at the proposed Huntington Beach site, or alternative sites. FGC encourages further consideration of subsurface intakes for the Poseidon project proposal consistent with the Ocean Plan Amendment. However, FGC questions the appropriateness or necessity of siting a 50 million gallon a day desalination plant off Huntington Beach given the availability of alternative sources of water to augment Orange County's water supply portfolio at a much lower economic and environmental cost.

At a minimum, FGC urges SLC to make avoiding potential impacts to MPA effectiveness a priority and to consider additional science on best management measures for seawater intake and discharge. While new desalination projects with open ocean intakes will not be permitted within MPAs, facilities with open ocean intakes *near* MPAs can have a direct impact on marine resources; incidental take and the reduction of critical larval connectivity between MPAs occurs as marine life is pulled into a plant and removed from the ecosystem, including organisms originating from the MPAs that are necessary to support California's marine life. Impacts from open ocean intake have the potential to undermine the ability of MPAs to function as a network, weakening the science-based framework on which they were created and potentially their ability to generate expected long-term benefits.

While in a July 2017 letter to FGC⁶ Poseidon stated that 91% of larvae estimated to be entrained by the proposed project are from fish that are not associated with the kelp and rocky reef habitat inside the southern California coastal MPA reserve network, FGC would

⁵ State Water Resources Control Board, Final Staff Report and Final Desalination Amendment, including the Final Substitute Environmental Documentation. Adopted on May 6, 2015. Available at: www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2015/rs2015_0033_sr_apx.pdf


⁶ Fish and Game Commission meeting materials for June 21-22, 2017 meeting, Agenda Item No. 34, available at nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=145898&inline

like to emphasize that kelp and rocky reef habitat are only two of the many habitat types California's MPAs are designed to protect. The network is designed to provide protection to *all* marine habitat types and their associated marine life, as mandated by the Marine Life Protection Act. Further, while Poseidon concludes that there is little or no likelihood that the project's potential entrainment could negatively affect any MPA or any network of MPAs, and that marine life effects due to entrainment are anticipated to be insignificant based on the 2010 California Environmental Quality Act (CEQA) review relied upon by SLC, the 2010 CEQA review was completed before MPAs were designated as a network within the Southern California Bight. FGC requests that at a minimum the supplemental CEQA review, or preferably a new CEQA review based on current baseline and information, fully evaluate how the proposed open ocean intake as modified would adversely impact productivity and connectivity of the affected MPA system.

With a tidelands lease for desalination facilities poised for your consideration, it is critical to uphold protections for California's MPA network, and to preserve the state's significant investment in the resilience of our ocean. Seawater desalination can be a tool in our water supply portfolio, particularly when other less economically- and environmentally-costly options are exhausted, but it must be carefully analyzed and designed in a way to avoid or minimize adverse effects to the greatest extent possible. Siting desalination facilities, intakes, and discharges away from MPAs (and other sensitive habitats and species), and requiring the use of subsurface intakes, will help ensure California's ocean ecosystems are sustained in the long-term.

Based on the aforementioned concerns regarding the proposed Poseidon Project and any future seawater desalination projects along the California coastline, we urge you (1) to apply sound scientific information to inform decisions surrounding siting, precautionary design, and technology for intake valves and discharge sites; (2) to seriously evaluate if or how the community need justifies the impacts associated with the proposed project relative to other options or sitings; and (3) to structure an adaptive process for any approved project to include periodic project review for careful consideration of new scientific information and technologies that may reduce impacts, and how to integrate them into the existing project.

Sincerely,



Eric Sklar
President

cc: Members, California Fish and Game Commission
Honorable Betty T. Yee, California State Controller and member, California State Lands Commission
Michael Cohen, Director of the California Department of Finance and member, California State Lands Commission
Dayna Bochco, Chair, California Coastal Commission
Jennifer Lucchesi, Executive Officer, California State Lands Commission

Jack Ainsworth, Executive Director, California Coastal Commission

Felicia Marcus, Chair, State Water Resources Control Board

David Noren, Chair, North Coast Regional Water Quality Control Board

Dr. Terry Young, Chair, San Francisco Bay Regional Water Quality Control Board

Dr. Jean Pierre Wolff, Chair, Central Coast Regional Water Quality Control Board

Irma Munoz, Chair, Los Angeles Regional Water Quality Control Board

William Ruh, Chair, Santa Ana Regional Water Quality Control Board

Henry Abarbanel, Chair, San Diego Regional Water Quality Control Board



POSEIDON SURFSIDE

a Poseidon Water company

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MLS

May 9, 2017

Mr. Eric Sklar
President
California Fish and Game Commission
1416 Ninth Street, Room 1320
Sacramento, CA 95814

SUBJECT: Huntington Beach Desalination Project

Dear President Sklar:

I am writing in response to your February 1, 2017 letter to the California Coastal Commission regarding the proposed Huntington Beach Desalination Project ("Project"). A copy of your letter was recently provided to us by the State Water Resources Control Board staff on May 4, 2017.

Poseidon supports the California Fish and Game Commission's mission to ensure the long-term sustainability of fish and wildlife. Our Carlsbad Desalination Plant, the state's first and only large-scale seawater desalination plant, has successfully produced over 20 billion gallons of drinking water since starting commercial operation in December 2015 while operating in accordance with applicable state and federal environmental laws and regulations. The Carlsbad project includes the restoration of 66 acres of wetlands in south San Diego Bay, an endeavor undertaken in cooperation with the U.S. Fish and Wildlife Service that will measurably enhance fish and wildlife habitat. In addition, with the adjacent Encina Power Station scheduled to decommission its cooling water system soon, Poseidon is poised to serve as the long-term steward for the resource-rich Agua Hedionda Lagoon, 300 acres of sensitive and vital coastal wetlands.

Based on the comments in your February 1, 2017 letter I want to make sure the Fish and Game Commission and its staff are correctly informed about our proposed Huntington Project and its relationship to the state's Marine Protected Areas (MPAs) and the Commission's effort to preserve marine ecosystem functions and oversee species-specific management.

The proposed Project has been in the state's permitting process since 2002. Over the past fifteen years the Project has successfully obtained permits and environmental approvals from the City of Huntington Beach, the Santa Ana Regional Water Quality Control Board ("Regional Board") and the California State Lands Commission ("SLC"). These environmental approvals include the Project's Subsequent Environmental Impact Report ("SEIR") (State Clearinghouse No. 200151092) certified by the City of Huntington Beach on September 7, 2010 and subsequently relied upon by the SLC and Regional Board for the agency's respective approvals of the Project.

Poseidon Surfside

17011 Beach Blvd., Suite 900 Huntington Beach, California 92647 Phone: (714) 596-7946 Fax: (714) 596-7947
www.poseidonwater.com

More recently, the proposed Project description has evolved and been amended to demonstrate compliance with the requirements of the California State Water Resources Control Board's Seawater Desalination Ocean Plan Amendment ("Desalination Amendment"). Poseidon's proposed Huntington Beach Project will be the first large-scale desalination facility in the world to deploy 1mm (1/25th inch) slot width wedgewire intake screens with a through-screen water velocity of less than 0.5 feet per second in an open-ocean setting. The plant will also include state-of-the-art brine diffuser technology that will ensure that the salinity level in the plant's seawater discharge meets the Desalination Amendment's stringent new receiving water quality requirements. These technologies will minimize the intake and mortality of all forms of marine life. Because of these technology enhancements the Project's long-term, stand-alone operation will continue to provide 50 MGD of drinking water but only require an average annual volume of source water of approximately 106 MGD, or 30% less water than the 152 MGD analyzed in the City of Huntington Beach's 2010 SEIR.

The current proposed Project description was informed, in large part, by the outcome of a site-specific assessment of the feasibility of subsurface seawater intake technologies. Between 2014-15, at the direction of the Coastal Commission, the Coastal Commission staff and Poseidon jointly convened an Independent Scientific & Technical Advisory Panel ("ISTAP") to reach a scientifically justified and independent assessment of the feasibility of subsurface seawater intake systems. During the two-year process, which included public participation, the ISTAP evaluated nine different subsurface intake technologies and different project scales (i.e., product water production capacities) ranging from a plant capable of producing 12.5 MGD to 100 MGD of drinking water. Based on the application of the Coastal Act's and Desalination Amendment's definition of feasibility, the ISTAP concluded that eight (8) of the nine (9) subsurface intake technologies – including all beach well technologies - were technically infeasible, and a the ninth (9th) technology – a seafloor infiltration gallery - was not economically viable at the Huntington Beach location within a reasonable time frame. To our knowledge, the Commission's ISTAP process is the most comprehensive, independent evaluation of the site-specific feasibility of subsurface seawater intake technologies ever conducted.

Your February 1, 2017 letter characterized the feasibility standards in the Desalination Amendment as providing "unfortunate" technology flexibility; however, the requirement that a project be feasible is codified in state law - both the Coastal Act and California Water Code – with the Water Code requirement recently being affirmed by the California courts (*Surfrider Foundation v. the California Regional Water Quality Control Board, San Diego Region, Fourth District Court of Appeal case No. Do60382.*), which in turn helped inform the development of the Desalination Amendment.

The Fish and Game Commission's concern about the potential effects screened seawater intakes could have on the state network of MPAs is understood; however, the proposed Project's intake and discharge structures are not located within or nearby any MPA. The

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www.poseidonwater.com

nearest Area of Special Biological Significance is located more than nine (9) miles southeast and down current. The nearest MPA is the Bolsa Chica State Marine Conservation Area, which is approximately 4.3 miles northwest.

Any concerns to the state's MPAs should be based on Project and site-specific facts. A key marine life finding in the Project's EIR on this point states:

Impacts on marine organisms due to the potential entrainment resulting from the project are relatively small, and would not substantially reduce populations of affected species, or affect the ability of the affected species to sustain their populations. Therefore, entrainment impacts would be less than significant.

This CEQA finding is supported by site-specific information, empirical data and statistical analysis including:

- **The intake area does not have any environmentally sensitive habitats such as eelgrass beds, surfgrass, rocky shores, or kelp beds;**
- **No larvae of threatened or endangered species are anticipated to be entrained;**
- **Potential entrainment of larval species of commercial or recreational value will be extremely rare;**
- **Operation of the desalination facility may entrain 0.02% of the larva in the source water and at risk of entrainment, meaning only 2 out of every 10,000-at-risk larval are anticipated to be entrained.**

It's important to note these potential impacts do not take into consideration that the 1mm wedgewire screens will reduce entrainment and eliminate impingement of larger marine life (e.g., seals, sea lions, sea turtles, and adult fish like Kelp Bass and California Sheephead). The entrainment reducing potential of the wedgewire screens is a function of slot size relative to organism size, the behavior of organisms near the screen, and ambient hydrodynamics. The influence of organism behavior (swimming ability) and ambient hydrodynamics are documented by the 2010 Santa Cruz Water District pilot study <https://www.youtube.com/watch?v=bSEmJZmJRMU>.

In 2015, at the request of the Coastal Commission staff, Poseidon specifically analyzed the relationship between the proposed Project's ocean intake and the state's networks of MPAs. Tenera Environmental issued a report entitled "*Assessment of Entrainment Effects Due To The Proposed Huntington Beach Desalination Facility On State Marine Protected Areas*" which concludes that 91% of larvae estimated to be entrained by the proposed Project are from fish that are not associated with the kelp and rocky reef habitat inside the Southern California coastal MPA reserve network. Of the remaining 9% associated with kelp and

rocky reef habitats, the report's ocean currents model concludes that the probability is, at most, 1.0% (or 0.09% of the total larvae potentially at risk of entrainment) of that larvae from inside one of these MPAs could be transported into the vicinity of the Project and subject to entrainment. The results of the ocean current modeling suggest that the more likely source of the larvae from fishes associated with kelp and rocky reef habitat in the vicinity of the Project's intake and discharge is from the rocky habitat formed by Los Angeles/Long Beach Harbor Complex, which is not a protected area and is closer to the proposed Project's intake than any of the kelp and rocky reef coastal MPAs. Therefore, the location of the Project at the proposed site ensures that there is little or no likelihood the Project's potential entrainment could negatively affect an MPA or any "network" of ocean MPAs. Again, this analysis did not include any consideration of the entrainment minimizing effects of the 1 mm wedge wire screens. California Department of Fish and Wildlife were briefed and provided copies of this study in December of 2015 and over the past fifteen-plus months there have not been any questions or comments.

Tenera 2015 found that four of the nine MPAs within 80 km (50 mi) up coast or down coast of the HBDP intake are protected tidal embayments or estuaries (e.g., Bolsa Chica) and do not contain kelp and rocky reef habitat. Marine larvae spawned from within these MPAs are subject to high levels of natural mortality because there is no suitable adult habitat for these larval fishes to settle on along the open coast. The Project intake is in an area not directly adjacent to the opening to any of these MPAs where tidal action might have some possibility of transporting larvae back into the embayment from which they were spawned. It is extremely unlikely larvae originating from embayment MPAs that are potentially entrained at the intake would have contributed to the adult population in the absence of entrainment and therefore entrainment of these larvae is extremely unlikely to result in any impacts to the adult populations of these fishes inside the embayment MPAs.

Nonetheless, in 2016, at the request of the Regional Board staff, Poseidon augmented the 2015 Tenera Environmental report with a species-specific marine life biological assessment conducted by HDR and MBC entitled "*Huntington Beach Desalination Facility: Intake Location Entrainment Analysis.*"

The HDR/MBC report was prepared, in part, to address concerns about potential impacts to Bolsa Chica and non-open-ocean, rocky-reef MPA species and whether moving the proposed screened intake location farther offshore would reduce marine life effects. The HDR/MBC report concluded:

- **Only four (4) of the twenty (20) most abundant taxa occurring in plankton samples taken offshore of Huntington Beach are documented to occur in the Bolsa Chica Ecological Reserve;**
- **The current intake location entrained the fewest fish taxa and lowest density of those taxa that the California South Coast Region Marine Protected Area Network was expected to protect and enhance;**

- **Adverse impacts to fish taxa that the South Coast Region Marine Protected Area Network was designed to protect will increase by moving the intake farther offshore of Huntington Beach.**

Finally, despite the Project's CEQA determination that the marine life effects are anticipated to be insignificant, the Coastal Act and State Water Code require mitigation for unavoidable marine life impacts, no matter how ecologically insignificant. Based on guidance provided by the Desalination Amendment, Poseidon has calculated the Project's necessary compensatory mitigation, and based on input from the SLC staff we have proposed a Marine Life Mitigation Plan that involves the maintenance of the tidal influence of Bolsa Chica to ensure the long-term preservation of the 1,500-acre Bolsa Chica Ecological Reserve, the largest saltwater marsh between Monterey Bay and the Tijuana River Estuary.

In closing, we want to take this opportunity to propose a meeting with the Fish and Game Commission and its staff to address any questions you may have about the Huntington Beach Project. In the meantime, the studies and reports referenced above are part of the Regional Board application administrative record and copies can be provided to you at your request.

Sincerely,



Scott Maloni
Vice President, Poseidon Water

cc: Nancy McFadden, Executive Secretary Office of Governor Edmond G. Brown Jr.
Felicia Marcus, Chair State Water Resources Control Board
Dayna Bochco, Chair California Coastal Commission
Lt. Governor Gavin Newsom, Chair State Lands Commission
Kurt Bertchold, Executive Officer Santa Ana Regional Water Board
Valerie Termini, Executive Director CA Fish and Game Commission

From: Zubkousky-White, Vanessa (CDPH-DDWEM-EMB) <Vanessa.Zubkousky@cdph.ca.gov>
Sent: Friday, August 18, 2017 12:15 PM
To: Jacque Smith (j-smith@att.net); Jaytuk Steinruck; Ken Graves (salmon700@live.com); Rosa Laucci; Tom Weseloh (Tom.weseloh@sen.ca.gov); Ashcraft, Susan@FGC; Grant, Christina (CDPH-DFDRS); Mastrup, Sonke@Wildlife; Klasing, Susan@OEHHA; Ramey, Kirsten@Wildlife; Martel, Melissa (HUMBOLDT COUNTY); McNally, Brian (Del Norte); Ray, James@Wildlife; Trevena, Eric (CDPH-EMB)
Subject: Razor Clam Results 7/23/17

Hello,

Razor clams were collected 7/23/17 from Clam Beach in McKinleyville by James Ray with DFW. The domoic acid results are below and posted [online](#).

Only 2 out of 10 samples were above the 20 ppm action level.

Location	Collection Date	Collecting Agency	Sample Type	DA (parts per million)
Clam Beach, McKinleyville	7/23/2017	CA Dept of Fish & Wildlife	Meat	27
Clam Beach, McKinleyville	7/23/2017	CA Dept of Fish & Wildlife	Meat	19
Clam Beach, McKinleyville	7/23/2017	CA Dept of Fish & Wildlife	Meat	11
Clam Beach, McKinleyville	7/23/2017	CA Dept of Fish & Wildlife	Meat	15
Clam Beach, McKinleyville	7/23/2017	CA Dept of Fish & Wildlife	Meat	27
Clam Beach, McKinleyville	7/23/2017	CA Dept of Fish & Wildlife	Meat	18
Clam Beach, McKinleyville	7/23/2017	CA Dept of Fish & Wildlife	Meat	16
Clam Beach, McKinleyville	7/23/2017	CA Dept of Fish & Wildlife	Meat	11
Clam Beach, McKinleyville	7/23/2017	CA Dept of Fish & Wildlife	Meat	17
Clam Beach, McKinleyville	7/23/2017	CA Dept of Fish & Wildlife	Meat	9.3
Clam Beach, McKinleyville	7/23/2017	CA Dept of Fish & Wildlife	Viscera	15

Vanessa Zubkousky-White
Senior Environmental Scientist
California Department of Public Health
Preharvest Shellfish Program
850 Marina Bay Pkwy., G165
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Phone (510) 412-4635 (new number)
Fax (510) 412-4637

CALIFORNIA FISH AND GAME COMMISSION
DECISION LIST FOR MARINE PETITIONS FOR REGULATION CHANGE RECEIVED THROUGH AUG 16, 2017
Revised 09-29-2017

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	Accept or Reject	Name of Petitioner	Subject of Request	Code or Title 14 Section Number	Short Description	FGC Decision	Staff Recommendation
2017-004	6/6/2017 Revised 6/8/2017	A	Robert Juntz Caito Fishing Inc., North Coast Fisheries Inc., and Ocean Fresh LLC Dan Yoakum (<i>F/V Casey II</i>) Bill Forkner (<i>F/V Shirley</i>)	Market squid	53.03, T14	Authorize a commercial open access fishing opportunity for market squid in northern California (north of Point Arena to the California/Oregon border) under a seasonal quota of 950 tons and daily boat limit of 5 tons.	Receipt: 6/21-22/2017 Action: 8/16/2017; deferred to 10/11-12/2017 meeting per petitioners' request ----- Action scheduled: 10/11-12/2017	Deny; however, item to be considered through current fishing communities project and future review of FGC's policy on restricted access commercial fisheries.
2017-006	8/8/2017	A	Joshua Russo Watermen's Alliance	European green crab	671(c)(8), T14	Add <i>Carcinus maenas</i> (European green crab) to the list of restricted species.	Receipt: 8/16/2017 Action scheduled: 10/11-12/2017	Refer to DFW for evaluation.



2017-004
Tracking Number: (Reference attached document)

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: Robert Juntz, Representing: Caito Fisheries Inc, North Coast Fisheries Inc, Ocean Fresh LLC, Noyo Fish Company, Dan Yoakum (F/V Casey III), Bill Forkner (F/V Shirley) and the Fort Bragg Fishing Community.
- 2. Rulemaking Authority (Required)** - Reference to the statutory or constitutional authority of the Commission to take the action requested: Authority cited: Sections 7078, 7701, 7708, 8026, 8425 and 8429.5 and the Fish and Game Code.
- 3. Overview (Required)** - Summarize the proposed changes to regulations: We are requesting changes to existing market squid regulations to allow anybody holding a current CA commercial fishing license, and on a CA commercially registered vessel to be able to harvest 5 tons per day of market squid with a cap of 950 tons total in the waters north of Point Arena to the California Oregon border. The fishing methods would be consistent with existing rules, methods, times IE, Methods seine, lampara, braile etc. This 950 tons if not caught between Apr 1st – Jan 1st would revert back to the limited entry permittees. This 950 tons is less than 1 % of existing quota. We are open to variations of this proposal as to fit controlling agencies and user groups. After implementation we would like to reassess this fishery every 3 – 5 years.
- 4. Rationale (Required)** - Describe the problem and the reason for the proposed change: The biggest problem we are facing is the FMP unknowingly took the biggest and most abundant fishery in California and gave it to 55 fishers without taking into account the future needs and access of Northern California Fishing Communities. The prices of these permits have skyrocketed to over one million dollars, and made it unattainable for the fishermen of Northern California to have access to a resource that is right out in front of the harbor. Another problem is the quota is based on central California south, not taking into account the enormous amount of squid we have here. These squid are here year in and



out; they are not here due to El Nino conditions only. The solution is a community based squid fishery with its own quota in the ports of Noyo, Eureka and Crescent City. This quota will give the local fishing-based communities an opportunity to make use of a natural local resource, create jobs, industry and save these ports that are in serious danger of failing.

SECTION II: Optional Information

5. **Date of Petition:** 6th of June, 2017

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): 149
☐ 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 2015-007**

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.

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: This proposal would help create jobs and revenue to support the local fishing communities. We are open to current economic taxation on market squid and if this would increase workload on the department an increased tax to accommodate excess workload.

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: 6/8/17
Click here to enter text.

RECEIVED
CALIFORNIA
FISH AND GAME
COMMISSION
2017 JUN -8 PM 3:15



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: June 9, 2017

Meeting date for FGC consideration: August 16-17, 2017

FGC action:

- ☐ Denied by FGC
- ☐ Denied - same as petition _____
- ☐ Granted for consideration of regulation change

Tracking Number



Tracking Number: *2017-006* (~~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: Joshua Russo. President. Watermen's Alliance
- 2. Rulemaking Authority (Required)** - Reference to the statutory or constitutional authority of the Commission to take the action requested: Fish and Game Code Sections 2118(i) and 2118(k)
- 3. Overview (Required)** - Summarize the proposed changes to regulations: Amend Title 14 CCR 671 (c) (12) to add subsection (C) *Carcinus maenas* (European Green Crab) to the list of restricted species.
- 4. Rationale (Required)** - Describe the problem and the reason for the proposed change: The European Green Crab is considered one of the world's worst invasive species. In areas where the crab have been able to establish reproducing populations they have had dramatic impacts on other species, particularly smaller shore crab, clams, and small oysters. While the crab cannot crack the shell of a mature oyster, it can prey upon young oysters, and will dig down six inches to find clams to eat.

SECTION II: Optional Information

- 5. Date of Petition:** 7/5/2017
- 6. Category of Proposed Change**
 - ☐ Sport Fishing
 - ☐ Commercial Fishing
 - ☐ Hunting



☒ Other, please specify: Restricted Species

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):671 (c) (12)
☐ 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: Click here to enter text.
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.~~ August 8, 2017

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: August 16, 2017

Meeting date for FGC consideration: October 11-12, 2017

FGC action:

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

From: Diane Pleschner-Steele
Sent: Wednesday, August 02, 2017 10:00 AM
To: Eric Sklar; FGC
Cc: Termini, Valerie@FGC; Ashcraft, Susan@FGC; Shuman, Craig@Wildlife; Ugoretz, John@Wildlife; Brady, Briana@Wildlife
Subject: Agenda Item 26 ~ Action on petitions for regulation change I. Petition #2017-004 to authorize commercial access fishing opportunity for market squid in northern California
Attachments: CWPA_FGC Squid comments080217.pdf

Hi President Sklar et al,
Unfortunately I'm unable to attend the Fish and Game Commission meeting in person on Aug. 16; however I've engaged in lengthy discussions with the proponents of the petition, DFW and Commission staff, and have coordinated multiple meetings with the squid fishermen and markets to learn their views re: the petition requesting open access squid fishing opportunity in the area north of Point Arena.
I would greatly appreciate it if you could include the attached letter in the Commission's pre-meeting briefing materials for consideration by all the Commissioners. Mike Conroy will attend the meeting, and can address any questions that might arise on behalf of CWPA, the squid fleet and wetfish industry.

Thank you very much for your consideration of our comments and recommendations.

Best regards,
d.



www.californiawetfish.org
diane@californiawetfish.org



CALIFORNIA WETFISH PRODUCERS ASSOCIATION

PO Box 1951 • Buellton, CA 93427 • Office: (805) 693-5430 • Mobile: (805) 350-3231 • Fax: (805) 686-9312 • www.californiawetfish.org

July 30, 2017

Mr. Eric Sklar, President
Members of the Fish and Game Commission
1416 Ninth Street
Sacramento, CA 95814

RE: Agenda Item 26 ~ Action on petitions for regulation change

I. Petition #2017-004 to authorize commercial access fishing opportunity for market squid in northern California

Dear President Sklar and Commissioners,

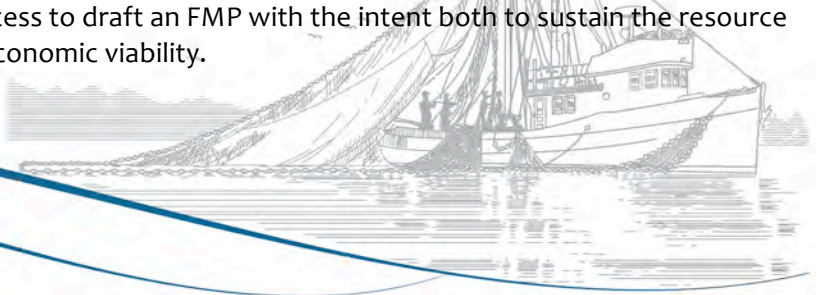
As you're aware, CWPA represents a majority of fishermen and processors who land and process coastal pelagic species in California, including market squid. Unfortunately I am unable to attend the Commission meeting on September 16, so I would greatly appreciate your consideration of the following comments on behalf of the squid / wetfish industry at large, regarding Agenda Item 26, continuing discussion re: commercial access to the squid fishery in northern CA.

This issue has appeared on the Commission agenda periodically for several years in different iterations, but the gist has always been to allow exclusive opportunity for N.CA. fishermen to harvest squid outside the limits of the current restricted access policy. Over these years, CWPA, the wetfish industry and I personally have invested a lot of time, thought and discussion, considering potential alternatives that could be accomplished within the current regulatory framework or with surgical regulatory change that could apply across all fisheries, and without harming the existing wetfish industry, for whom the squid fishery is an essential part – and now virtually the only part – of their livelihood.

Our discussions triggered a flood of questions: What about the restricted access policy itself and the precedent that reversing it would set for all other fisheries? What about the rest of the State: why should northern CA. receive preferential treatment? What socio-economic harm would befall the existing limited entry squid fleet — the fishermen and processors who have invested millions of dollars to develop the fishery because restricted access policy limited overexploitation, and the fishery is now fully utilized, in light of capacity limits set in the Market Squid Fishery Management Plan (FMP).

In reviewing the most recent petition for regulation change, I realized that, despite countless hours of discussion with the proponents, they have not acknowledged nor addressed any of these concerns. Rather, I found misrepresentations in the rationale, for example the statement that the Commission approved an FMP that “unknowingly... gave the squid fishery to 55 fishers without taking into account the future needs and access of N.CA. fishing communities.”

The root of this petition, as with the earlier appeals, is to gain special access to a restricted-access fishery. The Commission approved the squid FMP and its restricted access policy for valid reasons. At the beginning of the last decadal squid “boom” in the late 1990s, the increasing value of squid on the international market drew heightened interest from fishermen, many from out of state. The Department enacted a moratorium on new permits in 1999, and initiated a multi-year, multi-million-dollar process to draft an FMP with the intent both to sustain the resource and stabilize the fishery, including its long-term economic viability.



Representing California's Historic Fishery

Quoting from the Market Squid FMP:

Sec. 2.2 Restricted Access (Sec. 2-21)

Restricted access programs should: 1) contribute to sustainable fisheries management by providing a means to match the level of effort in a fishery to the health of the fishery resource and by giving fishery participants a greater stake in maintaining sustainability; 2) provide a mechanism for funding fishery management, research, monitoring, and law enforcement activities; 3) provide long term social and economic benefits to the State and fishery participants; and 4) broaden opportunities for the commercial fishing industry to share management responsibility with the Department. More specifically, the Commission's purposes for restricting access or entry to a fishery are described as: 1) promote sustainable fisheries; 2) provide for an orderly fishery; 3) promote conservation among fishery participants; and 4) maintain the long term economic viability of fisheries. Restricted access programs may be instituted in order to carry out one or more of these purposes in a given fishery.

Sec. 2.2.1 Limited Entry / Capacity Goals

Establishing limited entry qualifying criteria is a first step in reducing fleet size from the 184 market squid vessels and 41 light boats currently permitted to achieve the selected capacity goal, provided the current number of vessels is in excess of the selected goal.

Sec. 2.2.2 Initial Issuance of Market Squid Fleet Permits

California has had a practice of giving preference to vessels of fishermen with past participation when issuing restricted access permits. Among fishermen or vessels with past participation in the squid fishery, preference for permits may be based on factors such as years of participation in the fishery or level of participation (landings).

The Commission approved a **capacity goal** of 55 seine permits, including three “experimental” permits in northern CA., along with a capacity goal of 34 light boat permits and 18 brail permits (a new category included as a subset of the light boat category to provide one lighting vessel per seiner, and enable a number of smaller vessels to scoop limited quantities of squid for specialty markets).

But prior to the FMP there were **184 squid vessel and 41 light boat permits** in the fishery. Thus adoption of the FMP eliminated more than half of the then existing seine fleet, as vessels were required to qualify based on a prescribed number landings in the window period or history in the fishery. The total number of vessels that qualified to remain in the fishery exceeded the capacity goal, but the intent was to attain the capacity goal by attrition and permit stacking.

In 2016 the squid fleet numbered 45 transferable brail permits (up from the 14 issued in 2005 due to a one-time light boat to brail transfer authorized in regulation that inadvertently did not cap transfers at the capacity goal), 30 transferable light boat permits (down from the initial 41 due to the transfers) and 68 transferable seine vessel permits (down from the 77 issued in 2005). Although the seine fleet is working toward its capacity goal, the fishery as a whole has not reached it yet. Transferable seine and brail permits now cost \$2,764.50 per year, among the most expensive commercial fishing permits in California, and fishermen must pay this fee annually to remain in the fishery, regardless of whether or not they go fishing. But the ‘good’ news is 113 permits are eligible for transfer, should someone wish to enter the squid fishery under the existing regulatory framework.

I recall the Commission’s initial intent when approving the “experimental” permit class in 2004 was to “develop a fishery in an area previously unfished”, but regulations established a time limit for those permits. Why were the three “experimental” squid permits issued at the beginning of the market squid FMP not used? The experimental permits acquired in 2005 were not renewed for a reason:

For example, an article in the Eureka Times Standard, “Another ‘Freakish’ Squid Fishing Boom Unlikely” (dated 10/22/15), posted a telling sidebar:

Yearly squid landings in the Eureka area since 2000:

2014: 4.8 million pounds*

2008: 87 pounds

2006: 300 pounds

2004: 95 pounds

2001: 255 pounds

2000: 1,645 pounds

Source: California Department of Fish and Wildlife

*Please understand that the 4.8 million pounds landed in 2014 were landed by squid limited-entry fishery participants who had invested millions of dollars in vessels and infrastructure, including mobile pumps, to maximize the harvest and value of the squid resource during a decadal squid “boom”. This value was lauded by local businesses in ports like Eureka and Fort Bragg that benefited from the upsurge in economic activity. The current squid limited-entry fleet is mobile and capable of harvesting squid wherever they appear, in northern as well as southern California. However, the current lack of ice and cold storage facilities in northern CA have hampered local processing, and trucking will be required unless or until adequate infrastructure is built.

Everyone can support the goal of achieving sustainable harbor communities. **But sustainability is an issue for all of California’s harbors, not just those in northern CA.**

Many harbors are suffering. California’s wetfish fleet has little else to harvest besides squid now. The sardine fishery is closed; mackerel, although present, are not often concentrated into fishable schools in waters where the fleet operates; anchovy markets are limited and there are severe restrictions on tuna fishing.

Market squid is now the only economic driver in a historic industry that, until recent years, has contributed as much as 80 percent of California’s statewide fishery landings, representing 40 percent of total dockside value. We all feel the pain voiced by the proponents of this petition. We’ve participated in and paid close attention to the sustainable harbor community workshops that the Commission has sponsored, and we’ve encouraged the proponents to pursue the model advanced by the City of Monterey, which could include creating a co-op or foundation and purchasing some squid permits, along with permits for other fisheries.

Excerpting from CWPA’s earlier discussion document submitted to the Commission:

Potential Long-Term Solutions to achieve Sustainable Harbor Community Goals

- *Follow the precedent set by Monterey and Morro Bay – i.e. develop a Fishing Community Sustainability Plan, identify infrastructure needs and how to secure funding and political support for improvements and focus on securing landings from a diversity of fisheries, which translates to a diversity of gear types operating on a diversity of habitats and relying on a diversity of markets.*

We’ve noted that these themes are repeated in the summary from the most recent sustainable community workshop in Smith River.

It is important to point out that Northern CA ports historically have relied on groundfish, Dungeness crab, salmon and Pacific Ocean “pink” shrimp. Fort Bragg also has had a viable sea urchin fishery until recent anomalous ocean conditions precipitated an explosion of purple urchins and loss of kelp. The abundance of squid in northern CA is transient, and certainly **squid by itself cannot “save” fishing communities in northern CA.**

After lengthy, serious discussion, a consensus of the wetfish industry continues to express grave concern over the petition now asking for “open access” permits in the squid fishery:

- **Squid fishermen and processors fear the harm caused by reversing restricted access policy to upset the economic sustainability of the existing limited-entry squid fishery and California’s wetfish industry.**
- **They also point to the precedent set by issuing new permits to individuals who had not qualified for permits nor invested substantially to participate in the fishery.**

Employing similar logic, why not give squid fishermen Dungeness crab, salmon, spiny lobster or spot prawn permits during times of hardship? (A spot prawn permit recently sold for \$1.1 million.) California’s wetfish fleet also needs help!

Market squid supports many fishing communities in California. Issuing new “open access” fishery permits in an existing limited-entry fishery would set the precedent for similar consideration in other fisheries and other areas, **would jeopardize the value of existing limited-entry permits, would increase capacity in an already fully utilized fishery and would not be equitable to fishermen who worked hard and risked millions of dollars themselves to secure a place in the fishery initially.**

- **An important purpose of the restricted access program was to provide economic stability. Adding more permits would destabilize the existing limited entry squid fleet and wetfish industry.**

I have engaged in many informal discussions with DFW fishery managers and Commission staff about this issue. On behalf of CWPA and the wetfish industry at large, I agree with recommendations of Marine Region Manager Craig Shuman, who suggested that before acting on any fishery-specific request for regulation change involving a restricted-access fishery, the Commission should consider its overarching restricted access policy and how that is applied across all fisheries. As noted above, given the dynamic, transient behavior of market squid, the squid fishery by itself is not going to save northern CA fishing communities. However, the squid fishery is now the lifeline for California's historic wetfish industry.

CWPA supports the current management framework of the squid FMP, including the goals of the restricted access policy – in particular: *4) broaden opportunities for the commercial fishing industry to share management responsibility with the Department.*

CWPA is pleased to serve as a partner of the Department of Fish and Wildlife in research and management. CWPA has assisted the Department in tracking squid fishery landings since 2013, after the fishery closed early during the “boom” in 2012, with about 11,000 tons remaining in the max cap, which caused a \$20 million impact to the industry. We successfully coordinated voluntary participation with all major markets who emailed fish tickets daily to the Department, and fishermen voluntarily restricted fishing days after landings approached about 100,000 tons, stopping for a week to enable the Department to confirm the landings count, then proceeding one trip per day, two days per week, until landings approached the max cap. Fishermen stopped fishing voluntarily, before landings reached 118,000 tons. We are continuing this cooperative management agreement even though fishery landings have been sharply reduced during the 2015 El Niño and its aftermath.

We have also conducted a squid research program for many years, in cooperation with the Department and the Southwest Fisheries Science Center. I'm happy to announce that a paper reporting our supervising squid scientist's research findings 2011-2016 was recently published in the journal *Marine Ecology*. I have attached highlights from that paper following our comment letter.

I have also included an infographic illustrating the importance of wetfish / squid to numerous harbor communities, as well as to California's fishing economy.

We look forward to further cooperation in both fishery research and management, and will be happy to discuss market squid management policy at the appropriate time in the future.

In the meantime, thank you very much for considering our comments.

Best regards,



Diane Pleschner-Steele
Executive Director

HIGHLIGHTS FROM VAN NOORD, ET AL **Published 20 Jun 2017**

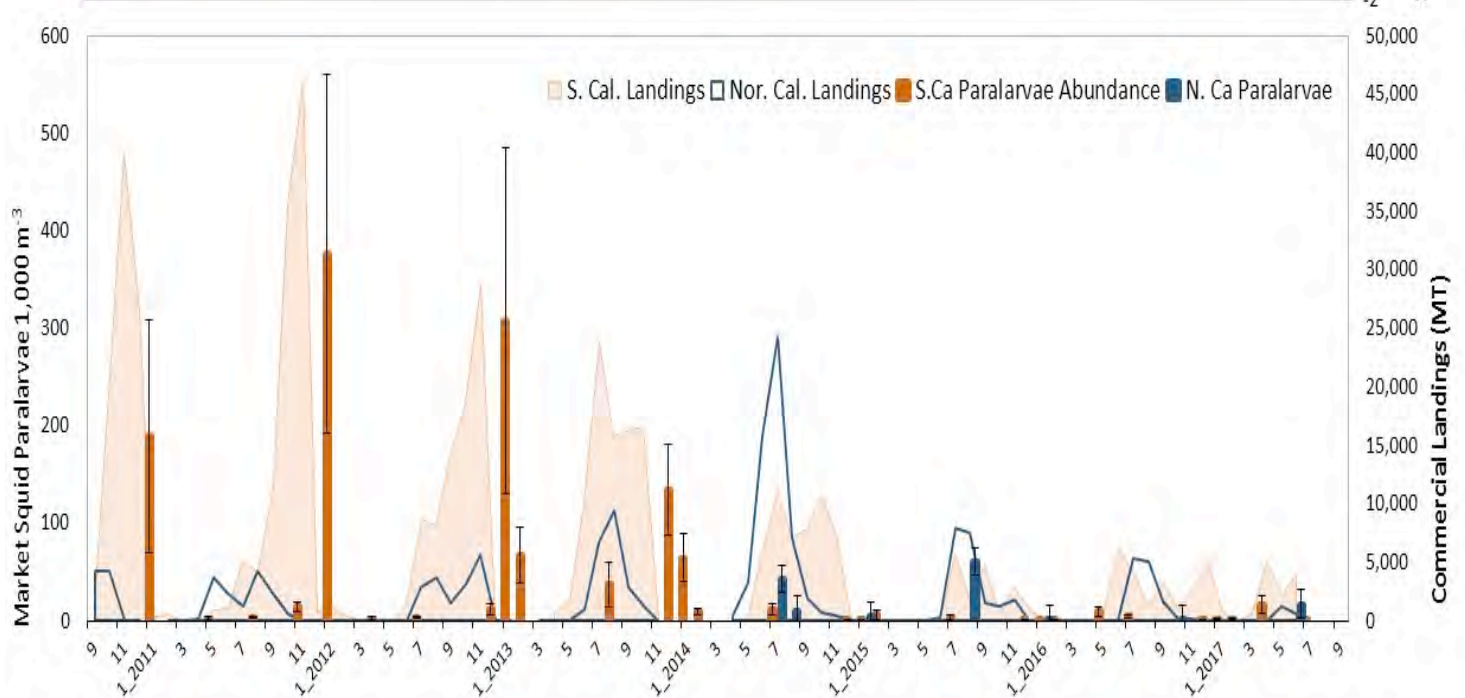
Van Noord JE, Dorval E. Oceanographic influences on the distribution and relative abundance of market squid paralarvae (*Doryteuthis opalescens*) off the Southern and Central California coast. Mar Ecol. 2017;38:e12433. <https://doi.org/10.1111/maec.12433>

Summary

This study represents the most comprehensive, on-going effort to directly assess the relative abundance of market squid paralarvae in nearshore waters and the conditions that influence the variability in the stock, density and distribution. Warm temperatures pose ecological and physiological limitations on squid through feeding constraints and metabolic stress that alter the timing and location of spawning. We found that the densities and distribution of market squid paralarvae show a strong relationship to local sea surface temperatures and ocean productivity, where colder temperatures and moderate zooplankton displacement volumes promote greater paralarval densities, while warmer temperatures cause the population to spawn earlier, shift north, and contract. These findings indicate that squid abundance, distribution, and timing of spawning are largely driven by environmental forcing, while the effect from the fishing pressure is likely much less.

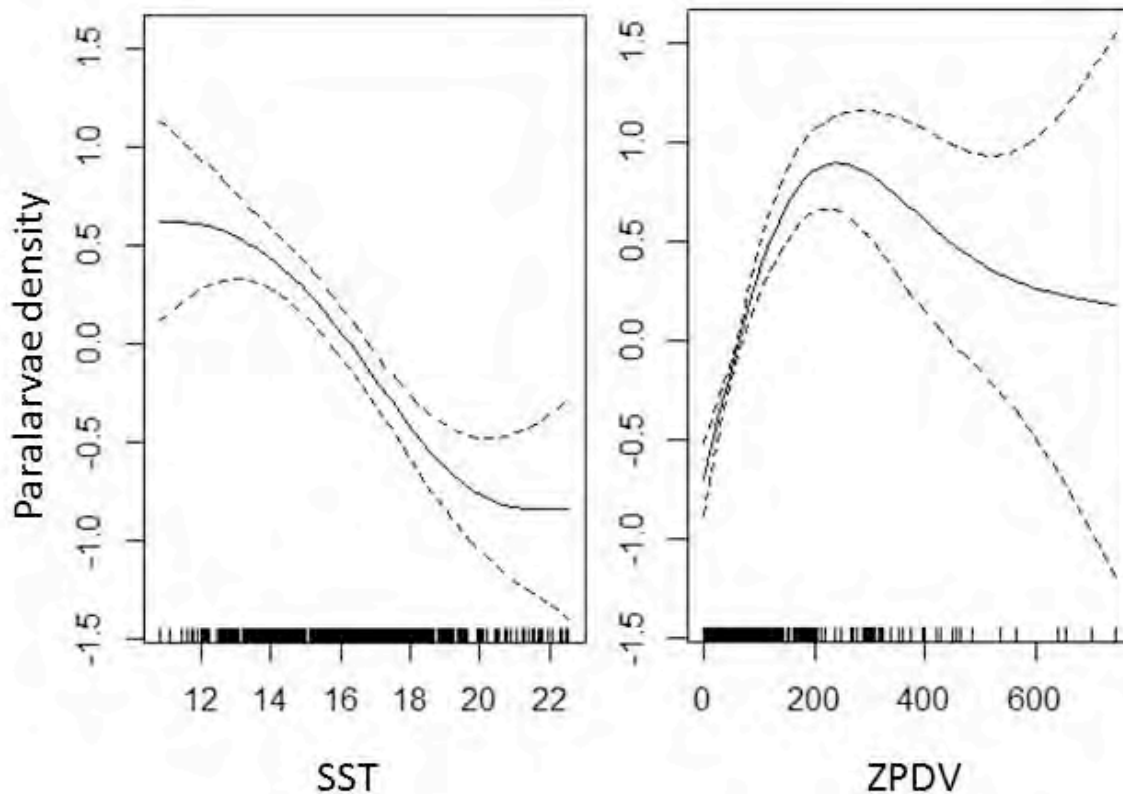
ENSO cycles control the abundance, distribution and maturity rate of market squid

- The abundance, distribution, and maturity rate (which controls the timing of spawning and recruitment to fishing grounds) of market squid are strongly influenced by warm and cool cycles of the El Niño Southern Oscillation (ENSO).
- During La Niña events the ocean temperature is cooler and the ecosystem is more productive than normal. During El Niño events the opposite is true, the ocean temperature is warmer and the ecosystem is unproductive compared to the long-term average.
- Warm oceanic conditions pose ecological and physiological challenges to market squid at multiple life-history stages.
 - Warm waters yield fewer zooplankton, resulting in reduced prey for squid
 - Warmer waters result in greater egg failure and less paralarvae hatching
 - Paralarvae are born with reduced egg-yolk (an initial and critical food source)
 - Metabolic rate is increased with greater ocean temperatures, requiring more food for sustaining growth
 - Maturation rate increases, which alters timing of spawning and can effect synchronicity with seasonal upwelling events.



- The above time series shows the effect of an ENSO cycle (top panel showing the Oceanic Niño Index) on squid abundance, distribution, and timing of spawning (bottom panel):
 - Ocean conditions are cool and productive (La Niña) from late 2010 – 2013, commercial landings (shaded areas) and paralarval abundance (bars) are high, particularly in southern California (orange colors).
 - Ocean temperatures gradually rise in late 2013 (neutral conditions) and cause a temporal shift in spawning, squid mature early and recruit to the Southern California spawning beds during late spring and summer, instead of autumn and winter.
 - Continued warming causes a distributional shift, squid can be found recruiting further north (blue lines and bars) to Monterey Bay spawning beds.
 - As a near-record El Niño peaks in 2016, both commercial landings and paralarval abundance decrease to very low levels in the traditional spawning locations.

Oceanographic variables explain variability in paralarval density



- Sea surface temperature (SST) and zooplankton displacement volume (ZPDV – a measure of zooplankton abundance and availability as prey) are strongly correlated with paralarval density.
- The above figure shows the effect of SST and ZPDV on paralarval density. The solid lines indicate the estimated paralarval density at a measured SST or ZPDV measurement. A value of 0 on the vertical axis indicates no effect on paralarval density. A positive value indicates greater paralarvae, and a negative value indicates fewer. The dotted line is the 95% confidence interval.
- The left panel shows greater paralarval densities associated with colder temperatures, and an adverse effect of warm temperatures ($>17^{\circ}\text{C}$) on paralarval density.
- The right panel indicates zooplankton abundance and paralarval densities are positively correlated, when zooplankton abundance is low, paralarvae abundance is also low. As zooplankton abundance increases, paralarval densities increase as well. This trend continues until the ocean environment is saturated with enough zooplankton and there is no effect after ~ 200 ml displacement.
- Sea surface temperature, zooplankton abundance, chlorophyll concentration, and geographic and temporal variables combined to explain 41% of the variability associated with paralarval densities (Van Noord & Dorval 2017).

CALIFORNIA PORTS RELY ON SQUID & CPS FISHERIES

HALF MOON BAY*
85% of port landings
33.8% of dockside value

MOSS LANDING*
94.4% of port landings
63.9% of dockside value

MONTEREY HARBOR*
88.8% of port landings
44.4% of dockside value

VENTURA*
97% of port landings
71% of dockside value

PORT HUENEME*
99.98% of port landings
99.8% of dockside value

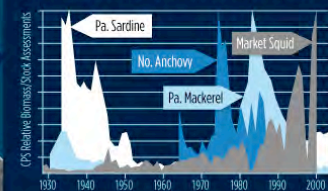
SAN PEDRO*
99.6% of port landings
94% of dockside value

TERMINAL ISLAND*
97.9% of port landings
87.2% of dockside value

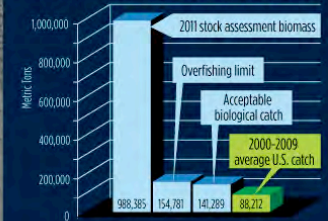
Coastal Pelagic Species fisheries (including market squid, sardines, mackerels, anchovy, coastal tunas) need flexibility in management to account for dynamic ocean cycles and facilitate productive harvest of this complex of species during their unique periods of abundance.

CA CPS fisheries are managed precautionarily with strict quotas/area closures and harvest only a small percentage of the biomass.

DYNAMIC NATURAL FLUCTUATIONS OF CPS



STRICT SARDINE QUOTAS



LOW CARBON FOOTPRINT

To preserve quality, fishing areas for CA CPS are limited to day trips nearby the ports. This makes CA CPS among the most efficient, "greenest" fisheries in the world - with one of the lowest carbon footprints in the world. For example: CA CPS fisheries on average produce 2,000 pounds of protein for 6 gallons of diesel fuel.

SQUID & CPS FISHERIES PROVIDE

82%
of all CA port landings*



4,000 to 4,500
workers employed by CA CPS fisheries

37%
of all CA dockside value*



\$325 MILLION
annual contribution to CA economy*

*2012 preliminary data by port

FISHING AREA
FEDERAL MPA
STATE MPA
NON-FISHING AREA



Artwork by eat2Seafood.com

From: Ken Bates
Sent: Tuesday, August 15, 2017 8:58 PM
To: FGC
Subject: Agenda Item 26 A 1

Re: Agenda Item 26A1., Fort Bragg Small Scale Squid EFP Request

Humboldt Fishermen's Marketing Association has supported various proposals for small scale squid fishing, north of Point Arena. The Fort Bragg proposal, agenda item 26A1 is scheduled to go before the commission on August 16, 2017. We would respectfully request that the commission vote to table this item and instruct staff and the department to meet with supporters this fall to discuss the merits and obstacles of this proposal. Tabling this proposal (referred to committee) would relieve the commission of the responsibility of granting or denying this proposal without having an indepth understanding of what your constituents are actually requesting. If the staff and department, after working with the North Coast supporters, find this proposal unworkable, the authors would then be in a legitimate position to withdraw this proposal from the Commission agenda. Thank you.

Sincerely,

Ken Bates, Vice-President

Humboldt Fishermen's Marketing Association

Sent from my iPad

CALIFORNIA FISH AND GAME COMMISSION
DECISION LIST FOR MARINE NON-REGULATORY REQUESTS RECEIVED THROUGH AUG 16, 2017
Revised 09-29-2017

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	FGC Decision	Staff Recommendation
8/16/2017	Geoff Shester Oceana	Leatherback turtles	(1) Requests DFW include leatherback turtles in an entanglement reduction program. (2) Requests DFW and FGC attend the federal sea turtle summit. (3) Requests DFW and FGC pursue federal funding opportunities for research and monitoring.	Receipt: 8/16/2017 Action: Scheduled 10/11-12/2017	(1) No action required as request directed at DFW. (2) Potential participation pending input from FGC on priorities and FGC staff availability. (3) DENY; FGC does not have a research and monitoring mandate.
8/16/2017	Chris Voss Commercial Fishermen of Santa Barbara	Fishery management plans	Requests FGC consider costs of management strategies and data streams when developing fishery management plans	Receipt: 8/16/2017 Action: Scheduled 10/11-12/2017	GRANT; as a consideration in the amended Marine Life Management Act master plan for fisheries, and in developing future fishery management plans.
8/16/2017	Paul Weakland	Abalone	Requests an update on the status of pink, green, black, and white abalone since the fisheries were closed	Receipt: 8/16/2017 Action: Scheduled 10/11-12/2017	GRANT; request DFW provide an update as part of the red abalone regulation change agenda item at the 10/11-12/2017 or 12/6-7/2017 FGC meetings.

California Fish and Game Commission
Staff Report on Staff Time Allocation and Accomplishments
September 29, 2017

Commission staff time is a tangible and invaluable asset. Especially since the Commission's staff is so small, where and how staff members spend their time matters. This report identifies where Commission staff allocated time to general activity categories (see table; sample tasks for each general category begin on page 3) and specific activities (see activities lists) during August and September 2017.

The table below summarizes time allocation across all staff classifications, though some classifications require a greater emphasis on certain task categories than others. For example, advisors can spend 30% or more of their time on special projects due to committee project assignments, while regulatory analysts spend up to 70% of their time on regulatory program tasks.

General Allocation

Task Category*	August Staff Time	September Staff Time
Regulatory Program	11%	12%
Commission/Committee Meetings	25%	21%
Legal Matters	4%	5%
External Affairs	6%	6%
Special Projects	14%	15%
Administration	21%	21%
Leave Time	11%	10%
Unfilled Positions	11%	16%
Total Staff Time ¹	108%	106%

** Total staff time is greater than 100% due to overtime*

Activities for August 2017

- Finished preparations for and conducted one publically-noticed meeting (August 16 Commission)
- Began preparations for one publically-noticed meeting (September 13 Wildlife Resources Committee)
- Conducted August 1 meeting of the MRC's Fisheries Bycatch Workgroup and coordinated completion of final workgroup report
- Began planning and preparations for September 13 FGC Wildlife Resources Committee meeting
- Began onboarding and training for new regulatory analyst

- Participated in Traditional Ecological Training Issues and Partnerships webinar hosted by the California Landscape Conservation Cooperative
- Participated in the Hunting and Conservation Coalition meeting
- Participated in the California Department of Fish and Wildlife's mission-based budgeting planning meetings and administrative coordination meetings
- Participated in the Sacramento-San Joaquin Delta Invasive Species Symposium
- Participated in information security and privacy awareness trainings
- Participated in planning team meetings for updates to the Marine Life Management Act master plan for fisheries
- Attended the DFW Law Enforcement Academy graduation
- Attended the DFW Strategic Vision Stakeholder Advisory Group meeting

Activities for September 2017

- Finished preparations for and conducted one publically-noticed meeting (September 13 Wildlife Resources Committee)
- Finished preparations for and conducted Tribal Committee conference call with California tribes on developing a shared vision of co-management for fish and wildlife resources under the jurisdiction of the Commission
- Began preparations for October 19 meeting of the MRC's Fisheries Bycatch Workgroup
- Organized and attended a tour of Ballona Wetlands Ecological Reserve
- Began preparations for four publically-noticed meetings (October 10 Tribal Committee, October 11-12 Commission, and October 11 and 18 Coastal Fishing Communities)
- Began preparations for the November meeting of WRC's Predator Policy Workgroup
- Continued onboarding and training for new regulatory analyst
- Participated in the California Department of Fish and Wildlife's mission-based budgeting planning meetings, Operations Committee meeting, administrative coordination meetings
- Finished preparations for and participated in Native American Day at the State Capitol
- Participated in California Natural Resources Agency MPA Milestones meeting
- Participated in planning team meetings for updates to the Marine Life Management Act master plan for fisheries
- Participated in shellfish aquaculture carrying capacity modeling meeting with the National Oceanic & Atmospheric Administration
- Participated in training for using DFW's Biogeographic Information and Observation System (BIOS) and DFW's California Natural Diversity Data Base (CNDDB)

General Allocation Categories with Sample Tasks

Regulatory Program

- Coordination meetings with DFW to develop timetables and notices
- Review and process CESA petitions
- Prepare and file notices, re-notices, ISORs and FSORs
- Prepare administrative records
- Track and respond to public comments
- Consult, research and respond to inquiries from OAL

Commission/Committee Meetings and Support

- Research and review practices and procedures for adaptive management
- Research and compile subject-specific information
- Review and develop policies
- Develop and distribute meeting agendas and materials
- Agenda and debrief meetings
- Prepare meeting summaries and audio files
- Maintain voting records
- Develop and distribute after-meeting memos/letters
- Make travel arrangements for staff and commissioners
- Conduct onsite meeting management
- Process submitted meeting materials
- Provide commissioner support (expense claims, office hours, etc.)
- Process and analyze regulatory petitions and non-regulatory requests

Legal Matters

- Respond to Public Records Act requests
- Process appeals and accusations
- Process requests for permit transfers
- Process kelp and state water bottom leases
- Litigation

External Affairs

- Engage and educate legislators, monitor legislation
- Maintain state, federal and tribal government relations
- DFW partnership, including joint development of management plans and concepts
- Website maintenance

Special Projects

- Predator Policy Workgroup
- Fishing from piers and jetties
- Coastal fishing communities
- Fisheries Bycatch Workgroup
- Streamline routine regulatory actions

Administration

- Correspondence
- Purchases and payments
- Contract management
- Personnel management
- Strategic planning
- Budget development and tracking
- Health and safety oversight

- Internal processes and procedures

- Staff training and professional development

Leave Time

- Holidays
- Sick leave
- Vacation or annual leave

- Jury duty
- Bereavement
- Professional development

Unfilled

- Program Manager
- Regulatory analyst (thru August 15)

- Legal/regulatory clerk



Department of Fish & Wildlife Legislative Report

October 2017
(as of September 26, 2017)

AB 8

(Bloom D) Mountain lions: depredation permits.

Introduced: 12/5/2016

Status: 4/28/2017-Failed Deadline pursuant to Rule 61(a)(2). (Last location was W.,P. & W. on 1/19/2017)(May be acted upon Jan 2018)

Location: 4/28/2017-A. 2 YEAR

Summary: The California Wildlife Protection Act of 1990 establishes that the mountain lion is a specially protected mammal under the laws of this state, and makes it unlawful to take, injure, possess, transport, import, or sell a mountain lion or a product of a mountain lion. The act authorizes a person whose livestock or other property is being or has been injured, damaged, or destroyed by a mountain lion to report that fact to the Department of Fish and Wildlife and request a permit to take the mountain lion. The act requires the department or a specifically authorized animal damage control officer to immediately confirm the reported depredation by a mountain lion, and then promptly issue a permit to take the mountain lion. This bill would authorize, rather than require, the issuance of a permit under these circumstances.

AB 12

(Cooley D) State government: administrative regulations: review.

Introduced: 12/5/2016

Status: 5/26/2017-Failed Deadline pursuant to Rule 61(a)(5). (Last location was APPR. on 5/26/2017)(May be acted upon Jan 2018)

Location: 5/26/2017-A. 2 YEAR

Summary: Would require each state agency to, on or before January 1, 2020, review that agency's regulations, identify any regulations that are duplicative, overlapping, inconsistent, or out of date, to revise those identified regulations, as provided, and report to the Legislature and Governor, as specified. The bill would repeal these provisions on January 1, 2021.

AB 18

(Garcia, Eduardo D) California Clean Water, Climate, Coastal Protection, and Outdoor Access For All Act of 2018.

Introduced: 12/5/2016

Last Amend: 8/30/2017

Status: 9/1/2017-From committee: Do pass and re-refer to Com. on APPR. (Ayes 4. Noes 1.) (August 31). Re-referred to Com. on APPR.

Location: 9/1/2017-S. APPR.

Summary: Under current law, programs have been established pursuant to bond acts for, among other things, the development and enhancement of state and local parks and recreational facilities. This bill would enact the California Clean Water, Climate, Coastal Protection, and Outdoor Access For All Act of 2018, which, if approved by the voters, would authorize the issuance of bonds in an amount of \$3,470,000,000 pursuant to the State General Obligation Bond Law to finance a clean water, climate, coastal protection, and outdoor access for all program.

AB 77

(Fong R) Regulations: effective dates and legislative review.

Introduced: 1/4/2017

Last Amend: 2/7/2017

Status: 5/26/2017-Failed Deadline pursuant to Rule 61(a)(5). (Last location was APPR. on 5/26/2017)(May be acted upon Jan 2018)

Location: 5/26/2017-A. 2 YEAR

Summary: Would require the Office of Administrative Law to submit to each house of the Legislature for review a copy of each major regulation that it submits to the Secretary of State. The bill would add another exception to those currently provided that specifies that a regulation does not become effective if the Legislature enacts a statute to override the regulation.

AB 108

(Committee on Budget) Public resources.

Introduced: 1/10/2017

Last Amend: 6/12/2017

Status: 7/20/2017-Ordered to inactive file at the request of Senator Mitchell.

Location: 7/20/2017-S. INACTIVE FILE

Summary: Current law regulating commercial fishing imposes, or authorizes the imposition of, various license, permit, and registration fees. Existing law requires specified persons to pay commercial fishing fees, referred to as a "landing tax," calculated on the total weight of fish delivered, based on a rate-per-pound schedule applicable to specified aquatic species. This bill would rename the "landing tax" as a "landing fee" and would revise the rate schedule by increasing certain fees while decreasing other fees to specified amounts. The bill would make conforming and other related changes.

AB 110

(Ting D) Cannabis: medicinal and adult use.

Introduced: 1/10/2017

Last Amend: 6/12/2017

Status: 7/20/2017-Ordered to inactive file at the request of Senator Mitchell.

Location: 7/20/2017-S. INACTIVE FILE

Summary: The Medical Marijuana Program also provides immunity from arrest to those exempt patients or designated primary caregivers who engage in certain acts involving marijuana, up to certain limits, and who have identification cards issued pursuant to the program unless there is reasonable cause to believe that the information contained in the card is false or fraudulent, the card has been obtained by means of fraud, or the person is otherwise in violation of the law. Under existing law, a person who steals, fraudulently uses, or commits other prohibited acts with respect to those identification cards is subject to criminal penalties. This bill would require probable cause to believe that the information on the card is false or fraudulent, the card was obtained by fraud, or the person is otherwise in violation of the law to overcome immunity from arrest to patients and primary caregivers in possession of an identification card.

AB 118

(Committee on Budget) Transportation.

Introduced: 1/10/2017

Last Amend: 6/26/2017

Status: 7/20/2017-Ordered to inactive file at the request of Senator Mitchell.

Location: 7/20/2017-S. INACTIVE FILE

Summary: Would require the Department of Transportation to develop and submit to the Legislature and specified legislative caucuses, by January 1, 2019, a detailed outreach plan intended to increase procurement opportunities for new and limited contracting small business enterprises, as defined, including, but not limited to, those owned by women, minority, disabled veterans, LGBT, and other disadvantaged groups, in all the department's transportation programs, to undertake specified outreach activities required to be included in the plan, and to update that plan and submit it to specified entities.

AB 424

(McCarty D) Possession of a firearm in a school zone.

Introduced: 2/9/2017

Last Amend: 8/30/2017

Status: 9/18/2017-Enrolled and presented to the Governor at 4 p.m.

Location: 9/18/2017-A. ENROLLED

Summary: Would delete the authority of a school district superintendent, his or her designee, or equivalent school authority to provide written permission for a person to possess a firearm within a school zone. By expanding the scope of a crime, the bill would create a state-mandated local program. The bill would exempt from that crime the activities of a program involving shooting sports or activities that are sanctioned by a school, school district, college, university, or other governing body of the institution, as specified, and the activities of a certified hunter education program, as specified. The bill would make other conforming changes to related provisions.

AB 425

(Caballero D) Timber harvesting plans: exemptions: temporary roads.

Introduced: 2/9/2017

Last Amend: 4/4/2017

Status: 9/13/2017-Ordered to inactive file at the request of Senator Hertzberg.

Location: 9/13/2017-S. INACTIVE FILE

Summary: The Z'berg-Nejedly Forest Practices Act of 1973 authorizes the State Board of Forestry and Fire Protection to exempt from some or all of those provisions of the act a person engaging in specified forest management activities, including the cutting or removal of trees in compliance with existing law relating to defensible space. In this regard, the act authorizes, until January 1, 2021, the Forest Fire Prevention Pilot Project Exemption if specified conditions are met. This bill would expand the exemption to allow the construction or reconstruction of temporary roads on slopes of 40% or less if certain conditions are met, including that a registered professional forester designates temporary road locations, landing locations, associated class III watercourse crossings, unstable areas, and connected headwall swales, including convergent slopes, on specified maps.

AB 429

(Grayson D) State water policy: water rights: use and transferability.

Introduced: 2/13/2017

Status: 5/12/2017-Failed Deadline pursuant to Rule 61(a)(3). (Last location was PRINT on 2/13/2017)(May be acted upon Jan 2018)

Location: 5/12/2017-A. 2 YEAR

Summary: Current law declares that the growing water needs of the state require the use of water in an efficient manner and that the efficient use of water requires certainty in the definition of property rights to the use of water and transferability of those rights. This bill would make nonsubstantive changes to those declarations.

AB 474

(Garcia, Eduardo D) Hazardous waste: spent brine solutions.

Introduced: 2/13/2017

Last Amend: 8/21/2017

Status: 9/19/2017-Enrolled and presented to the Governor at 3 p.m.

Location: 9/19/2017-A. ENROLLED

Summary: Current law exempts from certain requirements of the Hazardous Waste Control Law wastes from the extraction, beneficiation, or processing of ores and minerals that are not subject to regulation under the federal Resource Conservation and Recovery Act of 1976, including spent brine solutions used to produce geothermal energy that meet specified requirements. This bill would exempt spent brine solutions that are byproducts of the treatment of groundwater to meet California drinking water standards from those same requirements if certain conditions are met, including that the spent brine solutions are transferred for dewatering via a closed piping system to lined surface impoundments regulated by the California regional water quality control boards.

AB 478

(Waldron R) Sport fishing licenses: age requirement.

Introduced: 2/13/2017

Status: 5/26/2017-Failed Deadline pursuant to Rule 61(a)(5). (Last location was APPR. on 5/26/2017)(May be acted upon Jan 2018)

Location: 5/26/2017-A. 2 YEAR

Summary: Current law requires every person 16 years of age or older who takes any fish, reptile, or amphibian for any purpose other than profit to first obtain a sport fishing license for that purpose, with specified exceptions, and to have that license on his or her person or in his or her immediate possession when engaged in carrying out any activity authorized by the license. This bill would raise the age at which a person is required to obtain a sport fishing license to 18 years of age or older and would make other conforming changes.

AB 510

(Quirk-Silva D) State property acquisition: West Coyote Hills project site: funding.

Introduced: 2/13/2017

Last Amend: 7/20/2017

Status: 9/1/2017-Failed Deadline pursuant to Rule 61(a)(12). (Last location was APPR. SUSPENSE FILE on 8/21/2017)(May be acted upon Jan 2018)

Location: 9/1/2017-S. 2 YEAR

Summary: Would require that the \$15,000,000 appropriated in the Budget Act of 2017 for the purposes of SB 714 of the 2017–18 Regular Session be deposited in the West Coyote Hills Conservancy Program Account in the Coastal Trust Fund to be used for the purchase of specified property and related projects. The bill would make findings and declarations regarding funding under the bill for the Wildlife Conservation Board to open up, operate, and maintain the Robert E. Ward Nature Preserve. The bill would state the intent of the Legislature in enacting this act to specify the particular uses of the appropriated funds.

AB 521

(Frazier D) Hunting: elk tags: apprentice elk hunt tags: fees for residents.

Introduced: 2/13/2017

Last Amend: 6/26/2017

Status: 9/1/2017-Failed Deadline pursuant to Rule 61(a)(12). (Last location was N.R. & W. on 7/14/2017)(May be acted upon Jan 2018)

Location: 9/1/2017-S. 2 YEAR

Summary: Under current law, a hunting license grants the privilege to take birds and mammals. Current law authorizes the Department of Fish and Wildlife to issue a tag that is required in addition to a hunting license to take an elk. Current law sets the fee for an elk tag for a resident of the state at \$165, as adjusted annually pursuant to a specified index. This bill would reduce the fee for an elk tag for a resident of the state to \$100 and would prohibit the fee from being adjusted, except pursuant to an analysis of the fee to ensure that the appropriate fee amount is charged and a recommendation to the Legislature or the Fish and Game Commission that the fee be adjusted.

AB 573

(Bigelow R) Depredation: wild pigs: damage guidelines.

Introduced: 2/14/2017

Last Amend: 3/23/2017

Status: 4/28/2017-Failed Deadline pursuant to Rule 61(a)(2). (Last location was W.,P. & W. on 3/23/2017)(May be acted upon Jan 2018)

Location: 4/28/2017-A. 2 YEAR

Summary: Current law provides that any wild pig that is encountered while in the act of inflicting injury to, or damaging or destroying, or threatening to immediately damage or destroy, land or other property may be taken immediately by the owner or the owner's employee or agent, as specified. Current law defines "damage" for purposes of these provisions and requires the department to develop statewide guidelines to aid in determining the damage caused by wild pigs. This bill would require the guidelines to consider additional factors and would require the department to update the guidelines as needed.

AB 661

(Mayes R) Magnesia Spring Ecological Reserve: Mirage Trail.

Introduced: 2/14/2017

Last Amend: 7/3/2017

Status: 9/19/2017-Enrolled and presented to the Governor at 3 p.m.

Location: 9/19/2017-A. ENROLLED

Summary: Current law requires, until January 1, 2018, that the Mirage Trail within the Magnesia Spring Ecological Reserve be open 9 months of the year during the months of May to January, inclusive, and closed for 3 months during the months of February to April, inclusive, to recreational hiking if the Fish and Game Commission determines that specified conditions relating to providing funding and ensuring the proper use and monitoring of the reserve are met. This bill would require the commission, beginning January 1, 2020, and by January 1 every 2 years thereafter, at a public hearing, to assess compliance with the requirements of those provisions and post its findings and any recommendations on its Internet Web site.

AB 707

(Aguiar-Curry D) Clear Lake.

Introduced: 2/15/2017

Last Amend: 7/3/2017

Status: 9/25/2017-Enrolled and presented to the Governor at 12 p.m.

Location: 9/25/2017-A. ENROLLED

Summary: Would establish in the Natural Resources Agency, the Blue Ribbon Committee for the Rehabilitation of Clear Lake. The bill would require the committee to consist of specified persons, including the Secretary of the Natural Resources Agency, or his or her designee. The bill would require the committee to meet quarterly for the purposes of discussion, reviewing research, planning, and providing oversight regarding the health of Clear Lake. The bill would require the committee to hold 2 meetings per year in the County of Lake.

AB 718

(Frazier D) Mosquito abatement and vector control districts: managed wetland habitat: memoranda of understanding.

Introduced: 2/15/2017

Last Amend: 9/8/2017

Status: 9/25/2017-Enrolled and presented to the Governor at 12 p.m.

Location: 9/25/2017-A. ENROLLED

Summary: Current law provides for the formation of mosquito abatement and vector control districts, and prescribes the powers, functions, and duties of those districts, as specified. This bill would authorize a private landowner whose property includes managed wetland habitat, as defined, located within the boundaries of a district and meets other criteria to initiate the opportunity to enter into a memorandum of understanding with the district to establish a process to implement best management practices with regard to the managed wetland habitat.

AB 721

(Bigelow R) Firearms: prohibited firearms.

Introduced: 2/15/2017

Status: 7/21/2017-Failed Deadline pursuant to Rule 61(a)(11). (Last location was PUB. S. on 5/10/2017)(May be acted upon Jan 2018)

Location: 7/21/2017-S. 2 YEAR

Summary: Current law prohibits the manufacture, importation, sale, or possession in the state of short-barreled rifles and short-barreled shotguns, as defined. Current law authorizes certain government entities and certain peace officers to purchase and possess these firearms under certain circumstances, as specified. This bill would add district attorney's offices and peace officer members of these offices to the specified entities and persons authorized to purchase and possess these weapons under specified circumstances.

AB 748

(Ting D) Peace officers: video and audio recordings: disclosure.

Introduced: 2/15/2017

Last Amend: 7/19/2017

Status: 9/1/2017-Failed Deadline pursuant to Rule 61(a)(12). (Last location was JUD. on 8/23/2017)(May be acted upon Jan 2018)

Location: 9/1/2017-S. 2 YEAR

Summary: The California Public Records Act requires that public records, as defined, be available to the public for inspection and made promptly available to any person. Current law makes records of investigations conducted by any state or local police agency exempt from these requirements. Current law requires specified information regarding the investigation of crimes to be disclosed to the public unless disclosure would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation. This bill would, notwithstanding the above provisions, allow a video or audio recording that relates to a matter of public concern because it depicts an incident involving a peace officer's use of force, or is reasonably believed to involve a violation of law or agency policy by a peace officer, to be withheld for a maximum of 120 calendar days if disclosure would substantially impede an active investigation.

AB 816

(Kiley R) California Environmental Protection Agency: Natural Resources Agency: Web casts of public meetings and workshops.

Introduced: 2/15/2017

Status: 9/1/2017-Failed Deadline pursuant to Rule 61(a)(12). (Last location was APPR. SUSPENSE FILE on 8/21/2017)(May be acted upon Jan 2018)

Location: 9/1/2017-S. 2 YEAR

Summary: Would require that each department, board, and commission of the Natural Resources Agency, except as specified, and each department, board, and office of the California Environmental Protection Agency Web cast all onsite public meetings, in a manner that enables listeners and viewers to ask questions and provide public comment by telephone or electronic communication commensurate with those attending the meeting. The bill would require the agencies to make the recording of a Web cast available online for no less than 3 years for subsequent viewing by interested members of the public.

AB 947

(Gallagher R) Department of Fish and Wildlife: lake or streambed alteration agreements: definitions.

Introduced: 2/16/2017

Last Amend: 4/17/2017

Status: 5/26/2017-Failed Deadline pursuant to Rule 61(a)(5). (Last location was APPR. SUSPENSE FILE on 5/3/2017)(May be acted upon Jan 2018)

Location: 5/26/2017-A. 2 YEAR

Summary: Current law prohibits an entity from substantially diverting or obstructing the natural flow of, or substantially changing or using any material from the bed, channel, or bank of, any river, stream, or lake, or from depositing certain material where it may pass into any river, stream, or lake, without first notifying the Department of Fish and Wildlife of that activity, and entering into a lake or streambed alteration agreement if required by the department to protect fish and wildlife resources. This bill would define "river" and "stream" for purposes of these provisions.

AB 975

(Friedman D) Natural resources: wild and scenic rivers.

Introduced: 2/16/2017

Last Amend: 5/4/2017

Status: 7/14/2017-Failed Deadline pursuant to Rule 61(a)(10). (Last location was INACTIVE FILE on 6/5/2017)(May be acted upon Jan 2018)

Location: 7/14/2017-A. 2 YEAR

Summary: Current law establishes that it is the policy of the state that certain rivers that possess extraordinary scenic, recreational, fishery, or wildlife values shall be preserved in their free-flowing state, together with their immediate environments, for the benefit and enjoyment of the people of the

state. This bill would revise that policy to specify that certain rivers that possess scenic, recreational, fishery, wildlife, historical, cultural, geological, or other similar values shall be preserved in their free-flowing state, together with their immediate environments, for the benefit and enjoyment of the people of the state, and would revise the definition of "immediate environments," and define the term "extraordinary value" for purposes of that policy.

AB 986 (Gallagher R) Hunting and sport fishing licenses: sport fishing license duration: reduction in license fees for veterans.

Introduced: 2/16/2017

Status: 5/26/2017-Failed Deadline pursuant to Rule 61(a)(5). (Last location was APPR. on 3/21/2017)(May be acted upon Jan 2018)

Location: 5/26/2017-A. 2 YEAR

Summary: Current law requires a resident or a nonresident, 16 years of age or older, upon payment of a specified fee, to be issued a sport fishing license for the period of a calendar year, or, if issued after the beginning of the year, for the remainder thereof. This bill would instead require a resident or a nonresident, 16 years of age or older, upon payment of the fee, to be issued a sport fishing license for the period of 12 consecutive months beginning on the date of issuance.

AB 1000 (Friedman D) Water conveyance: use of facility with unused capacity.

Introduced: 2/16/2017

Last Amend: 7/3/2017

Status: 9/1/2017-Failed Deadline pursuant to Rule 61(a)(12). (Last location was APPR. SUSPENSE FILE on 8/28/2017)(May be acted upon Jan 2018)

Location: 9/1/2017-S. 2 YEAR

Summary: Current law prohibits the state or a regional or local public agency from denying a bona fide transferor of water from using a water conveyance facility that has unused capacity for the period of time for which that capacity is available, if fair compensation is paid for that use and other requirements are met. This bill would, notwithstanding that provision, prohibit a transferor of water from using a water conveyance facility that has unused capacity to transfer water from a groundwater basin underlying desert lands, as defined, that is in the vicinity of specified federal lands or state lands to outside of the groundwater basin unless the State Lands Commission, in consultation with the Department of Fish and Wildlife, finds that the transfer of the water will not adversely affect the natural or cultural resources of those federal and state lands.

AB 1031 (Waldron R) Personal income taxes: voluntary contributions: Rare and Endangered Species Preservation Program: Native California Wildlife Rehabilitation Voluntary Tax Contribution Fund.

Introduced: 2/16/2017

Last Amend: 8/24/2017

Status: 9/19/2017-Enrolled and presented to the Governor at 3 p.m.

Location: 9/19/2017-A. ENROLLED

Summary: Current law allows an individual taxpayer to contribute amounts in excess of his or her personal income tax liability for the support of specified funds and accounts, including among others, to the Endangered and Rare Fish, Wildlife, and Plant Species Conservation and Enhancement Account. Current law authorizes contributions to be made to this account pursuant to these provisions until January 1, 2018, or until an earlier date if specified minimum contributions are not received. Current law requires all moneys contributed to this account pursuant to these provisions to be allocated, upon appropriation by the Legislature, to the Franchise Tax Board and the Controller for the costs of collection and administration of the funds, and to the Department of Fish and Wildlife for specified purposes. This bill would authorize contributions to be made to this account pursuant to these provisions until January 1, 2025, or until an earlier date if the Franchise Tax Board determines that the amount of contributions estimated to be received during a calendar year will not at least equal the minimum contribution amount of \$250,000.

AB 1050 (Allen, Travis R) California Endangered Species Act: Delta smelt.

Introduced: 2/16/2017

Last Amend: 3/28/2017

Status: 4/28/2017-Failed Deadline pursuant to Rule 61(a)(2). (Last location was W.,P. & W. on 3/27/2017)(May be acted upon Jan 2018)

Location: 4/28/2017-A. 2 YEAR

Summary: The California Endangered Species Act requires the Fish and Game Commission to establish a list of endangered species and a list of threatened species and requires the commission to add or remove species from either list if it finds, upon the receipt of sufficient scientific information, that the action is warranted. The act prohibits the taking of an endangered or threatened species, except as specified. This bill would require the commission to remove the Delta smelt from the endangered species list.

AB 1097 (Levine D) Department of Fish and Wildlife: Significant Natural Areas Program.

Introduced: 2/17/2017

Status: 4/28/2017-Failed Deadline pursuant to Rule 61(a)(2). (Last location was W.,P. & W. on 3/6/2017)(May be acted upon Jan 2018)

Location: 4/28/2017-A. 2 YEAR

Summary: Current law requires the Department of Fish and Wildlife to administer the Significant Natural Areas Program, and requires the department, as part of its administration of the program, to maintain, expand, and keep current a data management system, designated the California Natural Diversity Database. Current law requires that data to be made available to interested parties on request. This bill would instead require that data to be made available on the department's Internet Web site.

AB 1133 (Dahle R) California Endangered Species Act: experimental populations.

Introduced: 2/17/2017

Last Amend: 8/21/2017

Status: 9/25/2017-Chaptered by Secretary of State- Chapter 276, Statutes of 2017

Location: 9/25/2017-A. CHAPTERED

Summary: Would provide that a person who obtains a federal enhancement of survival permit that authorizes the take of endangered or threatened species that is also listed as endangered, threatened, or candidate under CESA, in order to establish or maintain an experimental population of the species pursuant to FESA, requires no further authorization or approval under CESA for that person to take that species as identified in, and in accordance with, the enhancement of survival permit, if specified requirements are met. These provisions would remain in effect only until the effective date of an amendment to FESA that alters the requirements for issuing an enhancement of survival permit.

AB 1151 (Gloria D) Vaquita-friendly fish and fish products.

Introduced: 2/17/2017

Last Amend: 5/30/2017

Status: 9/12/2017-Ordered to inactive file at the request of Senator Allen.

Location: 9/12/2017-S. INACTIVE FILE

Summary: Current law makes it unlawful for any person to possess, sell, offer for sale, trade, or distribute a shark fin, as defined. Current law generally makes violations of provisions relating to fish and wildlife a crime. This bill would, commencing January 1, 2019, make it unlawful to sell, offer for sale, trade, or distribute fish and fish products that are not vaquita-friendly, as defined. The bill would require the Department of Fish and Wildlife to adopt regulations on or before January 1, 2019, to enforce this prohibition and would prohibit the department from enforcing the prohibition until July 1, 2019.

AB 1197 (Limón D) Oil spill contingency plans: spill management teams.

Introduced: 2/17/2017

Last Amend: 8/21/2017

Status: 9/19/2017-Enrolled and presented to the Governor at 3 p.m.

Location: 9/19/2017-A. ENROLLED

Summary: Current law provides for the rating of oil spill response organizations (OSROs) by the administrator pursuant to specified provisions and requires an oil spill contingency plan to identify at least one rated OSRO for each rating level established pursuant to those provisions. This bill would no longer require an oil spill contingency plan to identify at least one rated OSRO for each rating level and would instead require the plan to identify at least one OSRO rated pursuant to those provisions, and would authorize an owner or operator to rely on its own response equipment and personnel, if they have been rated by the administrator, as specified.

AB 1228 (Bloom D) Marine fisheries: experimental fishing permits.

Introduced: 2/17/2017

Last Amend: 7/17/2017

Status: 9/25/2017-Enrolled and presented to the Governor at 12 p.m.

Location: 9/25/2017-A. ENROLLED

Summary: Would authorize the Fish and Game Commission to approve experimental fishing permits to be issued by the Department of Fish and Wildlife for specified purposes that would authorize commercial or recreational marine fishing activity otherwise prohibited by the Fish and Game Code or regulations adopted pursuant to that code, subject to certain requirements, including a requirement that activities conducted under the permit be consistent with specified policies enacted as part of the Marine Life Management Act of 1998 and any applicable fishery management plan and a requirement that the permit be subject to certain commission conditions.

AB 1254 (Wood D) Production or cultivation of a controlled substance: civil penalties.

Introduced: 2/17/2017

Last Amend: 7/10/2017

Status: 9/1/2017-Failed Deadline pursuant to Rule 61(a)(12). (Last location was APPR. SUSPENSE FILE on 8/21/2017)(May be acted upon Jan 2018)

Location: 9/1/2017-S. 2 YEAR

Summary: Current law makes a person found to have violated specified provisions of law generally protecting fish and wildlife, water, or other natural resources in connection with the production or cultivation of a controlled substance liable for a civil penalty in addition to any penalties imposed by any other law. With respect to a violation that occurs on land that a person owns, leases, or otherwise uses or occupies with the consent of the landowner, existing law makes each day that a violation occurs or continues to occur a separate violation subject to the additional civil penalty. This bill would also make each day that a violation occurs or continues to occur on the specified types of public or private land or while the person was trespassing on public or private land a separate violation subject to the additional civil penalty.

AB 1273 (Gallagher R) California Environmental Quality Act: exemption: levee repairs.

Introduced: 2/17/2017

Last Amend: 5/2/2017

Status: 7/14/2017-Failed Deadline pursuant to Rule 61(a)(10). (Last location was N.R. & W. on 7/6/2017)(May be acted upon Jan 2018)

Location: 7/14/2017-S. 2 YEAR

Summary: Would, until July 1, 2023, exempt from the requirements of CEQA repairs of critical levees of the State Plan of Flood Control within an existing levee footprint to meet standards of public health and safety, except as otherwise provided in a specified regulation. The bill would require the lead agency to take certain actions regarding the repairs. This bill contains other existing laws.

[AB 1282](#) (Mullin D) Transportation Permitting Task Force.

Introduced: 2/17/2017

Last Amend: 6/29/2017

Status: 9/7/2017-Enrolled and presented to the Governor at 3 p.m.

Location: 9/7/2017-A. ENROLLED

Summary: Would require, by April 1, 2018, the Secretary of Transportation, in consultation with the Secretary of the Natural Resources Agency, to establish a Transportation Permitting Taskforce consisting of representatives from specified entities to develop a process for early engagement for all parties in the development of transportation projects, establish reasonable deadlines for permit approvals, and provide for greater certainty of permit approval requirements. The bill would require the Secretary of Transportation, by December 1, 2019, to prepare and submit to the relevant policy and fiscal committees of the Legislature a report of findings based on the efforts of the taskforce.

[AB 1337](#) (Patterson R) Fish and Game Commission: meetings and hearings: live broadcast.

Introduced: 2/17/2017

Status: 9/16/2017-Ordered to inactive file at the request of Senator McGuire.

Location: 9/16/2017-S. INACTIVE FILE

Summary: Would require the Fish and Game Commission to provide a live video broadcast on its Internet Web site of every commission meeting or hearing that is open and public and every meeting or hearing conducted by the marine resources committee, wildlife resources committee, or tribal committee that is open and public.

[AB 1404](#) (Berman D) California Environmental Quality Act: categorical exemption: infill development.

Introduced: 2/17/2017

Last Amend: 7/10/2017

Status: 9/1/2017-Failed Deadline pursuant to Rule 61(a)(12). (Last location was APPR. SUSPENSE FILE on 8/21/2017)(May be acted upon Jan 2018)

Location: 9/1/2017-S. 2 YEAR

Summary: CEQA requires the Office of Planning and Research to prepare and develop, and the Secretary of the Natural Resources Agency to certify and adopt, guidelines for the implementation of CEQA. CEQA requires the guidelines to include a list of classes of projects that have been determined not to have a significant effect on the environment and that shall be exempt from CEQA (categorical exemption). Current guidelines for the implementation of CEQA exempts from the requirements of CEQA infill development meeting certain requirements, including the requirement that the proposed development occurs within city limits. This bill would revise the above-described categorical exemption to include proposed residential and mixed-use housing projects occurring within an unincorporated area of a county.

[AB 1420](#) (Aguilar-Curry D) Water rights: small irrigation use: lake or streambed alteration agreements.

Introduced: 2/17/2017

Status: 9/1/2017-Failed Deadline pursuant to Rule 61(a)(12). (Last location was APPR. SUSPENSE FILE on 7/10/2017)(May be acted upon Jan 2018)

Location: 9/1/2017-S. 2 YEAR

Summary: Would require the State Water Resources Control Board to give priority to adopting, on or before June 30, 2021, except as provided, general conditions that permit a registrant to store water for small irrigation use during times of high streamflow in exchange for the registrant reducing diversions during periods of low streamflow, as specified. The bill would require that the actions of the board under these provisions be deemed an action taken for the protection of the environment for purposes of specified California Environmental Quality Act guidelines, if those actions do not result in the relaxation of streamflow standards.

AB 1433 (Wood D) Natural and working lands: unified program application and process.

Introduced: 2/17/2017

Last Amend: 7/18/2017

Status: 9/14/2017-Ordered to inactive file at the request of Senator McGuire.

Location: 9/14/2017-S. INACTIVE FILE

Summary: Current law establishes various programs to provide financial assistance for natural or working lands. This bill would require the Strategic Growth Council, on or before April 1, 2018, to establish and convene an interagency task force consisting of representatives from various state agencies who are knowledgeable in programs for natural or working lands to develop a common application form and process for those programs. The bill would require the task force, on or before January 1, 2019, to develop and implement the common application form and process for those programs.

AB 1471 (Kiley R) Firearms: silencers.

Introduced: 2/17/2017

Last Amend: 5/3/2017

Status: 5/12/2017-Failed Deadline pursuant to Rule 61(a)(3). (Last location was PUB. S. on 3/13/2017)(May be acted upon Jan 2018)

Location: 5/12/2017-A. 2 YEAR

Summary: Current law generally makes it a felony for any person, firm, or corporation to possess a silencer within this state. Existing law exempts from that prohibition the sale to, purchase by, or possession by certain law enforcement agencies of a silencer for use in the discharge of their official duties, or possession by peace officers employed by those law enforcement agencies. This bill would make the crime of possessing a silencer inapplicable to the sale or other transfer in interstate or foreign commerce by registered dealers or manufacturers when the sale or other transfer is in accordance with federal law.

AB 1479 (Bonta D) Public records: custodian of records: civil penalties.

Introduced: 2/17/2017

Last Amend: 9/1/2017

Status: 9/19/2017-Enrolled and presented to the Governor at 3 p.m.

Location: 9/19/2017-A. ENROLLED

Summary: Would, until January 1, 2023, require public agencies to designate a person or persons, or office or offices to act as the agency's custodian of records who is responsible for responding to any request made pursuant to the California Public Records Act and any inquiry from the public about a decision by the agency to deny a request for records. The bill also would make other conforming changes. Because the bill would require local agencies to perform additional duties, the bill would impose a state-mandated local program.

AB 1544 (Dahle R) Hunting: nonlead ammunition.

Introduced: 2/17/2017

Last Amend: 3/28/2017

Status: 4/28/2017-Failed Deadline pursuant to Rule 61(a)(2). (Last location was W.,P. & W. on 3/16/2017)(May be acted upon Jan 2018)

Location: 4/28/2017-A. 2 YEAR

Summary: Current law requires the use of nonlead centerfire rifle and pistol ammunition, as determined by the Fish and Game Commission, when taking big game with a rifle or pistol, and when taking coyote, within the California condor range. Current law further requires by no later than July 1, 2019, the use of nonlead ammunition for the taking of all wildlife, including game mammals, game birds, nongame birds, and nongame mammals, with any firearm, and requires the commission to promulgate regulations by July 1, 2015, that phase in the requirements of these provisions. This bill would require the commission to temporarily suspend the latter prohibition for a specific hunting season and caliber if the commission finds that nonlead ammunition of the specific caliber is not available for any reason.

AB 1587 **(Levine D) Invasive species: dreissenid mussels.**

Introduced: 2/17/2017

Last Amend: 6/29/2017

Status: 9/1/2017-Failed Deadline pursuant to Rule 61(a)(12). (Last location was APPR. SUSPENSE FILE on 8/21/2017)(May be acted upon Jan 2018)

Location: 9/1/2017-S. 2 YEAR

Summary: Current law, until January 1, 2020, generally prohibits a person from possessing, importing, shipping, or transporting in the state, or from placing, planting, or causing to be placed or planted in any water within the state, dreissenid mussels, and authorizes the Director of Fish and Wildlife or his or her designee to engage in various enforcement activities with regard to dreissenid mussels. Current law authorizes the director to conduct inspections of waters of the state and facilities located within waters of the state that may contain dreissenid mussels and, if those mussels are detected or may be present, order the closure of the waters or facilities to conveyances or otherwise restrict access to the waters or facilities, with the concurrence of the Secretary of the Natural Resources Agency. This bill would also authorize a peace officer to engage in certain of these enforcement activities, as prescribed, and would extend to January 1, 2023, the repeal date of those provisions.

AB 1608 **(Kalra D) Vibrant landscapes for California.**

Introduced: 2/17/2017

Last Amend: 5/1/2017

Status: 5/26/2017-Failed Deadline pursuant to Rule 61(a)(5). (Last location was APPR. SUSPENSE FILE on 5/10/2017)(May be acted upon Jan 2018)

Location: 5/26/2017-A. 2 YEAR

Summary: Would require the Department of Conservation to develop the Vibrant Landscape Program to assist eligible applicants in the development and implementation of county and regional plans to, among other things, integrate the conservation and management of natural and working lands with other sectors to reduce the emissions of greenhouse gases and achieve other public and environmental benefits. The bill would require the department, in collaboration with the Strategic Growth Council and the State Air Resources Board, to develop guidelines and criteria for the program.

AB 1617 **(Bloom D) Department of Fish and Wildlife: Fish and Game Commission: funding: strategic vision.**

Introduced: 2/17/2017

Last Amend: 5/15/2017

Status: 7/14/2017-Failed Deadline pursuant to Rule 61(a)(10). (Last location was N.R. & W. on 6/14/2017)(May be acted upon Jan 2018)

Location: 7/14/2017-S. 2 YEAR

Summary: Current law requires the Secretary of the Natural Resources Agency to convene a committee to develop and submit to the Governor and Legislature, before July 1, 2012, a strategic vision for the Department of Fish and Wildlife and the Fish and Game Commission that addresses specified matters relating to state fish and wildlife resource management. This bill would require the Department of Fish and Wildlife, in cooperation with the above-mentioned parties and additional specified parties, to identify and propose new sources of revenue to fund the department's necessary wildlife, land, and marine conservation, restoration, and resources management and protection responsibilities.

AB 1630 **(Bloom D) Transportation: wildlife movement and barriers to passage.**

Introduced: 2/17/2017

Last Amend: 4/17/2017

Status: 4/28/2017-Failed Deadline pursuant to Rule 61(a)(2). (Last location was TRANS. on 4/4/2017)(May be acted upon Jan 2018)

Location: 4/28/2017-A. 2 YEAR

Summary: Current law requires the department to seek input from representatives of other state agencies, local government, federal agencies, nongovernmental conservation organizations, landowners, agriculture, recreation, scientific entities, and industry in determining essential wildlife corridors and habitat linkages. Current law also declares that it is the policy of the state to encourage, wherever feasible and practicable, voluntary steps to protect the functioning of wildlife corridors through various means. This bill would authorize the Department of Fish and Wildlife or the Department of Transportation to pursue development of a programmatic environmental review process with appropriate state and federal regulatory agencies for wildlife connectivity-related transportation infrastructure.

SB 1

(Beall D) Transportation funding.

Introduced: 12/5/2016

Last Amend: 4/3/2017

Status: 4/28/2017-Approved by the Governor. Chaptered by Secretary of State. Chapter 5, Statutes of 2017.

Location: 4/28/2017-S. CHAPTERED

Summary: Would create the Road Maintenance and Rehabilitation Program to address deferred maintenance on the state highway system and the local street and road system. The bill would require the California Transportation Commission to adopt performance criteria, consistent with a specified asset management plan, to ensure efficient use of certain funds available for the program.

SB 5

(De León D) California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access For All Act of 2018.

Introduced: 12/5/2016

Last Amend: 9/10/2017

Status: 9/21/2017-Enrolled and presented to the Governor at 5:30 p.m.

Location: 9/21/2017-S. ENROLLED

Summary: Would enact the California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access For All Act of 2018, which, if approved by the voters, would authorize the issuance of bonds in an amount of \$4,000,000,000 pursuant to the State General Obligation Bond Law to finance a drought, water, parks, climate, coastal protection, and outdoor access for all program. The bill, upon voter approval, would reallocate \$100,000,000 of the unissued bonds authorized for the purposes of Propositions 1, 40, and 84 to finance the purposes of a drought, water, parks, climate, coastal protection, and outdoor access for all program.

SB 22

(Hill D) Firearms: law enforcement agencies: agency firearm accounting.

Introduced: 12/5/2016

Last Amend: 3/28/2017

Status: 5/26/2017-Failed Deadline pursuant to Rule 61(a)(5). (Last location was APPR. SUSPENSE FILE on 5/25/2017)(May be acted upon Jan 2018)

Location: 5/26/2017-S. 2 YEAR

Summary: Would require a law enforcement agency, as defined, to adopt a written procedure to account for firearms that are owned, acquired, maintained, sold, loaned, lost, stolen, or in any way possessed by that agency or by an employee of that agency if used or carried for purposes of carrying out the official duties of his or her employment, as specified. The bill would require that firearms that are lost, stolen, or otherwise disposed of be entered into the AFS. By imposing additional duties on local law enforcement agencies, this bill would impose a state-mandated local program.

SB 49

(De León D) California Environmental, Public Health, and Workers Defense Act of 2017.

Introduced: 12/5/2016

Last Amend: 9/12/2017

Status: 9/12/2017-From committee with author's amendments. Read second time and amended. Re-referred to Com. on RLS.

Location: 9/11/2017-A. RLS.

Summary: Would require specified agencies to take prescribed actions to maintain and enforce certain requirements and standards pertaining to air, water, and protected species. By imposing new duties on local agencies, this bill would impose a state-mandated local program. This bill contains other related provisions and other existing laws.

SB 50

(Allen D) Federal public lands: conveyances.

Introduced: 12/5/2016

Last Amend: 9/5/2017

Status: 9/20/2017-Enrolled and presented to the Governor at 4 p.m.

Location: 9/20/2017-S. ENROLLED

Summary: Would establish, except as provided, a policy of the state to discourage conveyances of federal public lands in California from the federal government. The bill would, except as provided, specify that these conveyances are void ab initio unless the State Lands Commission was provided with the right of first refusal or the right to arrange for the transfer of the federal public land to another entity.

SB 58

(McGuire D) Wildlife management areas: payment of taxes and assessments.

Introduced: 12/12/2016

Status: 5/26/2017-Failed Deadline pursuant to Rule 61(a)(5). (Last location was APPR. SUSPENSE FILE on 5/25/2017)(May be acted upon Jan 2018)

Location: 5/26/2017-S. 2 YEAR

Summary: Existing law regulates real property acquired and operated by the state as wildlife management areas, and authorizes the Department of Fish and Wildlife, when income is directly derived from that real property, to annually pay to the county in which the property is located an amount equal to the county taxes levied upon the property at the time it was transferred to the state. Existing law requires those payments to only be made from funds that are appropriated to the department for those purposes. This bill would, commencing with the 2018–19 fiscal year and each fiscal year thereafter, require, instead of authorize, the department to make these payments subject to appropriation by the Legislature.

SB 80

(Wieckowski D) California Environmental Quality Act: notices.

Introduced: 1/11/2017

Last Amend: 6/21/2017

Status: 9/15/2017-Enrolled and presented to the Governor at 3:30 p.m.

Location: 9/15/2017-S. ENROLLED

Summary: The California Environmental Quality Act requires the lead agency to mail certain notices to persons who have filed a written request for notices. The act provides that if the agency offers to provide the notices by email, upon filing a written request for notices, a person may request that the notices be provided to him or her by email. This bill would require the lead agency to post those notices on the agency's Internet Web site. The bill would require the agency to offer to provide those notices by email. Because this bill would increase the level of service provided by a local agency, this bill would impose a state-mandated local program.

SB 92

(Committee on Budget and Fiscal Review) Public resources.

Introduced: 1/11/2017

Last Amend: 6/9/2017

Status: 6/27/2017-Approved by the Governor. Chaptered by Secretary of State. Chapter 26, Statutes of 2017.

Location: 6/27/2017-S. CHAPTERED

Summary: Current law regulating commercial fishing imposes, or authorizes the imposition of, various license, permit, and registration fees. Current law requires specified persons to pay commercial fishing fees, referred to as a "landing tax," calculated on the total weight of fish delivered, based on a rate-per-pound schedule applicable to specified aquatic species. This bill would rename the "landing

tax” as a “landing fee” and would revise the rate schedule by increasing certain fees while decreasing other fees to specified amounts. The bill would make conforming and other related changes.

SB 94

(Committee on Budget and Fiscal Review) Cannabis: medicinal and adult use.

Introduced: 1/11/2017

Last Amend: 6/9/2017

Status: 6/27/2017-Approved by the Governor. Chaptered by Secretary of State. Chapter 27, Statutes of 2017.

Location: 6/27/2017-S. CHAPTERED

Summary: The Medical Marijuana Program also provides immunity from arrest to those exempt patients or designated primary caregivers who engage in certain acts involving marijuana, up to certain limits, and who have identification cards issued pursuant to the program unless there is reasonable cause to believe that the information contained in the card is false or fraudulent, the card has been obtained by means of fraud, or the person is otherwise in violation of the law. This bill would require probable cause to believe that the information on the card is false or fraudulent, the card was obtained by fraud, or the person is otherwise in violation of the law to overcome immunity from arrest to patients and primary caregivers in possession of an identification card.

SB 144

(McGuire D) Fish and wildlife: steelhead trout: fishing report-restoration card.

Introduced: 1/13/2017

Last Amend: 3/15/2017

Status: 9/11/2017-Enrolled and presented to the Governor at 4 p.m.

Location: 9/11/2017-S. ENROLLED

Summary: Current law requires revenues from steelhead trout fishing license fees to be deposited in the Fish and Game Preservation Fund and to be available for expenditure, upon appropriation by the Legislature, to monitor, restore, or enhance steelhead trout resources consistent with specified law, and to administer the fishing report-restoration card program. This bill would extend the operation of those provisions to July 1, 2022, to be repealed as of January 1, 2023. The bill would require the department to report to the Legislature regarding the fishing report-restoration card program's projects on or before July 1, 2021.

SB 161

(McGuire D) Fish and Game Commission: tribal committee.

Introduced: 1/19/2017

Status: 9/14/2017-Enrolled and presented to the Governor at 4 p.m.

Location: 9/14/2017-S. ENROLLED

Summary: Current law requires the Fish and Game Commission to form a marine resources committee and a wildlife resources committee from its membership. This bill would require the commission to form a tribal committee from its membership consisting of at least one commissioner and would require the committee to report to the commission from time to time on its activities and to make recommendations on all tribal matters considered by the commission.

SB 187

(Berryhill R) Sport fishing licenses: duration.

Introduced: 1/25/2017

Last Amend: 5/3/2017

Status: 9/1/2017-Failed Deadline pursuant to Rule 61(a)(12). (Last location was APPR. SUSPENSE FILE on 7/19/2017)(May be acted upon Jan 2018)

Location: 9/1/2017-A. 2 YEAR

Summary: Would require a resident or a nonresident, 16 years of age or older, upon payment of a specified fee, to be issued a sport fishing license for the period of 12 consecutive months beginning on the date specified on the license, instead of for the period of a calendar year, or the remainder thereof. The bill would require the commission to include, among the costs required to be recovered by an adjustment of the fee amount, transition costs related to the new licensing period.

- [SB 193](#)** **([Cannella](#) R)** **Monterey County Water Resources Agency: Lake Nacimiento and Lake San Antonio: white bass.**
Introduced: 1/30/2017
Last Amend: 6/8/2017
Status: 6/8/2017-From committee with author's amendments. Read second time and amended. Re-referred to Com. on N.R. & W.
Location: 6/8/2017-S. N.R. & W.
Summary: Current law makes it unlawful to place, plant, or cause to be placed or planted, in any of the waters of this state, any live fish, any fresh or salt water animal, or any aquatic plant, whether taken without or within the state, without first submitting it for inspection to, and securing the written permission of, the Department of Fish and Wildlife. Current law also makes it unlawful to transport or possess any live white bass, whether taken within or without the state, unless it is first submitted for inspection to, and written permission is obtained from, the department. This bill would exempt the movement of white bass between Lake Nacimiento and Lake San Antonio through the interlake underground tunnel or pipeline from the above-described provisions relating to fish and wildlife.
- [SB 214](#)** **([Atkins](#) D)** **San Diego River Conservancy.**
Introduced: 2/1/2017
Last Amend: 9/5/2017
Status: 9/18/2017-Enrolled and presented to the Governor at 3 p.m.
Location: 9/18/2017-S. ENROLLED
Summary: The San Diego River Conservancy Act establishes the San Diego River Conservancy in the Natural Resources Agency, and prescribes the territory, membership, functions, and duties of the conservancy with regard to, among other things, the acquisition, protection, and management of public lands within the San Diego River area, as defined. This bill would specify that the powers of the conservancy include improving, developing, and preserving lands for the purpose of protecting the natural, cultural, and historical resources, and entering into a joint powers agreement, as specified.
- [SB 216](#)** **([Moorlach](#) R)** **Property: wild animals.**
Introduced: 2/1/2017
Status: 5/12/2017-Failed Deadline pursuant to Rule 61(a)(3). (Last location was RLS. on 2/1/2017)(May be acted upon Jan 2018)
Location: 5/12/2017-S. 2 YEAR
Summary: Current law provides animals that are wild by nature may be the subject of ownership while those animals are living only in specified circumstances. This bill would make nonsubstantive changes to that section of law.
- [SB 234](#)** **([Berryhill](#) R)** **Fishing: local regulation: report.**
Introduced: 2/6/2017
Last Amend: 3/21/2017
Status: 9/1/2017-Failed Deadline pursuant to Rule 61(a)(12). (Last location was APPR. SUSPENSE FILE on 7/19/2017)(May be acted upon Jan 2018)
Location: 9/1/2017-A. 2 YEAR
Summary: Would require the Fish and Game Commission to undertake a survey and evaluation of local ordinances that regulate fishing and to submit the survey and evaluation to the Legislature in a report by December 31, 2018.
- [SB 259](#)** **([Wilk](#) R)** **Reports.**
Introduced: 2/8/2017
Status: 4/28/2017-Failed Deadline pursuant to Rule 61(a)(2). (Last location was G.O. on 3/28/2017)(May be acted upon Jan 2018)
Location: 4/28/2017-S. 2 YEAR

Summary: Would require a written report, as defined, submitted by any state agency or department to the Legislature, a Member of the Legislature, or any state legislative or executive body to include a signed statement by the head of the agency or department declaring that the factual contents of the written report are true, accurate, and complete to the best of his or her knowledge.

SB 287 **(Dodd D) Habitat restoration: invasive species: Phytophthora pathogens.**

Introduced: 2/9/2017

Last Amend: 3/15/2017

Status: 5/26/2017-Failed Deadline pursuant to Rule 61(a)(5). (Last location was APPR. SUSPENSE FILE on 5/25/2017)(May be acted upon Jan 2018)

Location: 5/26/2017-S. 2 YEAR

Summary: Current law establishes the Department of Fish and Wildlife and sets forth the powers and duties of the department with regard to the implementation and administration of, among other things, projects and programs to protect wildlife and wildlife habitat in the state. This bill would require the department, on or before December 31, 2019, to adopt regulations to minimize the risk of Phytophthora pathogens in plant materials used for habitat restoration projects authorized, funded, or required by the state.

SB 345 **(Bradford D) Law enforcement agencies: public records.**

Introduced: 2/14/2017

Last Amend: 9/5/2017

Status: 9/20/2017-Enrolled and presented to the Governor at 4 p.m.

Location: 9/20/2017-S. ENROLLED

Summary: Would, commencing January 1, 2019, require the Department of Alcoholic Beverage Control, the Department of the California Highway Patrol, the Department of Corrections and Rehabilitation, the Department of Fish and Wildlife, the Department of Justice, the Commission on Peace Officer Standards and Training, and each local law enforcement agency to conspicuously post on their Internet Web sites all current standards, policies, practices, operating procedures, and education and training materials that would otherwise be available to the public if a request was made pursuant to the California Public Records Act.

SB 347 **(Jackson D) State Remote Piloted Aircraft Act.**

Introduced: 2/14/2017

Last Amend: 6/21/2017

Status: 7/14/2017-Failed Deadline pursuant to Rule 61(a)(10). (Last location was P. & C.P. on 6/12/2017)(May be acted upon Jan 2018)

Location: 7/14/2017-A. 2 YEAR

Summary: Would enact the State Remote Piloted Aircraft Act. The bill would prohibit a person from operating a remote piloted aircraft in any number of specified manners and would require any person using, operating, or renting a remote piloted aircraft and every commercial operator of a remote piloted aircraft to maintain adequate liability insurance or proof of financial responsibility, as specified.

SB 402 **(Allen D) Marine fisheries: state policy.**

Introduced: 2/15/2017

Last Amend: 5/2/2017

Status: 5/26/2017-Failed Deadline pursuant to Rule 61(a)(5). (Last location was APPR. SUSPENSE FILE on 5/25/2017)(May be acted upon Jan 2018)

Location: 5/26/2017-S. 2 YEAR

Summary: Would declare that it is the policy of the state to robustly protect and enhance the significant economic, environmental, recreational, aesthetic, and educational values provided by the Pacific fisheries and would require the Department of Fish and Wildlife and Fish and Game Commission to consider this policy when revising, adopting, or establishing policies, regulations, expenditures, or grant criteria relating to the protection and management of marine fisheries. The bill

would require the department and commission, to the extent feasible, to attempt to work collaboratively with the federal government and all fisheries stakeholders in furtherance of this policy.

SB 473 (Hertzberg D) California Endangered Species Act.

Introduced: 2/16/2017

Last Amend: 9/5/2017

Status: 9/8/2017-Ordered to inactive file on request of Assembly Member Calderon.

Location: 9/8/2017-A. INACTIVE FILE

Summary: The California Endangered Species Act, prohibits the taking of an endangered or threatened species, except in certain situations. The act also provides, until January 1, 2020, that the accidental take of candidate, threatened, or endangered species resulting from acts that occur on a farm or a ranch in the course of otherwise lawful routine and ongoing agricultural activities is not prohibited by the act. The act requires the Department of Fish and Wildlife to define "routine and agricultural activities" by regulation. This bill would also apply the take prohibition to public agencies.

SB 506 (Nielsen R) Department of Fish and Wildlife: lake or streambed alteration agreements: Internet Web site.

Introduced: 2/16/2017

Last Amend: 6/5/2017

Status: 7/21/2017-Vetoed by the Governor. In Senate. Consideration of Governor's veto pending.

Location: 7/21/2017-S. VETOED

Summary: Would require the Department of Fish and Wildlife, on or before December 31, 2018, and periodically thereafter, to upgrade the information on its Internet Web site regarding lake or streambed alteration agreements, to update its "Frequently Asked Questions" document and other appropriate sources of information regarding the lake and streambed alteration program, and to provide guidance on its Internet Web site to facilitate members of the public in obtaining individualized guidance regarding the lake and streambed alteration program, as specified.

SB 518 (Berryhill R) Sport fishing licenses: 12 consecutive month licenses.

Introduced: 2/16/2017

Last Amend: 9/15/2017

Status: 9/15/2017-From committee with author's amendments. Read second time and amended. Re-referred to Com. on NAT. RES.

Location: 9/15/2017-A. NAT. RES.

Summary: This bill, in addition to sport fishing licenses for the periods specified above, would require a sport fishing license to be issued to a resident or nonresident for the period of 12 consecutive months, upon payment of a fee that is equal to 130% of the fees for issuance of resident or nonresident calendar-year licenses, as applicable.

SB 532 (Dodd D) California State Safe Harbor Agreement Program Act: tricolored blackbird.

Introduced: 2/16/2017

Status: 4/28/2017-Failed Deadline pursuant to Rule 61(a)(2). (Last location was N.R. & W. on 3/2/2017)(May be acted upon Jan 2018)

Location: 4/28/2017-S. 2 YEAR

Summary: Would extend the California State Safe Harbor Agreement Program Act indefinitely and would exempt the approval of a safe harbor agreement covering only tricolored blackbird from CEQA. This bill contains other existing laws.

SB 580 (Pan D) Water development projects: Sacramento-San Joaquin watersheds.

Introduced: 2/17/2017

Status: 9/18/2017-Enrolled and presented to the Governor at 3 p.m.

Location: 9/18/2017-S. ENROLLED

Summary: Current law adopts and authorizes federally adopted and approved projects, including a project for flood control along the American and Sacramento Rivers. The projects are authorized at an estimated cost to the state of the sum that may be appropriated by the Legislature for state participation upon the recommendation and advice of the Department of Water Resources or the Central Valley Flood Protection Board. This bill would revise the authorization for the project for flood control along the American and Sacramento Rivers as further modified by a specified report adopted by Congress.

SB 588 **(Hertzberg D) Marine resources and preservation.**

Introduced: 2/17/2017

Last Amend: 6/19/2017

Status: 7/14/2017-Failed Deadline pursuant to Rule 61(a)(10). (Last location was NAT. RES. on 6/27/2017)(May be acted upon Jan 2018)

Location: 7/14/2017-A. 2 YEAR

Summary: Would revise and recast the California Marine Resources Legacy Act to establish a similar program to allow, 2 years after the payment of startup costs, a prospective transferor, as defined, to offer and the department to accept title to an artificial reef converted from a decommissioned oil and gas platform for incorporation into the California Artificial Reef Program if similar conditions to as specified are met, except if the platform is required to be fully removed by conditions in a lease issued by the State Lands Commission. As part of the implementation of the program, the bill would require the department to revise the Artificial Reef Plan prepared pursuant to the California Artificial Reef Program.

SB 594 **(Beall D) Flood risk: dam failure: expedited permit processing and approval: human life safety protection.**

Introduced: 2/17/2017

Last Amend: 7/20/2017

Status: 8/21/2017-Withdrawn from committee. Re-referred to Com. on RLS.

Location: 8/21/2017-S. RLS.

Summary: Would require a state agency to expedite permit processing and approval for a project that will maintain or improve human life safety protection through flood risk reduction or reduction of a risk of dam failure, as specified. This bill would declare that it is to take effect immediately as an urgency statute.

SB 615 **(Hueso D) Salton Sea restoration.**

Introduced: 2/17/2017

Last Amend: 9/8/2017

Status: 9/19/2017-Enrolled and presented to the Governor at 4 p.m.

Location: 9/19/2017-S. ENROLLED

Summary: Would specify that any barrier in the Salton Sea within or below a certain elevation would not be considered a dam and would provide that the construction of facilities to separate fresh water from highly saline water for the purposes of implementing restoration activities pursuant to the act shall not be subject to review, approval, inspection, or fees associated with certain laws relating to dams and reservoirs. The bill would state various legislative findings and declarations relating to the Salton Sea, would name the state's comprehensive management plan for the Salton Sea the "John J. Benoit Salton Sea Restoration Plan."

SB 667 **(Atkins D) Department of Water Resources: riverine and riparian stewardship improvements.**

Introduced: 2/17/2017

Last Amend: 6/20/2017

Status: 9/19/2017-Enrolled and presented to the Governor at 4 p.m.

Location: 9/19/2017-S. ENROLLED

Summary: Current law authorizes the Director of Water Resources to establish a program of flood control and urban creek restoration, known as the Urban Streams Restoration Program, consisting of

the development of the capability by the Department of Water Resources to respond to requests from local agencies and organizations for planning and design assistance for efficient and effective urban creek protection, restoration, and enhancement. This bill, upon an appropriation of funds from the Legislature, would require the department to establish a program to implement watershed-based riverine and riparian stewardship improvements by providing technical and financial assistance in support of projects with certain benefits.

SB 701 **(Hueso D) Salton Sea Obligations Act of 2018.**

Introduced: 2/17/2017

Last Amend: 7/3/2017

Status: 9/1/2017-September 1 hearing: Held in committee and under submission.

Location: 8/23/2017-A. APPR.

Summary: Would enact the Salton Sea Obligations Act of 2018, which, if approved by the voters, would authorize the issuance of bonds in the amount of \$500,000,000 pursuant to the State General Obligation Bond Law to finance a program to comply with specified state obligations relating to the Salton Sea. This bill would provide for the submission of these provisions to the voters at the November 6, 2018, statewide general election.

SB 709 **(Wiener D) Oil spill response and contingency planning.**

Introduced: 2/17/2017

Last Amend: 4/26/2017

Status: 5/26/2017-Failed Deadline pursuant to Rule 61(a)(5). (Last location was APPR. SUSPENSE FILE on 5/25/2017)(May be acted upon Jan 2018)

Location: 5/26/2017-S. 2 YEAR

Summary: Would define "nonfloating oil" for purposes of the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act. The bill would require the administrator, by January 1, 2020, to conduct and complete an independent scientific study on the best achievable protection of state waters from spills of nonfloating or potentially nonfloating oils, including criteria for oil spill contingency plans and oil spill response organizations (OSROs) responsible for remediating those spills. The bill would require that the scientific study evaluate the hazards and risks and potential hazards and risks that nonfloating or potentially nonfloating oils pose to natural resources and public, occupational, and environmental health and safety.

SB 710 **(Anderson R) Silencers.**

Introduced: 2/17/2017

Status: 5/12/2017-Failed Deadline pursuant to Rule 61(a)(3). (Last location was PUB. S. on 3/9/2017)(May be acted upon Jan 2018)

Location: 5/12/2017-S. 2 YEAR

Summary: Current law makes it a felony to possess a silencer in the state, punishable by imprisonment in county jail or by a fine not to exceed \$10,000 or by both that fine and imprisonment. This bill would delete the felony prohibition on possession of a silencer and would authorize an individual in lawful possession of a device that will silence, suppress, or muffle the sound or natural report of a firearm when the firearm is discharged to use that device to hunt a bird, mammal, fish, reptile, or amphibian for which the individual is licensed if the firearm to which the device is attached is lawfully possessed.

SB 714 **(Newman D) State Coastal Conservancy: West Coyote Hills Conservancy Program.**

Introduced: 2/17/2017

Last Amend: 9/12/2017

Status: 9/12/2017-Re-referred to Com. on RLS. Senate Rule 29.3(b) suspended. (Ayes 27. Noes 12.) From committee with author's amendments. Read second time and amended. Re-referred to Com. on RLS.

Location: 9/12/2017-S. RLS.

Summary: Would, until January 1, 2028, establish the West Coyote Hills Conservancy Program, to be administered by the State Coastal Conservancy and to undertake projects and award grants in the West Coyote Hills area, as described, for purposes relating to improvement of public access, and the protection, restoration, and enhancement of natural resources in the area. The bill would prescribe the duties of the conservancy with regard to the implementation and administration of the program. This bill contains other related provisions.

SB 771 (De León D) California Environmental Quality Act: continuing education: public employees.

Introduced: 2/17/2017

Last Amend: 7/18/2017

Status: 9/13/2017-Ordered to inactive file on request of Assembly Member Calderon.

Location: 9/13/2017-A. INACTIVE FILE

Summary: Would establish a continuing education requirement for employees of public agencies who have primary responsibility to administer the California Environmental Quality Act (CEQA, as specified. Because this bill would require a public agency to ensure that this continuing education requirement is met, this bill would impose a state-mandated local program.

SB 809 (Committee on Natural Resources and Water) Natural resources.

Introduced: 3/8/2017

Last Amend: 6/20/2017

Status: 9/6/2017-Enrolled and presented to the Governor at 3 p.m.

Location: 9/6/2017-S. ENROLLED

Summary: The California Constitution establishes the 5-member Fish and Game Commission, with members appointed by the Governor and approved by the Senate. Current statutory law requires the commissioners to annually elect one of their number as president and one as vice president, by a concurrent vote of at least 3 commissioners. Current law prohibits a president or vice president from serving more than 2 consecutive years. This bill would eliminate this prohibition.

For more information call:

Susan LaGrande, CDFW Deputy Director at (916) 651-6719

Julie Oltmann, CDFW Legislative Representative at (916) 653-9772

You can also find legislative information on the web at <http://leginfo.legislature.ca.gov/> and follow the prompts from the 'bill information' link.



U.S. Fish & Wildlife Service

Pacific Southwest Region

California, Nevada and Klamath Basin



Once described by explorers as the 'most abundant bird species in coastal southern California,' tricolored blackbird populations are in sharp decline due to habitat loss. This year, however, they found nesting spots on five national wildlife refuges throughout northern California and the central valley. "They came later than normal this breeding season, but it's pretty exciting because they haven't nested here in four years," said Geoffrey Grisdale, wildlife biologist at Kern National Wildlife Refuge in Delano, California.

Credit: Geoffrey Grisdale/USFWS

Thousands of tricolored blackbirds nest on California wildlife refuges

By Byrhonda Lyons

September 22, 2017

This summer while many Californians were celebrating the end of the years-long drought, tricolored blackbirds were finding nesting spots on five national wildlife refuges throughout northern California and the central valley.



Scientists and citizens across the country use leg bands to identify birds. The U.S. Geological Survey hosts a website for the public to report banded birds they encounter. Credit: Geoffrey Grigsdale/USFWS

"They just showed up," said **Geoffrey Grisdale**, wildlife biologist at Kern National Wildlife Refuge in Delano, California. "They came later than normal this breeding season, but it's pretty exciting because they haven't nested here in four years."

Once described by explorers as 'the most abundant bird species in coastal southern California,' tricolored blackbird populations are now in sharp decline due to habitat loss. Over the past 70 years, their population has decreased by 80 percent. The species is under review for protection under the Endangered Species Act (ESA).

Kern and other National Wildlife Refuges in California are working against the clock to increase nesting habitat and up tricolored blackbird populations now.

"If we wait until they are gone, then it's too late," Grisdale said. "We're doing the hard work now to make sure they don't get to that point."

Tricolored blackbirds are medium-sized birds with white and red epaulettes on their wings. Adult males are glossy black, often with an iridescent blue-green sheen in bright sunlight. Adult females are dark brown with dark gray and brown streaks. They are not migratory, but they move around within lower elevation sites, and live and nest in California.



Biologists from Kern National Wildlife Refuge paddle to one of the tricolored blackbird colonies on Kern National Wildlife Refuge. This spring and summer, tricolored blackbirds established nesting colonies on Merced, Colusa, Delevan, Bitter Creek and Kern National Wildlife Refuges. Credit: Geoffrey Grisdale /USFWS

"The tricolored blackbird is important because it's our bird," said **Bob Meese**, Ph.D., staff researcher at the University of California at Davis. "If Californians don't care about [the bird], no one else is going to come and bail us out."

Getting Everyone Involved

It was nearly 13 years ago when Meese was asked to help with research on tricolored blackbirds.



Tools of the job: Leg bands, pliers, scales and other items are laid across the banding table. Credit: Geoffrey Grisdale/USFWS

"When I started working with tricolored blackbirds, I wanted to improve our methods to detect colonies and sought to find them in places that had not been found before," he said. "My focus was on detecting tricolored blackbird colonies and improving data management."

Every three years since the late 1980s, there's a statewide tricolored blackbird survey. This year nearly 200 people—an all-time high—went out and counted tricolored blackbirds in California. Volunteers documented where and when they saw tricolored blackbirds, providing an estimate of the number of birds throughout California and added their findings to a statewide online database called the [Tricolored Blackbird Portal](#).

Having an online database is a huge improvement from where things were just 10 years ago. "Before the portal, people put their notes in field notebooks," Meese said.

Funded by the U.S. Fish and Wildlife Service, the portal has been active since 2007. It's used by hundreds of scientists and concerned citizens who enter records of their observations, adding to scientists' knowledge of the birds.

"The statewide survey depends upon the efforts of local experts," Meese said. "To illustrate, there was a dramatic increase in information in San Benito County this year, which I call the 'Debi Sheawater effect.'"

"**She's an extremely good birder** who was the volunteer coordinator in San Benito County," he said. "She's a bird expert, and this year she counted 15,000 birds and added five additional blackbird locations that we didn't know existed. All of that information is now in the portal and it's helped plug a gap in our knowledge of the species."



Biologists Jennifer Brown and Greg Yarris attach a leg band to a blackbird. Every three years since the late 1980s, there's a statewide tricolored blackbird survey. This year nearly 200 people—an all-time high—participated in the tricolored blackbird survey in California. Credit: Pam Bierce/USFWS

In addition, the portal helps scientists track birds that are on the move throughout California. How do they keep track of the birds? They use tiny, metal bands known as bird bands.

Banding

By the time the sun rose, the Service's biologists had already added bands to a dozen birds. But they had a long way to go before it got too hot and they had to shut down for the day. With a medium-sized, wire mesh walk-in trap and a bowl of cracked corn, Service bird biologist **Jennifer Brown** walked through the tall, scratchy grass to set the trap. She set the wire trap on the ground and headed back towards her lawn chair and binoculars.

Every few minutes, she grabbed her binoculars, counting the number of birds that were flying near the trap. After more than a few glances, she headed back towards the trap. The corn: gone. The trap: filled with small tricolored blackbirds that would soon be banded and released.

Scientists and citizens across the country use the bands to identify birds that may be a long way from home. In fact, the U.S. Geological Survey (USGS) has a website for the public to [report banded birds they encounter](#).

As for tricolored blackbirds in California, "Since 2007, we've banded over 81,000 tricolored blackbirds," said Meese. "And many of these have been banded with Service staff and on refuges."

But banding birds is just one part of what refuges are doing to increase the birds' population.

Colonies on Refuges

Tricolored blackbirds established nesting colonies on Merced, Colusa, Delevan, Bitter Creek and Kern National Wildlife Refuges this spring and summer. While nesting colonies on the refuge are not anything new, it is a testament to how important building habitat is to conserving tricolored blackbird populations in California.



A simple "walk in" trap baited with cracked corn. "Since 2007, we've banded over 81,000 tricolored blackbirds," said Bob Meese, staff researcher at UC Davis. Many of these have been banded by Service staff on national wildlife refuges. Credit: Geoffrey Grisdale/USFWS

"Delevan had one of the largest tricolored blackbird colonies in the state this year," said **Michael D'Errico**, supervisory biologist at the Sacramento National Wildlife Refuge Complex. Delevan had 20,000 blackbirds on the refuge this year. There were 15,000 at Colusa.

Tricolored blackbirds usually start showing up to the refuges in the late spring, early summer. To make sure they have nesting habitat, refuge staff begin planning for the birds months—sometimes years—in advance.

"At Delevan, we did habitat enhancement last year," said **Craig Isola**, deputy project leader at Sacramento National Wildlife Refuge Complex. The wetland enhancement included burning and disking old decadent stands of cattails and excavating interconnecting channels and potholes to provide open water.



Service biologist Sabrina West retrieving a bird that would soon be banded. Credit: Byrhonda Lyons/USFWS

"**We burned cattails**, did some disking excavation, and because of all of the rain this year, we had more open water and fresh new cattail growth," D'Errico said. "The habitat conditions were just right for them [tricolored blackbirds] to decide to settle down and make a go of it."

"We're not just putting up a refuge sign," Isola said. "We are managing the refuge for all kinds of wildlife—including tricolored blackbirds."

However, it's not just happening at the Sacramento Complex. At Merced National Wildlife Refuge, the sentiment is the same, although bird numbers were down this year compared to other years.

"Tricolored numbers on our refuge are habitat-driven," said Kyle Whiteaker, equipment operator at Merced National Wildlife Refuge. "This year, the areas where they used to nest were completely underwater last year, so that may be a factor in the lower-than-average number of birds on the refuge."

Although there was a decline in tricolored blackbirds nesting on Merced National Wildlife Refuge, the birds were still in the neighborhood finding habitat in private silage fields—which can be a problem for the birds and for the landowners.

Working Together

When tricolored blackbirds nest on farms, they head straight for dairy farmers' silage fields. Silage is primarily grains that are used to feed animals. Birds like to nest in the silage fields and farmers cut silage to feed their cattle.



State partner, Carie Battistone, raptor coordinator for the California Department of Fish and Wildlife, holds a recently banded tricolored blackbird. Credit: Pam Bierce/USFWS

"The weeks overlap," said **Jesse Bahm**, area biologist for the Natural Resources Conservation Service (NRCS). "The time to get the best yield for silage is at the same time tricolored blackbirds have young in the nest that are still growing their feathers and unable to fly."

In an ideal world, the birds would nest on the federally protected wetlands, instead of private lands. However, it's impossible to order the birds off of private lands. The Service and other government agencies are addressing this by creating more protected wetlands, hoping to lure the birds to better habitat.

NRCS is establishing wetland habitat for tricolors on more than 400 acres of wetlands through conservation easements. NRCS also provides cost-share to landowners who wait until after the tricolored blackbirds have left to cut their silage.

In addition, the Service, NRCS, Western United Dairymen, California Audubon, California Department of Fish and Game and other partners have formed a working group to develop strategies and working plans to conserve tricolored blackbird habitat.



Tricolored blackbird chicks from a colony at Kern National Wildlife Refuge. Credit: Geoffey Grigsdale/USFWS

"We're trying to do anything we can to help tricolored blackbirds," said **Matt Hamman**, California state coordinator for the Service's Partners for Fish and Wildlife Program (Partners). The partners program works with private landowners to implement conservation practices on private lands. "We often step in with other organizations to shore up some of the costs of creating wetlands in the Valley."

"I work one-on-one with producers, and I like to educate them about tricolored blackbirds and build that trust," Bahm said. "If you just worry about regulations, people are apprehensive. I focus on the benefits to the birds and to the landowners."

Since the NRCS program began four years ago, farmers have helped save more than 200,000 birds. According to this year's survey, there were 177,000 tricolored blackbirds in California in 2017. In 2014, the count was 145,000. And in 2011, scientists counted 259,000 birds.

The tricolored blackbird population may continue to fluctuate, but the working group and concerned citizens are still coming together to find ways to keep tricolored blackbirds around for generations to come.

"If we want to succeed, it's going to take everyone," Meese said. "It's our bird. It's California's blackbird. And no one is going to come in and do the work for us."



Tricolored blackbirds awaiting their bands in Folsom, California. This year, the Service banded about 700 birds in Folsom. They've been coming to the same site for about 30 years. "The tricolored blackbird is important because it's our bird," said Bob Meese, Ph.D., staff researcher at the University of California at Davis. "If Californians don't care about [the bird], no one else is going to come and bail us out." Credit: Pam Bierce/USFWS

Byrhonda Lyons is a public affairs specialist and the regional social media coordinator for the Pacific Southwest Region, located in Sacramento, California. She writes, "tweets" and posts daily about the activities of the U.S. Fish and Wildlife Service in California, Nevada and the Klamath Basin.

Last updated: September 26, 2017

California Fish and Game Commission

Potential Agenda Items for December Commission Meeting

The next FGC meeting is scheduled for December 6-7, 2017, at the Handlery Hotel in San Diego. This document identifies potential agenda items for the meeting, including items to be received from FGC staff and the California Department of Fish and Wildlife (DFW).

Wednesday, December 6: Non-Marine-related and administrative items

1. Public forum
2. Wildlife Resources Committee
3. Notice: Klamath river sport fishing (annual)
4. Notice: Central Valley salmon sport fishing (annual)
5. Notice: Waterfowl (annual)
6. Discuss: Tricolored blackbird – Incidental take
7. Adopt: Sport fishing (annual)
8. Adopt: Use of GPS-equipped dog collars and treeing switches for dogs used to pursue/take mammals or for dog training
9. Receive and adopt: Wild trout waters designation
10. Results from executive session
11. Non-Marine items of interest from previous meetings
12. Action on non-marine petitions for regulation change
13. Action on non-regulatory non-marine requests from previous meetings
14. Receive DFW non-marine informational items

Thursday, December 7: Marine-related and administrative items

15. Public forum
16. Tribal Committee
17. Marine Resources Committee
18. * Notice: Ocean salmon sport fishing (April 2018) (annual)
19. * Notice: Ocean salmon sport fishing (May-November 2018) (annual)
20. * Notice: Pacific halibut
21. Adopt: Abalone certificate of compliance
22. Adopt: Commercial sea urchin (Phase II)
23. Approve Santa Barbara Mariculture request to renew State Water Bottom Lease No. M-653-02 for aquaculture in Santa Barbara County
24. Approve Santa Barbara Mariculture application for new state water bottom lease for aquaculture adjacent to existing State Water Bottom Lease No. M-653-02 in Santa Barbara County
25. Marine items of interest from previous meetings
26. Action on marine petitions for regulation change
27. Action on non-regulatory marine requests from previous meetings
28. Receive DFW marine-related informational items
29. Receive other information (staff report, legislative update)

** If the fisheries auto-conformance rulemaking is approved by the Office of Administrative Law, these agenda items will become informational rather than a notice hearing.*

California Fish and Game Commission – Perpetual Timetable for Anticipated Regulatory Actions

(Dates shown reflect the date intended for the subject regulatory action.)

Updated: 9/28/17

ITEMS PROPOSED FOR CHANGE ARE SHOWN IN BLUE

Updated: 9/28/17							2017																2018																				
ITEMS PROPOSED FOR CHANGE ARE SHOWN IN BLUE							OCT 10	OCT 11	12	NOV 9	DEC 6	7	JAN 11	FEB 6	FEB 7	8	MAR 6	MAR 15	APR 12	APR 18	19	MAY 17	JUN 19	JUN 20	21	JUL 17	AUG 22	23	SEP 20														
For FGC Staff Use				REGULATORY CHANGE CATEGORY			ACTION DATE, TYPE AND LOCATION			TC ATASCADERO		FGC ATASCADERO		MRC MARINA		FGC SAN DIEGO		WRC SANTA ROSA		TC SACRAMENTO		FGC SACRAMENTO		MRC PETALUMA		FGC TELECONFERENCE		FGC TELECONFERENCE		FGC VENTURA		WRC LOS ALAMITOS		TC SACRAMENTO		FGC SACRAMENTO		MRC SAN CLEMENTE		FGC NORTH COAST		WRC SACRAMENTO	
QUARTERLY EFFECTIVE										File Notice w/OAL by		8/15/17		10/10/17		12/12/17		01/16/18		02/13/18		02/23/18		04/24/18		06/26/18																	
DRW/RU ANALYST										Notice Published		8/25/17		10/20/17		12/22/17		01/26/18		02/23/18		03/02/18		05/04/18		07/06/18																	
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	KM	JS	FB	Sport Fishing (Annual)	1.05 et al.		D			A		V					E 3/1				R						N																
	KM	SF	FB	Klamath River Sport Fishing (Annual)	7.50(b)(91.1)					N					D			A			V					E 8/1		R															
	KM	RP	FB	Central Valley Salmon Sport Fishing (Annual)	7.50(b)					N					D			A							E 7/1			R															
	KM	SF	MR	Ocean Salmon Sport Fishing (April 2018) (Annual)	27.80(c)					N					D			A		E 4/1 X																							
	KM	SF	MR	Ocean Salmon Sport Fishing (May - November 2018) (Annual)	27.80(d)					N					D			A				E 5/1 X																					
		RP	MR	Pacific Halibut Sport Fishing	28.20					N					D			A				E 5/1 X																					
	MR	JS	FGC	Use of Dogs for Pursuit/Take of Mammals or for Dog Training 2016	265														E 4/1																								
	MR	JS	WLB	Mammal Hunting (Annual)	360 et al.					N						D						A	V			E 7/1			R														
	MR	JS	WLB	Waterfowl (Annual)	502					N						D						A	V			E 7/1			R														
	MR	JS	WLB	Upland (Resident) Game Bird (Annual)	300							R				N						D			A			E 9/1 V															
*	KM	ST	WB	Tricolored Blackbird - Incidental Take	749.9		N			D						A			E 4/1 X																								
	MR	JS	FGC	Use of Dogs for Pursuit/Take of Mammals or for Dog Training 2017	265		D			A									E 4/1																								
	KM	SF		Process for Automatic Conformance to Federal Fishing Regulations	1.95				E 11/1																																		
*	KM	ST	FB	Commercial Take of Rattlesnakes	42, 43, 651, 703		D/A					E 1/1																															
*	KM	ST	MR	Nearshore and Deeper Nearshore Fishing Permits	150,150.01,150.02,705			A				E 1/1																															
*	MR	ST	MR	Commercial Fisheries Landing Requirements	197			D/A				E 1/1																															
*	MR	SF	MR	Commercial Sea Cucumber	128			A				E 1/1																															
	KM	ST	MR	Abalone Emergency - 90 Day	29.15					EE 12/5																																	
	KM	ST	MR	Abalone Certificate of Compliance	29.15			D			A								E 4/1																								
*	MR	ST	MR	Commercial Sea Urchin (Phase II)	120.7			D			A								E 4/1																								
RULEMAKING SCHEDULE TO BE DETERMINED																																											
*			MR	Kelp and Algae Harvest Management	165, 165.5, 704												V																										
*				Possess Game / Process Into Food	TBD																																						
*			OGC	AZA / ZAA	671.1																																						
				Night Hunting in Gray Wolf Range	474																																						
				Shellfish Aquaculture Best Management Practices					V								R																										
			WB	Trapping Fees	TBD																																						
			SF	FGC Tribal Take in MPAs	632																																						
*			SF	FGC Rockport Rocks Special Closure	632																																						

EM = Emergency, EE = Emergency Expires, E = Anticipated Effective Date (RED "X" = expedited OAL review), N = Notice Hearing, D = Discussion Hearing, A = Adoption Hearing,

V = Vetting, R = Committee Recommendation, WRC = Wildlife Resources Committee, MRC = Marine Resources Committee, TC = Tribal Committee