

STAFF SUMMARY FOR FEBRUARY 7-8, 2018

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

Receipt of public comments, petitions for regulation change, and requests for non-regulatory actions for items not on the agenda.

Summary of Previous/Future Actions

- **Today's receipt of requests and comments** **Feb 7-8; Sacramento**
- Direction to grant, deny or refer **Apr 18-19; Ventura**

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. A petition for regulation change is summarized in Exhibit 1, and the original petition is provided as Exhibit 3.
2. A non-regulatory request is summarized in Exhibit 2, and the original request is provided in exhibit 4.
3. Informational comments are provided in exhibits 5-14.

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.

STAFF SUMMARY FOR FEBRUARY 7-8, 2018

Exhibits

1. [Summary table of new petition for regulation change received by Jan 25 at 5:00 p.m.](#)
2. [Summary table of new non-regulatory request received by Jan 25 at 5:00 p.m.](#)
3. [Petition 2018-001: Exempt shore-based angling](#)
4. [Email from Travis Lobo requesting experimental permit for brown box and spiny king crabs, received Dec 7, 2017](#)
5. [Emails from Wendy Tochiara regarding artificial reefs, received Dec 6-7, 2017](#)
6. [Email from Patricia McPherson providing information on Ballona Wetland Ecological Reserve prior to commissioners' tour, received Dec 7, 2017](#)
7. [Email from Joel Rambaud regarding poaching of abalone and other endangered species, received Dec 7, 2017](#)
8. [Email from Kerry Kriger, Save the Frogs, regarding American bullfrogs, received Dec 20, 2017](#)
9. [Email from Chris Occhialini expressing interest in reintroduction of bull trout to Upper McCloud river, received Dec 20, 2017](#)
10. [Sample email from Paul Novak \(one of seven received to date\) regarding the "Water4Fish" petition calling for a cutback in delta water exports, received Jan 15, 2018](#)
11. [Emails from Waltraud Milani against all hunting, received Jan 17-18, 2018](#)
12. [Email from Gregory Allison thanking the Commission for closing the abalone fishery, received Jan 21, 2018](#)
13. [Email from Marko Mlikotin, California Sportfishing League, regarding low fishing participation rate in California, received Jan 23, 2018](#)
14. [Email from Protecting Earth & Animals with Compassion & Education urging Commission to address potential negative impact of food plots on deer and other wildlife, received Jan 25, 2018](#)

Motion/Direction (N/A)

CALIFORNIA FISH AND GAME COMMISSION
RECEIPT LIST FOR REGULATION CHANGE REQUESTS: RECEIVED BY 5 PM ON JAN 25, 2018
Revised 01-29-2018

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	Accept or Reject	Name of Petitioner	Subject of Request	Code or Title 14 Section Number	Short Description	FGC Decision
2018-001	1/3/2018	A	Terrance P. Healey	Exempt shore-base angling	27.75(a), (b), and (c)	The proposal would limit the application of state law to ocean fishing vessels by specifically exempting shore-based angling for salmon from the mouths of the Smith, Klamath and Eel rivers.	Receipt: 2/7-8/2018 Action scheduled: 4/18-19/2018

CALIFORNIA FISH AND GAME COMMISSION
RECEIPT LIST FOR NON-REGULATORY ACTION: RECEIVED BY 5 PM ON JAN 25, 2018
Revised 1-29-2018

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
12/7/2017	Travis Lobo	Brown box and spiny king crabs	Requests an experimental permit for brown box crab and spiny king crabs.	Receipt: 2/7-8/2018 Action Scheduled: 4/18-19/2018



Tracking Number: (2018-001)
(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: TERRANCE P. HEALEY
Address:
Telephone number:
Email address: None (Click here to enter text.)
2. **Rulemaking Authority (Required)** - Reference to the statutory or constitutional authority of the Commission to take the action requested: FGC 200, 205, 265, 275 (Click here to enter text.)
3. **Overview (Required)** - Summarize the proposed changes to regulations: ATTACHED (Click here to enter text.)
4. **Rationale (Required)** - Describe the problem and the reason for the proposed change: ATTACHED (Click here to enter text.)

SECTION II: Optional Information

5. **Date of Petition:** 12/21/17 (Click here to enter text.)
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): 27, 75 **ATTACHED**
☐ 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: MARCH 1, 2018
10. **Supporting documentation:** Identify and attach to the petition any information supporting the proposal including data, reports and other documents: **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: **ATTACHED**
12. **Forms:** If applicable, list any forms to be created, amended or repealed:
ATTACHED

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

RECEIVED
 CALIFORNIA
 FISH AND GAME
 COMMISSION
 2018 JAN -3 PM 2:05

3. Overview (Required) - What has been in essence a defacto exemption for shore based angling at the mouth of the Smith, Klamath, and Eel Rivers under Section 27.75, that has existed for several decades in recognition of the river recreational fisheries, is in need of clarification because of recent misinterpretation and unwarranted enforcement actions. The shore based sport fisheries at the mouths of these rivers, legally defined as inland waters, are legitimate uses of the rivers. Shore based angling was never intended to be regulated the same as ocean fishing vessels.. A specific exemption for shore based angling is now necessary and is proposed herein to eliminate the ambiguity that has remained since the regulation was last amended in March 2015.

4. Rationale (Required) - I believe further clarification of Section 27.75 (a), (b) and (c) (last amended in March 2015), is necessary because of recent misinterpretation and wrongful enforcement actions taken against shore based anglers. Based on my recent observations of the situation at the mouth of the Smith River, I have learned that people simply fishing from the shore at the Smith River are now being cited for violation of Section 27.75 (a), should they venture near or land a fish in the surf zone at the mouth of the river. Very likely, this is also occurring on the Klamath and Eel (Sub-Sections (b) and (c)) as well. Therefore, these comments pertain to all three rivers.

Section 27.75 (a),(b) and (c) contain no defined boundaries between the mouths of the rivers and the ocean (attachment #1). This makes it impossible for anyone to know where the mouth of the river ends and the "ocean" begins. Without boundaries being described in the text of the regulation, Section 26.75 (a),(b) and (c) can not legally preclude sport fishing and take of salmon from the shore at the mouths of the rivers. The present wording in the regulation applies only to fishing vessel operations within the zone and provides virtually a defacto exemption to shore based angling.

Despite this reality, one warden and likely others are now ignoring the limitations built into the law by this omission and arbitrarily decide where a boundary between river and "ocean," should be located for the purpose of unfairly and wrongfully issuing citations to shore anglers for "fishing for salmon in closed area" (Attachment #2). The regulation as written, simply does not provide anyone with authority to make this determination.

The omission of a defined shoreside boundary in the text of the regulation is understandable.. It is impossible for anyone, at any time, to precisely determine the exact location of the mouth of any river because it is always changing with the tide and out flow volume. Therefore, establishing such a boundary can only be done arbitrarily, which would legally require a written description of its location in the regulation and posting with signs on the shore to inform the public. The problems associated with trying to establish one make it impractical because of such issues as tidal fluctuations, shifting locations of the mouths from year to year, legal posting requirements and maintenance of

signs, and private property matters. Finally, a defined shoreside boundary is not needed for two reasons (1) The ocean itself is a natural barrier to encroachment. It is impossible for shore based anglers to even enter the ocean closure zones beyond the insignificant margin at the shore/ocean interface. (2) The regulation as written, cannot legally be enforced against shore based angling but satisfies its intent to regulate offshore ocean fishing vessel activity. It is fully enforceable in the "ocean" proper without the inclusion of a shoreside boundary because the north, south and west boundaries in the ocean are clearly defined and adequate for the purpose of regulating vessel fishing activities.

Background - I believe the first salmon closure zone was established in 1957 by the State Legislature. Commercial take of salmon then and now, is permitted only in the ocean with hook and line by vessels and these vessels must be licensed. The original wording of this regulation is still current and reads as follows:

California 2017 Fish and Game Code - Division 6, Fish - Part 3, Commercial Fishing - Chapter 2, Particular Varieties of Fish - Article 4, Salmon - Section 8219, Taking in District 6 and 7.

"Salmon may not be taken for commercial purposes in District 6 at the mouths of the Smith and Klamath Rivers within three nautical miles north and south of a line drawn due west for three nautical miles from the center of the mouths of each of those streams, or during the months of August and September in District 7 at the mouth of the Eel River within two nautical miles north and south of a line drawn due west from the center of the mouth of that stream".

Following the enactment of Section 8219, Section 27.75 under Title 14 CCR, Chapter 4: Ocean Fishing was enacted by the Fish and Game Commission and patterned after Section 8219 to regulate sport, as well as commercial fishermen, in the offshore ocean waters.

Conclusions - There is nothing I have been able to find to suggest that shore anglers at the mouths of the rivers were ever a reason for the enactment of either of these regulations. However, the initial wording of Section 8219 provides good evidence that the ocean closures were enacted to prevent fishing vessels, mainly commercial salmon trollers, from fishing too close the mouths of these rivers and competing with the river recreational fisheries.

Shore based angling at the mouths of Smith, Klamath, and Eel Rivers have long been recognized as a legitimate recreational use of these rivers. It is apparent that the regulation was enacted based on a reasonable assumption that the depletion of the fish by commercial fishing vessels in the ocean, where the fish are known to concentrate before

entering the rivers, could have a negative impact on spawning runs, as well as the recreational fisheries in the rivers, including the shore based fisheries at the mouths of the rivers. The regulation is clearly aimed at preventing over harvest of salmon in the ocean by fishing vessels to insure that enough fish return to the rivers for spawning and recreational harvest.

The use of nautical terminology in the wording of the regulation is further evidence that the regulations were intended to be understood and directed toward persons operating ocean fishing vessels.

The waters at the mouths of the Smith, Klamath and Eel rivers are "brackish" and can be legally defined as such, based on their salinity being less than about 34.5 ppt. The waters at the mouths of these rivers cannot legally be defined as "ocean" waters without violating Title 14, Chapter 1 General Provisions and Definitions - Section 1.53, Inland Waters. This section specifically defines fresh and brackish waters as "inland waters"(Attachment #3).

Also, Section 1.53 is consistent with Title 14, Chapter 4: Ocean Fishing Section 27.00. Definition where "ocean" is defined as the "open seas" adjacent to the coast and islands "or the waters of open or enclosed bays contiguous to the ocean", including Elkhorn Slough etc....."(Attachment #4). There is no wording in Section 27.00 or 27.75 describing the brackish tidal waters of the Smith, Klamath and Eel Rivers as "ocean waters or open or enclosed bays."

I am proposing that five words be added to each sub-section of Section of 27.75 to clearly and concisely reflect the intent of the law. This proposal would limit the application of the law to ocean fishing vessels, as originally intended, by specifically exempting shore based angling, and would follow the example set forth by Title 14, Chapter 4: Ocean Fishing Section 27.20, (b), (1), (C) concerning groundfish management areas (Attachment #5).

7. The Proposal is to: Amend Title 14 Section 27.75 (a); (b) and (c).

27.75 Salmon Closures.

(a) No Salmon may be taken, **except by shore based angling**, at any time in ocean waters at the Smith River Mouth bounded on the north by 41 degrees 59' 36" N. lat. (approximately 3 nautical miles north of the Smith River mouth), on the west by 124 degrees 16' 24" W. long (approximately 3 nautical miles offshore), and on the south by 41 degrees 53' 30" N. lat. (approximately 3 nautical miles south of the Smith River mouth).

(b) No Salmon may be taken, **except by shore based angling**, at any time in ocean waters at the Klamath River mouth bounded on the north by 41 degrees 35' 30" N. lat. (approximately 3 nautical miles north of the Klamath River mouth), on the west by 124 degrees 08' 54" W. long. (approximately 3 nautical miles offshore), and on the south by 41 degrees 29' 24" N. lat. (approximately 3 nautical miles south of the Klamath River mouth). In August, the ocean salmon closure expands into the "Klamath Control Zone." The Klamath Control Zone is defined in federal regulations as the ocean area at the Klamath River mouth bounded on the north by 41 degrees 38' 48" N. lat. (approximately 6 nautical miles north of the Klamath River mouth), on the west by 124 degrees 23' 00" W. long (approximately 12 nautical miles offshore), and on the south by 41 degrees 26' 48" N. lat. (approximately 6 nautical miles south of the Klamath River mouth).

(c) No Salmon may be taken, **except by shore based angling**, at any time in ocean waters at the Eel River Mouth bounded on the north by 40 degrees 40' 24" N. lat. (approximately 2 nautical miles north of the Eel River mouth), on the west by 124 degrees 21' 24" W. long (approximately 2 nautical miles offshore), and on the south by 40 degrees 36' 24" N. lat. (approximately 2 nautical miles south of the Eel River mouth).

8. Not applicable.

9. **Effective date:** March 1, 2018.

10. Supporting Documentation:

Attachment #1 - CCR Title 14, Section 27.75 (entire).

Attachment #2 - Copy of citation and court summons issued to shore angler at mouth of Smith. River in 2017.

CFGF, Section 8219. (See entire wording in **4. Rational**).

Attachment #3 - CCR Title 14, Section 1.53 (entire).

Attachment #4- CCR Title 14, Section 27.00 (entire).

Attachment #5- CCR Title 14, Sections 27.20 (applicable portions).

11. Economic or Fiscal Impacts: Without a detailed accounting, the amount of money that has been improperly taken from anglers by the counties of Del Norte and Humboldt and to the State of California Department of Fish and Wildlife, cannot be determined. To allow this practice to continue for the sake of making money would be wrong from a moral, as well as a legal standpoint.

12. Forms: 2018-2019 CALIFORNIA SALTWATER SPORT FISHING REGULATIONS.

10. Supporting documentation: (continued) Attachments.

Attachment 1.

27.75. Salmon Closures.

(a) No salmon may be taken in ocean waters at the Smith River mouth bounded on the north by 41degrees 59'36 N. lat. (approximately 3 nautical miles north of the Smith River mouth), on the west by 124 degrees 16' 24" W. long.(approximately 3 nautical miles offshore), and on the south by 41degrees 53' 30" N. lat. (approximately 3 nautical miles south of the Smith River mouth).

(b) No salmon may be taken in ocean waters at the Klamath River mouth bounded on the north by 41degrees 35' 30" N. lat. (approximately 3 nautical miles north of the Klamath River mouth), on the west by 124 degrees 08' 54" W. long." (approximately 3 nautical miles offshore), and on the south by 41degrees 29' 24" N. lat. (approximately 3 nautical miles south of the Klamath River mouth). In August, the ocean salmon closure expands into the "Klamath Control Zone." The Klamath Control Zone is defined in federal regulations as the ocean area at the Klamath River mouth bounded on the north by 41degrees 38' 48" N. lat. (approximately 6 nautical miles north of the Klamath River mouth), on the west by 124 degrees 23' 00" W. long. (approximately 12 nautical miles offshore), and on the south by 41degrees 26' 48" N. lat. (approximately 6 nautical miles south of the Klamath River mouth).

(c) No salmon may be taken during the months of August and September in ocean waters at the Eel River mouth bounded on the north by 40degrees 40'24 N lat. (approximately 2 nautical miles north of the Eel River mouth), on the west by 124 degrees 21' 24" W. long. (approximately 2 nautical miles offshore), and on the south by 40degrees36' 24" N. lat. (approximately 2 nautical miles south of the Klamath River mouth).

ATTACHMENT 2

Citation and Court summons
issued erroneously to
shore Based Angler at
Smith River Mouth.

KEEP THIS PORTION FOR YOUR RECORDS

Name: **DEVON THOMAS NIPGEN** Docket Number: **DNJC-INNT-2017-3667-1** Citation No.: **AD2016833**
Date of Birth: Driver's License: Violation Date: **10/05/2017**
Due Date: **11/30/2017** Agency: **DNFG** Officer: **T PINNOW**

POC	Sections	Violations	Description	Bail Amount
	CCR	27.75(a)	SALMON CLOSURES	395.00
			COURT OP ASSESSMENT	40.00
			SECRET WITNESS ASS.	15.00
			CONV. ASSM. INFRACT	35.00

RETURN THIS PORTION
WITH YOUR PAYMENT

NAME: **DEVON THOMAS NIPGEN**

CITATION# **AD2016833**

DUE DATE **11/30/2017**

RETURN THIS PORTION WITH YOUR PERSONAL CHECK OR MONEY ORDER (US FUNDS ONLY)

DEPARTMENT OF FISH AND GAME ☐ MISDEMEANOR ☒ TRAFFIC ☐ NON-TRAFFIC **AD2016833**
NOTICE TO APPEAR **66-900**

Date of Violation: **10/05/2017** Time: **3:05** ☐ AM ☒ PM Day of Week: **THUR** Case No.:
Name (First, Middle, Last): **DEVON THOMAS NIPGEN** ☐ Owner's Responsibility (Veh. Code, § 40001)
Address:
City: State: ZIP Code: Phone Number:
Driver Lic. No.: State: **CA** Class: **C** Commercial: ☐ Yes ☒ No Age: Birth Date:
Sex: **M** Hair: Eyes: Height: Weight: Race: Other Description:
Veh. Lic. No. or VIN: State: ☐ COMMERCIAL VEHICLE (Veh. Code, § 15210(b))
Yr. of Veh.: Make: Model: Body Style: Color: ☐ HAZARDOUS MATERIAL (Veh. Code, § 353)
Evidence of Financial Responsibility:
Registered Owner or Lessee: ☐ Same as Driver.
Address: ☐ Same as Driver.
City: State: ZIP Code:
Correctable Violation (Veh. Code, § 40610) ☐ Booking Required Misdemeanor or Infraction (Circle)
Yes No Code and Section Description
☒ **CCR 27.75(a) - FISHING FOR SALMON** M ☒
☐ **IN BEACH CLOSURE** M ☐
☐ **VIOLATIONS NOT COMMITTED IN MY PRESENCE; DECLARED ON INFORMATION AND BELIEF.**
Speed: P.F./Max. Veh. GPS: ☐ ☐ ☐ ☐
Approx. Spd. Lmt. Lat. Long.
Location of Violation(s): City/County of Occurrence: CalTIP: Yes / No
at **MOUTH OF SMITH RIVER / DEL NORTE** ☒
Evidence Seized: **NONE**
I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.
T. PINNOW Arresting Officer: **872** Badge No.
Name of Arresting Officer, if different from Citing Officer: Badge No.:
Date: **11/30/2017**
WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR AT THE TIME AND PLACE INDICATED BELOW.
Signature: **Devon Nipgen**
WHEN: ON OR BEFORE THIS DATE **Nov 30 2017** Time: **1:00** ☐ AM ☒ PM
WHAT TO DO: FOLLOW THE INSTRUCTIONS ON THE REVERSE.
Name of Court: **DEL NORTE SUPERIOR**
WHERE: Section or Division, Room No.:
Street Address: **450 H ST, CRESCENT CITY, CA, 95531**
Phone Number: **(707) 444-8115** Ext: **-** Court: **08100**
☐ Juvenile ☐ To be notified ☐ You may arrange with the clerk to appear at a night session of the court.
AD2016833
JUDICIAL COUNCIL OF CALIFORNIA FORM
Rev. 09-20-05 (Veh. Code, §§ 40500(b), 40513(b), 40522, 40600; Pen. Code, § 853.9)
RESPONDENT COPY
SEE REVERSE TR-130

(*WITH POC: \$485.00)

TOTAL DUE **\$485.00**

(SEE BACK FOR FURTHER OPTIONS)

Attachment 3.

1.53 Inland Waters.

Inland waters are all the fresh, brackish and inland saline waters of the state, including lagoons and tidewaters upstream from the mouths of coastal rivers and streams. Inland waters excludes the waters of San Francisco Bay and the waters of Elkhorn Slough, west of Elkhorn Road between Castroville and Watsonville. See Section 27.00 for the description of San Francisco Bay.

Attachment 4.

27.00 Definition.

The Ocean and San Francisco Bay District consists of the Ocean and San Francisco Bay as described herein. **The Ocean is the open seas adjacent to the coast and islands and the waters of open and enclosed bays contiguous to the ocean,** including the waters of Elkhorn Slough, west of Elkhorn Road between Castroville and Watsonville. San Francisco Bay and San Pablo Bay and all their tidal bay, sloughs, estuaries, and tidal portions of their rivers and streams between the Golden Gate Bridge and the west Carquinez Bridge. For purposes of this section, waters downstream of The Trancas Bridge on the Napa River, downstream of the Highway 121 Bridge on Sonoma Creek, and downstream of the Payran Street Bridge on the Petaluma River are tidewater portions of the Napa River, Sonoma Creek and the Petaluma River, respectively. Also see Section 1.53.

Attachment 5.

27.20

Groundfish Management Areas, Depths Exceptions, and Fishery Closure/ Rule Change Process described.

(b) General Provisions.

(1) Take and Possession:

- (C) Shore Based Angling: When angling from shore (includes beaches, banks, piers, jetties, breakwaters, docks, and other man made structures connected to the shore), all species may be taken or possessed year-round (See 27.50 (b) (1) for exceptions in the Cowcod Conservation Areas) No vessel or watercraft (motorized or non-motorized) may be used to assist in taking or possessing these species while angling from shore under this provision.

Subject:

From: K Lobo

Sent: Thursday, December 07, 2017 12:44 PM

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

Cc: Ashcraft, Susan@FGC <Susan.Ashcraft@fgc.ca.gov>; Coates, Julia@Wildlife <Julia.Coates@wildlife.ca.gov>

Subject: Lobo Ltr of Request to Fish and Game Commission for Experimental Permit (11-28-17)

Dear Sirs/Mesdames of the Fish and Game Commission,

Please accept the attached letter as my formal submission of petition requesting to obtain an experimental permit for Brown Box Crab and California Spiny King Crab.

Thank you for your consideration.

If additional information is needed, please feel free to contact me at:

Mr. Travis T. Lobo

November 28, 2017

California Fish and Game Commission
Mr. Eric Sklar, President
Mrs. Jacque Hostler-Carmesin, Vice President
Mr. Anthony C. Williams
Mr. Russell Burns
Mr. Peter S. Silva
1416 Ninth Street, Room 1320
Sacramento, CA 95814

Dear Sirs/Mesdames of the Commission:

Pursuant to Fish and Game Code sections 8606 and 7090, I am submitting this petition for an experimental Brown Box Crab (*Lopholithodes Forminatus*) and California Spiny King Crab (*Paralithodes Rathbuni*) fishing permit, as I pursue efforts to establish an emerging fishery.

Fish and Game Code section 8606 states as follows: “(a) The commission shall encourage the development of new types of commercial fishing gear and new methods of using existing commercial fishing gear by approving permits to be issued by the department, consistent with the policies set forth in Section 1700, for that development or use, subject to [the restrictions set forth in 8606(a)(1)-(3)].”

Section 8606(b) states: “A permit may authorize the use of new types of commercial fishing gear and new methods of using existing gear otherwise prohibited by this code and may authorize that use or the use of existing gear in areas otherwise closed to that use by this code.”

Section 7090 relates to emerging fisheries, and states, “(a) The Legislature finds and declares that a proactive approach to management of emerging fisheries will foster a healthy marine environment and will benefit both commercial and sport fisheries and other marine-dependent activities. Therefore, the commission, based upon the advice and recommendations of the department, shall encourage, manage, and regulate emerging fisheries consistent with the policies of this part.” An “emerging fishery” is defined by section 7090(b)(1) as: “A fishery that the director has determined is an emerging fishery, based on criteria that are approved by the commission and are related to a trend of increased landings or participants in the fishery and the degree of existing regulation of the fishery.”

I believe that I qualify for an experimental permit pursuant to section 8606. First, none of the restrictions set forth in section 8606(a)(1)-(3) apply to me. Second, I currently possess a prototype trap which I can present to Fish and Game as well as the Fish and Game Commission for assessment. (8606(a)). From 2016 to the present, I have trapped and landed 23,000 pounds of Brown Box Crab (Over half of the 45,000 total pounds of Brown Box Crab landed).

I am interested in developing an experimental fishery pursuant to Fish and Game Code section 7090, and I believe an experimental permit as allowed by section 8606 can provide a scientific basis for the fishery.

If I am granted the use of an experimental permit, I will agree to incur the cost of any scientist(s) wishing to evaluate and research the fishery, so that they may collect data for the Fish and Game Commission to determine if a Brown Box Crab (*Lopholithodes Forminatus*) and California Spiny King Crab (*Paralithodes Rathbuni*) Fishery is sustainable, manageable, and of economic value to the State of California. I respectfully request the Fish and Game Commission's approval.

Please let me know what additional information you need from me to access this permit.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Lobo', written over a horizontal line.

Mr. Travis T. Lobo
Commercial Fisherman L#53349

Cc: Susan Ashcraft, Marine Advisor, California Fish and Game Commission
Dr. Julia Coates, Environmental Scientist, California Department of Fish and Wildlife -
DFG Marine Region – Sacramento
Valerie Termini, Executive Director, California Fish and Game Commission

From: Wendy Tochiara
Sent: Thursday, December 07, 2017 7:54 AM
To: FGC
Subject: Re: Artificial Reefs

Hi John,

Yes, please consider my email for the February Commission meeting. As for the videos, I am on the State Board for CCA, these are videos that were posted to YouTube which are made for public use.

Thank You!!!
Best regards,
Wendy Tochiara
Sent from my mobile office

On Dec 7, 2017, at 6:58 AM, FGC <FGC@fgc.ca.gov> wrote:

Dear Ms. Tochiara,

Comments intended for the Fish and Game Commission must have been received by the deadlines indicated on each agenda. And in the case of video presentations they must be free of any copyright materials and pre-screened by our Executive Director.

Because your email was received too late for today's Commission meeting, would you like your information considered for the Commission's next meeting in February 2018?

From: Wendy Tochiara
Sent: Wednesday, December 6, 2017 7:18 PM
To: FGC
Subject: Artificial Reefs

Hi Valerie,

Please forward to our Fish & Game Commissioners.

Thank you!

Wendy Tochiara

Ballona Tour--Information & CDFW Coastal Comm. Hearing on Coastal Act Violation - Drainage of BALLona Wetlands

patricia mc pherson

Thu 12/7/2017 12:56 PM

To:FGC <FGC@fgc.ca.gov>; Termini, Valerie@FGC <Valerie.Termini@fgc.ca.gov>;

Cc:Jeanette Vosburg

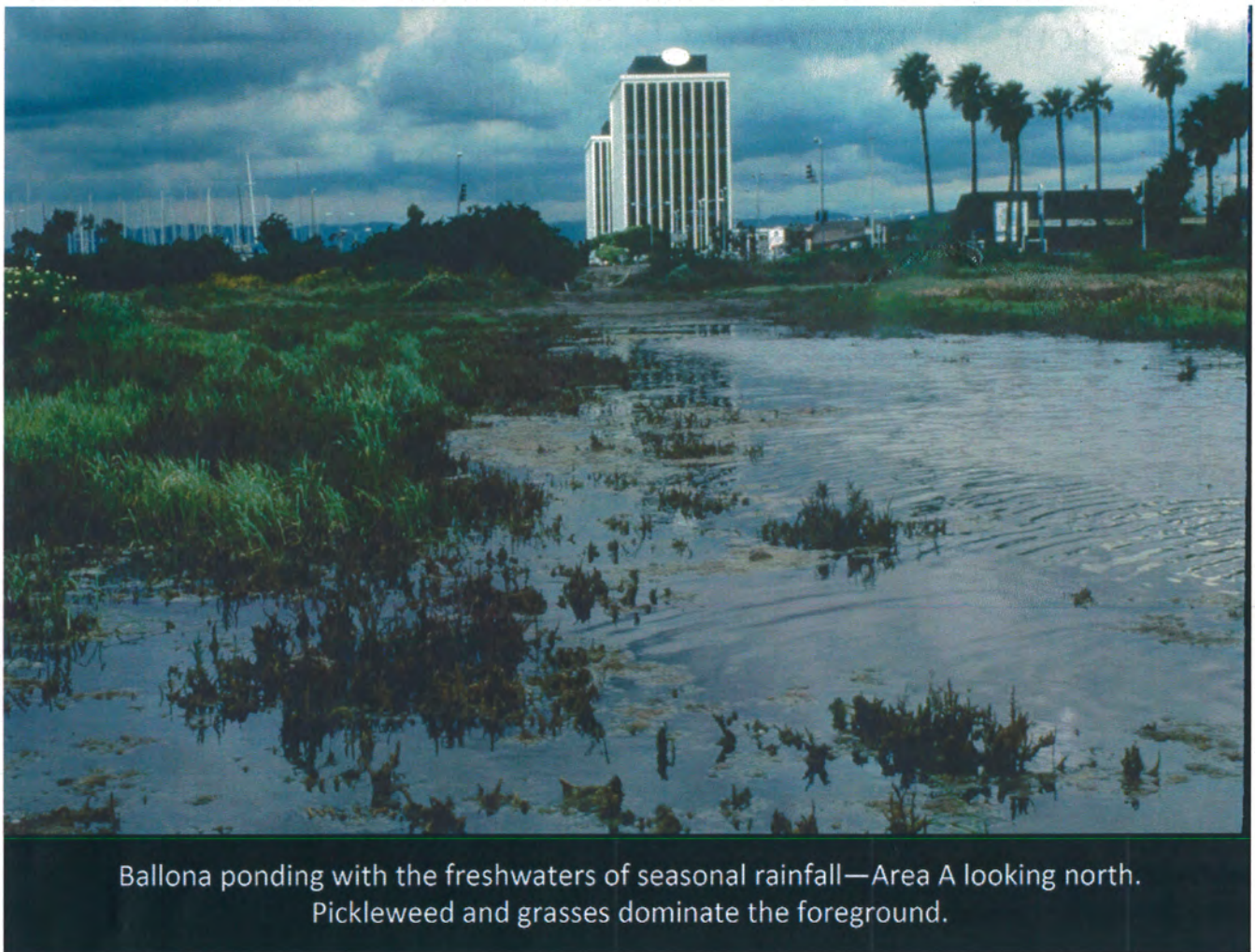
1 attachments (199 KB)

CCC Ittr 4.11.14.pdf;

Hello Ms. Termini and FGC Staff,

Please distribute the following information to the FGC Commissioners as informational background prior to the upcoming touring of Ballona Wetlands Ecological Reserve.

Area A photo—Area A of Ballona Wetlands contains the parking lots at issue for Commissioners.



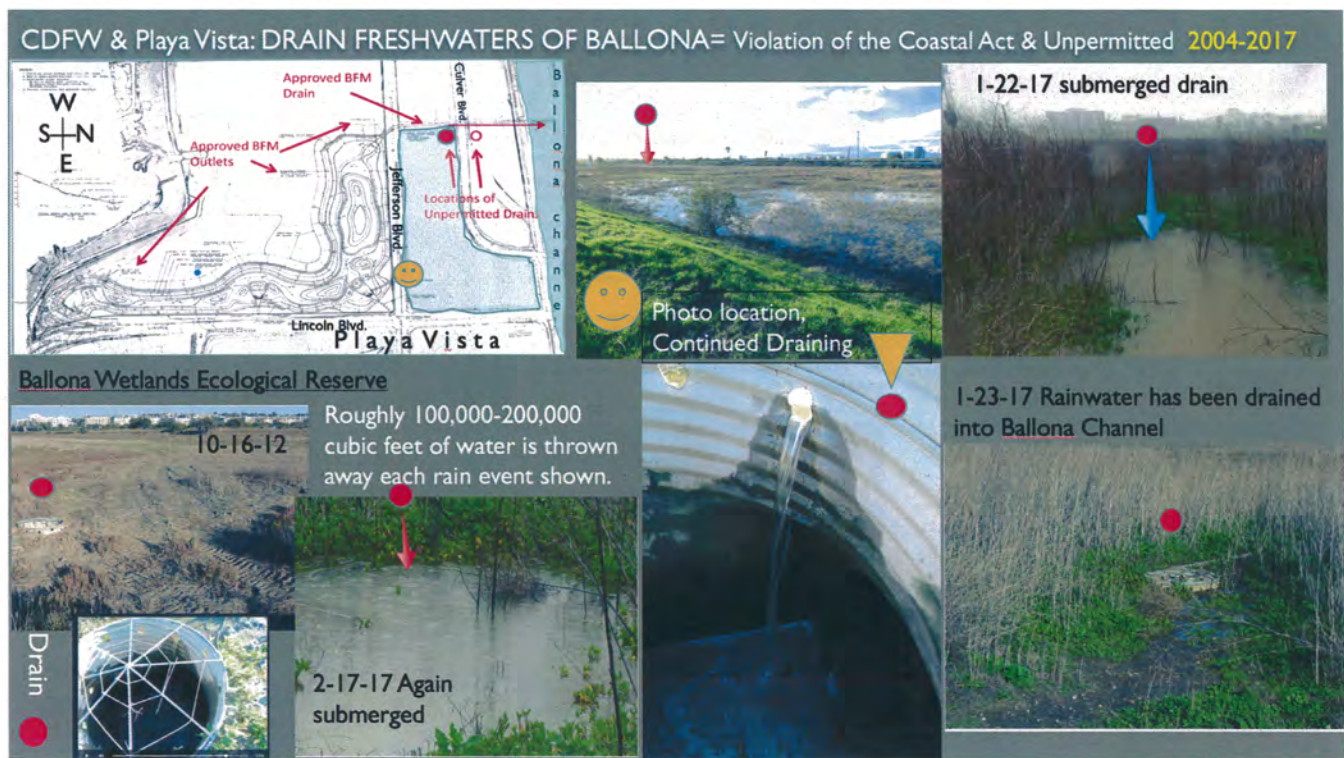
Ballona ponding with the freshwaters of seasonal rainfall—Area A looking north.
Pickleweed and grasses dominate the foreground.

Letter from Enforcement Analyst Andrew Willis of the California Coastal Commission RE: Coastal Act Violation per Unpermitted Drains and Drainage of Ballona Wetlands by CDFW & Playa Capital LLC.

Dec. 14, 2017 is the hearing before the CCC of the CDFW APPLICATION for stopping the drainage.

www.saveballona.org/
Ballona Wetlands.

GRASSROOTS COALITION WEBSITE with full sets of diagrams and information regarding



As discussed regarding the proposed Parking Structure on Ballona Wetlands—A PATTERN OF SPECIAL/ PRIVATE INTERESTS ENCROACHMENT SUPERSEDING PUBLIC AND ECOLOGICAL INTERESTS

Local CDFW Staff-Richard Brody emails with Playa Capital LLC(Pres. Marc Huffman) discussing Brody's board membership rights within Playa Vista's private business, The Ballona Conservancy-- provide another window into public and ecological interests that have, at least, the appearance of being highly compromised by a very disturbing blurring of lines by CDFW local Staff.

The BALLONA Conservancy (Playa Vista development entities) emails discuss the new roadway built in endangered species habitat -the riparian corridor portion of Playa Vista's flood control system. This roadway is now known to have had no permits for its construction using excavated Playa Vista development soils. CDFW issued a Streambed Violation Notice after alerts came from USFWS about the roadbuilding (Grassroots Coalition had provided notice to USFWS since CDFW has been non-communicative regarding Ballona.)

Vector Control below, discusses their frustration with any and all of the entities that are, in one way or another supposed to be providing oversight. Multiple years of mosquito problems from the Flood Control System led up to the

2016 mosquito excess which prompted Vector Control to threaten fines and other legal action. None of this issue was reported in any Monitoring Reports by Playa Vista/ Ballona Conservancy and /or CDFW and neither alerted the public to the health hazards with which they have direct oversight.

Camponotus caryandae 10/10/86, 10/10/86

Thank you for your time,
Patricia McPherson , Grassroots Coalition

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



April 11, 2014

Playa Capital Company, LLC
c/o Rick Zbur
355 South Grand Avenue
Los Angeles, CA 90071

Re: Unpermitted drains located in Ballona Ecological Reserve

Dear Mr. Zbur:

Thank you for your December 11, 2013 response to our June 12, 2013 letter. Our June 12 letter described installation of two drains and drain lines in the Ballona Ecological Reserve without the required coastal development permit. After carefully reviewing the information that you included with your letter, our position on installation of the drains at issue has not changed: installation of the drains requires a coastal development permit from the Coastal Commission. As explained below, the unpermitted drains were not authorized, as you contend, by Coastal Development Permit No. 5-91-463, as amended ("the CDP"), which authorized construction of the Ballona Freshwater Marsh ("BFM"). Moreover, the subject drains are located in the Ballona Ecological Reserve within natural habitat and a wetland that rely on water to function. Thus the presence of the subject drains is clearly detrimental to natural habitat and the hydraulic functioning of the wetland.

The two unpermitted drains at issue ("Unpermitted Drains") are located in the Ballona Ecological Reserve, one north of Culver Boulevard and the other south of Culver Boulevard. The Unpermitted Drains are not located within the BFM, but instead within natural saltmarsh and habitat areas separated from the marsh area of the BFM by Jefferson Boulevard. The Unpermitted Drains are not described in the CDP application, nor are the drains identified in the plans submitted with the application and presented to the Commission for approval. Thus the Unpermitted Drains were never authorized through the CDP, or by the Commission in any way that we are aware of.

As a point of clarification since your letter appears to conflate several separate structures, the Commission-approved BFM main drain line and the two other outlets from the BFM (in addition to the main drain line) that are critical to maintaining water levels in the BFM, and which are specifically identified in the CDP application and accompanying plans ("Approved BFM Drain" and "Approved BFM Outlets"), are not at issue in this enforcement matter. Each of these components is identified and described in the CDP application and accompanying plans, which comprise the development approved by the Commission via the CDP. By contrast, the Unpermitted Drains were not identified in the CDP application or its accompanying materials or plans. For reference I've attached a site plan submitted to the Coastal Commission that show the Approved BFM Drain and the Approved BFM Outlets. I've also annotated the plan to show the locations of the Unpermitted Drains, which are not depicted on the approved plan.

Below, I respond to points raised in your December 11 letter related to the Unpermitted Drains. However, first I provide some background and clarification on the purpose and functions of the BFM in order to explain that the Unpermitted Drains function inconsistently with the habitat enhancement, water quality and flood control objectives of the BFM and in no way does the BFM rely on the Unpermitted Drains to perform its necessary functions. Please note that some of our responses to the points you raised in your December 11 letter are provided in the background section below.

Background

The BFM was approved by the Commission pursuant to CDP No. 5-91-463 (as amended) on September 13, 1991. The project is designed to integrate water quality protection functions, habitat creation and restoration, and stormwater control. The first function of the BFM is to collect runoff via inlets specifically identified in the CDP application and accompanying plans. Each of these approved inlets flow into the BFM. The CDP application describes the process by which the BFM achieves its water quality objectives:

The water quality functions would be performed by the input of a year-round supply of clean freshwater into the system and through the natural processes of a wetlands – sedimentation, adsorption, and transformation – which would reduce levels of pollutants in stormwater and other urban runoff that drains into the system. The freshwater wetlands system would trap and remove pollutants in stormwater runoff as the water moves slowly through the system. Water cleaner than the stormwater runoff originally put into the system would then flow into the Ballona Flood Control Channel or into the salt marsh, thus enhancing the resource values of those areas. [Appendix 5, page 2]

The Unpermitted Drains do not support the water quality objectives of the BFM; the Unpermitted Drains do not direct water into the BFM to be subject to the wetland treatment processes described above. Instead, water flows into the Unpermitted Drains, then untreated into the Ballona Channel.

The second function of the BFM, habitat creation and restoration, is the product of collecting stormwater and treated groundwater within the marsh area of the BFM. This process fosters vegetation growth and, in turn, provides wildlife habitat. The habitat function of the BFM and its reliance upon stormwater is further described in the CDP application:

The 52-acre freshwater wetland system proposed by Maguire Thomas Partners – Playa Vista, includes a 25-acre riparian corridor and a 27-acre freshwater marsh. This system is to be planted with marsh vegetation, willow woodland and mixed riparian habitat over a three-phase construction period lasting 10 years. It is designed to create new and restore currently degraded freshwater wetland habitat and to enhance their associated uplands. In order to maintain the proposed vegetation and habitat of the system, a water supply of reliable quantity and quality is needed.

...

- Using two sources of supply (storm runoff and treated groundwater) that are consistent with the urban setting of the Playa Vista project, a completely satisfactory quantity of fresh water would be provided to establish and sustain 52-acres of wetland vegetation and the freshwater need of wildlife. (Appendix 11, ps. EX1-2)

As noted above, the Unpermitted Drains do not drain into the BFM, thus they do not contribute water to the BFM and thus do not contribute to its habitat function. In fact the effect of the functioning of the Unpermitted Drains is deleterious to habitat because the Unpermitted Drains direct water away from habitat areas within the Ballona Ecological Reserve, including a wetland area.

Another function of the BFM is stormwater management and this indeed was a stated objective for constructing the BFM. In contrast to the functioning of the BFM, during all but the most extreme storm events, the Unpermitted Drains do not provide any necessary flood protection because of the elevation of adjacent Culver Boulevard. The BFM project engineer, in describing the value of the Unpermitted Drains, or lack thereof, notes in July 11, 2013 email to staff at the Santa Monica Bay Restoration Commission, and others, that: "If these inlets were plugged, there would be no chance of any flooding ever reaching the adjacent roadways as the roads are about three feet higher than the surrounding grades. A three foot storm would be something on the order of the 1,000,000-year event (purely a guess, but you get the idea) and L.A. would not notice a little flooding here."

Moreover, the Unpermitted Drains are not designed to function when flood control devices would be expected to, i.e. during storm events. During storm events when the water levels in Ballona Channel are elevated, the flapgates in the Approved BFM Drain close in order to prevent water from flowing from the Ballona Channel and out through the Approved BFM Outlets into the BFM. When these flapgates in the Approved BFM Drain close during storm events, water will not flow through the Unpermitted Drains into the Approved BFM Drain, consequently, water will pond in the location of the Unpermitted Drains. Thus, it appears that the idea that stormwater control benefits are provided by the Unpermitted Drains is, at best, dubious. However, as a result of below-grade and at-grade inlets in the Unpermitted Drains, the Unpermitted Drains remove water in the ground and on the surface at all other times water is present. This is a continuous detriment to wetland hydrology and habitat that relies on water to function.

Coastal Development Permit Required

The Unpermitted Drains were not identified in the CDP application or accompanying plans and materials. Therefore, the Unpermitted Drains were not reviewed by the Coastal Commission and installation of the Unpermitted Drains was not authorized via the CDP. Furthermore, the Unpermitted Drains do not, as detailed above, perform any of the intended functions of the BFM and thus could not have been somehow approved in concept by the Commission.

Pursuant to Section 30600(a) of the Coastal Act, any person wishing to perform or undertake development in the Coastal Zone must obtain a coastal development permit, in addition to any other permit required by law. "Development" is defined by Coastal Act Section 30106 as:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations....[underling added for emphasis]

Installation of the Unpermitted Drains constitutes development under the Coastal Act and, therefore, requires a coastal development permit. Any development activity conducted in the Coastal Zone without a valid coastal development permit, or which does not substantially conform to a previously issued permit, constitutes a violation of the Coastal Act.

Our goal is to resolve this situation amicably and as quickly as possible so that all parties can move forward. We greatly appreciate your time and input and look forward to discussing this matter further and working on a consensual resolution to this matter. To that end, subsequent to the substantive responses to your letter, below, I propose a potential path forward to resolve this matter collaboratively.

Staff Responses to Section A

You note, as a preliminary matter, that Playa Capital Company, LLC ("PCC") does not currently own the property upon which the Unpermitted Drains are located. You do not specifically argue that as a result of this lack of property interest at the present time, PCC is not liable for installation of the Unpermitted Drains, however, I note that liability for Coastal Act violations attaches to the property owner upon which unpermitted development is located *and to the party that undertook the unpermitted development*. Documents submitted to the City of Los Angeles regarding construction of the Approved BFM Drain indicate that installation of the Approved BFM Drain was commenced by PCC's predecessor-in-interest, Maguire Thomas Partners ("MTP"), and completed by PCC. The Unpermitted Drains connect to the Approved BFM Drain (but as noted above, do not contribute to the functioning of the BFM) and logically then were constructed by PCC and/or its predecessor-in-interest at the time the Approved BFM Drain was constructed. Contemporaneous construction of the Unpermitted Drains and the Approved BFM Drain does not establish, however, that the Unpermitted Drains were authorized pursuant to the CDP. As described above, the Unpermitted Drains are not described in the CDP application or depicted in the accompanying plans, in contrast to the Approved BFM Drain, which is described and depicted in the CDP application and plans.

You also provide in Section A your description of the function of the Approved BFM Outlets and equate the Unpermitted Drains with the Approved BFM Outlets. You assert that:

The outlet drains in question were initially incorporated in the Freshwater Marsh design with the approval of the City of Los Angeles, to protect the Ballona salt marsh located to the west of the Freshwater Marsh from imminent construction impacts, and, ultimately, to prevent flooding of the roadways adjacent to the Freshwater Marsh during severe storm events in the long-term.

However, the Unpermitted Drains are distinct from the Approved BFM Outlets. The three Approved BFM Outlets (including the Approved BFM Drain) are identified in the CDP application and plans. These outlets allow for freshwater to be directed from the BFM into the Ballona Channel or into the saltmarsh west of the BFM when needed to adjust salinity levels in the saltmarsh. The CDP application specifically identifies the Approved BFM Outlets as such:

Three water management structures are included in the design of the system: a spillway system between the freshwater marsh and the salt marsh, a sluice-gate structure between the freshwater marsh and the salt marsh, and a control weir with a tide-gated outlet between the freshwater marsh and the Ballona Channel. [pgs. II-7-8]

Clearly none of these descriptions pertain to the Unpermitted Drains. The Unpermitted Drains can be further distinguished from the Approved BFM Outlets in a number of ways. First, the Unpermitted Drains are not depicted in the CDP application or the plans, as the Approved Outlets are, and thus the Unpermitted Drains were not approved by the Commission. Second, the Unpermitted Drains are not outlet drains. The Approved BFM Outlets provide outlets for freshwater water to move from the BFM into Ballona Channel and into the saltmarsh west of the BFM for salinity level management purposes. In contrast, the Unpermitted Drains do not outlet water from the BFM. Thus, categorically, the Unpermitted Drains are not "outlets" from the BFM. Instead, they drain water from native habitat and a wetland area separated from the BFM by Jefferson Boulevard. Third, the Unpermitted Drains do not direct drained water into the saltmarsh, thus they also do not share the function of the Approved BFM Outlets to provide the saltmarsh with freshwater. Finally, the saltmarsh that is protected by the Approved BFM Outlets that is referenced in the CDP application and associated documents is west of the BFM. In contrast, the Unpermitted Drains are located in the saltmarsh and habitat area north of the BFM.

Regarding the assertion in Section A that the Unpermitted Drains are necessary flood control measures that were approved by the City of Los Angeles, the lack of any flood prevention provided by the Unpermitted Drains is addressed above. In addition, as you are no doubt aware, even if the Unpermitted Drains were approved by the City of Los Angeles through local processes, such approval is not a substitute for authorization from the Commission and does not waive the coastal development permit requirements of the Coastal Act. Furthermore, no regulation is cited in the City's letter attached to your December 11 letter that confirms that there is a basis for the City to require construction of the Unpermitted Drains for flood protection. Nor could City staff identify such regulation in its discussions with Commission staff. In fact, in discussions with us, City staff had no objections to removal of the Unpermitted Drains, which is not surprising since the Unpermitted Drains provide negligible (if any) flood control benefits.

Staff Responses to Section B

In Section B, you again apparently confuse the Unpermitted Drains with the Approved BFM Outlets. As detailed above, in contrast to the Unpermitted Drains, the Approved BFM Outlets were approved by the Commission pursuant to the CDP and, again in contrast to the Unpermitted Drains, perform important habitat enhancement, water quality and flood control functions.

You also assert that staff was made aware of the plans to construct the Unpermitted Drains prior to construction of said drains (but subsequent to Commission approval of the BFM) and that staff concurred with their construction. Regardless of whether this assertion is true, and it is not, as explained below, the Unpermitted Drains were not a component of the CDP application; were not presented in narrative or graphic form, or in any manner to the Commission for review; were not authorized by the Commission pursuant to the CDP in any way; and there is no other Commission action that authorized the Unpermitted Drains. Furthermore, the assertion that staff was aware of plans to build the Unpermitted Drains prior to construction of said drains and concurred with their construction, which we did not, has no bearing on whether the Commission authorized construction of the Unpermitted Drains.

To support your assertion noted above that staff was aware of installation of the Unpermitted Drains, you outline staff's receipt of plans that depict the Unpermitted Drains and staff's investigation of construction of the Approved BFM Drain, which you mistakenly describe as an investigation of the Unpermitted Drains. In 1995, subsequent to the Commission's approval of the BFM, staff was provided with a copy of the BFM Habitat Mitigation and Monitoring Plan ("HMMP") prepared by PCC's predecessor for the U.S. Army Corps of Engineers, which included plans depicting the Unpermitted Drains. This document was not a requirement of the coastal development permit authorizing the BFM, and therefore, staff was under no obligation to review and approve it. Thus, it cannot be concluded from the mere submittal of the HMMP that staff was aware of its contents. Furthermore, in reviewing compliance with the CDP, the HMMP document would not be central to staff's review since the Commission's approval is embodied in the CDP application and accompanying documents, as well as the CDP and staff report, none of which depict the Unpermitted Drains.

As you note in your letter, in 1996 staff investigated alleged unpermitted grading in the vicinity of the BFM. Commission staff investigated the incident and determined that the grading was undertaken in order to install the Approved BFM Drain. To investigate the report, staff reviewed the CDP application and associated plans, which describe and depict the Approved BFM Drain. Thus, staff confirmed that the Approved BFM Drain and associated grading was approved by the CDP and sent a letter dated July 10, 1996 to that effect to PCC's predecessor. Staff gave no indication in the letter or otherwise that we were aware of the plan to install the Unpermitted Drains. You claim that an April 4, 1996 letter from MTP to staff would have made staff aware of the plan to install the Unpermitted Drains. Although the Approved BFM Drain is described in detail in the April 4 letter, there is no mention in the letter of the Unpermitted Drains, nor are the Unpermitted Drains identified in the attachments to the April 4 letter. In fact, one of the exhibits to the April 4 letter, which delineates the limits of work required for installation of the Approved BFM Drain, does not include in its delineation the areas where the Unpermitted Drains are located. Thus, far from making staff aware of a plan to install the Unpermitted Drains, the letter

would do the opposite and indicate that there were no plans to disturb the area where the Unpermitted Drains were ultimately constructed.

In addition, staff would not have been aware from visiting the site that MTP or Playa Capital planned to install the Unpermitted Drains. At the time staff visited the site, grading had occurred to begin the process of installing the Approved BFM Drain, but neither the Approved BFM Drain nor the Unpermitted Drains had been installed yet, so staff would not have been made aware of their presence in that way either.

Again, regardless of whether the April 4 letter made staff aware of the plan to install the Unpermitted Drains, which was not the case, the Unpermitted Drains were not a component of the CDP application; were not presented in narrative or graphic form, or in any manner to the Commission for review; were not authorized by the Commission pursuant to the CDP in any way; and there is no other Commission action that authorized the Unpermitted Drains. Thus the Unpermitted Drains constitute unpermitted development and a violation of the Coastal Act.

Staff Responses to Section C

You assert in Section C that the Unpermitted Drains have not had any adverse impacts on wetlands. You attach a memorandum from your biological consultant that purportedly supports this claim. However, the memorandum is limited in scope to a comparison of surveys of the vegetative communities around the Unpermitted Drains before and after installation of the Unpermitted Drains. There is no discussion of the effects the Unpermitted Drains might have on wetland hydrology.

Attached to the memorandum is a vegetation survey of the vegetation in the Ballona Wetlands area in 1990, prepared by MTP's biological consultant, and results of a survey of the vegetation in 2006, undertaken by the California Department of Fish and Game. The prior survey shows the vegetation around the Unpermitted Drains to be arguably upland before installation of the Unpermitted Drains, the subsequent survey shows seasonal saltmarsh south of Culver Boulevard and a mix of seasonal saltmarsh and riparian vegetation north of Culver Boulevard. You thus assert that wetland habitat has expanded since installation of the Unpermitted Drains. However, the dominance by wetland vegetation documented in the survey conducted after installation of the Unpermitted Drains is evidence of a trend to dominance by wetland vegetation that began at the time agriculture use of the site ceased in the 1980's, before installation of the Unpermitted Drains.

In a 1991 memorandum, the Department of Fish and Game, which delineated wetlands in the Ballona Wetlands area in 1991, stated "During the evolution of the now certified Playa Vista Land Use Plan, we predicted that, were it not for the then ongoing agricultural operation, wetlands in Area B would expand. These agricultural activities ceased for approximately three years prior to the Corps' wetland determination, and, as we predicted, the wetlands did expand into the area which was formerly used for the production of barley and lima beans." The Unpermitted Drains are located in such a formerly farmed area. The 1990 MTP vegetation survey notes of the area where the Unpermitted Drains are located that "All of this area at some

time has been disturbed, and much of it has been used for agriculture, some within the past 10 years.”

The survey goes on to say that “The elevations of the flats appear to reflect the original elevations and except for the elevated roadways, the areas appear not to have been artificially filled.” Indeed the survey labels the areas where the Unpermitted Drains are located as “old marsh flats.” It is not surprising then, given the history of the site, that the 2006 survey found that wetland vegetation has returned to much of the area around the Unpermitted Drains, despite the limiting effects on hydrology that the Unpermitted Drains have had.

Again your general assertion in Section C is that the Unpermitted Drains have not had any adverse impacts on wetlands. As explained above, the memorandum attached to your letter does not persuasively support this assertion. Moreover, this assertion is both conceptually and factually incorrect. Water is the main requirement for a functional wetland. Any fill or alteration of wetland hydrology reduces a wetland’s ability to function. If water is drained or removed, or isn’t present in the wetland for as long, then wetland function is degraded. Therefore, wetland function is degraded by actions that disrupt water supply through direct fill of a wetland or draining. The Unpermitted Drains disrupt water supply through direct fill and draining of a wetland and habitat within the reserve.

One of the chief components of wetland habitat is wetland vegetation. Thus, removal of wetland plant species, whether through removal or physical preclusion of growth, reduces the habitat value of a wetland. In addition, degradation of wetland function through alteration of hydrology means that the same plants may not grow and habitat value and wildlife use of the wetland are reduced. This has clearly happened in the vicinity of the Unpermitted Drains. It is readily apparent from a review of the vegetation in the vicinity of the Unpermitted Drain located in a wetland south of Culver Boulevard that the drain is precluding growth of wetland plant species. Moreover, since the Unpermitted Drain is designed to drain water from the soil in the wetland around it, as well as ponding water that flows into the drain, this deleterious effect would not be limited to just the immediate vicinity where water pools, but would extend to any area hydrologically connected to the Unpermitted Drain.

You also point out in Section C that the Commission approved limited fill of wetlands through authorization of the BFM project, and thus argue that fill of wetlands for purpose of constructing the Unpermitted Drains is consistent with that approval. Please note that the Commission did not review fill of wetlands for the purpose of constructing the Unpermitted Drains because such structures were never before the Commission for its review. The Commission did review the proposal for the Approved BFM Drain, since this structure was part of the application and proposal for the BFM. The Commission found that limited fill of wetlands for the purpose of constructing the Approved BFM Drain was consistent with the Coastal Act. Coastal Act Section 30233 allows for fill of wetlands through the coastal development permit process in certain circumstances, including for restoration purposes. The Approved BFM Drain is a necessary component of a restoration project, the BFM, approved via the coastal development permit process. However, in contrast, no coastal development permit was applied for nor obtained for the Unpermitted Drains, and the drains do not facilitate the restoration functions of the BFM, nor do they serve any restoration purpose independent of the BFM. In fact, the Unpermitted Drains


detract from wetland and habitat function. Thus the Unpermitted Drains are both unpermitted and could not be found to be consistent with Section 30233 of the Coastal Act.

Resolution

As we have expressed to you throughout our discussions, we would like to work with you to resolve these issues amicably. One option that you may want to consider is agreeing to consent orders. Consent cease and desist and restoration orders would provide you with an opportunity to have more input into the process and timing of removal of the Unpermitted Drains and mitigation of the damages caused by installation and functioning of the Unpermitted Drains, and could potentially allow you to negotiate a penalty amount with Commission staff in order to resolve the violation without any formal legal action. Another advantage to agreeing to a consent order is that it replaces the need for costly and time consuming litigation. Further, in a consent order proceeding, Commission staff will be promoting the agreement between the parties and staff, rather than addressing the violations through a disputed hearing, which could only highlight the violations of the Coastal Act for which the parties are responsible.

If you are interested in discussing the possibility of agreeing to consent orders, please contact me by no later than April 25, 2014 to discuss options to resolve this case. Staff would be happy to meet with you before the date noted above to discuss the steps necessary to resolve the unpermitted development described in this letter and to discuss the necessary scope of that resolution. Our goal is to resolve this situation amicably and as quickly as possible so that all parties can move forward. We greatly appreciate your time and input and look forward to discussing this matter further and working together on a consensual resolution. If you have any questions about this letter or the pending enforcement case, please do not hesitate to contact me as soon as possible at (562) 590-5071.

Sincerely,



Andrew Willis
Enforcement Analyst

cc: Rick Mayfield, Department of Fish and Wildlife
Michael Patonai, City of Los Angeles

Encl: Annotated plan

From:
Sent: Thursday, December 07, 2017 6:14 PM
To: FGC
Subject: Abalone , and other endangered seafood

Good Morning

I should not call it Sea food , however it is .

It is with great sadness to see the closure of the abalone in northern California , I will be honest the last I ate was back in the 1990 and they were farmed , as a French Fine dining room Chef , I did not find much interest in it .

Preserving our heritage regardless of it's nature .

The legislative has made improvement , it is yet still very much better to be a poacher than a drug dealer .

You need to make it harder .

- Seizure of all property and asset in the entire chain

technology has made such jump you now have the capability of tracing just about every one of them .

- poacher , they loose everything , vessel , vehicle , tool , house .

- Dealer same

- Hotel and Restaurant likewise

- let's not forget some real jail time

- Prohibition to be involved in any related business or face added time , this will mean no more hotel , restaurant , Bar , fish or food supply

- Cannot be closer than 30 miles from the Coast line , they will no longer be able to work as look out .

I doubt any commercial Fisherman or even real Amateur will say no.

In case any first responder get hurt , added time and fine .

Money talk . make good use to preserve our future , who better to fund it than the criminal profiting from it .

Best Regards

Joel Rambaud

From: Kerry Kriger <kerry@savethefrogs.com>
Sent: Wednesday, December 20, 2017 2:11 PM
To: Bonham, Chuck@Wildlife; Lehr, Stafford@Wildlife; Laird, John@CNRA; FGC
Subject: You are still allowing the importation of bullfrogs

Dear FGC and DFW staff and executives,

This is a friendly reminder that you are still allowing the importation of millions of bullfrogs into the state and your departments and employees have made zero progress on this issue in the eight years since I became involved. Your current plan of "involving stakeholders" will be unlikely to produce any result for years, if at all.

Please remember that you are responsible for the problem, as your people stamp their approval on the imports, even while you know it contradicts your department's mission and harms the state's wildlife.

To allow the problem to continue even while you have the authority to fix the problem is a failure in your duties.

You have the authority to add American Bullfrogs to the list of prohibited species.

Do it. Let the powers that be fire you if they want to, but don't go to your grave knowing you were afraid to act. That would be a wasted life.

Sincerely,

Dr. Kerry Kriger

SAVE THE FROGS!

Founder, Executive Director, Ecologist

www.savethefrogs.com

www.savethefrogs.com/kerry-kriger

1968 S. Coast Hwy Suite 622

Laguna Beach, CA 92651

Voicemail: 415-878-6525

Email: kerry@savethefrogs.com

From: Chris Occhialini
Sent: Wednesday, December 20, 2017 6:59 PM
To: FGC
Subject: Reintroduction of Bull Trout

Expressing interest and agreement with Jack Trout to reintroduce Bull Trout to the Upper McCloud river.

Chris O.

From: paul novak <activist@water4fish.org>
Sent: Monday, January 15, 2018 12:11 PM
To: FGC
Subject: California's Salmon and Steelhead Crisis

January 15, 2018

California Fish and Game Commissioners
California Department of Fish and Wildlife

Subject: California's Salmon and Steelhead Crisis

Dear California Fish and Game Commissioners,

This letter will notify you that I have signed the California "Water4Fish" petition which calls for a cutback in delta water exports and changes in river flows, temperatures, pollutants and barriers that destroy the ability of salmon and steelhead to survive and flourish. I am joining thousands of the State's 2.4 million fishermen and other supporters calling for this action. Please let me know if I have your support.

Many of the fish runs are now approaching extinction levels because fish protections have been ignored as water projects were implemented. These need to be corrected and we need leadership from our elected officials to bring it about. As one of your constituents I am asking you to please support our cause.

Yours truly,

paul novak

From: waltraud a. Milani
Sent: Thursday, January 18, 2018 9:07 AM
To: FGC; Scott VanValkenburg (PETA Foundation)
Subject: cruel practices in the world don't seem to stop in california !!!

to the government - who should know right from wrong !!!

how about some compassion for animals!

NO HUNTING !!! period !

animals have a right to live !

do you have a right to live ? the same should go for animals !!!

who says we have the right to terminate their lives ? WHO ????

waltraud a. milani

From: waltraud a. Milani
Sent: Wednesday, January 17, 2018 2:52 PM
To: FGC
Subject: no on making it easier to hunt !!!!! it is a crime to kill animals -

why don't we hunt humans!

if animals don't have the right to live -

i would say - humans don't have the right to live either !!!

waltraud a. milani

From: Gregory Allison
Sent: Sunday, January 21, 2018 4:17 PM
To: FGC
Subject: abalone fishery closure and thank you

A few months ago I emailed the DFW with my concerns about the utter destruction of our kelp forest. I had a somewhat naive suggestion for volunteer divers to go smashing urchins to save Gerstle Cove. I have always loved the solace of diving in the cove and seeing a beautiful unblemished kelp forest. I have been an abalone diver for years and appreciate the necessary decision to close the fishery.

My email was forwarded to Cynthia Catton who later gave me a call and invited me to see the hard work that is being done at the Bodega Marine Center. I very much appreciate the time she gave me and to see a glimpse into the efforts that are being done to figure out if there is any sort of intervention we could do. She is great and so are the other scientists who are working there!

I am surprised by how few people seem to understand the massive scale of this problem which seems to be on the same order as the Great Barrier Reef. Part of the problem may be because of how fast these changes have occurred and that they are underwater. If and when there is something that makes scientific sense that recreational divers can do to help, I would think there could be a resource. Perhaps there is a way to channel some of the confused and negative emotions that are probably out there. Thank you for closing the abalone fishery. I know that all the divers I talked with knew that this had to happen. However, they are probably not the ones who show up at meetings. Thank you to Cynthia who is dedicated to understanding the science behind this devastation.

Sincerely,
Greg Allison (abalone diver who loved Gerstle Cove)

From: Marko Mlikotin <marko@savefishing.com>
Sent: Tuesday, January 23, 2018 3:29 PM
To: FGC
Subject: RE: Feb. Fish and Game Commission Hearing
Attachments: 1.17.18WONCADFWrecognizesneedtoimprovefishingOPED.pdf

Thank you for including this in the commission packets.

Marko Mlikotin
marko@savefishing.com (new)



O: 916-936-1777

www.savefishing.com

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Perspective: CA Department Of Fish And Wildlife Finally Recognizes Need To Improve Fishing Participation

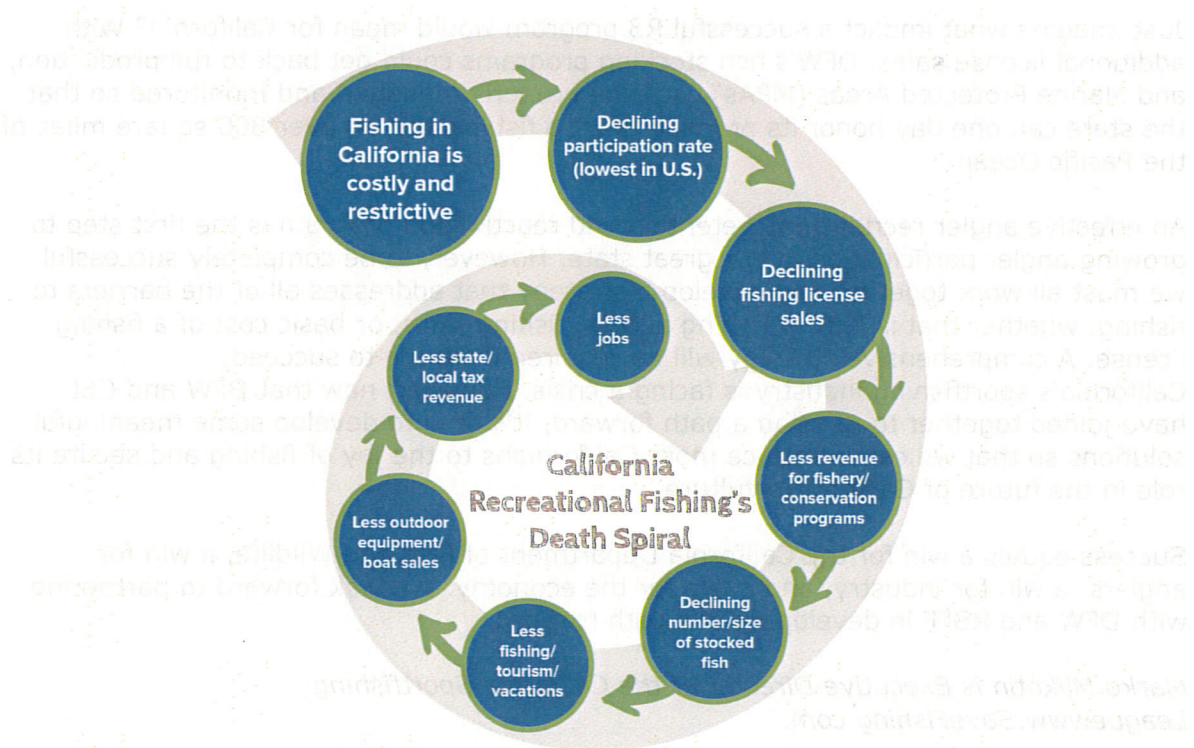
BY MARKO MLIKOTIN/CALIFORNIA SPORTFISHING LEAGUE
Published: Jan 17, 2018

It's no secret that California's fishing participation rate and licenses sales are in a desperate state. Fortunately, the California Department of Fish and Wildlife (DFW) recognizes that inaction does not serve the interests of recreational anglers, nor the department. This recognition could not be more timely.

In September of 2017, a new report by the U.S. Fish and Wildlife Service showed that 101.6 million Americans — or 40 percent of the U.S. population (16 years old and older) participated in wildlife-related activities, such as hunting, fishing and wildlife-watching. This national report, which comes out every five years, revealed an 8 percent increase in angler participation from 2011-16, and a 2 percent increase of expenditures made by anglers from \$45 billion to \$46.1 billion. Sadly, the number of anglers and their economic contribution would have been significantly greater if California's declining participation rate would simply stop its slide.

Hunting and fishing license sales have been declining in California for decades and only now has its impact on funding for the DFW become most evident. In 2017, the California Fish and Game Preservation Fund, funded by hunting and fishing licenses, experienced a \$20 million deficit. Absent an influx of new revenue, future deficits are projected for years to come.

Needless to say, when California has one of the costliest fishing licenses in the U.S., combined with increasing limitations on when and where one can fish, it comes as no surprise that California's fishing participation rate ranks dead-last in the U.S. (per capita). Consequently, annual license sales have declined over 55 percent since 1980, a time when annual licenses cost a mere \$5 a year. All this has contributed to what is often referred to as a "death-spiral."



It does not have to be this way and we are pleased that the DFW recognizes the need to take action. DFW has reached out to both the Recreational Boating and Fishing Foundation (RBFF, www.takemefishing.org) and the California Sportfishing League (CSL) for assistance in developing a strategy that could increase fishing participation rates and license sales by identifying barriers to fishing. Funded by a federal excise tax on fishing tackle and boat fuel, RBFF is charged by federal law to invest these funds in programs that stimulate fishing and boating activities throughout the country — and their expertise is coming to California.

The need for reform takes on added importance when one considers that California remains one of the largest consumer markets for fishing tackle and outdoor equipment in the U.S. There are more anglers in a handful of California counties than several states combined. This is why tens of thousands of Californians who depend on outdoor tourism, retailers and manufacturers for jobs should applaud DFW's recognition that a new approach is needed to protect recreational fishing and outdoor tourism.

To date, RBFF has enjoyed considerable success by working with State fish and wildlife agencies implementing programs throughout the country that aim to Recruit new anglers, Retain existing ones and Reactivate anglers who allowed their licenses to lapse (known as "R3" programs). Many states have found success in having an R3 coordinator for their agency as part of their planning and program implementation process. For example, utilizing RBFF's Angler Reactivation Toolkit, Georgia DNR successfully brought back nearly 10,000 lapsed anglers generating more than \$170,000 in revenue for the agency. New York DEC had similar results with their retention/reactivation campaign generating an additional \$220,000 in revenue.

Just imagine what impact a successful R3 program would mean for California? With additional license sales, DFW's fish stocking programs could get back to full production, and Marine Protected Areas (MPAs) could be properly managed and monitored so that the state can one day honor its promise to lift a fishing ban on over 800 square miles of the Pacific Ocean.

An effective angler recruitment, retention and reactivation program is the first step to growing angler participation in our great state. However, to be completely successful we must all work together and develop a strategy that addresses all of the barriers to fishing, whether that is lack of fishing access, fishing skills, or basic cost of a fishing license. A comprehensive strategy will be required if we are to succeed.

California's sportfishing industry is facing a crisis. However, now that DFW and CSL have joined together to develop a path forward, it's time to develop some meaningful solutions so that we can introduce more Californians to the joy of fishing and secure its role in the future of California's culture.

Success equals a win for the California Department of Fish and Wildlife, a win for anglers, a win for industry, and a win for the economy. We look forward to partnering with DFW and RBFF in developing this path forward.

Marko Mlikotin is Executive Director of the California Sportfishing League www.SaveFishing.com.

From: Pea Ce <pea-ce@live.com>
Sent: Thursday, January 25, 2018 4:18 PM
To: FGC
Cc:
Subject: Stop Illegal BAITING via "Food Plots"
Attachments: 1-25-18-FGC-No or regulated food plots.pdf

To: FGC

Attached is information on concerns that the FGC should address before more harm is done to diminishing deer herds and other wildlife.

Please reply to confirm receipt. Thanks,

Randall

for the PEACE Team



P E A C E
PROTECTING EARTH & ANIMALS WITH COMPASSION & EDUCATION

P.O. Box 846 • Newcastle, CA 95658 • pea-ce@live.com

January 25, 2018

California Fish and Game Commission
P.O. Box 944209
Sacramento, CA 94244-2090
Ladies and Gentlemen:

RE: STOP "Illegal Baiting" in form of "Food Plots"

A loophole is being increasingly created that bypasses the ban on baiting wildlife (deer or their predators) by creating food plots to attract deer herds and then killing the best as they come through, or the predators that may follow them.

Although reasons stated for creating food plots to "help deer populations" is well intended, the fact is that food plots have become illegal baiting arenas to slaughter deer for sport and trophy. Trophy hunters already negatively impact and diminish the best of the genetic pool by killing the healthiest and strongest. Yet CDFW (and by its silence, the CA FGC) condones this scam that avoids prosecution. CDFW has created its own food plots which it tries (unsuccessfully) to not disclose.

Landscape surrounding a food plot is usually cleared (akin to a logging clear cut) so that there is no brush for deer or other animals (predators, for example) to hide or escape. Thus, food plots make them even more vulnerable than a bait station under a tree stand. Deer can be spotted from greater distances and with high-powered firearms, they can be easily picked off. This is neither ethical hunting nor fair chase.

Any organization that creates a food plot in California, as well as CDFW, should have to make that area and its surroundings within a three-mile radius totally off limits. All food plots should have to be registered with the CDFW, their locations kept undisclosed, legal NO Trespassing and NO hunting signs posted, and fencing should be required in all or most-likely-poaching areas. Such fencing should low enough for deer to jump over.

A second loophole occurs when the food plot is stated to be an "agricultural operation." If that is the case, then documented proof must be provided or poaching charges must be filed. Any agricultural operation will have receipts from seed purchases, planting and harvest records, and sales of the crops, which can be confirmed. Otherwise, scam agricultural operations become convenient bogus "fronts" for baiting operations that may allow hunting (for a fee) and reap even more profits from SHARE programs.

Food plots need to be treated the same as a non-hunting refuge area. A rule or regulation must be introduced to prove that the true intention of food plots, to assist deer survival, can be enforced. All hunting and other activities within a three-mile radius of the food plot must be banned. Until then, based on easily found food plots, with no signage to the contrary, they are simply opportunistic deer killing grounds.

We strongly urge the FGC to address this most appalling loophole that severely impacts already declining deer populations.

Randall Cleveland
For the PEACE Team