

## Summary of Comments and General Responses to the Title 14, Section 650 and 703, CCR Rulemaking

General Response to the public comments on the proposed Section 650, 703 regulations were concentrated on these six topics:

1. *Invertebrate permitting*
2. *Proposed permit structure – General and Specific Use permits*
3. *Fees and cost recovery*
4. *Notification of intent to conduct field activities*
5. *Size of List of Authorized Individuals; Amendments to add additional Authorized Individuals*
6. *Request for extension on comment period*

### General Comment 1 – Invertebrate Permitting

**Comment letters:** 3, 12, 13, 16, 18, 19, 20, 22, 24, 25, 26, 27, 30, 33, 34, 37, 38, 39, 40, 41, 42, 43, 44, 45, 48, 49, 50, 51, 52, 53, 56, 69, 60, 64, 65, 68, 69, 73, 75, 84, 88

#### Summary of comments:

**1.1 Invertebrate taxonomic scope for permitting; logic relative to other wildlife.** Terrestrial invertebrates and insects should not be considered as “wildlife” under the proposed regulations. These groups should not be treated the same as vertebrates, because invertebrates are typically highly abundant (even ubiquitous) in the environment, with short lifespans, yet rapid life cycles. Terrestrial invertebrates and insects should be treated the same way as the California Department of Fish and Wildlife (CDFW) treats non-threatened plants, which also are broadly distributed in large populations, and not require a permit for their collection. Furthermore, the regulatory proposal to require a SCP for take of terrestrial invertebrates is not logical when considering that recreational take of amphibians, or other vertebrates can occur without any detailed application within designated limits under a sportfish license. Collection of terrestrial arthropods and other invertebrates such as nematodes, centipedes, millipedes, arachnids and freshwater arthropods should not require a SCP unless they fall under a special status or protected category, including threatened, endangered, species of special concern, at-risk, rare, imperiled, or for collection of such taxa and federal and state parklands, or for collections in sensitive habitats or natural communities. Other commenters requested exemption from permitting on private property as well.

**Response:** The CDFW currently requires SCPs under the existing Title 14, California Code of Regulations (CCR), Section 650(a) [operative 7-18-1996], for scientific, educational, and propagation purposes involving all animals and marine plants in California, even the common species of fish, birds, mammals, herpetofauna, and terrestrial, aquatic (e.g., freshwater streams) and marine invertebrates. Additionally Fish and Game Code (FGC) Section 1802 states: “The CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species”. As explained under **General Response 1.2**, these taxonomic groups all fall under “wildlife” in accordance with other statutes and regulations.

Invertebrates are only beginning to get the recognition they deserve for their role in the ecosystems within California, and the alarming loss of native pollinators as well as increasing invasive invertebrates are recognized problems. A large proportion of the species and populations that have become extinct worldwide in the past century, including in California, are insects and other invertebrates. There are many examples of species with very limited ranges in California, including invertebrates that are limited to a particular group of unique habitat elements such as vernal pools, desert/ocean dunes or spring systems (SWAP, 2015). With the above considerations, and given recent statute to conserve monarch butterflies (FGC Section 1021), a focus on host specific native pollinators and pollinators for food crops for humans (e.g., Governor Brown's proclamations for California Pollinator Week), and the 2014 Presidential Memorandum "*Creating a federal strategy to promote the health of honey bees and other pollinators*," the CDFW has decided to focus attention on certain invertebrate species and populations and research activities, while responding to public comment from our research, citizen scientist and education stakeholder/partnership base. The proposed exemption for most terrestrial invertebrates articulated under subsection 650(u)(5) of the Amended Statement of Reasons (ISOR), addresses the CDFW's narrowed focus, and acknowledges the majority of commenters on this issue who acknowledged that research on certain invertebrates and insects does warrant regulation through a permitting process.

The CDFW drafted a prioritized list of 303 species or genera of terrestrial and vernal pool invertebrates, called the "California Terrestrial and Vernal Pool Invertebrates of Conservation Priority" list (dated June 12, 2017), and is incorporated by reference into the amended Title 14, Section 650 regulations. This list was developed in consultation of several sources, including the CDFW's the 2015 California State Wildlife Action Plan (SWAP), by which technical teams developed scientifically rigorous criteria and evaluated species, resulting in a revised Species of Greatest Conservation Need (SGCN) list of 264 invertebrates with representatives from a variety of invertebrate taxonomic groups in a variety habitats. Most invertebrates on the SGCN list are found in terrestrial and ephemeral pool habitats during at least one life stage, and these taxa are either considered "S1" (Critically Imperiled), and "S2" (Imperiled) under the NatureServe State Conservation Rank, including more than 30 taxa listed as threatened or endangered under state and/or federal laws. Other invertebrate taxa of concern are covered on the CDFW's Special Animals List, including those with NatureServe State Conservation Ranks managed by California Natural Diversity Database (CNDDDB) staff. The CNDDDB determines the State Ranks used by NatureServe, although the CNDDDB may review conservation assessments done by others (Xerces Society, IUCN, NatureServe). There may be additional invertebrate species that are not currently listed on the "California Terrestrial and Vernal Pool Invertebrates of Conservation Priority" list, or even on the Special Animals List, due to lack of information, and with new research findings, may qualify for special concern status in the future.

Research activities may also be located in a special status natural community or in an area that provides habitat for a non-target special status plant or animal. In response to many comments from the public, the CDFW considered under the amended definition of subsection 650(b)(26) that terrestrial and vernal pool invertebrates includes sampling of vernal pool natural communities and ephemeral water habitats that support vernal pool invertebrates (usually where finfish are absent). Thus the CDFW continues to require SCPs for the vernal pool special status natural community. State and federal parklands, as well as private property, were not exempted due to the challenge in managing and enforcing take on certain lands. This decision

is consistent with the Fish and Game Code authority for SCPs to be issued on all lands in California, which states, “The department may issue permits, subject to restrictions and regulations that the department determines are desirable, to take or possess, in any part of the state, for scientific, educational, or propagation purposes, mammals, birds and the nests and eggs thereof, fish, amphibians, reptiles, or any other form of plant or animal life (FGC subsection 1002(a)).” The CDFW’s Law Enforcement Division officers have jurisdiction to enforce Fish and Game Code and regulations (as well as other statutes and regulations) throughout the state. Other State and federal entities may require permission to take wildlife under their respective authorities, such as via a California Department of Parks and Recreation or National Parks Service research permit. However, receiving permission from those entities does not preclude the need for a CDFW-issued SCP, nor would the CDFW’s permitting program conflict with other entities managing the take of wildlife under their respective authorities.

One of our roles in permitting is to help applicants learn of the presence of sensitive and listed species they may not have even considered when planning their research, and inform them about incidental take (by-catch) concerns with their methods, and the spreading of diseases with their field equipment between sites. By continuing to issue SCPs for the taxa on the “California Terrestrial and Vernal Pool Invertebrates of Conservation Priority” list, the CDFW is able to protect invertebrates of conservation priority (and other species), while receiving data and applying new scientific information. Through the permitting process, the CDFW can protect invertebrates of conservation priority by carefully monitoring sacrifice by people lacking expertise to distinguish sensitive or locally endemic subspecies, or condition permit holders to use special precautions when working in their essential habitats and geographic ranges. The permitting process may restrict use of indiscriminant field methods to reduce incidental take (by-catch) of non-target wildlife to prevent incidental mortality of other sensitive invertebrates, or sensitive non-target vertebrates (e.g., state- and federally-listed California tiger salamander, if working in vernal pools). It also helps monitor numbers of individuals taken per species per location to only the number of individuals of appropriate life stages essential for the scientific studies that will be undertaken, and the CDFW manages, in consideration of drought impacts, take by other researchers, threats to the population, and cumulative impacts facing the invertebrate taxa in question. Cumulative take by researchers may not result in significant impacts to many invertebrates or other common animal taxa with abundant population sizes, but is an important consideration for invertebrates of conservation priority, or other species of concern. The reporting information required by SCPs, including the submittal of data to the CNDDDB, will contribute towards the protection and management of California’s ecosystems and natural communities. Research efforts can help guide conservation priorities for invertebrates and their habitats, scientifically inform regulations, monitor cumulative take, encourage preventative measures (e.g., decontamination protocols for invasive species), and protect vulnerable species before they decline to a level where recovery is impossible. Dialogue and information exchange during the permitting process also helps build partnerships with the stakeholder group, and helps the CDFW to become a better steward of fish and wildlife resources.

A couple of commenters requested that aquatic arthropods and insects be excluded from requiring a SCP. The CDFW considered several reasons to continue to permit the take of such invertebrates. Freshwater invertebrates are indicators of water quality and environmental impacts, and are sensitive to changes in fish populations, and species assemblage. Programs

such as the State Water Resources Control Board's joint program with the CDFW, and several other research collectives (the Surface Water Ambient Monitoring Program, or "SWAMP") pairs benthic macroinvertebrate (BMI) data with habitat indicators to measure the effects of different stressors from point discharge sources in fluctuating conditions over long periods of time, providing a holistic measure of aggregate effect on aquatic biota. Also, freshwater invertebrate surveys can result in take of fish or amphibians as incidental take (by-catch) to collection methods. This type of sampling has previously been, and is currently permitted through an SCP. Past correspondence with applicants/researchers indicates that many individuals participating in and conducting invertebrate research are unaware that the incidental take (by-catch) of fish, amphibians, or other species otherwise not identified in permit applications still constitutes take, and should be permitted accordingly.

The continued regulated take of the terrestrial and vernal pool invertebrates identified on the "California Terrestrial and Vernal Pool Invertebrates of Conservation Priority" list (dated June 12, 2017), is facilitated by the ability to incorporate this list by reference in the new regulations. The CDFW plans to update this list every **two** years, with the caveat of reminder applicants and permit holders of current versions of those lists over the course of their permit term. As has been the practice for many years, the CDFW provides updated special status taxa lists on our public web pages, and would do the same for the updated prioritized list.

### **1.2 CDFW's authority to permit take of terrestrial invertebrates; bureaucratic overreach.**

Terrestrial invertebrates are not included under the current Title 14, Section 650 [operative 7-18-1996], therefore the proposed regulations represent a new inclusion of terrestrial invertebrates and insects for permitting. Only vertebrates have always been included under Section 650. The CDFW doesn't have the resources to provide meaningful oversight over insects and arthropods. The regulatory proposal is seen by some to be a form of bureaucratic overreach to now formally require SCPs for the collection of common terrestrial invertebrates and insects that can otherwise be taken lawfully by other means, and without a permit (e.g., windshield strikes, home and commercial pest control, development projects and habitat destruction, and other actions). As proposed or already practiced, California is the only state in the US that would require permits for invertebrates.

**Response:** Given the role the CDFW is tasked with to administer and enforce the California FGC as the State's trustee for fish and wildlife resources, it is worth highlighting some sections of state law that underpin the current regulatory effort. FGC Section 1802 states: "The department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species". FGC Section 2000 prohibits take of a bird, mammal, fish, reptile, or amphibian except as allowed in state law. The Legislature in FGC Section 45 defined a fish to be "...a wild fish, mollusk, crustacean, invertebrate, amphibian, or part, spawn, or ovum of any of those animals." Therefore, wherever the FGC or related regulation mentions fish, that mention includes invertebrates. Title 14, CCR, subsection 650(a) currently states: "General. Except as otherwise provided, it is unlawful to take or possess marine plants, live or dead birds, mammals, fishes, amphibians, or reptiles for scientific, educational, or propagation purposes except as authorized by a permit issued by the department. Notwithstanding FGC Section 86, take includes capturing, marking, and releasing any animal." The Legislature defined take as, "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill" (FGC Section

86). Because invertebrates are defined as fish, the above reference to “fish” in both FGC and CCR includes invertebrates. In addition, Title 14, CCR subsection 650(b) mentions “wildlife,” which according to FGC Section 89.5 means and includes “...all wild animals, birds, plants, fish, amphibians, reptiles, and related ecological communities, including the habitat upon which the wildlife depends for its continued viability.” Under state law, therefore, the public is not allowed to catch, capture, or kill any invertebrate, unless otherwise authorized. The Legislature chose to authorize the take and possession of mammals, birds, fish, amphibians, reptiles, or any other form of plant or animal life through the CDFW’s issuance of SCPs when such take is for purposes of science, education, or propagation (FGC Section 1002).

It is within this regulatory framework that the CDFW has administered the SCP program for the past few decades. Many entomologists, citizen scientists and hobbyists may have been unaware of the laws and regulations for take of invertebrates. With the laws and regulations noted above, and how the words such as “animal,” “wildlife,” and “fish” are defined and related, the CDFW continues to maintain the authority to issue SCPs for invertebrates, as has been longstanding practice. The Amended ISOR reflects a focus on the prioritized list of 303 species or genera under the “California Terrestrial and Vernal Pool Invertebrates of Conservation Priority” list, and therefore exempts most other terrestrial invertebrates from requiring a SCP. As discussed above in **General Response 1.1**, this decision demonstrates the CDFW’s commitment to natural resources by prioritizing and focusing permitting efforts to track those species and natural communities of greatest concern. The CDFW acknowledges that other take activities can occur lawfully (e.g., Accidental Taking by Collision with Motor Vehicle; FGC Section 2000.5), or whose take falls under other statutory authorities, and possibly regulated by other state agencies.

California is not the only state that has issued, or currently issues, permits for the take or collection of invertebrates for research purposes. Hawaii Division of Forestry and Wildlife issues permits for all native and threatened and endangered invertebrates. Missouri’s Conservation Department issues permits for mollusks, crayfish, and other aquatic freshwater invertebrates and terrestrial invertebrates (the latter two only if Species of Conservation Concern or on Conservation Department lands). Oregon Department of Fish and Wildlife issues permits for shellfish and marine invertebrates, and freshwater invertebrates when fish may be incidentally captured, while Washington Department of Fish and Wildlife issues permits for all invertebrates, including terrestrial invertebrates (however transitory handling only for identification purposes does not require a permit). Nevada Department of Wildlife issues permits for terrestrial invertebrates (excluding insects), mollusks and crustaceans, while Virginia issues permits for aquatic crustaceans, aquatic insects, aquatic mollusks, crayfish, freshwater mussels, macroinvertebrate water quality sampling, other aquatic invertebrates. Other states may implement other criteria for the take of invertebrates for research purposes.

### **1.3 Aspects of invertebrate and insect collection incompatible with proposed regulations.**

The proposed regulations with respect to the terrestrial invertebrate and insect research community does not meet the need for flexibility that many invertebrate and insect sampling and identification methods demand. Sampling methodology is often opportunistic and random, while capture methods used by entomologists and other persons targeting insects and other invertebrates are often indiscriminant or passive (e.g., vacuum sampling, malaise and flight intercept traps, pan traps, sticky traps, attractants, light collecting methods, etc.) where specific

species, or even entire taxa taken at the time of collection, nor the quantities of such taxa, are predictable beforehand, and may be unknown at the time of collection. Research involving species discovery requires flexibility to be able to collect outside specific dates and locations, where universal allowance often granted by courses in entomology would now be a violation. Further, species or taxonomic expertise in identification is shared amongst the invertebrate and entomological community, where specimens may be shipped around the world for identification, several years down the road. Thus the proposed requirement to accession specimens to a collection within three months is infeasible. Lastly, reporting timeframes specified in the proposed regulation would not work for terrestrial invertebrates and insects, for similar reasons in that identification down to the species level may not occur for several years, a decade, or even longer. Reporting requirements for invertebrates should not be the same for identification down to species level as it is for vertebrates.

**Response:** The rulemaking reasonably balances the needs of researchers with the CDFW's public trust duties. The CDFW acknowledges that there are limited people with the expertise to identify certain invertebrate families, genera and species, and that identification down to the species level, even if not discovering and classifying new species, can take years, or even decades. Predicting the invertebrate species and numbers that may be potentially captured is extremely difficult, especially given there is a great deal of unknown information about invertebrates. With the final amended regulations that exempt most terrestrial invertebrates, the General Use permit accommodates for incidental take (by-catch) or other take of certain special status terrestrial and vernal pool invertebrates during field activities that are otherwise exempt from needing a SCP, pursuant to subsection 650(u)(5) (take, even if for scientific, education and propagation purposes, of those terrestrial invertebrates that are not listed on the "California Terrestrial and Vernal Pool Invertebrates of Conservation Priority" list, dated June 12, 2017). Increased flexibility for donation or accessioning to a museum collection has been expanded from three months to 12 months, or as soon as reasonably possible.

In following the General Use permit, which covers incidental take (by-catch) of prioritized invertebrates, targeted take of the prioritized terrestrial and vernal pool invertebrates would be requested via the Specific Use application (form DFW 1379S), where more detailed information would be required. The Specific Use applications include clarifiers for terrestrial invertebrate research, such as an educated approximation on proposed collection locations, what methods/equipment will be used, and an estimate of how many individuals per location/species would be collected. For all invertebrates, because of the challenges unique to invertebrate research, applicants may request broader taxonomic groups (e.g., Family, Order) based on the flexibility given in the application when implemented online (by selecting the most refined levels of taxonomic groups) when all species that may be present on a site or study area are not yet known.

Comments regarding practicality and reasonableness of requiring reporting for every specimen immediately upon capture has long been heard from many stakeholders over the years, including permit holders working with freshwater aquatic invertebrates and marine invertebrates. In many cases, researchers should be able to submit reports for readily identifiable invertebrate taxa within the timeframes described in the proposed regulations. It is expected that those collecting invertebrates report what was taken down to the lowest level(s) of taxonomic group(s) possible. Certain flexibilities and allowances have been made for

invertebrate reporting, such as the ability to report take inland aquatic invertebrates (Authorization F1, form DFW 1379GF) for benthic macroinvertebrate work following established protocols endorsed by the CDFW via other state databases. Another flexibility is for reporting under Authorization W1 (form DFW 1379 GW) of incidental take (by-catch) or other take of those terrestrial and vernal pool invertebrates listed on the California Terrestrial and Vernal Pool Invertebrates of Conservation Priority list, even during the course of field activities that are otherwise exempt from needing a permit (pursuant to subsection 650(u)(5)), that reporting of such incidental take (by-catch) was extended from a three month period in the Original Proposed Initial Statement of Reasons (ISOR) package, to a 12-month period (or “as soon as reasonably possible”) with the Second Amended ISOR.

#### **1.4 Insect collection draws a wide audience; permit fees would be burdensome.**

Entomology draws interest from a broad audience, from amateurs to researchers, so these constituent groups could be negatively affected by the proposed regulations. Students are often introduced to the natural world by way of entomology and studying invertebrate and insect diversity, allowing for a hands-on “pre-cursor” to the biological world. Requiring each student in a college entomology class to obtain a permit to conduct required collections as part of class assignments would be burdensome for the time, cost, and effort in obtaining such permits. Similarly, citizen scientists, naturalists and hobbyists partake in the collection of insects, actions which under the proposed regulations would be a violation if conducted without a SCP. The research and education programs involving these constituent groups are often funded by public or research funds, funds which already stand to decline under the current federal administration.

**Response:** The CDFW supports advancing the conservation and scientific knowledge about invertebrates and the ecosystems they are a part of, in addition to the education of children, students and the general public about invertebrates. These activities may include collecting insects to learn about biodiversity, or other types of amateur hobbyist activities involving the collecting of a few insects. Teaching students about ecology and the local plant and invertebrate community could be accomplished without requiring the non-lethal take or sacrifice of voucher specimens, and could be complimented by field trips to places such as natural history museums to view the entomology collections, without the need for an SCP. Members of the public may take pictures of all invertebrates they passively encounter and try to identify them with field guides or simplified keys you may develop for the local insects. Having pictures of invertebrates in the class or educational materials with pictures and biological facts for butterflies, beetles, bees, and other such taxonomic groupings will introduce them to taxonomy and identification skills needed by biologists.

As explained in **General Response 1.2**, the CDFW administers SCPs under the regulatory framework is established by the CDFW, under authority granted by the Legislature. In years past, if researchers inquired with the CDFW as to the need for an SCP to take freshwater, marine or terrestrial invertebrates and/or insects for scientific, education, and propagation purposes, the CDFW’s response has been yes, a SCP would be required for their take. However, the CDFW is not aware of any instance in which it proactively sought to inform such researchers of the legal framework or to proactively seek enforcement of the Fish and Game Code against a researcher.

As explained in the Amended ISOR and detailed in the SCP Fiscal Analysis (revised June 2017), administration of the current SCP program has been a fiscal challenge, and the limited

resources are not unique to this one CDFW program, or even among the state. The legislature recognized in statute, that “the department continues to face serious funding instability due to revenue declines from traditional use fees and taxes and the addition of new and expanded program responsibilities” (FGC Section 710.7). See also **General Response 3** regarding fees and cost recovery.

In light of the fiscal constraints under which the CDFW operates, it must prioritize its administration and enforcement of state law. In setting priorities, the CDFW’s role as the state’s trustee for fish and wildlife resources and its exercise of professional judgment are significant considerations. Students (as defined under subsection 650(g)(8) of the proposed regulations) undertaking research studies as part of their educational curriculum are currently required, and have been required for several decades, to apply for a SCP to conduct their take activities, a (see also **General Response 3** regarding fees and cost recovery). For a K-12 teacher whose curriculum involves take of those 303 species or genera identified on the prioritized list, permit requirements would apply, under the General and Specific Use permit levels discussed in the Amended ISOR, and in **General Response 1.3**. It could be reasonable for a school, or school district, to apply under the Entity permit holder type, which spreads the cost among a Principal Investigator (PI) (perhaps a teacher with a science background), and many Authorized Individuals (perhaps other teachers), and allows for collaborative efforts to help reduce the burden of the proposed fees. On the other hand, a child or hobbyist collecting a few common insects without any measurable effect on the ecosystem or species’ population in order to experience the natural world is not a regulatory or enforcement priority for the CDFW. Other similar situations where a CDFW response could be expected are also not a priority. Yet, the priority can shift depending on the circumstances. There could be an individual actively collecting an invasive species who without proper containment or sterilization of equipment either intentionally or unwittingly causes the spread of that organism to the detriment of ecosystems. The CDFW’s effective use of limited resources and best professional judgment will continue to dictate its priorities, and that will not change with implementation of the proposed SCP regulations. As explained in **General Response 1.3**, with the final amended regulations, targeted take of prioritized terrestrial and vernal pool invertebrates would come under a permit requirement (Specific Use), and incidental take (by-catch) of these prioritized species during activities that are otherwise exempt from needing a SCP under subsection 650(u)(5) would be permitted under a General Use permit.

**1.5 Requiring permits discourages research; existing data repositories negate the proposed reporting database.** Permitting the take of terrestrial invertebrates has the potential to stifle research, and impede scientific discovery of California’s terrestrial insect and arthropod diversity because of the proposed onerous permitting and reporting requirements. For example, entomologists tend to avoid research activities in national parks because the permitting requirements are onerous, so there is concern that with the proposed regulations, researchers or others can be turned off to conduct such research to avoid permitting. Furthermore, the focus of such research may serve a single taxa within the broader terrestrial invertebrate community, where such data is already collected and reported to specific databases (e.g., Lepidoptera of North American Network, or “LepNet,” CalBug, Antweb, Global Biodiversity Facility (gbif.org), and other museum or citizen science resources, etc.). Such aggregations of data suggest that the CDFW’s proposed or other centralized reporting database to report take of terrestrial invertebrates may be redundant, or of little benefit, where data reported to the CDFW’s



database may be piecemeal or scattered, depending on the narrowed scope of taxa that permit holders choose to study.

**Response:** The purpose of the proposed program is to streamline the SCP process and balance the needs of the regulated community with the overarching public trust and fiscal responsibilities of the CDFW. As addressed under General Response 1.1, the CDFW's focus on terrestrial and vernal pool invertebrates as demonstrated with the Amended ISOR would relieve reporting for all other invertebrates that are exempt from SCP permitting, as well as notification and chain of custody requirements. However, for those 303 species or genera identified on the prioritized list, permit requirements would apply, under the General and Specific Use permit levels discussed in the Amended ISOR and in **General Response 1.3**. In general, the proposed reporting requirements under subsection 650(p) may represent a different end goal than what many of the databases cited by commenters are geared towards. The CDFW is developing its own SCP reporting database to meet data requirement needs that address pressing questions for state-mandated management or habitat prioritization (e.g., how much take occurs in a given area for a given species, or set of species; how many permit holders are working the same area, what species have been identified in a given area for consideration of land use changes, etc.), and has goals consistent with later spatial mapping goals for positive observation records that fall in line with other CDFW priorities (e.g., CNDDDB mapping).

The reporting requirements to the SCP reporting database, as well as to the CNDDDB of the narrowed terrestrial and vernal pool invertebrate taxa on the prioritized list will assist the CDFW build a more focused database with the prioritized take and occurrence data, which too would be available to the public. The utility of data for this focused group of terrestrial and vernal pool invertebrates should be greater because of the concentration on much fewer invertebrate species than was proposed with the Original Proposed ISOR package. In focusing the database, the goals addressed by commenters to help expand knowledge, and to inform management considerations will be better met.

## **General Response 2 – Proposed permit structure - General and Specific Use permits**

Comment letters: 2, 5, 9, 11, 14, 28, 29, 32, 46, 47, 54, 55, 57, 58, 62, 63, 68, 71, 75, 82, 84, 83, 85, 87, 89

### **Summary of comments:**

**2.1 Both a General Use and Specific Use permit seem to be required, and the Specific Use seems to cover take of CESA-listed species.** Commenters have expressed understanding that a General Use permit would be required to work with non-sensitive or common species using standardized or generally non-invasive methods, while a Specific Use permit would be required to work with more sensitive species (e.g., those listed on the CDFW's Special Animals List), using more invasive methods not otherwise authorized by the General Use. Several commenters expressed concern that both permit use levels would be required in order to complete the work under their purview, depending on the species and methods that may be requested for take. The Specific Use permit should cover the pre-determined, non-special status species and non-invasive methods and procedures that are granted under the Authorizations of the General Use permit. Many commenters also assumed a Specific Use

permit cover take of State listed species (Candidate, Threatened or Endangered under the California Endangered Species Act (CESA)).

**Response:** Depending on the nature of activities seeking take authorization, both a General and Specific Use permit may not be necessary. As discussed under the justification for subsection 650(i) of the Amended ISOR (pages 22-25), while a majority of the species and/or taxonomic groups may be able to be surveyed for under the General Use permit without specifying target species, capture and release numbers, and specific locations, there may be “Prohibited Wildlife” species that may direct the applicant to needing a Specific Use permit. As stated on page 9 of the SCP Fiscal Analysis (revised June 2017), a Specific Use permit may include the take activities covered under the Authorizations included for the General Use (by separate review program – Inland Fisheries (form DFW 1379GF), Marine (form DFW 1379GM) and Terrestrial Wildlife (form DFW 1379GW), but may also include activities not covered under a General Use permit that require greater levels of review or scrutiny by the CDFW (e.g., sensitive species and numbers, capture methods, more invasive procedures, sensitive locations, etc.). If activities covered under the General Use Authorizations are requested and justified within the scope of an individual study or planned undertaking under the Specific Use permit, then such activities and/or Authorizations may be approved and included with the Specific Use permit.

As discussed on pages 2 and 3 of the Original Proposed ISOR, the SCP covers the take and/or possession of all species that are not listed as Candidate, Threatened, or Endangered under the CESA pursuant to FGC Section 2080 *et. seq.* and that are not Fully Protected pursuant to FGC sections 3511, 4700, 5050 and 5515, and Title 14, Section 670.7, CCR. CESA-listed species may be taken for scientific, education, or management purposes pursuant to FGC subsection 2081(a) via a permit or memorandum of understanding (MOU) issued by the CDFW. Fully Protected species may be taken via a permit or MOU issued by the CDFW, but only for the purposes of necessary scientific research, and including recovery of said Fully Protected species, or recovery of other CESA listed species. SCPs are the correct permitting mechanism for take of other non-CESA listed special status species, such as Species of Special Concern, or federal listed species (when not also listed under CESA).

**2.2 The Specific Use permit appears to be most suited to specific study plans, and may not work for environmental consultants.** As the second most common permit holder group, environmental consultants were the most vocal on this topic, commenting that the Specific Use application appears to be more suited as a specific study plan for university programs based on grants, or for NGOs, restoration or conservation groups, educational organizations, etc., rather than for consultants who work on multiple projects for multiple clients, involving ever-changing field work of short or long durations. Consultant commenters state that they themselves do not generate work requiring environmental compliance, but instead implement projects or work involving take and/or possession of wildlife to meet environmental compliance requirements mandated by state agencies (e.g., mitigation, avoidance, preventative, or other measures), often times for public clients (e.g., water districts, municipalities, parks districts, infrastructure agencies, and even regulatory agencies themselves), as well as for the private sector. The CDFW should already be cognizant of the tendency to create a “catch-22” situation where clients are looking for CDFW-approved biologists (via the SCP or other mechanism) to award contracts, when the CDFW seeks the details about field work/ take activities in order to approve the SCP. Further, environmental consultants are substantial contributors of reporting

information on sensitive species occurrences to the CDFW's CNDDDB, and via reporting required by the SCP.

Commenters hold the impression that a separate Specific Use permit, or a separate Specific Amendment, would be required for each new contract or project that an environmental consultant might bid on. The review of such applications could take 100 days or more for surveys restricted to narrow sampling windows in some cases, and which could lead to delays in meeting timeframes to meet clients' needs, to meet California Environmental Quality Act (CEQA) review, or for other reviews mandated by the State's Permit Streamlining Act (PSA). Consultants are often unable to predict the work to be involved, even the species, locations, or timing, as such information often depends on contracts or work that pops up in order to meet clients' needs. Amendments to a study or project area, or to add species or locations would have to be turned around quickly to meet client timeframes, and the CDFW's prospective workload alone under the proposed system is a concern to push the review timing past the 100 day minimum stated in the regulations, when it seems amendments should be able to be reviewed within 30 days. Lastly, a couple commenters stated that a separate consultant-specific permit be developed, that could include a catalog-type approval of new work, might work in more of a programmatic fashion.

**Response:** As outlined in the SCP Fiscal Analysis (revised June 2017) and in **Goal 5d** of the rulemaking outlined in the Amended ISOR, the separation of the Specific Use from the General Use aimed to serve the request received during the pre-notice outreach period for this rulemaking (conducted between fall 2012 and spring 2015) of creating a streamlined permit with reduced scrutiny for more common species and methods. Other pre-notice comments acknowledged that the level of review should match the quantity of work requesting take, species, or methods, depending on biological consequences, where more diligence would be understandable for an application to take sensitive species vs. applications to take non-sensitive species, or for use of more invasive methods. This is the premise by which the General and Specific Use permits were divided.

The CDFW identified that inadequate justification for permit requests has been one of the major problems with the existing permit/application structure (see Table 1 on page 9 of the Original Proposed ISOR). The Specific Use application (DFW 1379S) was developed to accommodate the information needs by all three review programs for the diversity of species permitted under a SCP. It was also intended to reduce ambiguity amongst the three review programs, when simple headings on past application forms have led to varied interpretations by the review programs and applicants in the level of detail needed under each heading. Details are required in order to properly review and condition the permit, and because of this ambiguity, the CDFW received applications with little information for properly evaluating the proposed work and any potential environmental impacts, requiring review program staff to follow-up with applicants for more information, delaying permit issuance or occasionally leading to permit denial. The CDFW's solution to help ensure applications contain all information needed by the CDFW, as identified on page 9 of the ISOR, is to formalize in regulations the specific fields for the Specific Use permit application (form DFW 1379S) that need to be completed, and is expected from all applicants (whether academic or environmental consultant).

The scientific study proposal information required in the Specific Use SCP application, including the literature cited section, is intended for applicants to describe and document the purpose and

necessity of the proposed research, linking objectives to the research questions and hypotheses, if applicable, as well as explaining expected conservation value of the results.

Several elements are expected to be identified ahead of time for the Specific Use application, as outlined in the justification of Specific Use form DFW 1379S, Table 9 on pages 55-61 of the Original Proposed ISOR. Section 4c of the application, "Background and Past Findings" includes fields that are to be completed when applicable, such as past findings from pilot studies, activities previously permitted coming in for renewal, and how your research question addresses information needs not covered by previous research, or past reports or literature searches. Relating to other research projects or studies, or compliance with recovery, management or monitoring plans is common among SCP applicants. Most of this information is included in the scopes of work, grant funding requests and other documentation applicants use to support or justify the work they are requesting to be funded or permitted, and thus is information most applicants have. These fields help applicants demonstrate to CDFW the rationale for the proposed research and linkage to short-term or long-range conservation planning actions, while considering wildlife conservation and data needs. The CDFW understands that some of the information requested in the "Background and Past Findings" section of the Specific Use SCP application will not be applicable to all permit holders, thus the CDFW included the option to state "not applicable." For example: the section asking for a discussion on past findings may not be applicable to a biological consultant who will be conducting presence/absence surveys at many unknown locations throughout the term of a three year permit, but consultants may be routinely using specific published survey protocols that can be cited. Other parts of the Specific Use application, such as section 4f, "Requested Take Activities," are justified in the Original Proposed ISOR.

As discussed under the justification for subsection 650(i) of the Amended ISOR, each contract project or client would not necessarily need its own Specific Use permit, but rather those activities that fall under a unifying scope, requesting similar species and/or taxonomic groups, risk level of methods or procedures, or proposed locations may be grouped under a single Specific Use permit. For example, this could allow for general presence/ absence surveys across a wide variety of special-status taxa, if for the same general purpose of presence/ absence determination. While an environmental consultant may have more fluctuation in their permitting needs as new contracts and clients come up that may require additional or new scrutiny by different review programs, the CDFW reminds this stakeholder group that separate permits and/or amendments with certain take activities for certain taxonomic groups divided out could be issued much quicker than if all requested was lumped together, as is the situation with the current permit system (e.g., where take activities require review across review programs, or have varied requests in one application). This also takes into consideration the utility of the Entity permit, where a PI with a particular taxonomic expertise could help divide up research work.

The CDFW's review timeframe of 90-100 days is representative of the current review turnaround time where applications are still managed under scanned PDFs in the existing Access database. Online applications with completed application fields (as noted above) and reduced back-and-forth correspondence with applicants to complete the application is anticipated to greatly reduce review for completeness, and assist with the review for content phases described under the justification of subsection 650(i) of the Amended ISOR. The same would be true for Specific Amendments when only specific fields of the amendment application

(form DFW 1379SA) would need to be changed, including to add additional Authorized Individuals, a process now streamlined with up-front submission of qualifications with the proposed regulations. As outlined on pages 24 and 27-28 of the Amended ISOR, if a research project changes during the term of a permit, including but not limited to changing the authorized species and/or wildlife groups, methods, procedures, locations, goals and objectives and personnel, the Specific Use Amendment can be submitted to make such changes, as long as the fundamental scope of the original permit is not significantly changed and the Principal Investigator is able to continue carrying out all required duties under the permit.

While the regulations do not state that an application must be submitted at least three months ahead of time, as many commenters have interpreted, the regulations do state that CDFW will review an application for completeness within 40 days of the application fee clearing payment, and review for content within another 60 days after the application is determined to be complete. With online implementation, some permits may be issued faster than these specified timeframes. Thus the 90-100 day timeframe in the proposed regulations is already implemented for applications under the current system, while amendment applications under the proposed regulations are anticipated to be reviewed quicker (some of which should be able to be reviewed within 30 days, if applications are complete).

A separate permit type specific for environmental consulting work was not within the scope of the proposed regulations, or within the capabilities of the CDFW to program for an online system, given the goals of the rulemaking and the pre-notice outreach conducted, where input was considered to the extent feasible with internal limitations. It is expected that environmental consultants will be accommodated within the proposed General and Specific Use permit structure, as it could be considered unequitable to create a separate permit type for one constituent group. The CDFW is appreciative of the data contributed by environmental consultants for special status species occurrences, and reminds the regulated community that such reporting is required under the existing 650 regulations, under subsection 650(p) of the proposed regulations, and pursuant to FGC subsection 1002(m).

**2.3 The Specific Use permit may discourage study and accompany reporting of certain special-status species.** Other constituent groups provided comments regarding the applicability of the General and Specific Use permits. One non-profit research entity agreed that the Specific Use would be appropriate for species that are federal and State listed species, or species of special concern, and/or for specific sensitive habitats. Forest management entities shared concerns similar to those raised by environmental consultants, namely that to cover the diversity of surveys conducted across varied taxonomic groups on forest lands (e.g., birds, raptors, fish, reptiles, amphibians, small mammals, etc.), a permit for each taxonomic group is assumed to be required, and may lead to disincentives for pursuing research programs on private, or privately managed lands.

**Response:** As outlined in **General Response 2.2** above, non-profits and forest management entities may choose to divide up their work in a way that could facilitate a taxonomic or other breakdown of take activities that matches up with the PI's expertise that wouldn't necessitate multiple permits. The CDFW acknowledges the efforts of non-profits and forest management entities for their significant contributions of data that have helped inform the CDFW's management and conservation of special-status species.

**General Response 3 – Fees and cost recovery****Comment Letters:** 13, 18, 21, 37, 29, 54, 55, 58, 67, 68, 71, 81, 84, 85

**Summary of comments:** The permit fees still seem high, especially considering an applicant might need to apply for more than one permit. The proposed structure with the separated General and Specific Use permits appears to create a complex system whereby applicants pay more for additional authorizations for take needed so the CDFW can recoup costs for staff time devoted to SCP review. It appears the CDFW has created a regulatory process that now requires increased funding at the expense of permit holders who collect data. There is concern that amendments to add additional Authorized Individuals via the General or Specific Amendment would increase costs. It is unclear from the regulations if a PI can apply for and receive both a General and Specific Use permit, or how many permits a PI can possess. Renewals should be treated as a ministerial process with no fee, or by reduced fee, and should be reviewed and issued within 30-45 days. The cost could be high for non-profits that conduct research as well as public education activities (e.g., museums, teachers), and the student fees seem high as well.

**Response:** As outlined under **Goal 1** of the rulemaking in the Original Proposed ISOR, the non-refundable application fee (\$100) and permit issuance fee (\$300), adjusted for the implicit price deflator, were set by the Legislature with amendments to FGC sections 1002 and 1002.5 effective January 1, 2013. This statute is subject to legislative directive to recover costs, pursuant to FGC sections 710.5, 711.7, 713, and 1054.5. FGC subsection 1002.5(i) states “The department, by regulation, may adjust the amount of the fees specified in subdivisions (b) and (d) as necessary to fully recover, but not exceed, all reasonable administrative and implementation costs of the department relating to those permits,” where subsection (b) refers to the non-refundable application fee and permit fee for non-students, and (d) refers to student permits. The proposed regulations under subsection 703(c) and detailed in the SCP Fiscal Analysis (revised June 2017) outline an alternate permitting structure better suited for implementation in an online system (**Goal 2**, outlined in the Original Proposed ISOR) and a fee structure corresponding to the two new permit use levels (**Goal 3**, outlined in the Original Proposed ISOR) that take a different approach for cost recovery. Cost recovery remains a goal of the rulemaking, considering the historical shortfall the SCP program has been functioning at (Table 3 of the SCP Fiscal Analysis). Under Alternative 1D analyzed in the SCP Fiscal Analysis (*Maintain existing SCP structure with significantly increased fees*), achieving the bare minimum costs to fund just the four (4) dedicated (and existing) SCP staff would increase the existing SCP application and permit fee for Individuals and Entities from \$415 to approximately \$809, and for students from \$77 to approximately \$151, which are still higher fees than those for the General (\$230.10) and Specific Use (\$340.70) levels under Alternative 2D (base analysis with the revised permit structure). The student fee has been a separate dollar amount since the 1970’s, and is much lower than that of the Individual and Entity fee. The CDFW decided to maintain the fee amounts under the current permit structure (\$25 application, \$50 issuance – as outlined in the SCP Fiscal Analysis, and in subsection 703(c) of the proposed regulations) with the proposed permit structure, due to the understood burden and challenges students face in their studies. The CDFW reserves the right, as within the authority granted by FGC subsection 1002.5(d), to adjust permit fees to recover, but not exceed, all reasonable administrative and implementation costs. Considering the statutory permit duration of three years, renewals are treated the same as new applications in terms of permit fees. This is because the CDFW uses

the three year period for final reports of activities over the previous years, and the nature of take and/or possession activities requested by permit holders may change over time. If the renewal application mirrors that of the original application, then the review is often quicker than a brand new application, assuming all reporting requirements and permit terms have been met. However, time is still spent reviewing reports and inputting submitted data.

The CDFW reminds organizations of the option to apply for an Entity permit for either or both the General and Specific Use permit, which spreads the cost among a PI, and many Authorized Individuals, and allows for collaborative efforts to help reduce the burden of the proposed fees. A PI would have the ability to apply for a General and a Specific permit, given the requirements for the PI to provide adequate supervision for all permits pursuant to subsection 650(b)(19) are met. Further, the Authorized Individuals requested in an application for an Entity permit do not need to be employed or formally associated with the same organization or institution as the PI, as long as the PI is willing to take on the responsibility to adequately oversee those Authorized Individuals' actions, pursuant to the duties for a PI outlined in subsection 650(b)(19) of the final regulations. Similar to K-12 teachers or school districts (**General Response 1.4**), for universities, a professor whose take activities are similar under the General Use permit level, or are unified in scope for a study or planned undertaking under the Specific Use permit level, it could be reasonable for a professor or research group at a university to apply under the Entity permit holder type, which spreads the cost among a PI (one lead professor willing to take responsibility on the permit as a PI, and meet all requirements of subsection 650(b)(19)), and many Authorized Individuals (perhaps other professors and their students), and allows for collaborative efforts to help reduce the burden of the application and permit fees. However, this could result in increased fees to add additional Authorized Individuals (see below and **General Response 5**). Entity SCPs can also lessen the CDFW's workload by combining certain unified activities, allowing the processing of one permit with multiple Authorized Individuals, rather than several for the same take activities, or similar take activities. Addition of more persons to work under the permit, or to make changes to the permit, can occur via Specific Amendment (\$89.28, above the eight included along with the PI with permit fees) can occur for the flat fee to add as many more Authorized Individuals, given adequate supervision by the PI described in subsection 650(b)(19) is met. This fee, and the General Amendment fee (\$61.04) are lower than the current amendment fee (\$105.83).

It is important to note that even small nature centers collecting roadkill animals for educational taxidermy mounts or abandoned bird nests are required to pay the proposed SCP fees, and even college students working on common animals are expected to apply and pay for SCPs. Fees for the student SCP (valid for 1 year, pursuant to FGC subsection 1002(b)) are adjusted with the proposed regulations back down to those set in statute pursuant to FGC subsection 1002(d)(1) (\$25 non-refundable application fee, \$50 permit issuance fee, subject to implicit price deflator adjustments). The CDFW must be cognizant of special treatment for any one group, when all users should contribute to the state of knowledge and the CDFW's trusteeship for California's wildlife.

#### **General Response 4 – Notification of field activities**

**Comment Letters:** 15, 21, 23, 31, 34, 35, 36, 42, 43, 51, 57, 77, 84

**Summary of comments:** The proposed regulations call for permit holders to notify law enforcement of their planned take activities in the field. It is not clear from the regulations which law enforcement agency the notification is required to be sent to. Other commenters stressed that the notification requirements as proposed are not feasible, or may be a huge administrative burden to permit holders as well as to the CDFW. Plans for field work change regularly due to weather, habitat conditions, staff sick days, workload, etc., therefore it is important to be able to maintain survey flexibility given such unknowns. Commenters expressed inability to understand why notification is required every 14 days, particularly for long-term projects that are stationary throughout a field season, or on private land with landowner permission where repeated submissions would be required. Commenters thought it would be reasonable to request that a single notification at the start of a field season be sufficient, that outlines the planned dates and times for field activities. The notification form itself contains detailed information that would be a burden to submit every two weeks. Contact information should be made available, or a dedicated webpage to help permit holders know who to send notifications to, and to provide current information for permitting.

**Response:** Notification to the CDFW prior to the take of wildlife for scientific, educational or propagation purposes in the field, or of field activities, has been in the SCP regulations as far back as the 1940's. In fact, this aspect of the regulations governing SCPs is one that has remained constant through the decades, and is a requirement in the current Section 650 version (operative 7-18-1996). As outlined under **Goal 5f** of the rulemaking outlined in the Original Proposed ISOR, and implemented under subsection 650(o) of the final regulations, the primary purpose of the notification is to inform the CDFW's Law Enforcement Division (LED), or wildlife officers (wardens), of the permit holders who are out taking wildlife under their SCP in any part of California, who may be using capture equipment or gear that do not fall under the gear allowed by fishing or hunting licenses, and for take of wildlife in exceedance of daily and/or bag limits for game or other species taken by different FGC authorities. The Notification is secondarily required for regional biologists to know who is conducting activities in their region(s) or county(ies). This is relevant for lands of any jurisdiction, whether federally or state owned, public or private, as wildlife officers enforce Fish and Game Code on all lands subject to these laws and respective regulations. As noted on Pages 29 and 30 of the Original Proposed ISOR, a two week window (14 days) has been identified as the preferred window for LED officers to schedule out the rotations for patrols so the law enforcement contact listed on the permit can circulate the notifications (as well as any updated notifications) to the appropriate patrol officers in a timely fashion. Also noted on pages 29 and 30 of the Original Proposed ISOR, the previous system of faxing notifications to regional offices had failed to relay the notifications to the appropriate LED staff, and has led to unproductive patrolling to investigate CalTIP calls generated from legitimate authorized SCP field collecting activities. In response to public comment, the Amended ISOR (subsection 650(o), pages 29-30) reflects flexibility in the window to submit the notification form has been reduced from a 48 hour minimum, to a 36 hour minimum advance notice (equating to at least one business day), in order to provide LED staff appropriate time to circulate the notifications to the appropriate LED district.

The informational fields on form DFW 1379b (Notification of Field Work or Activity) were developed by LED to understand the nature of activities being conducted in the field so they could be compared to future public calls related to authorized collecting activities. All the fields were justified with their necessity on page 64 of the Original Proposed ISOR. The notification periods are broken down at the County or Marine Protected Area/ Marine Managed Area level



to accommodate those LED districts encompassing those counties, while at the same time accommodate those CDFW regions which usually have separate boundaries as the LED districts to inform regional biologists of the field activities. Re-submission of the same notification form (planned to be generated within the online system, or at least a fill-and-save format that can be emailed to appropriate CDFW contacts) every 14 days, particularly when the submission will be online (at least via email, or through a saved online form – no more faxing), is something that is required by the Department in order to meet its needs for scheduling wildlife officers for patrol in the field, and based on their dispatch and related infrastructure for communication. The CDFW plans to make it clear who the appropriate LED, as well as regional biologist contacts are for a given issued SCP, and will do so within the issued permit, within the online permit system, or via the CDFW's SCP webpage.

### **General Response 5 – Size of List of Authorized Individuals; Amendments to add additional Authorized Individuals**

**Comment Letters:** 5, 21, 36, 42, 43, 77, 81, 84, 85

**Summary of comments:** Some commenters recommended that the limit, or cap of the List of Authorized Individuals (LAI) for Individual and Entity permits at the General and Specific Use levels be increased from the eight Authorized Individuals included with application and permit fees (aside from the PI) to 15, or 20 Authorized Individuals – or higher, given hierarchical oversight. Comments included examples of professors with labs of undergraduate students, graduate students, post-docs, would often exceed the eight Authorized Individuals included in the LAI with permit fees. Commenters expressed the understanding that permits are envisioned to cover a suite of projects, and more Field Assistants working under direct supervision would thus need to be supervised by Authorized Individuals. Others mentioned that the LAI should allow for more than the eight Authorized Individuals (aside from the PI) when they are all working on one project or study. A couple commenters expressed confusion if more than one permit is needed, i.e., for the General Use, to cover the number of people to work independently when the same taxonomic group(s) is (are) being targeted, and that this could be a burden to the CDFW to review the same study multiple times to approve more Authorized Individuals. Other commenters expressed concern of having to wait to amend a General Use permit to add Authorized Individuals after the initial permit is issued, whereas it appears the Specific Use can be amended concurrently at the time of application to add more than the eight Authorized Individuals included in the application and permit issuance fees. It is also unclear how classroom students under supervision of an instructor would be treated with the LAI, particularly for General Use permits. It appears fees would increase as a result of needing to amend to add more than eight Authorized Individuals, and one commenter requested a waiver to pay the General or Specific Amendment fee(s) to add more Authorized Individuals.

**Response:** Under current operating procedures, generally Entity permits are broken down based on PIs and their expertise. As stated under **General Response 3**, the logical permit breakdown is to designate a university professor of a laboratory as the PI of a permit, and most often, the small number of students that the professor formally advises can also reasonably be supervised under a permit. Alternatively, an applicant could make a case to cover 50+ people under one single Entity SCP and PI (as in the case of citizen science work with invertebrates),

however, that many people typically cannot be adequately supervised by the PI to ensure they are mainlining responsibility and control over the permit.

The General Use permit is limited with a “hard cap” of eight Authorized Individuals per Authorization, but multiple Authorizations per permit mean far more than eight Authorized Individuals could be approved under separate Authorizations, as described on pages 25-26 of the Amended ISOR (justification for regulation subsection 650(j)(1)). For example, the Inland Fisheries General Use and the Marine General Use applications (forms DFW 1379GF and GM, respectively) each have three Authorizations, which means theoretically 24 Authorized Individuals could be requested under each of those permits. The Terrestrial Wildlife General Use application includes six Authorizations, meaning theoretically 48 Authorized Individuals could be requested under this permit. However, it is anticipated that most Permitholder applicants would utilize the same Authorized Individuals to cover take and/or possession activities under multiple Authorizations, so it is expected that these higher numbers of Authorized Individuals will be rarely reached. The flat fee for the General Amendment (\$61.04, listed in subsection 703(c)) would cover allowable amendments to the General Use level permit, which include any combination of changing the PI for Entity Permitholders, to adding or changing Authorized Individuals on the LAI, or to request a new Authorization not previously requested under the same General Use permit.

The Specific Use, on the other hand, has a “soft cap” of eight Authorized Individuals for the entire permit, and the ability to request more than eight, with adequate justification, as described on pages 25-26 of the Amended ISOR (justification for regulation subsection 650(j)(2)). The flat fee for the Specific Amendment (\$89.28, listed in subsection 703(c)) can include the request to add additional Authorized Individuals (no hard cap is defined), given qualifications for each meet subsection 650(h), and the requirements for the PI to provide adequate supervision and responsibility for the permit pursuant to subsection 650(b)(19) are met. The flat fee for this amendment type also includes the ability to amend species, methods, procedures, conditions, or other adjustments to a study or planned undertaking that do not change the fundamental scope of the existing Specific Use permit. Thus for a specific study or planned undertaking with the Specific Use, additional Authorized Individuals above eight can be requested.

The LAI size for Individual and Entity permits at the General and Specific Use levels of eight Authorized Individuals included with application and permit fees (aside from the PI) under subsections 650(j)(1) and (2) is justified on page 25 of the Amended ISOR, as well as on page 6 of the SCP Fiscal Analysis (revised June 2017). With the 2012 statutory changes to FGC subsection 1002.5(a), expansion in the utility of the Entity led to increased complexity in terms of numbers of studies and types of work requiring review (work that was previously covered under separate, Individual permits), combined with lack of guidance for how many Authorized Individuals can work under a single permit promoted lengthy, complicated permit applications requesting 28 (or more) Authorized Individuals to be covered under a single permit. FGC subsection 1002(i), which statutorily increased fees (\$100 application fee, \$300 permit fee, or adjusted as necessary by regulation) did not account for this increased complexity and review effort, nor specify the means to implement such complex permits. As stated in the Original Proposed ISOR package (Goal 3, pages 10-11), cost recovery is one of the goals of the SCP rulemaking. The number of eight Authorized Individuals captures the LAI size need of the majority of SCPs (65%), as analyzed by a subset of permits for the rulemaking, when currently

permits are lumped with multiple studies and types of work. The proposed permit use levels with the regulatory proposal may result in the need for the other 35% of permit holders to pay an amendment fee to add additional Authorized Individuals, or apply for multiple permits to cover all the work previously captured under an existing permit, as explained under Cost Recovery Option 2D of the SCP Fiscal Analysis (page 11). The proposed General and Specific Use permit levels attempt to break down complicated permits, where PIs may hold more than one permit, therefore the CDFW stands by the number of eight Authorized Individuals, for all applicant affiliations (i.e., academic, consultant, private business, forest management, etc.). No amendment fee exemptions will be considered due to the need for the CDFW to be equitable to all stakeholders.

General Amendments must be requested after an application is submitted and issued because of the nature of the hard cap (maximum) of eight Authorized Individuals per Authorization, and how changes are requested for each Authorization within a General Use permit included with the flat General Amendment fee (as outlined on pages 25-26 of the Amended ISOR). These changes are thus requested after approval and issuance of a permit. On the other hand, a Specific Amendment could be requested at the time of application of the Specific Use because a fee is paid to review the qualifications of more than the eight Authorized Individuals included with that study or planned undertaking. If an applicant's take and/or possession activities can be covered under the standardized "Authorizations" on each of the forms DFW 1379GF, GM and GW for the General Use that detail the authorized wildlife taxonomic groups, species numbers, methods, locations, and disposition that the applicant can consult prior to completing the appropriate application form(s) (a particular study need not be identified, as outlined by section 4b of the General Use forms). Thus if a PI is proposing take and/or possession activities that may require more than eight Authorized Individuals for an Authorization, a study would not need to be reviewed each time, but rather the review would focus on the qualifications of the proposed Authorized Individuals to conduct those standardized or low impact methods under separate permits. For classrooms, the instructor would likely take on the role of a PI (role described in subsection 650(b)(19)) on an Entity permit, and would determine the number of permit(s) needed to have students work independently under adequate supervision as Authorized Individuals (role described in subsection 650(b)(2)) as opposed to under direct supervision as Field Assistants (role described in subsection 650(b)(7)).

### **General Response 6 – Request for extension on comment period; consideration of pre-notice outreach**

**Comment Letters:** 23, 35, 73, 85, 86

**Summary of comments:** Three commenters requested a period of time longer than the 45-days, from 60 additional days, to six months, in order to put together detailed suggestions and comments on the proposed regulatory package. Other commenters stated they were not aware of the proposal to change the permitting process, and wanted more time to respond responsibly, or stated that the CDFW should revisit the proposed package and do a better job of engaging stakeholders to consider their specific needs.

**Response:** The Administrative Procedures Act (Government Code Section 11346.4) requires a minimum of a 45-day written public comment period for any California agency undergoing a rulemaking, and that the agency must give notice to the regulated community of the proposed action. The CDFW's public comment period for this rulemaking commenced with publication of

the notice in the California Regulatory Notice Register on March 24, 2017, which ended at 5:00pm on May 8, 2017.

As outlined in the beginning of this Appendix, and in the Original Proposed ISOR, the CDFW conducted pre-notice outreach, and held four public meetings prior to going to notice from December 2012 through April 2015. CDFW considered all comments and suggestions during the pre-notice period, and incorporated into the regulatory proposal those comments and suggestions that helped achieve the rulemaking's five goals (as outlined on pages 6-12 of the Original Proposed ISOR). In addition to the pre-notice outreach efforts, the CDFW sent an e-mail notice to interested parties on March 24, 2017 in conjunction with publication of the California Regulatory Notice Register. This interested parties list included recent and existing permit holders, pending SCP applicants, interested parties identified by CDFW review program staff, attendees from one of the four pre-notice outreach meetings (who requested to stay informed about the rulemaking), those who signed in at scientific conferences to stay informed, and those people who submitted pre-notice comments back in spring 2015. In addition to providing adequate public notice, the CDFW held a public hearing in Sacramento on May 8, 2017, where people attended to provide oral comments about the rulemaking.

The three commenters addressed here are recent or existing permit holders, and were on the mailing list and received notice of the availability of the draft package when it was emailed out in conjunction with publication of the California Regulatory Notice Register on March 24, 2017. Due to time constraints of completing the rulemaking package before the end of 2017, and the need to respond to all comments received and the first and second re-notices of the rulemaking package the CDFW was unable to extend the SCP rulemaking comment period for a further 60 days to six months. The CDFW believes it has provided extensive public outreach and adequate review time. All public comments are documented and responded to as part of this FSOR package (Appendices A-D).

## **References**

California Department of Fish and Wildlife (CDFW). 2015. California State Wildlife Action Plan, 2015 Update: A Conservation Legacy for Californians. Edited by Armand G. Gonzales and Junko Hoshi, PhD. Prepared with assistance from Ascent Environmental, Inc., Sacramento, CA.