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## Fish and Game Commission



*Celebrating 150 Years of  
Wildlife Heritage and Conservation!*

**Melissa Miller-Henson**  
**Executive Director**  
P.O. Box 944209  
Sacramento, CA 94244-2090  
(916) 653-4899  
[fgc@fgc.ca.gov](mailto:fgc@fgc.ca.gov)  
[www.fgc.ca.gov](http://www.fgc.ca.gov)

### MARINE RESOURCES COMMITTEE

Committee co-chairs: Commissioner Silva and Commissioner Murray

### July 29, 2020 Meeting Summary

Following is a summary of the California Fish and Game Commission Marine Resources Committee (MRC) meeting as prepared by staff. An audio recording of the meeting is available upon request.

#### Call to order

The meeting was called to order at 9:02 a.m. by MRC Co-chair Murray. All participation was by webinar and teleconference, consistent with current health orders and state travel restrictions.

Susan Ashcraft gave welcoming remarks and outlined meeting procedures and guidelines for participating in committee discussions, noting that the MRC is a non-decision-making body that provides recommendations to the California Fish and Game Commission (Commission) on marine items. The following MRC member(s), Commission staff and California Department of Fish and Wildlife (Department) staff were in attendance:

#### **Committee Co-Chairs**

Peter Silva	Present
Samantha Murray	Present

#### **Commission Staff**

Melissa Miller-Henson	Executive Director
Rachel Ballanti	Deputy Executive Director
Susan Ashcraft	Marine Advisor
Sherrie Fonbuena	Associate Governmental Program Analyst
Rose Dodgen	Sea Grant State Fellow

#### **Department Staff**

Mike Stefanak	Assistant Chief, Law Enforcement Division
Bob Puccinelli	Captain, Law Enforcement Division
Craig Shuman	Regional Manager, Marine Region
Sonke Mastrup	State Managed Invertebrates Program Manager, Marine Region
Tom Mason	Senior Environmental Scientist Supervisor, Marine Region

## ***Invited Speakers***

Paige Berube

Fisheries Program Manager, California Ocean Protection Council

### **1. Approve agenda and order of items**

MRC approved the agenda in the order listed.

### **2. General public comment for items not on agenda**

Two commenters expressed concerns about lobster traps along the boundaries of Laguna Beach State Marine Reserve and the potential risk of whale entanglements or disruption of whale migration. The commenters shared their plans to conduct independent surveys documenting traps and requested guidance from the Department to ensure the validity of their methodology.

Commenters reported recent sightings of invasive *Sargassum horneri* in Monterey Bay and expressed concern that restoration is not being authorized in marine protected areas (MPAs); one of the commenters also suggested altering legislative language to allow restoration activities and removal of invasive species in state marine conservation areas in response to these sightings.

Several harvesters of edible seaweed requested to collaborate with the Department and other stakeholders on upcoming commercial kelp and seaweed harvest regulation changes and offered to provide their data and photo documentation to inform the effort. A representative of an environmental non-governmental organization (NGO) outlined its kelp conservation initiative in California.

An environmental NGO representative reported that they have seen an increase in illegal take in intertidal areas of the Palos Verdes peninsula; Mike Stefanak concurred that Department enforcement has also observed the increase, and is focusing additional effort on enforcement in intertidal areas during low tides.

### **3. Recreational red abalone fishery**

#### **(A) Fishery management plan (FMP)**

Sonke Mastrup presented on behalf of the red abalone management integration administrative team. Consistent with MRC recommendations from its previous meeting, Sonke recapped the eight recommendations from the final administrative team report and clarified those elements of the recommendations for which the Department was seeking guidance prior to preparing a revised draft red abalone FMP. Specifically, he requested MRC guidance on selecting a harvest control rule, the number of fishing management zones to include, which types of data should be used in assessment and management, the possibility of a biological fishery conducted by recreational divers, and a possible permit lottery system. The Department also proposed the concept of including a tribal take allocation option.

#### *Discussion*

Based on questions from the MRC co-chairs, Sonke provided additional clarifications. A biological fishery is a type of *de minimis* fishery, which would be conducted only when the Department needs data, employing a very cautious approach and allowing an

amount of take that would not impact recovery of the stock. Any *de minimis* opportunity could be offered through a preference point system for a potential permit lottery, similar to California's big game draw system, and the available fishing period would be kept short to aid in effective enforcement.

The Department suggested that establishing two management zones with the possibility of opening a third upon availability of adequate data, and using both density and spawning potential ratio data in the harvest control rule, would be consistent with guidance from the peer review to provide more robust data-driven management.

The proposal for tribal allocation in the FMP would require the Commission to allocate some part of any *de minimis* total allowable catch (TAC) to federally-recognized tribes on a tribe-by-tribe basis, dividing TAC between tribal and non-tribal interests.

Tribal representatives supported the tribal allocation concept and requested the FMP include further co-management options and consider tribal subsistence over other uses. Several abalone fishermen expressed support for the biological fishery. Several NGO representatives asked the co-chairs to uphold the findings of the administrative team report. An environmental NGO is supporting a pilot citizen science program; the organization has been working with Reef Check on organizing pilot dives and is interested in collaborating with the Department. One former Department biologist was concerned about pursuing an FMP for a collapsing population and requested minimum viable population criteria and specific environmental or biological triggers in the FMP.

#### *MRC Recommendation*

MRC recommends that the Commission support the Department developing a draft FMP for further MRC and public review to include all FMP elements identified in the administrative team report recommendations with four options identified:

1. Harvest control rule: Use both spawning potential ratio and density metrics wherever possible.
2. Fishing zones: Two zones, with a framework in the FMP for data needed to establish a third zone.
3. Biological fishery: Include, but with a strong caveat that it needs to be very cautious and entirely driven by scientific need.
4. Tribal allocation: General support.

#### **(B) Current fishery closure sunset date**

Sonke Mastrup provided an update on options to extend the recreational red abalone fishery closure beyond the current sunset date of April 1, 2021; he presented the Department's recommendation to extend the sunset date for a period of five years—to April 1, 2026—rather than to remove the closure sunset date. Susan Ashcraft clarified that Commission staff supports the recommendation for a five-year extension but suggested that the Department provide the Commission with annual reports regarding the status of environmental and abalone stock conditions and recovery.

#### *Discussion*

An abalone diver urged MRC to consider establishing a biological fishery before the FMP is adopted, to provide a mechanism to continue data collection while the fishery is closed and the FMP is being completed. Sonke clarified that moving the sunset date from 2021 to 2026 would not prevent establishing a biological fishery outside of the FMP, as the sunset date could be modified in regulation as needed to accommodate a potential biological fishery.

#### *MRC Recommendation*

MRC recommends that the Commission extend the current recreational red abalone fishery closure for five years, with a sunset date of April 1, 2026, through a rulemaking proposed to commence in August 2020, and request that the Department provide annual reports to the Commission regarding the status of environmental and abalone stock conditions and recovery.

#### **4. Experimental Fishing Permit Program phase II**

Tom Mason provided an update regarding the proposed Experimental Fishing Permit (EFP) Program; he provided specific recommendations for the permit application cycle and proposed fees for each of four tier-based permits. The fees are intended to recover the Department's administrative costs, though it was acknowledged that some of the Department's costs would likely be absorbed. The permit tier structure and associated fees are proposed to be determined by two factors: (1) whether the permit is for research or conservation engineering versus exploratory fishing, and (2) whether the permit would be self-supported or require a higher level of Department assistance. The Department is exploring options for reducing fees for projects that would meet Department research priorities.

#### *Discussion*

Melissa Miller-Henson highlighted that the Department-estimated EFP fees identified for cost recovery did not yet include Commissions administrative costs, which is included in the cost-recovery statutory language. Commission staff and Department staff agreed to confer on options following the meeting.

Several commenters requested a provision where any new fishery resulting from an EFP would give EFP participants preference to receive permits due to the EFP participants' investment in developing the fishery. Tom explained that the Department has had internal discussions about how the end of an EFP and beginning of a fishery develops, but that considering a new fishery is a separate process from the EFP. A representative of an environmental NGO emphasized the importance of subsidizing costs for collaborative EFP projects.

#### *MRC Recommendation*

MRC recommends that the Commission advance to rulemaking the proposed phase II regulations to establish an Experimental Fishing Permit Program as proposed by the Department, including the proposed permit tiers, associated fee structure, and application cycle as discussed today, on a timeline to be determined, and authorize Commission staff to work with the Department to explore possible additions to the stated fees associated with Commission administrative costs.

## 5. Marine Life Management Act master plan implementation

Susan Ashcraft provided an overview of the topic. She explained that this item includes initial vetting of possible California grunion recreational fishing regulations, with options developed by the Department at the Commission's request based on a regulation change petition granted by the Commission in February 2020. The topic of grunion is included with the master plan update in order to provide context with other fisheries management priorities developed according to the master plan prioritization framework.

Craig Shuman provided a verbal update on Department efforts to implement the 2018 master plan for fisheries, including the recent unveiling of a marine species portal web page that provides access to species enhanced status reports (ESRs, available at: <https://marinespecies.wildlife.ca.gov/>). He additionally presented an overview of potential regulation changes for a recreational California grunion season and bag limit for initial vetting. The Department will be conducting stakeholder outreach and proposes to bring a refined proposal to the November MRC meeting for a possible recommendation. The Department also proposes to schedule the rulemaking to commence with notice in December 2020, which would be necessary to avoid a mid-season change to regulations; the Department wants printed fishery information to be consistent throughout the season.

### *Discussion*

Co-Chair Murray addressed the question of prioritization, as the petition that prompted the grunion rulemaking seemed to cause the potential rulemaking to move ahead of other MLMA topics. Under current circumstances, where both the Department and Commission staff have limited capacity, she stated that prioritization is key to effectively implementing MLMA master plan topics. The co-chairs want to ensure that the Department and Commission staff are communicating and have the same understanding of priorities moving forward.

Melissa Miller-Henson highlighted that the timing of a grunion rulemaking was uncertain due to the regulatory staff capacity constraints explained to the Commission in June, but that the Department program staff could continue to work on the grunion package in preparation for scheduling when staff capacity is improved.

*Comments related to California Grunion:* Two commenters spoke in support of the original petition to change the recreational grunion regulations. An NGO representative requested that the recent survey released for grunion permit holders should be extended to a broader range of stakeholders.

*Comments related to master plan implementation steps:* An NGO representative requested that set gillnet and trawl fisheries for California halibut, pink shrimp, and sea cucumbers be prioritized because of bycatch concerns, and that the master plan bycatch evaluation framework be used. A commercial kelp harvester requested implementation of an FMP for giant kelp, as their community holds that it is an established fishery.

Co-Chair Murray expressed support for scheduling a discussion of more specific grunion regulation proposals in November, with the caveats as discussed regarding potential timing for a rulemaking.

## 6. Staff and agency updates requested by the Committee

*Note: To enhance meeting efficiency in the webinar/teleconference format, MRC received some updates in written format.*

### (A) California Ocean Protection Council

Paige Berube provided a brief verbal update on OPC's recent activities to supplement the written update provided prior to the meeting. Her update included information about funding recently allocated to pop-up gear research relevant to whale and turtle entanglements, funding for kelp restoration, and an upcoming interagency meeting to discuss aquaculture principles for a statewide aquaculture action plan.

### (B) Department

Craig Shuman provided an update for the Marine Region. A potential rulemaking is being developed to allow inside state marine reserves the maintenance and repair of artificial structures (such as intake/outflow pipes) that were installed under the authority of other permitting agencies prior to the reserves being established as part of California's MPA network. The Commission's authority to designate MPAs did not override authority for structures already permitted by other agencies, and the Commission and Department want those agencies to be able to maintain and repair the structures without violating MPA statutes or regulations. The rulemaking will establish a definition of an artificial structure and define a buffer around structures which, together, will be a no-take state marine conservation area rather than a state marine reserve. The Department is scheduled to give a detailed presentation in November, with a goal to complete the rulemaking process by fall of 2021.

Craig also provided an update on the recreational crab regulations rulemaking package scheduled for notice next month. The package will not be limited to trapping for Dungeness crab as originally discussed, but will also apply to trap fishing for other species of crab, including rock crab, to avoid a regulatory loophole.

Mike Stefanak announced Robert Puccinelli's retirement, effective two days after the MRC meeting.

### (C) Commission staff: Update on Coastal Fishing Communities Project

Rose Dodgen provided an update on progress on the Coastal Fishing Communities Project, last discussed by MRC in November 2019. MRC previously directed staff to continue to evaluate ten staff recommendations included in the *Final Staff Synthesis Report on Coastal Fishing Community Meetings*; Rose has developed status update sheets for each recommendation to summarize efforts relevant to each recommendation. Rose presented a straw analytical approach for a more in-depth evaluation to inform MRC and Commission prioritization for future actions to assist coastal fishing communities. Co-chair Murray confirmed that the straw approach for analysis was useful and could be moved forward. The co-chairs requested an update on this project in November.

## *Discussion*

A representative of a large coalition of whale conservation interests requested that the Department allow Department-approved ropeless gear to be used any time in the fishing season in its upcoming commercial Dungeness crab Risk Assessment and Mitigation Program regulations, rather than just in closed areas after April 1 as currently allowed; the new regulations will require virtual marking to avoid conflict.

### **7. Future agenda items**

Susan Ashcraft provided an overview of the topic. She noted that the scope of this MRC meeting had been narrowed to allow in-depth discussion of topics consistent with the intent of committee meetings, provided that sensitive and urgent items could be advanced. As seen today, it is possible for MRC to successfully hear and complete discussions of topics in this format. There are eleven meeting topics identified for November in the MRC work plan, and staff recommended that the MRC co-chairs discuss priorities for November to help narrow the scope of that meeting as well. Regarding the work plan in general, Susan recommended that cowcod rockfish recovery could be removed from the work plan as the Department had provided a detailed verbal presentation of this informational item during the March 17/April 29 MRC meeting.

## *Discussion*

The co-chairs agreed that cowcod rockfish recovery could be removed from the November agenda and work plan, in light of the Department presentation provided previously. The Department further advised that swordfish could be removed as any updates on the topic could be provided in writing. After conferring with Commission staff, the co-chairs further decided to support development of the California grunion package for review in November, but that the timing for a rulemaking should be discussed at the August Commission meeting in the context of all other upcoming rulemakings to determine priority. Should the rulemaking need to be put on hold for any reason, it would need to be discussed prior to November.

A kelp harvester commented that the kelp wild harvest, kelp recovery, and aquaculture items could be looked at holistically.

Susan will provide further information about how to potentially allocate time to November agenda items at the October Commission meeting.

## *MRC Recommendation*

MRC recommends that the Commission (a) remove the cowcod rockfish recovery topic from the committee work plan, (b) remove the recreational swordfish topic from the November committee meeting agenda, and (c) keep California grunion recreational fishing regulations on the November committee meeting schedule, but (d) discuss and provide direction on the potential timing for a Commission rulemaking for California grunion relative to other rulemakings.

## **Adjourn**

The meeting adjourned at 2:27 p.m.