

California Fish and Game Commission Coastal Fishing Communities Project

DRAFT Analysis of Staff Recommendation 4

“Engage legislative staff to pursue adjustments to laws as ideas are refined, if warranted to support fishing communities.”

March 5, 2021 Draft

Background

In 2019, the California Fish and Game Commission (Commission) Marine Resources Committee (MRC) received a final [Staff Synthesis Report on Coastal Fishing Communities Meetings, 2016-2018](#), which included a list of ten staff-recommended options for potential Commission action in response to input received during the meetings. The staff recommendations were advanced as initial concepts, which MRC directed staff to more fully develop and evaluate to help guide the Commission in determining which, if any, to pursue in support of coastal fishing community needs. Each staff recommendation (SR) is being evaluated using a [draft standardized analytical approach](#) that was presented to MRC in July 2020, and which focuses evaluation around four categories: I. *Basic informational needs*; II. *Current regulatory and policy context*; III. *Potential Commission role*; and IV. *Costs and benefits*.

Overview of Staff Recommendation 4

This evaluation is for SR 4, to “engage legislative staff to pursue adjustments to laws as ideas are refined, if warranted to support fishing communities.” As contextualized in the 2019 staff synthesis report, recognizing that some possible desired actions may be outside of Commission authority, the Commission may direct staff to partner with stakeholders, the Department, and non- governmental organizations (NGOs) to find appropriate issues and means of engaging with legislative staff.

I. Basic Informational Needs

This recommendation is intended to be one way in which the Commission could collaborate on issues that are outside the scope of its authority and was prompted in part by the recognition that, as the Commission charts its path to define actions to support fishing communities, it may discover there are certain desired options for which it does not have authority. Thus, Commission staff may be asked to reach out to legislative staff to explore options for obtaining an authority through legislation. This recommendation is for a long-term and ongoing qualitative course of action. The chief investment that will make implementation of this recommendation feasible is staff time, as it will redirect staff efforts to engage with the legislature and build engagement with outside parties interested in coordinating with the Commission on these efforts.

There are up-front information needs that must be met in order to provide the analysis necessary to define the Commission context for action. The Commission or its staff will need to define the terms and course of action: What statutes is/are the Commission trying to amend? Is the Commission going to be attempting to introduce bills, or supporting modifications to already-proposed bills? With which legislative staff should Commission staff coordinate? With which non-governmental organizations and other state agencies should the Commission work

to support the legislation? This recommendation will be subject-specific and triggered by specific circumstances, so each question would need to be answered each time a need is identified.

This recommendation will also require initial information-gathering from fishing community members in order to determine where there are statutory barriers to coastal fishing communities becoming more resilient. Staff would then be able to build our understanding of how they might need to be changed. Commissioners and staff consult with our legal counsel or the California Department of Fish and Wildlife's (Department) office of legislative affairs to determine which adjustments are feasible.

This recommendation is linked to SR 5 (coordinate with sister agencies), as both are ways in which the Commission could collaborate on issues that are outside the scope of its authority, and this recommendation will require engagement with sister agencies in addition to other outside entities. In addition, SR 3 (approve small-scale projects) will be facilitated through an experimental fishing permit (EFP) program, a result of legislation directly addressing issues relevant to this project.

Staff is not aware of any current efforts by other agencies to adjust state legislation relevant to coastal fishing communities. The Commission may wish to begin conferring with other agencies invested in coastal communities, such as the California Ocean Protection Council or the California Coastal Commission, to determine which may be interested in exploring pursuit of legislative changes in concert.

A legislative pathway would optimally only be explored by the Commission if other remedies are not available, and should be narrowly focused on those items for which there is broad and diverse support; this will minimize concerns from stakeholders and help limit the risk of extensive amendments while under legislative review. Thus, an important informational need for each topic is to gauge support for the potential changes from the vantage points of the Commission, Department, other agencies, tribes, stakeholders, and the legislature.

II. Current Regulatory and Policy Context

The Commission has an existing policy on legislation, which indicates that the Commission only takes a position on proposed legislation under extraordinary circumstances, so this staff recommendation will need to be pursued cautiously.

Issue-specific information-gathering as described above will be necessary to provide topic-specific regulatory and policy context. Even when the Commission can act without constraint, many of its stakeholders rely on existing policy, statutory, regulatory, and management structures, and count upon the Commission to act to the broadest extent possible within its existing authorities. The Commission will need to be cautious in any amendments it pursues and should apply legislative pursuit only when other options are limited and there is a broad base of support.

There is precedent for individual commissioners and staff to engage with legislative staff on the Commission's behalf for educational purposes, but limited precedent for staff directly pursuing legislative amendments in recent history. Commission engagement with legislators or

legislative staff in recent years has generally focused on helping identify the pros and cons as well as the costs and benefits of proposed legislation.

Commission staff currently engages in Joint Committee on Fisheries and Aquaculture hearings, including its Annual Zeke Grader Fisheries Forum, as a way of identifying areas of mutual interest that legislation may help support or facilitate; staff also confers with the committee's chief consultant and the Commission president often joins the Department's director at the committee meetings to give remarks. The Commission may wish to seek more active engagement in this committee and even suggest topics for hearings or forum agendas that would benefit from the mutual engagement of industry, the Department, the Commission, and legislators.

There are some tools in place that allow the Commission to modify laws indirectly. For example, the Marine Life Management Act (MLMA) gives Commission authority to override fisheries statutes through adoption of individual fishery management plans (FMPs) that adhere to standards set forth in the MLMA. Thus, FMPs are a powerful, existing tool that can be used on a fishery-specific basis.

There are specific instances of Commission-relevant projects that have been pursued through legislation, the first being the EFP Program (Phase II, currently in development; see SR 3 update) that was authorized through the Fisheries Innovation Act of 2018 (Assembly Bill 1573; Chapter 477, Statutes of 2018). The Commission was granted authority to approve EFPs, upon adoption of regulations, under a more flexible and comprehensive program than was otherwise possible under the previous experimental gear permit provisions. This legislation is an example of new law intended to provide the Commission and Department flexibility to authorize more broad experimental ventures, and is scheduled to be established through a rulemaking in 2021.

An additional example of identified needs being met through legislation is related to California halibut trawl vessel permits, which were previously only allowed to be transferred under narrow circumstances, until the Commission could adopt a restricted access program. In 2017, fishery participants raised concerns about difficulty upgrading or selling their vessels because of constraints on transferability. MRC hosted a discussion at the industry's request, and recommended that the Commission direct staff to work with the chief consultant to the Joint Committee on Fisheries and Aquaculture on a bill to ease transfer provisions until the adoption of a halibut fishery management plan by the Commission. Discussions led to the inclusion of specific provisions in the 2018 Fisheries Omnibus Bill (Senate Bill 1309; Chapter 985, Statutes of 2018) which repealed limitations on the circumstances under which a transfer may be authorized, among other provisions to increase flexibility. While small, this is an example of increasing flexibility within a state-managed restricted access fishery and reflecting legislative responsiveness to industry needs.

III. Potential Commission Role

While the Commission does not have authority to change legislation, except in limited circumstances, this recommendation identifies an avenue of influence. Asking Commission staff to engage with legislative staff is well within the Commission's authority.

The Commission has potential influence with partner organizations or sister coastal resource agencies. A coalition of agencies would be useful in lending weight to the pursuit of legislation, if interests are aligned. In fact, as the original 2019 staff synthesis report identifies, the Commission may direct staff to seek to partner with stakeholders, the Department, and non-governmental organizations (NGOs) under this recommendation. It is likely that staff would pursue these adjustments primarily by identifying statutory barriers and coalition-build with other entities and with the legislature, rather than the direct on-the-ground work of amending statute. Involvement from fishing community stakeholders will be particularly key for taking action under this recommendation. These individuals are the most likely to already be aware of areas that may require adjustment to benefit their communities. Consultation with them will may guide the Commission to issues which are affected be statute.

It is important to keep in mind that the Commission's limited role in legislation introduces risks to pursuing topics in this way. Once a bill is introduced in the legislature, it is subject to revisions during the course of a legislative session, which can lead to outcomes that either don't match the original intent, or add unforeseen burdens on the Commission or Department. The Commission can minimize the risks by only applying this recommendation to topics for which it has determined there is a broad and diverse base of support.

IV. Costs and Benefits

In this section, we evaluate necessary staff resources, scale of stakeholder investment, and time commitment, identify who generally may benefit from a given recommendation and consider what specific benefits are anticipated to fishing communities. To that end, assessment of costs and benefits of this SR, which is primarily qualitative in nature, is considered across six broad goals: adaptability, consistency, accessibility, manageability, affordability, and resilience.

Adaptability

Depending on the specific laws and amendments pursued, this recommendation would ideally improve the Commission's ability to put forward pathways to adapt management, thereby giving coastal fishing communities more options for flexibility.

Consistency

In the past, the Commission has not directly sponsored any bills, even ones which it strongly supports (for example, establishing the Tribal Committee in statute as a standing committee). Historically, the Commission has focused on draft bills introduced by other entities as opposed to working with legislators to initiate new bills. That said, staff have in the past met with interested legislative aids wanting to explore solutions jointly with Commission and Department leadership, usually based on stakeholder-prompted issues, especially when economic implications are at play. Directly pursuing amendments to legislation, even as part of a coalition or in concert with other agencies, would indicate a change in how the Commission addresses topics of interest. This could raise concerns with stakeholders who depend on existing legislative status. This is another reason why the Commission would need to carefully consider which topics it chose to pursue in this way, and may wish to only pursue issues through legislation when there is broad support or the topic is not controversial.

Accessibility

Any increases in accessibility to specific fisheries resulting from this recommendation would depend on the amendments to laws that are pursued. Front-end information gathering efforts will help illuminate to what extent statutory amendments could address accessibility, and pursuing increased accessibility could be defined as a priority by the Commission. However, this recommendation in itself does not address accessibility, so effects to specific communities or fisheries are not predictable.

Manageability

Depending on the laws and amendments pursued, this recommendation is most likely to affect the Department's management burden. To help ensure successful legislative efforts, the Department should continue to be consulted on any actions the Commission wishes to take under the auspices of this recommendation. If changes are made to any legislative proposals once they are before the legislature, the management burdens added to the Department and Commission may be greater than estimated here.

Pursuing management changes through legislature may cause concern among partner agencies and NGOs. Changes to existing laws and, therefore, existing programs and management structures may be perceived as a threat by those stakeholders who rely upon them. There is also the possibility that NGOs may view this as a form of de-regulation, which might raise concerns about existing conservation measures. To reiterate, this is another reason why the Commission may wish to only pursue issues through legislation when there is broad support.

Affordability

Acting on this recommendation could require considerable Commission staff time investment, both to engage with the legislature and to engage with outside entities as a part of legislative efforts. Legislative efforts are typically conducted by the executive director and the marine advisor; the soon-to-be-hired tribal advisor may also contribute. Further additional staff may be necessary to make both this recommendation feasible, as the workload of current staff is such that any new tasks associated with this recommendation would be difficult to act on without additional hands. Commission staff time investment would include external tasks such as meeting with legislative staff, stakeholders, and outside partners, and internal tasks such as defining desired amendments and potentially drafting language. However, the time investment may be unpredictable and, if bill proposals are amended in the legislature, the resulting burdens might be more than estimated here.

Commission effort on this recommendation is most likely to be successful if the Department is conferred with throughout. It is therefore important to consider affordability through the lens of their staff time as well, as they may have to allocate staff hours to the process of pursuing legislative amendments. Consultation with the Department should include discussions of this aspect, adjustments pursued may vary in the impact to their workload and therefore the investment required on their part.

A specific timeline and budget are undefined for this recommendation. This recommendation is intended to be a course of action that may be triggered at any point in time based upon

specific circumstances, rather than a single action, so it is difficult to assign a concrete timeline. Budgeting is a slightly different question. As noted above, for this recommendation to be effective, additional staff could be necessary, which would be a considerable monetary investment. However, through the service-based budgeting process, Commission leadership has already identified the additional staff members necessary to meet the Commission's mission; as such, this recommendation may become more feasible as staff are added, without requiring discrete additional funding.

Resilience

Similar to accessibility, any impact that this recommendation may have on resilience of coastal fishing communities depends on the laws and amendments pursued. Front-end information gathering efforts may show to what extent legislative amendments could promote resilience. Specific changes will need to be defined before socioeconomic impacts to communities or ecologically resilient fisheries can be determined. In some cases, legislative changes to Commission authorities could ultimately lead to improving economic prospects of individual fishing communities