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Fish and Game Commission



*Wildlife Heritage and Conservation
Since 1870*

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MARINE RESOURCES COMMITTEE

Committee co-chairs: Commissioner Sklar and Commissioner Murray

July 21, 2021 Meeting Summary

Following is a summary of the California Fish and Game Commission (Commission) Marine Resources Committee (MRC) meeting as prepared by staff. An audio recording of the meeting is available upon request. *Note that in this document the California Department of Fish and Wildlife is referred to as the Department.*

Call to order

The meeting was called to order at 9:04 a.m. The following Committee members and Commission and Department staff attended:

Committee Co-chairs

Eric Sklar	Present
Samantha Murray	Present

Commission Staff

Melissa Miller-Henson	Executive Director
Rachel Ballanti	Deputy Executive Director
Susan Ashcraft	Marine Advisor
Cynthia McKeith	Staff Services Analyst
David Haug	Staff Services Analyst
Corinna Hong	Sea Grant State Fellow

Department Staff

Law Enforcement Division

Mike Stefanak	Assistant Chief
Wes Boyle	Captain
Eric Kord	Captain

Statewide Aquaculture Coordinator

Randy Lovell

Marine Region

Craig Shuman	Regional Manager
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Sonke Mastrup	State Managed Invertebrates Program Manager
Becky Ota	Marine Habitat Conservation Program Manager
Kirsten Ramey	State Managed Finfish Fisheries Program Manager
Steve Wertz	Senior Environmental Scientist Supervisor
James Ray	Senior Environmental Scientist Specialist
Rebecca Flores-Miller	Environmental Scientist
Katie Grady	Environmental Scientist
Ian Kelmartin	Environmental Scientist
Steve Reinecke	Environmental Scientist
Marina Som	Environmental Scientist

1. Approve agenda and order of items

MRC approved the agenda in the order listed.

2. General public comment for items not on agenda

A community member expressed concern over the condition of Tomales Bay, the lack of payment into an escrow clean-up fund, and the lobbying attempt to transfer management responsibility from the California Coastal Commission to the Department. The commenter did concede that the condition of aquaculture in Tomales Bay has improved over the years but expressed that there is still room for improvement.

Two commentors spoke about the Giant Kelp Restoration Project, highlighting their success with reducing urchin densities in project sites through safe culling methods and hitting metrics set by project organizers and the Department. They also expressed interest in extending restoration efforts into state marine conservation areas. Craig Shuman suggested project leads report out on efforts and results of their experience before commencing discussions on project expansion.

A representative from a non-governmental organization (NGO) provided an update on intertidal take in the Los Angeles region; they have observed illegal activity such as take over harvest limits and with illegal gear. The Los Angeles Marine Protected Area (MPA) Collaborative has been conducting enforcement training with rangers and plans to gather demographic information, such as languages spoken, to better inform outreach efforts. Mike Stefanak added that the Department's Law Enforcement Division (LED) is focused on low tide events in the Los Angeles area and is using the Department Natural Resources Volunteer Program to focus on outreach in the area. The Department is also translating materials into different languages for distribution.

A California halibut trawl fisher would like to see halibut trawl return to Monterey Bay and asked for the Commission to add the topic of opening halibut trawl grounds to a meeting agenda. Co-chair Murry noted that California halibut management review is on the Nov 2021 MRC agenda and Craig Shuman announced an upcoming webinar series hosted by the Department about the topic. The Department expects to first examine existing trawl grounds to understand existing activity, then consider expanding trawl grounds based on information gathered.

3. Marine aquaculture in California

- (A) Requests related to existing state water bottom leases and new lease applications currently under review

Randy Lovell presented on the current workload and prioritization efforts associated with current aquaculture lease requests. There has been improved and continued Department and Commission staff coordination on aquaculture leases, a clarification of roles and responsibilities, and progress on refining a prioritization approach. Craig Shuman summarized fiscal year 2020–21 service-based budgeting results for the Department’s aquaculture subprogram. The program has large gaps between mission-level hours and current staff hours for several lease-related tasks; he indicated this is one of the largest constraints for addressing and completing lease requests.

Discussion

Craig Shuman noted that the Department is working on developing efficient processes and protocols to help estimate how long it will take for individual lease requests to be addressed. Melissa Miller-Henson highlighted the diligent behind-the-scenes work that has occurred over the past few months that will allow the Commission and Department to move forward and resolve several requests in the coming weeks.

Aquaculture industry members expressed frustration with the slow-moving process and emphasized the need to have their lease requests addressed more quickly in order to make sound business decisions. Commentors suggested implementing a deadline for addressing a request similar to the California Coastal Commission’s deadline of 180 days and opening the line of communication with the leaseholder once a request is received to help streamline the process. Commission staff committed to facilitating coordination calls with each grower with an open lease request and offered to bring in Department and California Coastal Commission staff where appropriate.

Commentors were concerned about limited staff resources to manage existing aquaculture leases, let alone potential new leases, and agreed that prioritization is key. Commentors were also interested in knowing how to engage in conversations to advocate for increased resources for this program. Co-chairs recommended commentors call, write, or meet with their California State Legislature representatives to request more funding and staff for aquaculture.

- (B) Initial steps toward defining public interest determination criteria for new aquaculture lease applications

Randy Lovell gave a verbal update on progress for defining public interest determination criteria, including three potential platforms: Commission policy, regulations, or legislation.

Discussion

Commentors were supportive of staff pursuing public interest determination criteria. Suggestions included finding concrete examples to illustrate what is in the public interest (economic value contributed, carbon footprint, etc.), ensuring full and complete transparency in discussions, including all constituencies (boaters, birders, etc.), and using regional programmatic permitting.

No formal committee recommendation was made; however, Co-chair Murray expressed interest in hearing an update at the Nov 2021 MRC meeting and suggested Department and Commission staff start with a policy-based approach, followed by a future regulation change, if needed. Co-chair Sklar agreed with the policy-based approach. Staff

suggested that the process to develop the state aquaculture action plan may provide insights into how to refine such a policy.

4. Marine protected area network

Becky Ota gave a Department update on progress in planning for the first decadal management review of California's MPA network. The Department has established a stakeholder steering committee ("key communicators") to inform development of an outreach work plan by helping identify communication channels, strategies, target audiences, and known barriers. A Department-created tribal steering committee will help create a broader outreach plan for tribes across the state as well as tribal-specific language for communications material. Becky emphasized that the tribal steering committee is not a substitute for government-to-government consultation. Becky also presented options for an MPA symposium and sought direction on how Commissioners would like to receive the MPA decadal management review report, currently scheduled for Dec 2022.

Discussion

The co-chairs agreed that incremental updates leading up to the Dec 2022 report would be best, and Co-chair Murray suggested Department staff focus the updates on information that would help Commissioners make informed decisions about any potential adaptive management actions for the MPA network. Co-chair Sklar expressed his interest in hearing how biodiversity has increased in MPAs, how biodiversity compares from one area to another, and which MPAs were most successful and why. Lastly, Co-chair Murray supported having a full-day MPA symposium.

Stakeholders supported having multiple opportunities to hear informational updates, reports from monitoring and other research, and opportunities for public engagement. A couple of commenters expressed low optimism about adaptive management strategies resulting from this decadal management review. Representatives from NGOs supported the inclusion of human dimensions science and climate change into the review process.

Commission and Department staff committed to return to the MRC in Nov 2021 with a proposal for sharing information with MRC and the Commission.

5. Kelp and algae - Commercial harvest of bull kelp

- (A) Update on the coverage and distribution of north coast bull kelp canopy observed in 2020

James Ray presented an update on the status of north coast bull kelp canopy using available satellite, aerial, and drone-derived imagery. Kelp canopy levels were consistently low with no significant regrowth through 2020. There are observations of kelp regrowth in 2021, but the extent cannot be fully understood until satellite data and drone survey data through the third quarter are available.

Discussion

The co-chairs discussed the details of the presented data and clarified when 2021 data will be available. The co-chairs asked about risk of purple sea urchin populations having an impact while regrowth is occurring. Although urchin densities are still well over historic

levels, some natural population declines have been observed, and bull kelp is recruiting notably where barriers to urchin exist.

Harvesters reiterated their observations of bull kelp regrowth along the north coast in 2021 and expressed that an MRC decision now would not be informed by best available science. They urged MRC to delay a recommendation until the Nov 2021 MRC meeting when the third quarter drone survey data will be available to inform decision-making.

One commentor highlighted that tidal currents can totally submerge bull kelp, and requested verification that satellite images and drone surveys are timed accordingly to ensure accurate interpretation of imagery. James Ray emphasized the constraints on obtaining remote sensing data, such as cloud cover, smoke, glare on the water, and tidal effects. However, utilizing different methods provided the Department with multiple ways obtain the best data possible.

(B) Department overview of bull kelp working group (BKWG) outcomes and recommendations for commercial bull kelp harvest regulation changes

Rebecca Flores-Miller presented major takeaways from the four BKWG meetings, including areas of agreement and divergence amongst working group members, and the Department's recommendation for bull kelp harvest regulation changes. Hawk Rosales, staff to the InterTribal Sinkyone Wilderness Council, presented a tribal proposal, to ban harvest of bull and giant kelp statewide for ten years.

Discussion

Harvesters did not support the Department's recommendation as justified, and again urged MRC to delay a decision until the Nov 2021 MRC meeting. Several harvesters stated that the scale of their harvest is extremely small relative to total biomass, and that no data has been presented supporting the argument that harvest has any major effect on bull kelp canopy cover decline. A harvester from Mendocino added that the Department-proposed allowance for harvest in Del Norte and Humboldt counties, intended to mitigate for closure of their county to harvest, would not alleviate the loss; it is infeasible to travel further north for the small volumes they harvest based on fuel costs alone. A BKWG member representing kelp harvesters stated that a "sustainable harvest level would be 15% of canopy," based on the member's calculations using data from Department California Environmental Quality Act documents. The commentor believes that only 0.05% of canopy cover is currently being harvested from the north coast and questions the rationale for a closure.

Harvesters posited that a level of sustainable take needs to be established — along with defined levels of decline, recovery, and explicit trigger points for allowing or disallowing harvest — to prevent an extended ban on bull kelp harvest in the north coast.

Two representatives from different NGOs supported the Department's recommendation. They stated that while some recovery is being observed, bull kelp levels are still below the historic average. One suggested revising the sunset date often and using the historic average canopy cover as a trigger for allowing harvest again.

One NGO representative announced that current proposed legislation, the federal KELP Act, includes \$50 million for projects that address kelp recovery.

- (C) Consider potential committee recommendation for commercial bull kelp harvest regulations

The co-chairs supported moving the topic forward at this time and reminded the public that there will still be many opportunities to continue the discussion and submit public comment during the rulemaking process. Co-chair Murray agreed with commenters that there is not enough data on impact of harvest on kelp recovery but did not expect delaying the decision until Nov 2021 would drastically change interpretation relative to the trend data already in hand. However, Co-chair Sklar suggested recommending a sunset date range to include earlier sunset dates from which to select.

MRC Recommendation

Support proposed regulation measures for commercial bull kelp harvest as recommended by the Department and discussed today, including a sunset date between 3–5 years, and schedule for rulemaking on a timeline to be determined.

6. Pink shrimp fishery

Ian Kelmartin and Steve Reinecke presented an overview of the pink shrimp fishery, then presented the Department’s proposed basic fishery management plan (FMP) process. Proposed changes under the FMP included a harvest control rule, light emitting diode requirements to reduce bycatch, and new requirements for reporting landing weight.

Discussion

Co-chair Murray questioned whether the public FMP scoping phase was robust enough based on a concerned commenter. Craig Shuman explained that Department staff initially planned on a rulemaking then found that most of the proposed changes fit under the requirements for a basic FMP. Although the basic FMP has a shorter process and less protocol than a full FMP, a lot has been vetted through MRC already. Craig Shuman also responded to a written comment concerned about pink shrimp trawling in state waters. He reiterated that trawling is prohibited in state waters but mentioned that California Fish and Game Code subdivision 8842(b) presents some ambiguity. Department staff propose to use the FMP to make that section of code inoperable and alleviate the ambiguity.

Representatives from different NGOs expressed support for the pink shrimp basic FMP, appreciation for the harvest control rule and light emitting diode requirement, and appreciation for DFW’s proposed solution related to state waters.

MRC Recommendation

Schedule consideration of a draft pink shrimp fishery management plan as proposed by the Department, including language to make subdivision 8842(b) of the California Fish and Game Code inoperable to eliminate ambiguity surrounding trawling in state waters. Schedule the rulemaking on a timeline to be determined, and request that the Department propose a schedule for fishery management plan approval and adoption of implementing regulations that accounts for fishery management plan requirements and regulatory staff capacity.

7. Market squid fishery

Katie Grady presented the Department's plans to commence a review of market squid fishery management. The process will include formation of a stakeholder advisory group.

Discussion

Commentors supported the effort to commence a market squid fishery review and are open to engaging in the process. Two fishing industry members from Fort Bragg asked to be included in the stakeholder advisory committee, and another commentor emphasized the need to include fishery participants from different parts of the state since they all operate differently. Craig Shuman encouraged interested stakeholders to email Katie Grady to inquire about participating in the squid fishery advisory committee and to check the Department's website to stay up to date.

Two squid fishermen from Monterey Bay would like to see the fishery return to the previous 12-hours-open and 12-hours-closed schedule. They expressed concern over high fishing pressure and risk to successful squid spawning, increased bottom contact, and too many efficient boats in the water.

An NGO representative asked MRC to consider including a depth limit for fishing market squid with seine gear.

A fisherman would like to see the inclusion of an artisanal fishery option within the review process.

No formal recommendation was made; however, the co-chairs would like the Department to move forward on this and continue to bring updates to MRC.

8. Staff and agency updates requested by the Committee

(A) California Ocean Protection Council

No updates were given.

(B) Department

I. Law Enforcement Division

Mike Stefanak introduced and welcomed Eric Kord as the new marine enforcement liaison to the Commission.

a. MPA-related enforcement actions in 2020

Eric Kord gave a presentation on MPA-related enforcement actions in 2020, including percentage of violations statewide per MPA designation and a breakdown of the number of violations per MPA designation by region.

II. Marine Region

a. Recreational red abalone FMP development

Sonke Mastrup informed MRC that the Department is building environmental indicators into the FMP that focus on abalone health and reproduction, and will be partnering with Reef Check to gather data in the

Humboldt and Del Norte county areas.

b. Use of hydraulic pump gear to take clam, sand crab, and shrimp

Sonke Mastrup provided updates on Department efforts since the Commission took emergency action to ban use of hydraulic pump gear for recreational clam take. The Department is seeking to understand clammers' opinions on a hydraulic pump ban and will formally present the results once they are available. Results will be considered when preparing for a regular rulemaking to continue the ban long-term, which is on the Commission's rulemaking timetable for late 2021.

c. Experimental Fishing Permit Program Phase II

Marina Som gave verbal updates on the development of this program. The proposed Experimental Fishing Permit Program Phase II regulations are scheduled for notice in August, with a discussion hearing in October, and an adoption hearing in December.

(C) Commission staff

I. Coastal Fishing Communities Project

Corinna Hong provided verbal updates, including continued progress on writing the remaining five analyses of staff recommendations from the *Staff Synthesis Report on California Coastal Fishing Communities Meetings*. Commission staff will hold regional roundtables in the near future to begin engaging stakeholders in developing a policy and definition for coastal fishing communities for potential Commission adoption.

9. Future agenda items

(A) Review work plan agenda topics, priorities, and timeline

Susan Ashcraft provided an overview of topics in the work plan scheduled for the Nov 2021 MRC meeting.

(B) Potential new agenda topics for Commission consideration

There were no new topics identified to add to the current work plan.

Discussion

An NGO representative expressed concern about high levels of bycatch in California halibut trawls and supports the Commission undertaking a thorough review of federal observer data to reconsider its findings for all California halibut trawl grounds.

Adjourn at 5:28 p.m.