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Fish and Game Commission



*Wildlife Heritage and Conservation
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MARINE RESOURCES COMMITTEE

Committee co-chairs: Commissioner Sklar and Commissioner Murray

March 24, 2022 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.

Call to order

The meeting was called to order at 8:02 a.m. by MRC Co-chair Sklar, who confirmed that Co-chair Murray was present and gave welcoming remarks. The meeting was held via webinar/teleconference. The following commissioners, Commission staff, and California Department of Fish and Wildlife (Department) staff participated.

Committee Co-chairs

Samantha Murray Present
Eric Sklar Present

Commission Staff

Melissa Miller-Henson Executive Director
Susan Ashcraft Marine Advisor
Chuck Striplen Tribal Advisor and Liaison
Cynthia McKeith Staff Services Analyst
David Haug Staff Services Analyst
Kimberly Rogers Sea Grant State Fellow

Department Staff

Law Enforcement Division

Eric Kord Assistant Chief, Marine Enforcement District

Marine Region

Craig Shuman Regional Manager
Sonke Mastrup Program Manager, Invertebrate Fisheries
Becky Ota Program Manager, Marine Habitat Conservation
Kirsten Ramey Program Manager, State Managed Finfish and Nearshore Ecosystem

Julia Coates	Senior Environmental Scientist, Specialist
Laura Rogers-Bennett	Senior Environmental Scientist, Specialist
Ian Taniguchi	Senior Environmental Scientist, Specialist
Rebecca Flores-Miller	Environmental Scientist
Miranda Haggerty	Environmental Scientist
Lindsay Orsini	Environmental Scientist

Office of the State Aquaculture Coordinator

Randy Lovell	State Aquaculture Coordinator
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Invited Guests

Jenn Eckerle	Deputy Director, California Ocean Protection Council (OPC)
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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 non-governmental organizations (NGOs) provided updates on marine protected area (MPA) collaborative network activities to support MPA compliance. They provided updates on the effectiveness of Marine Monitor (M2) radar to help monitor and enforce regulations across the MPA network. These organizations, among others, are working closely to develop education and outreach materials and events, and have led MPA enforcement trainings for over 300 officers.

A representative of an environmental NGO provided an update on efforts to develop trap gear strategies to decrease whale entanglement. Efforts include: testing pop-up gear and technology by Sub Sea Sonics that can be used to mark gear locations at sea, enforceability review, and goals to submit an experimental fishing permit (EFP) application under the new EFP Program and explore cost-reductions for fishermen.

3. Red abalone fishery management plan (FMP) review

Susan Ashcraft provided an overview of the topic and materials provided for the meeting.

Sonke Mastrup introduced a team of three Department scientists who provided an in-depth overview of the newly-released draft management chapter for the red abalone FMP through a series of presentations and then described next steps. The draft management chapter details a management strategy framework, including environmental and abalone indicators, spawning potential ratios, egg production indicator, and a total allowable catch approach and allocation scheme.

The Department highlighted two types of options during recovery of the stock: a *de minimis* (limited) option, which could allow some opportunities for fishing as the stock rebuilds, or a rebuild option to prevent fishing until the stock is fully rebuilt. The Department is seeking MRC input on what to pursue.

Following the presentations, Co-chair Murray asked the scientists if they have observed any indications that abalone populations are improving. Laura Rogers-Bennett responded that the Department has not been able to do as much fieldwork as usual due to the COVID pandemic, thus they cannot quantitatively say how the numbers have changed. Subjectively, they have

not seen abalone stocks improve but they will be able to give the Commission more concrete answers after they go into the field this summer.

Discussion

There was discussion between the committee co-chairs and Department to clarify the process needed for a *de minimis* fishery if divers assisted the Department in data collection: any studies that involve the mortality or take of abalone would require an experimental fishing permit (EFP), whereas studies without the take of abalone could be done under a scientific collecting permit.

A Reef Check representative commented on the status of abalone in response to Co-chair Murray's question. Reef Check was able to collect data during the pandemic and its data supports what the Department hypothesized: abalone numbers have not recovered, nor has kelp cover.

A representative from Ocean Conservancy cautioned about the tradeoffs of each *de minimis* fishery and urged not to rush to open the fishery.

Several commenters appreciated the amount of work that has gone into the draft FMP chapter. However, several were concerned about the methodology to measure the abundance of abalone, including concerns about using density and egg production as opposed to also including size distribution. One commenter pointed at the importance of including survival of abalone recruits, not just egg production, as an important indicator.

Several abalone divers emphasized a desire to move forward with a *de minimis* fishery to fill data gaps, whereas an NGO representative expressed support for a continued closure of the fishery and use of pre-existing density threshold until dramatic signs of recovery are present.

A representative of The Nature Conservancy (TNC), a key partner in harvest control rule development and integration, gave specific points of concern regarding integrated harvest control rules in the draft management chapter. Co-chair Murray gave the Department an opportunity to address some of the issues raised. Craig Shuman committed to thoughtfully considering the concerns and plans to have follow-up conversations with TNC, including with Commission staff.

A former abalone diver who has been involved in abalone management for several years, expressed disappointment in the Department's methodology, stating that it strayed from what stakeholders had suggested. They supported TNC's concerns and advocated using fishermen and citizen science to fill data gaps. They suggested that the Department coordinate data collection with the institutions that are involved in abalone management.

Co-chair Sklar expressed concern about a *de minimis* fishery that would involve removing abalone, but not consuming it [via scientific collecting permit]; he would like to explore the possibility of using divers on a limited basis to participate in data collection and measurements and be able to consume the collected abalone [via EFP].

Craig Shuman requested some MRC guidance on where to prioritize Department efforts. Co-chairs Murray and Sklar would like to see data and more information about the status of the stock and the research goals before exploring a *de minimis* fishery option. Co-chair Murray indicated the goals are important to get a sense of scale for what amount is needed to achieve the scientific goals relative to the stock. Co-chair Murray expressed a low risk-tolerance for allowing

any fishing to happen without concrete data and information, while Co-chair Sklar expressed that his tolerance is low, but not as low as Co-chair Murray's. Co-chair Murray would not support a framework for a *de minimis fishery* without the data but is willing to have a conversation about it following the summer's data collection period. She requested that the Department provide information that would give the co-chairs a better sense for the number of individuals it would be okay to take without doing harm to the population. The co-chairs agreed that if the data suggests that a *de minimis* fishery would not cause more harm, they would be open to the possibility.

The Department committed to going into the field, working with its partners to understand the status of the population and engage in discussions on the management framework and harvest control rules, continue working with Reef Check to ensure their methodologies are consistent, and come to an agreement on the best management approach. Co-chair Murray hopes that the Department's research gives MRC a sense of scale for a *de minimis* fishery.

No formal committee recommendation was made, but MRC requested an update at the July MRC meeting on field surveys.

4. California halibut fishery bycatch review

Susan Ashcraft gave introductory remarks including the context for how "bycatch" is defined for state managed fisheries under the Marine Life Management Act (MLMA), MLMA requirements for determining acceptable amounts and types of bycatch, and the evaluation framework in the 2018 MLMA master plan for fisheries.

Kirsten Ramey presented an overview of the Department's approach to bycatch evaluation in support of halibut fishery management review, using the bycatch inquiry framework in the master plan. The Department will focus on review of the trawl and set gillnet gear fishing sectors.

Trawl grounds evaluation update

Kirsten also provided an update on plans to evaluate the California halibut trawl fishing grounds in state waters that MRC and the Commission previously supported. The Department has discovered that using an EFP to evaluate trawling in *closed* grounds is explicitly prohibited in EFP legislation. Therefore, the Department will move forward with an EFP to evaluate the *open* trawl grounds in southern California first, then consider options such as a collaborative research project to evaluate the currently-closed grounds.

Discussion

Representatives from two environmental NGOs gave a joint public comment presentation. They highlighted bycatch species documented in the California halibut fishery, noting that fishing also occurs in federal areas beyond state jurisdiction that have limited observer coverage. They highlighted their key priorities for the bycatch inquiry.

Other NGO representatives expressed support for DFW's approach to analyzing bycatch and emphasized the importance of transparency throughout the process. One representative expressed concern with gillnet bycatch in particular, offered support for the review, and requested that an update be provided at the July MRC meeting.

The co-chairs expressed support for the Department's attention and approach to the bycatch inquiry. No formal committee recommendation was made; however, MRC requested to receive an update on the analyses and source data in July.

5. California sheephead recreational harvest regulations

Susan Ashcraft introduced the purpose of the topic, noting that California sheephead is a species of finfish managed under the Nearshore FMP adopted by the Commission, and is managed with nearshore species through joint state and federal jurisdiction.

Miranda Haggerty presented an overview of the species, catch allocation between recreational and commercial sectors defined in the nearshore FMP and specified in regulation, and trends in increasing recreational catch. Recreational landings have exceeded the sector allocation and the total allowable catch for at least two years, prompting the need to amend regulations to help reduce take. The Department recommends using the Pacific Fishery Management Council (PFMC) process to develop the options with stakeholders and select the preferred approach, to be followed with conforming regulations for state waters by the Commission.

Discussion

One California resident noted that sheephead colonized in the Monterey area during the warm water phase and, as a natural predator of sea urchins, could help reduce urchin barrens and improve kelp forests. They recommend a moratorium on sheephead fishing along the central and northern coasts.

A sheephead fisherman asked for more information on how the Department calculated 2020 catch in the absence of field surveys. The Department used non-contact surveys, like counting fishing boats, and past landings to extrapolate an estimate on sheephead population. The staff noted that 2021 data is based on field surveys and verified that catch exceeded the total allowable catch.

The Department will likely pursue any management changes through the federal process and will keep the Commission posted on actions.

No formal committee recommendation was made. However, MRC requested to receive an update in July following the PFMC process.

6. Kelp recovery and management plan

Susan Ashcraft introduced the topic regarding Department plans to develop a kelp recovery and management plan (KRMP) in partnership with the California Ocean Protection Council and stakeholders; the strategy will apply many of the principles specified for FMPs developed under the MLMA. The KRMP ultimately will be brought to the Commission for adoption.

Kirsten Ramey presented an overview of the process to develop the KRMP, which will cover both giant and bull kelp. The process design includes hiring a project manager, assembling a management team, coordinating a scientific advisory committee to identify information gaps, engaging with California Native American tribes to incorporate tribal knowledge into the management process, and forming separate stakeholder working groups specific to giant kelp and bull kelp.

Discussion

Co-chair Murray asked about a potential timeline for KRMP development. Kirsten responded that the goal is between three and five years.

Committee co-chairs expressed support for the effort. The co-chairs suggested — given the multi-year process envisioned — that this item can be folded into the Department’s Marine Region updates at future MRC meetings rather than becoming a regular standing agenda item. MRC discussion will be scheduled at pivotal points in the process.

Many commenters expressed support and excitement for a KRMP covering both giant and bull kelp and emphasized that there is a lot of stakeholder interest in the topic. One commenter stressed the importance of considering kelp wild harvest, kelp aquaculture farming, and recovery together. A kelp harvester emphasized the importance of including kelp harvesters to fill in data gaps.

Another harvester encouraged involving and leveraging organizations that have been doing a lot of work around kelp management. A harvester would like to be included in the process and is willing to share harvest records to support Department and Commission use of “best available science.”

A kelp harvester expressed concern about tribal take of kelp being constrained by recreational harvest limits; in response, Chuck Striplen recommended using the Commission Tribal Committee as a space for tribes to give feedback about the plan and any concerns they have with the allowable harvest levels of kelp relative to their needs.

Following discussion, the co-chairs agreed they would like to schedule updates on a periodic basis rather than as a standing item. Craig Shuman responded that the Department will flag Commission staff on the right time frame to facilitate discussion at Commission meetings. No formal committee recommendation was made.

7. Kelp and algae commercial harvest – sea palm (*Postelsia*)

Susan Ashcraft introduced the topic, highlighting that review of kelp and algae harvest is following a multi-year management review process, within which review of edible seaweed species was identified on the MRC work plan to occur next. Sea palm is classified as an edible seaweed, however a decline in abundance has been documented. The purpose of the item is to discuss concerns with sea palm management and for MRC to consider whether to recommend elevating the review of sea palm harvest separately from the scheduled edible seaweed harvest review.

Rebecca Flores-Miller provided a brief background on the initial draft regulatory changes intended to support sustainable commercial harvest of kelp and other marine seaweed. With Commission approval, the Department’s attention focused on commercial bull kelp harvest management first. Following the Department’s proposed bull kelp harvest regulations, which were approved by the Commission in February 2022, the Department is now pivoting to focus on review of other commercial marine seaweed species. The Department has observed a persistent drop in sea palm population for five years (2014-2020), a trend also documented in independent academic research through Reef Check at University of California Santa Barbara. Current regulations do not include harvest limits, seasonal closures, or specific allowable harvest methods for sea palm.

Due to concerns in the sea palm population, the Department recommends prioritizing sea palm regulations review. To do this, it proposes to form a stakeholder working group of harvesters, scientific community members, NGOs, and any other interested constituents, and will also engage with tribal representatives to understand and use tribal knowledge.

Discussion

NGO representatives and seaweed harvesters supported the Department recommendation to review sea palm harvest separately from the scheduled edible seaweed harvest review and noted that there are tools, studies, and industry guidelines available to help guide the regulatory process.

Co-chair Murray referenced an earlier letter from the InterTribal Sinkyone Wilderness Council that requested a moratorium on sea palm for ten years; she wants to ensure that the proposal is not forgotten. She believes that the letter lends support to moving forward with elevating the review of sea palm before other edible species. The committee advised staff that it would like feedback from the Tribal Committee as the regulatory review moves forward.

Following discussion, the committee developed a recommendation for Commission consideration.

MRC Recommendation

Prioritize review of sea palm commercial harvest before the review of commercial harvest of other edible species, and consider referring this topic to the Tribal Committee.

8. Coastal fishing communities policy

Kimberly Rogers presented an update on Commission staff's progress developing a draft coastal fishing communities policy for potential Commission adoption. On February 23, 2022, staff hosted and facilitated a policy-drafting workshop where participants – including fishermen, NGO representatives, scientists, and more – gave feedback on a staff initial draft policy for coastal fishing communities. The initial draft policy was founded on the policy goals and principles reviewed by MRC in November 2021 and supported by the Commission in December 2021. The workshop provided an informal opportunity to improve the initial draft.

Kimberly presented the initial draft policy itself, the documents used to guide the workshop, a summary of key outcomes from the workshop, and staff's efforts to further explore and incorporate stakeholder feedback.

Following MRC guidance, the next steps are to distribute workshop outcomes to participants, integrate revisions to the existing initial draft policy language, further explore topics that require additional development, and prepare for a follow-up stakeholder policy-drafting workshop.

Discussion

Co-chair Murray pondered on the ongoing staff recommendation analyses and policy as the appropriate vehicle for addressing coastal fishing community needs. Both co-chairs want to ensure that the policy, once adopted and implemented, does address the needs of coastal fishing communities.

One commenter shared how other regions in the world incorporate fishing communities and emerging communities, like aquaculture, together since they share similar economic resources and infrastructure.

The Committee supports staff continuing to refine the policy, suggests using the term fishers instead of fishermen, and supports moving forward with a second workshop.

9. Box crab experimental fishing permit (EFP) research project

Susan Ashcraft introduced this item, including the history of the box crab EFP, a collaborative research program to study box crab and potentially develop a new fishery in California.

Lindsay Orsini provided an update on the box crab EFP program including what they have learned and options for moving forward. Lindsay described the three objectives of the program: gather essential fishery information for brown box crab and California king crab, evaluate the potential for a commercial fishery for brown box crab, and explore the application of electronic monitoring technologies to fixed gear fisheries.

Lindsay provided an overview of the preliminary results and some of the challenges the Department has come across, including lack of approved permit holders, which prevented data collection in some areas, and inability of Department staff and observers to join trips during the COVID pandemic. Preliminary results suggest that there is relatively high catch per unit effort compared to other invertebrate trap fisheries, it is mostly male box crabs that are caught due to size limits, there is a relatively high value of box crab and king crab relative to other crab species, and bycatch is fairly low to the target catch but did capture some at-risk groundfish species. Lindsay touched upon whale entanglement conflicts and the importance of evaluating risk mitigation measures.

The Department requested guidance from MRC about next steps to improve data collection and offered three options, including instituting a new EFP, developing a small-scale, interim developmental fishery through regulation with data collection requirements, or no action. The Department recommends a new EFP with revised goals to address information gaps.

Discussion

Co-chair Murray asked why some of the original eight participants left the box crab fishery. The Department responded that some found the permit fee to be too high and others were affected by Dungeness crab closures and delays and did not believe they could afford to participate.

Co-chair Murray then asked about how to proceed with mitigating whale entanglements. Craig Shuman responded that the next phase could provide an opportunity to evaluate and limit the risk of whale entanglement. Sonke Mastrup added that if the box crab EFP is renewed, there would be another venue to experiment with innovations to reduce entanglement, especially in southern California.

During the discussion, an Oceana representative supported expanding new fisheries and promoted Oceana's resources to folks who are interested in working with pop-up trap gear. They also urged the Department to explore if there are any legal issues with potentially taking species listed under the Endangered Species Act.

A fisheries consultant supported pursuing a new EFP but was concerned about some of the issues the lottery created when the original experimental gear permits for box crab were first issued. They encouraged the Commission and Department to give priority to folks who are already participating in the box crab fishery EFP. Co-chair Murray agreed that those folks should be given priority.

Following discussion, MRC developed a recommendation for Commission consideration.

MRC Recommendation

Support development of a new experimental fishing permit to continue researching brown box crab and California king crab with revised research goals related to filling information gaps and attention to whale entanglement issues, as recommended by the Department. Support giving priority to current/prior box crab experimental fishing permit participants to participate in the new experimental fishing permit.

10. Aquaculture leasing in California – public interest determination

Susan Ashcraft introduced the topic with an overview of the Commission’s authority to lease state water bottom leases for purposes of conducting aquaculture in State marine waters and under terms agreed upon by the Commission and lessee. Prior to a lease being approved, the Commission must determine that the lease is in the public interest; however, there are no set standards in California Fish and Game Code or Title 14 regulations to determine if a lease is in the public interest. While no criteria have been developed, there is currently one application for a new state water bottom lease that needs to be evaluated for public interest to be able to move forward; more are anticipated.

Randy Lovell provided an overview of some process concepts for the pathway to develop criteria and emphasized that there are no policy definitions or criteria for public interest found anywhere in Fish and Game Code, but the California Environmental Quality Act (CEQA) is costly and a significant time investment. Randy provided an approach to distinguish considerations that need to be addressed in the CEQA process from those considerations that are either missing or may preclude unnecessary expenses in the CEQA process. A set of criteria may standardize the considerations for leases in their varied environs across the state. The process to develop these criteria would include extensive research, coordination among agencies, and stakeholder engagement that may lead to drafting policy concepts.

Discussion

Co-chair Murray expressed that she wants to avoid developing criteria that is as complex, time consuming, and costly as the CEQA process but emphasized there is currently no procedure for public interest determination. She indicated that comment letters from Marin Environmental Action Committee (EAC) and Marin Audubon Society propose some criteria as a place to start.

During public comment, a resident from the San Francisco Bay Area objected to continued aquaculture in Tomales Bay. A representative from Marin EAC referred to specific points in their comment letter and expressed that they would be willing to help develop public criteria. A Los Angeles resident supported development of aquaculture and is particularly excited about seaweed aquaculture. A Heal the Bay representative provided examples of public criteria. Lastly, a representative from Los Angeles Waterkeeper emphasized that the sooner public interest criteria is developed, the better. They also reflected on the failing of certain infrastructure that is leading to sewage spills in the Los Angeles area that impacts aquaculture.

After a discussion on potential criteria to consider, the Committee explored next steps. Kirsten Ramey suggested the Department can begin reaching out to agencies with aquaculture jurisdiction, develop draft language which incorporates the feedback heard at the MRC meeting, and share the draft language with stakeholders.

MRC requested that the Department and Commission staff develop a preliminary draft, exploring the categories of criteria heard and discussed, circulate it to stakeholders, and bring

it back to MRC in July. Commission staff also committed to having at least one public workshop before the MRC meeting in July.

11. Staff and agency updates requested by the Committee

Co-chair Murray introduced the topic.

(A) California Ocean Protection Council (OPC)

Jenn Eckerle shared several OPC updates:

- The state aquaculture action plan is under development through OPC and with input from the State Aquaculture Leadership Team and other partners. Co-chair Murray asked to clarify if the State Aquaculture Action Plan includes finfish or not; Jenn responded that it only includes shellfish and seaweed.
- OPC efforts to draft a marine restoration and mitigation policy are advancing. The policy will be completed this year.
- Preparation for the MPA decadal management review includes education and outreach related to MPA long-term monitoring results and an “ask the researcher” forum this summer.
- OPC continues to work with agency partners on offshore wind and its potential impacts on fishing.

Discussion

An NGO representative highlighted OPC’s work on microplastic strategy. Another commenter referred to OPC’s strategic plan to protect California’s coast and approved of the inclusion of giant kelp aquaculture.

(B) Department – Law Enforcement Division

Assistant Chief for Marine Enforcement, Eric Kord, gave a presentation on recent marine enforcement cases, focusing on commercial Dungeness crab cases (possession of undersized crabs, and traps discovered in marine protected areas).

(C) Department – Marine Region

Craig Shuman highlighted that these updates were given in a written format.

I. Market squid fishery management review

Briana Brady gave an overview of the update at the request of Co-chair Murray.

II. Marine protected area (MPA) network decadal management review

Co-chair Murray asked if Becky Ota had anything to add to the written update. Becky requested guidance on the decadal management review report design and options – whether it should be web based or a PDF version. Commission staff offered to discuss options with the Department and provide support as needed. Craig Shuman responded that a web-based version could be a natural progression as the Department looks to the “paperless” future. The Department and Commission staff will work together on a solution.

(D) Department – Office of State Aquaculture Coordinator

I. Aquaculture – Current and future state lease planning

Randy provided a brief presentation on progress regarding requests for new leases and amendments to existing leases.

(E) Commission staff

The Committee did not have questions on the Commission staff update.

Discussion (Items B-E)

A commenter asked Eric Kord about repeat offenders and cross-coordination across counties. Eric responded that officers across counties do work with each other about repeat offenders and communicate across offices. Eric will look into talking with other chiefs about repeat offenders and ensuring there is a system to make sure different counties are aware of statewide violators.

12. Future agenda items

(A) Discuss work plan prioritization

(B) Review work plan agenda topics, and timeline

(C) Potential new agenda topics for Commission consideration

Susan Ashcraft presented an overview of the work plan agenda topics. No new topics were identified. Co-chair Murray would like aquaculture public interest determination to be included in the work plan table for July – Commission staff will update the work plan.

Co-chair Murray noted she will not be at the July MRC meeting, scheduled for San Diego, and requested to move the location. She also would like to be involved in the aquaculture public interest determination workshop if it happens some time before July.

Chris Stoots then responded to the data and information sharing concern an earlier commenter expressed, saying that the law enforcement division uses a records management system and communicates across all 480 wildlife officers around the state. They will ensure that the commenters' concern is addressed.

Co-chair Murray recognized the electronic records management system as an effective method for identifying repeat offenders.

Discussion

There were no public comments.

The meeting adjourned at 3:07 p.m.