

# California Department of Fish and Wildlife's Evaluation of 2023 Decadal Management Review Marine Protected Area Petition:

## Reclassify Footprint, Gull Island, and Santa Barbara Island SMRs to SMCAs to Allow Take of Highly Migratory Species (2023- 15MPA\_AM)



### I. PETITION SUMMARY

CFGFC Tracking Number	2023-15MPA_AM
Petition Contact/Affiliation	Blake Hermann
Number of Proposed Actions	3
Affected MPAs	Footprint SMR, Gull Island SMR, Santa Barbara Island SMR
Petition Summary	Reclassify three State Marine Reserves/Federal Marine Reserves (SMR/FMRs) in the Northern Channel Islands as State Marine Conservation Areas/Federal Marine Conservation Areas (SMCA/FMCAs) to allow use of Deep Set Buoy Gear (DSBG), pending the potential establishment of a DSBG fishery in state waters, commercial take of swordfish ( <i>Xiphias gladius</i> ) by harpoon, and one of six options representing various combinations of recreational and/or commercial take of highly migratory species (HMS) or pelagic finfish, and possession of coastal pelagic species (CPS). Petitioner includes options for partial reclassification of two of the three marine protected areas (MPAs) into inshore limited take or No-take MPAs/offshore limited take MPAs, with the portion of the existing MPA that extends into federal waters assuming the same regulations as the offshore portion in state waters. Target species and gear options proposed are intended to limit ecosystem impacts due to the selective nature of the fishing gear.
Link to StoryMap page	<a href="#">2023-15MPA_AM</a>



March 2026

## II. CDFW RECOMMENDATIONS AND BRIEF JUSTIFICATION

*Note: If a change to the Marine Protected Area (MPA) regulations is not needed to address the proposed change, California Department of Fish and Wildlife (CDFW) did not evaluate the proposed change using the framework. However, CDFW may recommend an alternative pathway to achieving the desired outcome of the proposed change.*

Petition Action ID and Proposed Action	Petitioner’s Stated Rationale and Brief Justification for Proposed Actions	CDFW Recommendation and Brief Justification
<p><b>2023-15MPA_1_AM2</b>                      Reclassify Footprint SMR/FMR to an SMCA/FMCA to allow use of DSBG, pending the potential establishment of a DSBG fishery in state waters; commercial take of swordfish by harpoon; and one of six options representing various combinations of recreational and/or commercial take of HMS or pelagic finfish by hook-and-line and/or spear, and possession of CPS (Table 1).</p>	<p>The petitioner’s stated intent for the proposed change is that HMS and pelagic finfish, including swordfish, were not intended to be protected by this MPA, and that take of these species will provide economically beneficial sustainable commercial fishing opportunities while minimally impacting the ecosystem due to the selective nature of the gear.</p>	<p><b>Deny petition actions 2023-15MPA_1_AM2, 2023-15MPA_2_AM2 and 2023-15MPA_3_AM2.</b>                      The proposed change, to reclassify Footprint SMR/FMR to an SMCA/FMCA to allow use of DSBG, commercial take of swordfish by harpoon, and various combinations of other recreational and/or commercial take, does not advance adaptive management recommendations from the Decadal Management Review or address a current or emerging MPA management challenge. Furthermore, the change would conflict with the original goals of these MPAs, create enforcement feasibility issues, and require coordination and a corresponding rulemaking with the National Oceanographic and Atmospheric Administration (NOAA) Channel Islands National Marine Sanctuary (CINMS). CINMS has not indicated to date to CDFW that protection level modifications appear needed in order to better support the goals established for these MPAs. There is not sufficient evidence to demonstrate that the proposed change would advance MPA adaptive management or that a change in MPA regulations is warranted.</p>

**CDFW EVALUATION 2023-15MPA\_AM Hermann**

<p align="center"><b>Petition Action ID and Proposed Action</b></p>	<p align="center"><b>Petitioner’s Stated Rationale and Brief Justification for Proposed Actions</b></p>	<p align="center"><b>CDFW Recommendation and Brief Justification</b></p>
<p><b>2023-15MPA_2_AM2</b>                      Reclassify Gull Island SMR/FMR to an SMCA/FMCA, or partially reclassify into an onshore portion with stronger take protections and an offshore portion with fewer restrictions. Within at least the offshore area, allow use of DSBG pending the potential establishment of a DSBG fishery in state waters; commercial take of swordfish by harpoon; and one of six options representing various combinations of recreational and/or commercial take of HMS or pelagic finfish by hook-and-line and/or spear, and possession of CPS (Table 1).</p>	<p>See 2023-15MPA_1_AM2.</p>	<p><b>Deny.</b> See 2023-15MPA_1_AM2.</p>

**CDFW EVALUATION 2023-15MPA\_AM Hermann**

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<p><b>2023-15MPA_3_AM2</b>                      Reclassify Santa Barbara Island SMR to an SMCA, or partially reclassify into an onshore portion with stronger take protections and an offshore portion with fewer restrictions. Within at least the offshore portion, allow use of Deep Set Buoy Gear (DSBG) pending the potential establishment of a DSBG fishery in state waters; commercial take of swordfish by harpoon; and one of six options representing various combinations of recreational and/or commercial take of HMS or pelagic finfish by hook-and-line and/or spear, and possession of CPS (Table 1).</p>	<p>See 2023-15MPA_1_AM2.</p>	<p><b>Deny.</b> See 2023-15MPA_1_AM2.</p>

### III. BIN 2 PETITION GROUPING: IDENTIFY TRIBALLY-LED PETITIONS

*The 2023 MPA Petition Companion Document (Attachment 1) includes a summary of the process for identifying Tribally-led petitions, CDFW’s outreach to all California Native American tribes<sup>1</sup> (tribes) throughout the petition process, and a summary of outreach and engagement with Tribally-led petitioners. Tribally-led petitions were evaluated with the CDFW 2023 MPA Bin 2 Petition Evaluation Framework.*

Tribal Components Questions	Answer and Explanation
<p>Was the petition submitted by a California Native American tribe, representative designated by a tribe or tribal organization, or have a tribal co-sponsor? If yes,</p> <ul style="list-style-type: none"> <li>a. Does the proposed change explicitly aim to advance tribal co-management, subsistence harvesting, stewardship, and/or provide a tribal benefit through recognizing the cultural significance of an area?</li> <li>b. Is the proposed regulatory change explicitly linked to a tribe or tribes? (i.e. tribal exemption, tribal take only MPA, or new MPA for co-management).</li> </ul>	<p>No, this petition was not submitted by a tribe or representative designated by a tribe and does not have a tribal co-sponsor.</p>

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<sup>1</sup> California Native American tribe is the preferred term to use per the Governor’s Office of Tribal Affairs when generally mentioning tribes of California, both federally and non-federally recognized.

## IV. PETITION EVALUATION

### EVALUATION NARRATIVE AND OVERVIEW FOR 2023-15MPA\_1\_AM2, \_2\_AM2, AND \_3\_AM2

The petitioner has requested that three SMRs/FMRs in the Northern Channel Islands (Footprint, Gull Island, and Santa Barbara Island SMRs/FMRs) be reclassified to allow take of select species. These No-take MPAs extend beyond the 3 nautical mile (nm) state waters boundary to the 6 nm CINMS boundary in federal waters. The purpose of these federal reserves within the CINMS is to “further the protection of Sanctuary biodiversity and to complement the state’s marine reserves.” However, the petitioner seeks to open these No-take MPAs to increase opportunities for take of HMS<sup>2</sup> (as defined in California Code of Regulations (Cal. Code Regs.), title (tit.) 14, § 1.49) and pelagic finfish<sup>3</sup> (as defined in Cal. Code Regs., tit. 14, § 632, subdivision (subd.) (a)(3)) including swordfish, using a variety of gear types intended to minimize impact to other species and habitats within the MPAs. The proposal also includes an allowance for possession of CPS<sup>4</sup> (Cal. Code Regs., tit. 14, § 1.49). The proposed change aims to address a number of problems stated by the petitioner. Firstly, the petitioner states that, “The problem created by [the MPAs established in the Northern Channel Islands in 2003] was the unintentional protection of seasonal pelagic and highly migratory species that migrate into Southern California in the summer months.” The petitioner also asserts the proposed action to allow these activities would resolve, “a large conflict in these MPAs” related to commercially targeted swordfish that are, “legally taken” (i.e., hooked or harpooned) outside of an MPA but that may require gear retrieval within an MPA’s boundaries due to movement by the fish and associated gear during the soak period. The petitioner further asserts that local naval closures result in limited and unpredictable fishing area availability in the Northern Channel Islands at any given time, which could be mitigated by providing access to areas that currently prohibit take (See response to Question 7b in the evaluation framework below for a complete list of concerns raised by the petitioner).

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<sup>2</sup> albacore, bluefin, bigeye, and yellowfin tuna (*Thunnus* spp.), skipjack tuna (*Katsuwonus pelamis*), dorado (dolphinfish) (*Coryphaena hippurus*), striped marlin (*Kajikia audax*), thresher sharks (common, pelagic, and bigeye) (*Alopias* spp.), shortfin mako shark (*Isurus oxyrinchus*), blue shark (*Prionace glauca*), and Pacific swordfish (*Xiphias gladius*)

<sup>3</sup> northern anchovy (*Engraulis mordax*), barracudas (*Sphyraena* spp.), billfishes\* (family *Istiophoridae*), dolphinfish (*Coryphaena hippurus*), Pacific herring (*Clupea pallasii*), jack mackerel (*Trachurus symmetricus*), Pacific mackerel (*Scomber japonicus*), salmon (*Oncorhynchus* spp.), Pacific sardine (*Sardinops sagax*), blue shark (*Prionace glauca*), salmon shark (*Lamna ditropis*), shortfin mako shark (*Isurus oxyrinchus*), thresher sharks (*Alopias* spp.), swordfish (*Xiphias gladius*), tunas (family *Scombridae*) including Pacific bonito (*Sarda chiliensis*), and yellowtail (*Seriola dorsalis*). \*Within the billfish family, commercial take of marlin is prohibited.

<sup>4</sup> northern anchovy (*Engraulis mordax*), Pacific sardine (*Sardinops sagax*), Pacific mackerel (*Scomber japonicus*), jack mackerel (*Trachurus symmetricus*), and market squid (*Doryteuthis opalescens*)

## CDFW EVALUATION 2023-15MPA\_AM Hermann

The petitioner's proposal for the Gull Island and Santa Barbara Island MPAs includes two alternatives: reclassifying the entire SMR as an SMCA, or establishing a new MPA cluster, with an onshore portion with stronger take protections (either a No-take SMR or a restrictive limited-take SMCA) and an offshore portion with fewer restrictions. The proposal for Footprint SMR/FMR does not include nearshore/offshore options, as it is in the channel between Santa Cruz and Anacapa Islands and thus does not border the mainland coast.

The petition proposes expanding opportunity within the new SMCAs by allowing use of deep-set buoy gear (DSBG), allowing commercial take of swordfish by harpoon, and selecting one of 6 options for other commercial and/or recreational take of HMS and pelagic finfish, as well as possession of CPS. Gear types would include hook and line, no-bottom contact hook and line, and/or spear (see Table 1 for all proposed options).

The petitioner also requests consideration of an allowance for DSBG inside the affected MPAs, pending any potential establishment of a DSBG fishery by the California Fish and Game Commission (CFGC). DSBG is currently not permitted for use in California state waters, except for an active experimental fishing permit (EFP) issued by CDFW which allows limited testing of DSBG by specific permit holders, including in the area around the Northern Channel Islands.

To facilitate analysis of the various options, CDFW distilled each variation of the petitioner's proposal into three proposed actions, Footprint (2023-15MPA\_1\_AM2), Gull Island (2023-15MPA\_2\_AM2), and Santa Barbara Island (2023-15MPA\_3\_AM2). CDFW evaluated the proposed actions as a whole because the analysis of redesignating all or portions of these SMR/FMRs to SMCA/FMCAs to allow commercial or recreational take of the proposed species (HMS/pelagic finfish, swordfish, plus CPS possession) using any of the proposed gear types (hook and line, no-bottom contact hook and line, spear, harpoon), is similar regardless of the particular location or variation considered. As redesignating the portions of the three SMR/FMRs that occur in federal waters is not within CFGC authority, CDFW focused the petition evaluation on proposed changes specified within state waters. In considering and weighing decisions to amend portions of the MPA Network around the Channel Islands, it is important to note the Islands MPAs were established through a joint state/federal community-based process, respective state and federal rule making processes with aligned MPA goals and regulations, and has been co-managed by the state, CINMS, and Channel Islands National Park.

Although the petitioner asserts the proposed options in the petition align with one or more of the MPA Master Plan objectives, CDFW's evaluation finds the petition (including all six options for the three affected SMR/FMRs):

## CDFW EVALUATION 2023-15MPA\_AM Hermann

- Is inconsistent with the goals of these MPAs as stated in the Northern Channel Islands MPA planning process,
- Does not align with the original intent of the MPAs,
- Does not address a current or emerging MPA management challenge, and
- Would not advance management of the MPA Network.

The petition proposal is inconsistent with the goals of these SMR/FMRs defined during the Northern Channel Islands MPA planning process, and these goals remain relevant today, including:

- To protect representative and unique marine habitats, ecological processes, and populations of interest; to identify and protect multiple levels of diversity (e.g. species, habitats, biogeographic provinces, trophic structure, and
- To set aside areas which provide physical, biological, and chemical functions (See NOAA 2007a and 2007b for goals of the Northern Channel Islands MPA planning process).

These SMR/FMRs were intentionally designed and placed with ecosystem-level protection objectives in mind. Although the Marine Reserves Working Group did not identify HMS and pelagic finfish, including swordfish, as species of interest or likely to benefit from MPAs during the Northern Channel Islands MPA planning process, the affected SMR/FMRs continue to offer refuge to individuals of these species when they are present and may be used for biological functions (e.g., swordfish basking).

Currently, Gull Island and Santa Barbara Island SMR/FMRs serve as part of the backbone of California's MPA Network, facilitating habitat and resource protection and ecological connectivity. Some of the proposed options would result in the current Level of Protection (LOP) being reduced from Very High to Moderate-low, which would result in these MPAs losing their status as habitat replicates. This has potential to compromise ecological connectivity objectives for the MPA Network, including between the Northern Channel Islands and the mainland coast. While the petitioner offers take options to allow these MPAs to maintain their replicate status (e.g., some inshore/offshore options), the MPAs would no longer offer the highest levels of protection or serve their designed function in the MPA Network as SMR/FMRs. All three MPAs and their No-take designations were expanded into federal waters in 2006 and 2007 by NOAA regulations cited in the Federal Register (See NOAA 2007b). Thus, redesignating these No-take MPAs as partial take MPAs in state waters would result in misalignment with regulations in the adjoining No-take FMRs. Redesignating the portions of the three MPAs that occur in federal waters is not within CFGC authority. Since the implementation of these MPAs, NOAA Sanctuaries has not indicated to CDFW that protection level modifications appear needed in order to

better support the goals established for these MPAs. The petition is currently under review by CINMS staff.

The petition proposal to partially or fully reclassify select Channel Island SMR/FMRs to SMCA/FMCAs is anticipated to present enforcement feasibility challenges due to increasing take regulation complexity combined with options for the inshore/offshore design. These proposed changes could cause public confusion about spatial, regulatory, and user group differences in allowed uses in the proposed near-shore and offshore areas, leading to greater accidental or intentional non-compliance and copycat behavior.

Regarding the petitioner's request for CFGC to consider an allowance for DSBG inside the state waters of the affected SMR/FMRs, there is no current process underway to broaden the use of DSBG to state waters beyond the currently active EFP, so such an allowance would be premature.

#### **RECOMMENDATION FOR 2023-15MPA**

Given these considerations, and the information in the evaluation below, **CDFW recommends CFGC DENY the petition**, including proposed changes:

- **2023-15MPA\_1\_AM2**, reclassify Footprint SMR to SMCA,
- **2023-15MPA\_2\_AM2**, reclassify all or portions of Gull Island SMR to SMCA, and
- **2023-15MPA\_3\_AM2**, reclassify all or portions of Santa Barbara Island SMR to SMCA.

### **EVALUATION QUESTIONS**

**2023-15MPA\_1\_AM2, \_2\_AM2, and \_3\_AM2: Reclassify three Channel Island SMRs to SMCAs, or reclassify portions into inshore/offshore (limited take or No-take/limited take) MPAs, to allow one of six options representing various combinations of recreational and commercial take of highly migratory species (HMS), possession of coastal pelagic species (CPS), and recreational and/or commercial take of pelagic finfish, using various gear types, including deep-set-buoy-gear.**

**QUESTION 1: DOES THE PROPOSED CHANGE SUPPORT THE MPA NETWORK IN MEETING ONE OR MORE OF THE MLPA GOALS AND ALIGN WITH MPA MASTER PLAN ADAPTIVE MANAGEMENT OBJECTIVES?**

The Marine Life Protection Act (MLPA) Goals and Master Plan objectives are inextricably linked and act as the foundational tools that CDFW utilizes for effective adaptive management of the MPA Network. Individual MPAs in the Network were not necessarily designed to address all six Goals of the MLPA but instead act as an important component of a functioning Network that was designed to holistically address the MLPA Goals. As such, CDFW has evaluated this action within the broader adaptive management framework and how the proposed action may or may not align with the MLPA Goals/Master Plan objectives and advance MPA Network management. See Question 1 of Attachment 1 for the MLPA Goals and Master Plan objectives.

Although the petitioner asserts the proposed actions would align with the MLPA Goals and MLPA Master Plan, in the broader adaptive management framework, the proposed change would not advance management of the MPA Network. As part of California's MPA Network, the three MPAs affected by the proposed changes are intended to meet several MLPA Goals that are still relevant today, including:

- Footprint SMR: Goals 1, 2, and 5,
- Gull Island SMR: Goals 1, 2, 5, and 6, and
- Santa Barbara Island SMR: Goals 1, 2, 5, and 6

Although HMS and swordfish stocks were not identified as species of interest or likely to directly benefit from directly MPAs due to their high mobility and large geographic ranges, the affected SMR/FMRs currently offer refuge to individuals of these species when they are present and may be used for biological functions (e.g., swordfish basking). These SMR/FMRs were intentionally designed and placed with ecosystem-level protection objectives in mind.

Currently, Gull Island and Santa Barbara Island SMR/FMRs are habitat replicates within the backbone of California's MPA Network, facilitating habitat and resource protection and ecological connectivity. Some of the proposed options have the potential to compromise ecological connectivity objectives for the MPA Network, which includes connectivity between the Northern Channel Islands and the mainland coast. Thus, the impact of the proposed changes to these SMR/FMRs has the potential to be greater than the take of HMS and pelagic finfish alone. While the petitioner offers some take options to allow these MPAs to maintain their replicate status (e.g., nearshore limited take zones), they would no longer offer the highest levels of protection or serve their designed function in the MPA Network as SMRs/FMRs. Additionally, they would no longer be aligned with the FMR goals.

**QUESTION 2A: DOES THE PROPOSED CHANGE ADVANCE ADAPTIVE MANAGEMENT RECOMMENDATIONS IN THE DECADAL MANAGEMENT REVIEW?**

**No.** None of the options the petitioner proposes advance adaptive management recommendations from the Decadal Management Review (DMR). See Question 2a of Attachment 1 for the Decadal Management Review and adaptive management Recommendations.

The petitioner cites several DMR Recommendations to justify allowing fishing for HMS and pelagic finfish within the affected SMR/FMRs, characterizing this activity as now being realized as, “low impact.” During the planning process, MPAs were acknowledged as not being as suitable for the protection of species that are highly mobile with large geographic ranges. However, the affected SMR/FMRs were intentionally established as No-take areas to meet MLPA Goals around ecosystem-level protection and thus, HMS and pelagic finfish are protected in these MPAs when present. While selective pelagic fishing gear may reduce direct MPA impacts, the affected SMR/FMRs were sited through extensive ecological and socioeconomic analysis and fishery stakeholder input. The petitioner’s rationale for introducing pelagic fishing does not offer new information resulting from the DMR or outweigh the foundational design principles of these No-take MPAs to warrant the proposed change, and thus, would not advance MPA adaptive management recommendations.

**QUESTION 2B: IF NOT, DOES THE PROPOSED CHANGE ADDRESS A CURRENT OR EMERGING MPA MANAGEMENT CHALLENGE?**

**No.** The proposed change does not address a current or emerging MPA management challenge. The petitioner’s stated intent for the proposed change is, “The problem created by [the MPAs established in the Northern Channel Islands in 2003] was the unintentional protection of seasonal pelagic and highly migratory species that migrate into Southern California in the summer months,” which is not a current or emerging MPA management challenge.

The petitioner also asserts the proposed action to allow these activities would resolve, “a large conflict in these MPAs” related to commercially targeted swordfish that are, “legally taken” outside of an MPA but that may require gear retrieval within an MPA’s boundaries due to movement by the fish and associated gear during the soak period. This is also not a current or emerging MPA management challenge (see response to Question 7b for more details).

See response to Question 1 regarding the goals that these MPAs are designed to meet and response to Question 8 for additional information on the background and intended purpose of these MPAs.

**QUESTION 3: DOES THE PROPOSED CHANGE HAVE THE POTENTIAL TO AFFECT EXISTING CFGC NON-MPA REGULATIONS, PERMITS, OR LEASES (E.G., KELP LEASES, AQUACULTURE LEASES, EXPERIMENTAL FISHING PERMITS)?**

**No.** However, the petition proposal includes a request for CFGC to consider an allowance for DSBG inside the state waters of the affected SMR/FMRs, pending any potential establishment of a state DSBG fishery by CFGC. DSBG is currently not permitted for use in California state waters. There is an active EFP issued by CDFW which allows limited testing of DSBG by specific permit holders, including in the area around the Northern Channel Islands (CDFW 2025). Though it is possible that this gear type may be allowed in state waters in the future, at this time it is unclear if and when CFGC might allow use of DSBG in state waters beyond the EFP.

**QUESTION 4: DOES THE PROPOSED CHANGE HAVE THE POTENTIAL TO AFFECT EXISTING REGULATIONS, PERMITS, LEASES, OR MANAGEMENT ACTIVITIES OF ANY OTHER AGENCY OR ENTITY?**

**Yes.** The three affected SMR/FMRs extend into federal waters. Following the Northern Channel Islands MPA designation process, the state of California collaborated with NOAA to extend some of the MPAs inside of CINMS into federal waters (Fig. 1). By design, these federally designated protected areas maintain consistent regulations with the state portions of the MPAs. Redesignating the portions of the three MPAs that occur in federal waters is not within CFGC authority. Since the implementation of these MPAs, NOAA Sanctuaries has not indicated to CDFW that protection level modifications appear needed in order to better support the goals established for these MPAs. NOAA Sanctuaries is currently reviewing the petition.

The three affected SMR/FMRs are inside and co-managed with CINMS and Channel Islands National Park, both of which are federally administered. Implementation of the proposed changes would require consultation and coordination with federal authorities and would likely affect their management activities.

Regarding the petition's proposal to include DSBG as a fishing gear option within the affected SMR/FMRs, DSBG is already permitted in federal waters for those with federal HMS permits outside of MPAs, though there are additional endorsements and permits also required.

This list may not be exhaustive. The proposed change may have the potential to affect existing regulations, permits, leases, or management activities of Tribal governments, other agencies, and entities not identified here.

**QUESTION 5: ARE THERE SIGNIFICANT INFORMATION GAPS THAT NEED TO BE FILLED TO INFORM THE EVALUATION OF THE PROPOSED CHANGE?**

**No.** CDFW had adequate information to evaluate and make a recommendation on this proposal. When evaluating this petition, CDFW reviewed the information in the petition as well as supplemental information including but not limited to:

- The California Environmental Quality Act documents that accompanied the original rulemaking establishing these MPAs (CDFG 2002a, CDFG 2002b),
- History of the Community-Based Process on Marine Reserves at the Channel Islands National Marine Sanctuary 1999-2001 (MRWG 2002),
- NOAA's Final Environmental Impact Statement for the Establishment of Marine Reserves and Marine Conservation Areas in the Channel Islands National Marine Sanctuary (NOAA 2007a),
- NOAA's final rule on the marine reserves inside Channel Islands National Marine Sanctuary (NOAA 2007b),
- The DSBG EFP conditions (CDFW 2025), and
- Internal consultation with CDFW's Marine Enforcement District on the feasibility complications that this proposed change would introduce.

Though the petitioner provided extensive supplementary information with their petition, this information, along with other information CDFW reviewed, did not demonstrate that the proposed change would advance MPA adaptive management or that a change in MPA regulations is warranted.

**QUESTION 6: ARE THERE SIGNIFICANT MANAGEMENT GAPS THAT NEED TO BE FILLED TO INFORM THE EVALUATION OF THE PROPOSED CHANGE?**

**No.** CDFW has sufficient management information to proceed with the evaluation of this proposed change, including the foundational principles of the MLPA and information guiding management of MPAs and the relevant fisheries.

**QUESTION 7A: WAS THE PROPOSED CHANGE CONSIDERED DURING THE MLPA INITIATIVE PLANNING PROCESS OR THE IMPLEMENTATION PROCESS OF MPAS AROUND THE NORTHERN CHANNEL ISLANDS?**

**No.** None of the options proposed by the petitioner were considered during the Northern Channel Islands MPA planning process. There were some proposals which did not include an MPA at Santa Barbara Island, and that area would have therefore been open to fishing as proposed in this petition (other than use of DSBG). However, in all alternatives where MPAs were considered at these sites, only SMRs were considered. None of the sites in the petition's proposal were considered for partial take SMCAs.

Following the initial proposal for the Northern Channel Islands MPAs, both the recreational and commercial fishing stakeholders returned a prioritized list of adjustments to that proposal. None of the options proposed by this petitioner were listed in the high priority requests by either group during this planning process.

**QUESTION 7B: IS THERE NEW INFORMATION AVAILABLE, CHANGING CONDITIONS SINCE THE MLPA IMPLEMENTATION PHASE, AND/OR INFORMATION PRESENTED IN THE DMR THAT WARRANTS REEVALUATION OF THE PROPOSED CHANGE?**

**No.** CDFW recognizes that the petitioner has worked to assemble a significant volume of information in their petition and provided their rationale to consider reevaluation of the SMRs discussed. However, the information presented does not support a recommendation to grant the proposed changes in the petition. The petitioner's stated reasons and CDFW's response follows:

- According to the petitioner, since implementation, research has shown that species discussed in the petition likely do not significantly benefit from state spatial protections, as their ranges are so large and these species are so mobile that state protected areas represent a small portion of their habitat.
  - During the Northern Channel Islands MPA planning process, it was acknowledged and recognized that MPAs should not be designed to protect highly mobile species because MPAs could not be designed large enough to capture their seasonal movement patterns and large geographic ranges. Thus, areas selected and placed for No-take protection, in which ecosystem-level protection was desired, were intended to offer the highest protection to the habitat, invertebrates, and fishes with smaller home ranges.
  - Although HMS and swordfish stocks were not identified as species of interest or likely to directly benefit from MPAs due to their high mobility and large geographic ranges, the affected SMR/FMRs currently offer refuge to individuals of these species when they are present and may be used for biological functions (e.g., swordfish basking).
  - HMS and pelagic finfish may receive benefits from marine reserves even if they spend more time outside than inside marine reserves. HMS and pelagic finfish fulfill an ecosystem role within marine reserves as predators on and forage for other species. Such species may benefit from fully protected zones if their prey is concentrated in a given area or if the zones include breeding, aggregating or resting grounds. Scientific research suggests that pelagic species gather in certain spots (usually banks or ridges), particularly during critical life cycle stages. Maintaining marine reserves in these areas is beneficial as the number and size of pelagic

animals in the food web dictates what other organisms thrive or decline (NOAA 2007a).

- According to the petitioner, limited take of pelagic finfish is unlikely to negatively impact the species that each SMR, “aims to protect” (such as species of interest identified as important for each MPA in the original California Environmental Quality Act document for the project).
  - The petition proposes the use of gear types that are selective to the target species, including options for no-bottom contact hook and line. While these gear types are intended to minimize fishing impacts within the affected SMRs, the Northern Channel Islands MPA planning process, after careful consideration of socioeconomic impacts and incorporating recommendations from commercial and recreational fishing stakeholders, established these areas with the intention they would prohibit all take. This included the recognition that the MPAs would also serve to benefit depleted groundfish stocks and other species of concern at the time.
  - Per NOAA’s Final Environmental Impact Statement (FEIS) concerning adopting these MPAs into federal regulation: allowing the take of pelagic species does not fully meet the goals of NOAA’s action adopting these MPAs. See section 3.1.2.2 of the FEIS for a discussion on the impacts of limited take (NOAA 2007a).
- The petitioner states that the proposal would result in more equal representation of MPA types across the state (the statewide MPAs established during the MLPA Initiative planning process have a higher proportion of SMCAs than the set of MPAs established during the Northern Channel Islands MPA planning process).
  - Equal representation of MPA types across the state is not an adaptive MPA management goal. Having a higher portion of SMRs within CINMS relative to the overall Network is commensurate with a nationally and internationally recognized biologically significant area containing sensitive species and habitats.
  - Per NOAA’s FEIS from when these MPAs were adopted: Marine conservation areas will not achieve the purpose and goals of the action as well as marine reserves. See sections 3.1.2.2 and 5.1.1.1 of the FEIS for more discussion on the ecological value of marine reserves compared to marine conservation areas (NOAA 2007a).
- The petitioner perceives the proposed changes to align with prior MPA management documents and processes, such as the MLPA Goals and the DMR.

## CDFW EVALUATION 2023-15MPA\_AM Hermann

- The petition's proposal does not align with the Goals of the MLPA or the DMR Recommendations. See responses to Questions 1 and 2 for a more in-depth explanation of why not.
- The petitioner believes the proposal would support sustainable fisheries and further develop the local and state economy.
  - While MPAs may offer benefits to fisheries, specific measures intended to support sustainable fisheries should be addressed through updates to fishery management rather than revising MPA regulations. Furthermore, the marginal increase in catch that might result from the proposed change is not expected to impact sustainability or enhance the local or state economy in a measurable way.
- According to the petitioner, the proposed changes will provide streamlined regulations that are reasonably enforceable.
  - The proposed change would increase regulatory complexity, not simplify regulations, and as such, would not improve enforceability. See responses to Questions 11 and 12 for a more in-depth explanation of why not.
- The petitioner identifies concerns about commercial swordfish anglers being penalized for gear retrieval within an MPA due to a "legally taken fish" moving from outside to inside an MPA's boundaries during the soak period and resulting in punitive consequences or wasted fish.
  - A fish that is hooked or harpooned outside the MPA and ultimately retrieved inside the MPA is not 'legally taken.' 'Take' means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill (Fish and Game Code § 86). Hauling a fish and associated gear aboard is part of the catching or capturing process and therefore qualifies as take. By letter of the law, even if a swordfish is hooked or harpooned outside of the MPA and then the vessel, gear and fish drift into the MPA while it is being hauled in, it technically is a violation of the regulation. On the rare occasion that this occurs, CDFW's Marine Enforcement District (MED) will investigate the incident and determine whether to issue a citation to the individual or to give a warning to the person based on all of the evidence, statements, and facts on hand. If regulations allowed for take of swordfish outside of an MPA, and subsequently allowed those taking the fish to drift inside of the MPA while they are hauling in the fish, this would weaken MED's ability to enforce MPA regulations because it would be impossible to distinguish those that drifted in from those who are deliberately taking inside an MPA and thus hiding behind such an exemption. The conflict the petitioner describes results from a misunderstanding of the regulation, not from misapplication of law enforcement. This can be resolved without an MPA

regulation amendment by fishery participants changing the location of where they fish.

- If only gear and no fish were retrieved, having gear or lines in the water and terminal tackle attached to those lines is considered an attempt to hunt, pursue, catch, capture, or kill and therefore qualifies as take. If gear targeting fish is retrieved within a No-take MPA, that is also technically a violation of the regulation, even if no fish were retrieved.
- According to the petitioner, localized U.S. Navy closures result in limited and unpredictable fishing area availability in the Northern Channel Islands at any given time.
  - This is not an MPA management issue.
  - While any impact may seem significant for those who experience it, NOAA's economic analysis conducted for their FEIS determined that the socioeconomic impact to fisheries from NOAA's action would be minimal (NOAA 2007a).

For these reasons, opening the affected SMR/FMRs to take of HMS and pelagic finfish including swordfish is not an appropriate means of addressing the petitioner's stated problem. Additionally, there is not sufficient evidence to demonstrate that the proposed change would advance MPA adaptive management or that a change in MPA regulations is warranted.

**QUESTION 8: IF THE PROPOSED CHANGE AFFECTS AN EXISTING MPA, DOES THE PROPOSED CHANGE ALIGN WITH THE ORIGINAL INTENT OF THE MPA IDENTIFIED DURING THE MLPA INITIATIVE PLANNING PROCESS OR THE IMPLEMENTATION PROCESS OF MPAS AROUND THE NORTHERN CHANNEL ISLANDS?**

**No.** None of the options for proposed changes align with goals identified during the Northern Channel Islands MPA planning process. According to the planning documents, the biodiversity goal of the process was, "to protect representative and unique marine habitats, ecological processes, and populations of interest" (MRWG 2002). An objective under that goal was to set aside areas which provide physical, biological, and chemical functions. The petitioner identifies the Footprint SMR specifically as a calm area in the lee of Santa Cruz Island where basking swordfish are more easily sighted. Calm waters allow swordfish to partake in basking behavior (Sepulveda et al. 2010), which suggests these species may use these areas for biological functions and benefit from protection.

The affected SMR/FMRs were intentionally established as No-take areas to meet MLPA Goals around ecosystem-level protection; HMS and pelagic finfish are protected in these MPAs when present, and thus, the proposed change would conflict with the foundational objectives for these areas.

**QUESTION 9: DOES THE PROPOSED CHANGE IMPROVE INDIVIDUAL MPA OR MPA NETWORK DESIGN SO THAT IT BETTER ALIGNS WITH OR MEETS THE MPA SCIENCE GUIDELINES?**

**No.** The MLPA requires that the design of individual MPAs and the statewide Network be based on the best readily available science and that MPAs be of adequate size, number, protection level, and location to meet MLPA Goals. The science guidelines developed by the Science Advisory Team and outlined in the MLPA Master Plan were created specifically to provide this scientific foundation and serve as the starting point for evaluating alternative MPA proposals. Alignment with these guidelines depends on Level of Protection (LOP), which is determined by allowed take, and spatial configuration. More specifically, these guidelines require that an MPA must be at least 9 square miles and meet one of the three highest LOPs (i.e., Very High, High, or Moderate-high) to contribute to ecological goals such as habitat replication and representation.

Footprint SMR does not currently meet the minimum size criterion. None of the proposed options would increase its size, and all would decrease its LOP by reclassifying it from an SMR to an SMCA. As a result, implementation of any option would not improve the design of Footprint SMR or the MPA Network, nor would it enhance alignment with the MLPA Science Guidelines, and thus, does not warrant a change.

Santa Barbara Island and Gull Island SMRs currently serve their designed function as habitat replicates. The proposed change under Options 1-4, without the inshore SMR/offshore SMCA, would lower the level of protection from Very High to Moderate-low, meaning they would no longer meet the minimum requirements to serve their designed connectivity role within the Network as habitat replicates. Such a change would decrease habitat replication and representation, increase spacing between habitat types, and undermine the design of these individual MPAs and the overall MPA Network.

The proposed change under Options 1-4, with the inshore SMR/offshore SMCA, would divide each of the two SMRs into an inshore SMR with a Very High LOP and an offshore SMCA with a High LOP. Options 5 and 6 would convert both SMRs to SMCAs with High LOPs. Although these options would result in the MPAs maintaining their habitat replicate status, the MPAs would no longer provide the highest LOP or serve their intended function in the MPA Network as SMRs. Therefore, implementation would not improve the design of these individual MPAs or the MPA Network, nor would it enhance alignment with the MLPA Science Guidelines.

See Question 9 of Attachment 1 for the MPA Science Guidelines and additional context. See Table 2 for more information on the protection level and habitat representation in each of these MPAs.

**QUESTION 10A: DOES THE PROPOSED CHANGE ALIGN WITH CDFW FEASIBILITY GUIDELINES?**

**No.** The options proposed in this petition would not align with Feasibility Guidelines related to enforceability. Feasible take regulations avoid precluding, "some uses while allowing other uses that are very similar" (e.g., allowing only take of HMS or pelagic finfish by a take method that can also be used for other species) and, "those which prohibit very specific gear types that must be checked on the water" (e.g., prohibited "bottom-contact gear" options).

The inshore SMR/offshore SMCA options conflict with MPA cluster orientation feasibility, "MPA clusters oriented in an alongshore fashion (stacked north/south) are preferred compared to inshore/offshore orientation." They also deviate from the MPA design guidance under "Multiple Zoning" to, "avoid having areas split to allow for different uses in different portions of an MPA." See Question 10a of Attachment 1 for the CDFW Feasibility Guidelines.

**QUESTION 10B: IF NOT, IS THERE A RATIONALE FOR MOVING FORWARD WITH THE PROPOSED CHANGE OR AN ALTERNATIVE THAT COULD MEET THE INTENT BUT BETTER ALIGN WITH FEASIBILITY GUIDELINES?**

**No.** There is no rationale for moving forward with any of the options presented in the petition or an alternative.

**QUESTION 11: DOES THE PROPOSED CHANGE MAINTAIN OR IMPROVE ENFORCEABILITY OF MPA REGULATIONS?**

**No.** None of the options presented in the petition maintain or improve enforceability of MPA regulations. Each proposed alternative adds another type and method of take to otherwise No-take MPAs and in some cases, incorporates an inshore/offshore design, which compromises enforceability of these MPAs by:

- Making it more difficult to discern if an activity is allowed when surveilling the MPA from afar,
- Increasing the potential for non-compliance with members of the public who observe the activity taking place in an MPA but are unfamiliar with the regulations, and
- Increasing the potential for the illegal take of other species.

Transitioning a third of the Channel Islands MPA Network to partial-take marine conservation areas is expected to intensify existing enforcement challenges, increasing operational costs and reducing the capacity to maintain oversight across the entire network. This is complicated by the potential for differing regulations in state and federal

waters, should CFGC and NOAA make different decisions about granting any of the changes proposed by this petition. The Channel Islands network of MPAs was intentionally designed to reduce complexity (NOAA 2007a). This includes the seamless and consistent marine zoning regulations between state and federal waters.

**QUESTION 12: DOES THE PROPOSED CHANGE SIMPLIFY REGULATORY LANGUAGE OR ENHANCE PUBLIC UNDERSTANDING WITHOUT CHANGING THE INTENT OF THE MPA?**

**No.** All options proposed in this petition would change the intent of all affected SMR/FMRs and would complicate both regulatory language and public understanding. Adding MPA regulatory language for existing No-take MPAs to include specific gear types for different species is inherently more complicated than disallowing all take.

**QUESTION 13: DOES THE PROPOSED CHANGE MAINTAIN OR ENHANCE PROTECTION OF MARINE RESOURCES?**

**No.** All options proposed would reduce protection of marine resources by redesignating all or portions of the affected No-take SMR/FMRs to SMCA/FMCAs to allow commercial and/or recreational take of one or more of the following species groups: HMS, pelagic finfish (including swordfish), plus possession of CPS. Although these may not be the primary species benefitting from these MPAs, as they are highly mobile and have large geographic ranges, the affected SMR/FMRs offer refuge when they are present in the area. See response to 7b for more details on the ecological role of these species relevant to MPAs.

**QUESTION 14: DOES THE PROPOSED CHANGE PROVIDE MORE EQUITABLE ACCESS OPPORTUNITIES (E.G., FISHING, EDUCATIONAL, AND/OR OTHER RECREATIONAL OPPORTUNITIES) FOR TRADITIONALLY UNDERSERVED OR MARGINALIZED COMMUNITIES?**

See Question 14 in Attachment 1.

**QUESTION 15: DOES THE PROPOSED CHANGE HAVE THE POTENTIAL TO AFFECT CONSUMPTIVE AND/OR NON-CONSUMPTIVE ACTIVITIES? IF SO, HOW?**

**Yes.** All options proposed would increase the available area accessible within CINMS to commercially and/or recreationally fish for one or more of the following species groups: HMS, pelagic finfish (including swordfish), plus possession of CPS. These consumptive uses would therefore likely increase in these areas. However, the amount of area that would be accessible within the broader Southern California Bight in which the desired species inhabit, and where the fisheries occur, would be less than 1%. Fishing for swordfish and other pelagic and highly migratory species is currently allowed in over 80% of CINMS (data provided by NOAA Sanctuaries staff).

**QUESTION 16: IS THE PROPOSED CHANGE CONSISTENT WITH THE CFGC JUSTICE, EQUITY, DIVERSITY AND INCLUSION POLICY?**

See Question 16 of Attachment 1.

**QUESTION 17: IS THE PROPOSED CHANGE CONSISTENT WITH THE CFGC COASTAL FISHING COMMUNITIES POLICY?**

The proposed change would increase fishing access, particularly for pelagic fishing participants and the associated coastal fishing communities of:

- Ventura Harbor and Channel Islands Harbor
- Port of Los Angeles (San Pedro)
- Santa Barbara

These communities are between ~20 nm and ~64 nm from individual areas of proposed change. See Question 17 of Attachment 1 for additional context on CFGC's response.

**QUESTION 18: DOES THE PROPOSED CHANGE INTERACT WITH OR HAVE THE POTENTIAL TO AFFECT PROPOSED CHANGES IN OTHER 2023 MPA PETITIONS?**

**Yes.** This proposed change would interact with 2023-33MPA\_4, which proposes to expand the Gull Island SMR/FMR and maintain its No-take status. Thus, the proposed change to allow partial take in the Gull Island SMR/FMR is in direct conflict with proposed changes in 2023-33MPA\_4.

## **V. SUPPLEMENTAL ANALYSES, DATA AND INFORMATION, AND CITATIONS**

### **TABLES AND FIGURES**

**Table 1.** The six options proposed by the petitioner for various gear types to be used for combinations of recreational and/or commercial take of HMS or pelagic finfish and possession of CPS. All of these options assume that the relevant MPA will be partially or fully reclassified from an SMR/FMR to an SMCA/FMCA. Proposed take regulations are assumed to apply to the SMCA portion of any proposal. All proposals include a request for commercial take of swordfish by harpoon. The petitioner also requests an allowance for use of DSBG inside these potential SMCAs, pending the establishment of DSBG fishery in state waters, separately from and without regard to these six options.

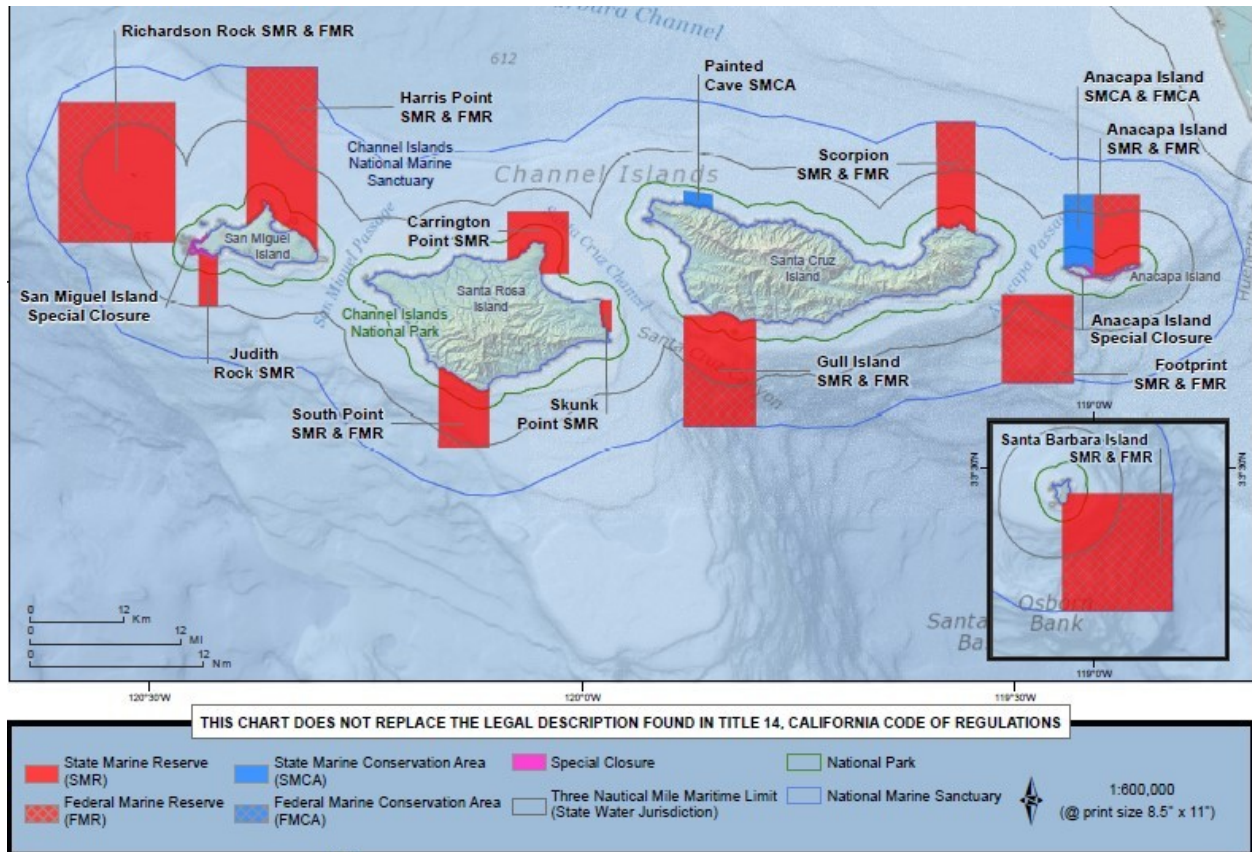
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Options	Recreational Take: Pelagic Finfish	Recreational Take: HMS	Commercial Take: Pelagic Finfish	Commercial Take: HMS	CPS
1	Hook and line, spear	N/A	Hook and line	N/A	N/A
2	N/A	Hook and line, spear	N/A	Hook and line	Possession
3	Hook and line, spear *no bottom contact	N/A	Hook and line *no bottom contact	N/A	N/A
4	N/A	Hook and line, spear *no bottom contact	N/A	Hook and line *no bottom contact	Possession
5	Spear	N/A	N/A	N/A	N/A
6	N/A	Spear	N/A	N/A	N/A

**Table 2.** MPA attributes (area, LOP, depth range, and habitat extent) of the existing Footprint, Gull Island, and Santa Barbara Island SMRs as referenced in petition 2023-15MPA. A dash (—) indicates that the MPA does not contain the habitat type. Habitat extent may be reported in linear miles or square miles, depending on data availability and Science Advisory Team (SAT) guidance.

Values shown in **bold** indicate that the MPA attribute meets the relevant science guideline established by the SAT during the MLPA Initiative planning process. An MPA contributes to habitat replication only if it first meets the minimum size (>9 sq mi) and LOP (Very High, High, or Moderate-High) criteria (i.e., first two rows must be bold).

	Footprint SMR	Gull Island SMR	Santa Barbara Island SMR
MPA Area (sq mi)	7.05	<b>19.93</b>	<b>12.77</b>
Level of Protection	<b>Very High</b>	<b>Very High</b>	<b>Very High</b>
Min Depth (m)	49.3	0	0
Max Depth (m)	534.5	698.1	588.6
Eelgrass (sq mi)	—	—	—
Kelp (mi)	—	<b>3.11</b>	1.04
Beach (mi)	—	<b>2.29</b>	0.15
Rocky Intertidal (mi)	—	<b>1.89</b>	<b>1.03</b>
Estuaries (sq mi)	—	—	—
Hard Substrate			
0-30 m (mi)	—	<b>2.18</b>	0.04
30-100 m (sq mi)	0.10	0.14	0.11
100-200 m (sq mi)	<b>0.16</b>	<b>0.17</b>	0.02
>200 m (sq mi)	<b>0.23</b>	<b>2.09</b>	—
Soft Substrate			
0-30 m (mi)	—	<b>2.79</b>	<b>1.24</b>
30-100 m (sq mi)	1.05	<b>3.89</b>	1.63
100-200 m (sq mi)	<b>1.53</b>	<b>3.36</b>	0.46
>200 m (sq mi)	<b>3.59</b>	<b>7.40</b>	0.04



**Figure 1.** Map of the Northern Channel Islands showing state and federal MPAs.

## CITATIONS

California Department of Fish and Game (CDFG). 2002a. Environmental Document: Marine Protected Areas in the National Oceanic and Atmospheric Administration’s Channel Islands National Marine Sanctuary, vol. I.

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