

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

Remove Recreational Take of True Smelt and Change the Boundary at Pyramid Point SMCA (2023-21MPA_AM1)



I. PETITION SUMMARY

CFGC Tracking Number	2023-21MPA_AM1
Petition Contact/Affiliation	Rosa Laucci, Tolowa Dee-ni' Nation
Number of Proposed Actions	2
Affected MPAs	Pyramid Point State Marine Conservation Area (SMCA)
Petition Summary	Remove allowance for recreational take of true smelt in Pyramid Point SMCA and retain the existing tribal exemption for Tolowa Dee-ni' Nation; change northern boundary from the official California/Oregon state line (42° N) to align with the landside surveyed border (41°59'55" N).
Link to StoryMap page	2023-21MPA_AM1



July 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
2023-21MPA_1_AM1 Remove recreational take allowance for true smelt in Pyramid Point State Marine Conservation Area (SMCA) and retain the existing tribal exemption for Tolowa Dee-ni' Nation.	<i>Lhvmsr</i> , also known as surf smelt (<i>Hypomesus pretiosus</i>), has seen significant decline since the late 1990s, which has caused concerns among tribal citizens that have continued the practice of stewarding this culturally significant resource. The change will help protect a species that has cultural importance to the people of the Tolowa Dee-ni' Nation as well as ecological significance.	Grant. CDFW recommends approving the removal of the allowance for recreational take of true smelt from Pyramid Point SMCA; and retaining the existing SMCA classification and the tribal exemption for Tolowa Dee-ni' Nation. The current regulations at Pyramid Point SMCA include recreational take of true smelt, which is defined as night smelt (<i>Spirinchus starksi</i>), surf smelt, and whitebait smelt (<i>Allosmerus elongatus</i>) under Cal. Code Regs Tit. 14 section 632 and are regulated as a unit. Removing the current recreational take allowance for true smelt in the Pyramid Point SMCA regulations while maintaining the tribal take exemption for the Tolowa Dee-ni' Nation is an important step in honoring the tribe as the original stewards of the area. The proposed change would advance Decadal Management Review (DMR) recommendations, including those related to the advancement of tribal stewardship in MPA management and governance in California (DMR Recommendations 1, 2, & 3). The proposed change is also consistent with the original intent for this MPA identified during the original Marine Life Protection Act (MLPA) planning process. Although no formal stock assessment exists for surf smelt, the fishery experienced a severe decline from 1995-1999. Recent trends in surf smelt landings data indicate the fishery has not recovered to pre-2000 levels.

CDFW EVALUATION 2023-21MPA_AM1 Laucci Tolowa Dee-ni' Nation

Petition Action ID and Proposed Action	Petitioner's Stated Rationale and Brief Justification for Proposed Actions	CDFW Recommendation and Brief Justification
		Restricting recreational fishing of true smelt in Pyramid Point SMCA while continuing to allow traditional uses by the Tolowa Dee-ni' Nation is a local management strategy that acknowledges the role of the Tolowa Dee-ni' Nation as a steward of the species and the importance of this marine resource to their "spiritual, physical, and cultural health and well-being"; and helps ensure that ecological recovery goals are met in alignment with MLPA Goals. Given these considerations, CDFW recommends removing the allowance for recreational take of true smelt while retaining the SMCA classification and the existing tribal exemption for the Tolowa Dee-ni' Nation.
2023-21MPA_2_AM1 Change northern boundary of Pyramid Point SMCA from the official California/Oregon state line (42° N) to align with the landside surveyed border (41°59'55" N).	The original SMCA boundary used a mapping system that does not align with the on-the-ground state line. Misalignment of the northern boundary of Pyramid Point SMCA with the on-land CA/OR border is causing enforcement and compliance challenges within the area between state jurisdictions.	Deny. The current northern boundary of the SMCA, as adopted by CFGC, is located along the 42nd parallel north in alignment with the legally recognized border between California and Oregon. In approximately 1869, the land surveyor incorrectly surveyed the California/Oregon border as 41°59'55" N, which is approximately 560 ft south of the true border. Although 41°59'55" N is recognized as the states' border in some contexts, the 42nd parallel remains the official and legally recognized boundary by both state governments (California Constitution Art. III § 2, Oregon Constitution Art. XVI § 1). The proposed boundary change is inconsistent with both the Science Advisory Team (SAT) Science Guidelines established during the MLPA Initiative planning process and the CDFW Feasibility Guidelines, would reduce the size of the MPA, would create regulatory inconsistencies, and has the potential to increase enforcement challenges.

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Petition Action ID and Proposed Action	Petitioner's Stated Rationale and Brief Justification for Proposed Actions	CDFW Recommendation and Brief Justification
		The petition did not include information demonstrating cultural significance for the proposed boundary change. The proposed change does not address a current or emerging MPA management challenge that has emerged since the DMR and would not advance management of the MPA Network.

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 tribes¹ (tribes) throughout the petitions 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.

WAS THE PETITION SUBMITTED BY A CALIFORNIA NATIVE AMERICAN TRIBE, REPRESENTATIVE DESIGNATED BY A TRIBE OR TRIBAL ORGANIZATION, OR HAVE A TRIBAL CO-SPONSOR?

Yes, this petition was submitted by Tolowa Dee-ni' Nation (hereafter referred to as the Nation).

IF YES, (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?

2023-21MPA_1_AM1 Yes. The Nation's petition highlights, "The area of *Tr'uu-luu-k'wvt*, also known as Pyramid Point, a Marine Protected Area (MPA) designated by the State of California in 2012, is an area where traditional *lhvmsr* [surf smelt (*Hypomesus pretiosus*)] fish camps have been identified and have been utilized since time immemorial." The Nation's petition cites concerns with *lhvmsr* population declines and states that, "It is imperative the Nation continues to take an active role to determine ecological, environmental, and anthropogenic impacts affecting this invaluable resource. This includes petitioning for the removal of *lhvmsr* as allowable [recreational] take from the state's northernmost Marine Protected Area, Pyramid Point State Marine Conservation Area." The proposed change explicitly aims to advance tribal co-management, traditional harvest, tribal stewardship, and provide a tribal benefit.

2023-21MPA_2_AM1. Unclear. The "Rationale for Regulation Change" for moving the northern boundary of Pyramid Point SMCA south states, "original boundary used a mapping system that does not align with on-the-ground state line." This justification appears again in the petition's Appendix 2, "MPA Collaborative Vetted Regulation Recommendations." The petition does not include any other information on the boundary change, including how the change would advance tribal co-management,

¹California 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.

subsistence harvesting, stewardship, and/or provide a tribal benefit through recognizing the cultural significance of an area.

(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)?

2023-21MPA_1_AM1 Yes. The proposed regulatory change is explicitly linked to the Tolowa Dee-ni' Nation. See response to (a) above.

2023-21MPA_2 Unclear. The proposed regulatory change is included in petition 2023-21MPA_2, but the petition did not provide evidence of a direct link between the proposed boundary change and the tribe. See response to (a) above.

IV. PETITION EVALUATION

The Nation submitted two proposed changes to the Pyramid Point SMCA regulations:

- 2023-21MPA_1: "Remove allowance for surf smelt (*Hypomesus pretiosus*) by dip net or Hawaiian type throw net; Change to No-take SMCA with [the existing] tribal exemption for Tolowa Dee-ni' Nation," and
- 2023-21MPA_2: "Change northern boundary [from the official California/Oregon state line (42° N)] to align with recognized California/Oregon state line [the landside surveyed border (41°59'55" N)], as stated in E4 of the MPA Collaborative Network's Regulatory Recommendations."

At the April 2026 CFGC Tribal Committee meeting, 2023-21MPA_1 was clarified that the intent was to remove the existing recreational take allowance from Pyramid Point SMCA for true smelt, which includes surf smelt, by dip net or Hawaiian type throw net; and retain the existing SMCA designation and tribal exemption for Tolowa Dee-ni' Nation. CFGC accepted this amendment (2023-21MPA_AM1) and referred to CDFW for evaluation in April 2026.

Tribal take in MPA regulations, which corresponds with tribal exemptions for area-specific take restrictions, applies to "federally recognized tribes"². As stated in these regulations, "Members taking living marine resources under this provision are subject to current seasonal, bag, possession, gear and size limits in existing Fish and Game Code statutes and regulations of the commission, except as otherwise provided for in subsection 632(b)."

² "Federally recognized tribe" means any tribes on the *List of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs*, published annually in the Federal Register.

During the initial phase of the 2023 MPA Petition process, when CDFW sorted petitions into bins based on their level of complexity, this petition was initially considered for Bin 1³. However, it was moved to Bin 2 to have sufficient time for tribal consultation, tribal engagement, and dedicated discussions with CFGC Tribal Committee as well as to receive guidance from CFGC on the framework for evaluating Tribally-led petitions.

EVALUATION NARRATIVE AND OVERVIEW FOR 2023-21MPA_1_AMI

The Nation proposes to remove recreational take of *lhvmsr*, otherwise known as surf smelt (*Hypomesus pretiosus*), by dip net or Hawaiian type throw net from the Pyramid Point SMCA regulations, and in so-doing, change the designation to a No-take SMCA and maintain the current tribal take exemption for the Nation. The Nation's petition highlights,

"The area of Tr'uu-luu-k'wvt, also known as Pyramid Point, a Marine Protected Area designated by the State of California in 2012, is an area where traditional lhvmsr [surf smelt] fish camps have been identified and have been utilized since time immemorial."

The Nation cites concerns with *lhvmsr* population declines and states that,

"It is imperative the Nation continues to take an active role to determine ecological environmental, and anthropogenic impacts affecting this invaluable resource. This includes petitioning for the removal of lhvmsr as allowable take from the state's Northernmost Marine Protected Area, Pyramid Point State Marine Conservation Area."

During the North Coast MLPA Initiative planning process, in order to "provide for specific non-commercial tribal uses by federally recognized tribes" in MPAs, the North Coast Regional Stakeholder Group (NCRSG), with guidance from the Blue Ribbon Task Force (BRTF), designed several MPAs in which separate specific recreational take allowances were proposed to accommodate existing traditional tribal non-commercial uses (MLPAI 2010a, CFGC 2012), with the additional intent that these allowances eventually "be restricted to only tribes and tribal communities when administrative or legislative action is taken" (MLPAI 2010). The proposed Pyramid Point SMCA included a recreational take allowance for surf and night smelt by cast net⁴ or dip net⁵, in addition to several specific

³ In the 2023 MPA Petition process, Bin 1 categorized petitions with sufficient information for immediate evaluation and potential near-term action. Bin 2 was designated for petitions requiring additional policy guidance, resources, or specific administrative processes.

⁴ Includes Hawaiian-type throw nets and other throw nets but not beach nets (i.e., seine gear)

⁵ Includes A-frame nets.

recreational take allowances intended to accommodate tribal uses, including surf smelt by beach net (i.e., seine gear; MLPAI 2010a).

During the regulatory process to adopt the North Coast MPAs, CFGC directed the California Natural Resources Agency (CNRA) to explore a clear pathway, “to allow for the tribes to have exclusive use” within MPAs (CFGC 2011a). A working group was assembled by the Secretary of CNRA consisting of two deputy attorney generals, chief counsel for two departments, various non-legal staff, and sovereign tribal nations in the North Coast (CFGC 2011a). Multiple pathways were considered and at the subsequent CFGC Notice Hearing pertaining to North Coast MPAs three options were proposed to legally accommodate tribal take within MPA regulations. CFGC chose Tribal Option 1, which provided a pathway to exempt federally recognized tribes from MPA regulations. This option required that federally recognized tribes submit a factual record of historic and current uses in specific geographies, other than State Marine Reserves (CFGC 2011b). It also required that all tribal take must be consistent with existing regulations (CFGC 2011b). As such, an exemption precluded the need to include separate tribal allowances by species and gear type within each applicable MPA. This pathway enabled CFGC to grant tribal take exemptions in MPAs that overlap with areas of historic and/or current uses by federally recognized tribes for specific, non-commercial uses as reflected in a factual record of use provided by the tribe (i.e., a “Factual Record of Current and Historical Uses” pertaining to the specific MPA location). The only tribe to submit a factual record specific to the geography of the proposed Pyramid Point SMCA was Smith River Rancheria (i.e., the Nation)⁶, and the final North Coast MPA design adopted by the CFGC included a recreational take allowance for surf smelt by dip net⁵ or Hawaiian type throw net⁴ and a tribal take exemption for the Nation [formerly Smith River Rancheria] at Pyramid Point SMCA (CFGC 2012).

The current regulations for Pyramid Point SMCA were subsequently revised to clarify the species; these regulations include a tribal exemption for the Nation and an allowance for the use of dip net⁵ or Hawaiian type throw net⁴ to recreationally take true smelt, which is defined as night smelt (*Spirinchus starksi*), surf smelt, and whitebait smelt (*Allosmerus elongatus*) under Cal. Code Regs. Tit. 14 section 28.45. True smelt are regulated as a unit with a recreational take limit of 25 pounds in combination of the three species, per person per day. The Nation originally requested (2023-21MPA) to remove the allowance for surf smelt by dip net or Hawaiian type throw net and change the SMCA to a No-take SMCA designation while retaining the Nation’s existing tribal take exemption. To achieve the intent of the request, the recreational take allowance for ‘true smelt,’ which includes

⁶ Although the ISOR pertaining to Pyramid Point lists several tribes, including Smith River Rancheria, this was later noted as being the result of clerical error, and Smith River Rancheria was deemed the only tribe to submit an actual Factual Record

surf smelt, would need to be removed from Cal. Code Regs. Tit. 14 section 632(b)(1). Given the request is to retain the Nation's existing tribal take exemption, the MPA would need to remain designated as an SMCA rather than a No-take SMCA⁷, as requested in the petition. This is consistent with clarifications noted on the record at the CFGC Tribal Committee meeting on April 14, 2026 and later referred to CDFW for evaluation (2023-21MPA_AMI). The SMCA classification and tribal take exemption for the Nation at Pyramid Point SMCA Cal. Code Regs. Tit. 14 section 632(b)(1)(B)3 were not evaluated as they are already included in the current regulations for Pyramid Point SMCA and require no change. Consequently, CDFW evaluated removing the current allowance for recreational take of true smelt by dip net or Hawaiian type throw net for Pyramid Point SMCA (Cal. Code Regs. § 632(b)(1)(B)1).

Surf smelt are a critical forage fish for higher trophic level predatory fish, seabirds, and marine mammals, and are an integral part of the nearshore ecosystem (Bargmann 1998, Pikitch et al. 2012). They range from Izembek Lagoon, southeast Alaska to Long Beach, California (CDFW 2021), with commercial fisheries occurring in California, Washington (Wash. Admin. Code § 220-356), and British Columbia (B.C. Reg. 93/53, pt. IV), and recreational fisheries spanning from Monterey, California to Alaska (Cal. Code Regs., Tit. 14, Div. 1, Subd. 1, Ch. 4; Or. Admin. R., Ch. 635, Div. 39; Wash. Admin. Code, Tit. 220, Ch. 315, B.C. Reg. 96/137; 5 Alaska Admin. Code, Art. 1). In California, surf smelt are taken with a variety of gears in commercial, recreational, and tribal fisheries. In Pyramid Point SMCA, current regulations allow for the recreational take of true smelt by dip net or Hawaiian type throw net. The gear is primarily used from shore where surf smelt lay their eggs during the spawning season; a small selection of suitable beaches are available for surf smelt spawning (Parks et al. 2013). Although the gear types used in the fishery are considered highly selective with minimal bycatch and low environmental impact, the seasonal targeting of surf smelt during the summer spawning period makes them vulnerable to harvest impacts. Surf smelt are also sensitive to warming oceans, including in coastal environments (Lee & Levings 2007, Russell et al. 2022), as well as other anthropogenic impacts such as habitat loss/alteration and pollution (Misitano et al. 1994, Quinn et al. 2012). Beach erosion, mechanical compaction of spawning substrate, and beach development have all been observed and recorded in and adjacent to Pyramid Point SMCA (Lane 2019).

⁷ The No-take SMCA designation is an historic MPA classification that prohibited take of any living, geologic, or cultural resource except take associated with maintenance of pre-existing artificial structures in MPAs. However, CFGC updated the regulations in 2023 to allow maintenance of 'Pre-Existing Artificial Structures' and established 'Incidental Take Buffer Zones' in all State Marine Reserves, State Marine Conservation Areas, and State Marine Parks. Consequently, the No-take SMCA designation is no longer necessary.

No stock assessment exists for surf smelt in California, and there are no estimates of abundance for surf smelt (CDFW 2021). However, trends in fishery-dependent data indicate probable declines in abundance, with landings at historic lows in 2023 and 2024 (Figure 1). The CDFW Surf Smelt Enhanced Status Report identifies several high priority knowledge gaps for management, including catch and effort estimates for recreational fisheries, estimates of commercial fishing effort, and species identification of embryos and larvae—information critical for improving estimates of total mortality and developing improved indices of surf smelt abundance (CDFW 2021). Despite these knowledge gaps, the recent trends in landings, combined with available information on surf smelt life history and existing environmental threats, suggest a vulnerable, depressed population relative to historic populations.

These findings correspond with Tribal/Indigenous Traditional Knowledge in the area, where most tribal interviewees (including members of the Nation) ranked the quantity of surf smelt and night smelt as somewhat or significantly worse over their generation (Van Pelt et al. 2017). As highlighted by the Nation in this petition,

"This decline has caused a panic among the Nation's citizens because of the cultural significance of the species, as elders and traditional fishermen are not seeing a return of the smelt to the Tolowa Dee-ni' territory in the numbers they have historically."

Surf smelt has also been identified as a keystone species of concern by the Nation (Van Pelt et al. 2017), who is monitoring the local surf smelt population and habitat to inform the Nation's Harvest Title regulations⁸.

From an ecological perspective, further limiting take of true smelt at Pyramid Point SMCA has potential to benefit the three smelt species and aid in surf smelt recovery at a localized scale. Given the species vulnerability to harvest impacts when they aggregate to spawn and that the fishery has not yet recovered from the late 1990s fishery collapse (Figure 1), continued recreational harvest of spawning aggregate species, even at low levels, may hinder recovery and resilience (Jarvis Mason et al. 2025) at this location. While fishery management tools, such as bag limits and seasonal closures, have potential to address population concerns at the regional scale, restricting recreational fishing within Pyramid Point SMCA, while continuing to allow traditional uses by the Nation, is a local management strategy. This strategy acknowledges the role of the Nation in co-stewardship of the species, monitoring, and the importance of this marine resource to their spiritual, physical, and cultural health and well-being, while also helping to ensure that ecological recovery goals are met in alignment with MLPA Goals. MLPA

⁸ [Tolowa Dee-ni' Nation Marine Monitoring](#)

Goals 1 and 2 include protecting the function and integrity of marine ecosystems and conserving and protecting marine life populations, and Pyramid Point SMCA holds a large concentration of suitable spawning grounds (Lane 2019). Goal 4 relates to protecting marine natural heritage. Thus, the Nation's request highlights a localized concern for this species as it pertains to habitat protection, ecosystem health, and cultural significance within Pyramid Point SMCA.

Although exclusive tribal access in Pyramid Point SMCA was not adopted following the North Coast planning process, policies such as Executive Order B-10-11 (2011) and the CDFW Tribal Communication and Consultation Policy (2014) have helped to bridge the gap between the MLPA and tribes since that time. More recently, Executive Order N-15-19 (2019), the 2020 Ancestral Lands Policy, and the CNRA Tribal Stewardship Policy, have continued to shape state policy by prioritizing cultural access and preservation and further incorporating sovereign recognition, among many other objectives.

Granting the proposed change acknowledges the important role of the Nation as the original stewards of the land and waters in the area, in the conservation and recovery of the culturally and ecologically important species and helps to preserve the Nation's traditional practice of "fish camp." Therefore, CDFW finds the proposed change:

- Could advance tribal co-management, subsistence harvesting, tribal stewardship, and provide a tribal benefit,
- Has the potential to advance both the conservation objectives of the MPA Network and the intent to preserve tribal cultural and subsistence practices of the Nation,
- Aligns with DMR recommendations regarding the advancement of tribal stewardship in MPA management and governance,
- Is consistent with the goals of this MPA, as identified in the MLPA Initiative planning process, and may help further advance these goals,
- Aligns with the original intent of this MPA, and
- Advances management of the MPA Network.

RECOMMENDATION FOR 2023-21MPA_1_AM1

Given these considerations, and the information in the evaluation below, **CDFW recommends CFGC Grant** the proposed change to remove the allowance for recreational take of true smelt by dip net or Hawaiian type throw net in Pyramid Point SMCA while retaining the existing SMCA designation and tribal exemption for the Nation.

EVALUATION NARRATIVE AND OVERVIEW FOR 2023-21MPA_2

The petition includes a proposal to shift the northern boundary of Pyramid Point SMCA south “to align with the recognized California/Oregon state line, as stated in E4 of the MPA Collaborative Vetted Regulation Recommendations (Appendix 2 of the petition).” The justification for the proposed change, as stated in Appendix 2 of the petition, includes the following, “original boundary used a mapping system that does not align with on-the-ground state line.” This is the only justification provided in the petition.

The current northern boundary of Pyramid Point SMCA, as adopted by CFGC, is located along the 42nd parallel north, which reflects the state line between California and Oregon as recognized by both state governments (Cal. Const., Art. III, § 2; Or. Const., Art. XVI, § 1).

In 1868, the U.S. General Land Office hired Daniel Major and a crew of 19 others to survey the CA/OR and Nevada state intersections. Using the technology available at the time (i.e., a sextant and following the stars) they navigated and maneuvered across mountainous terrain and brush, from the 120 meridian to the Pacific Ocean. As a result of the survey technique and difficult terrain, the state line meanders north and south of 42nd parallel north such that the state line near the coast was surveyed at 41°59'55" N, approximately 560 feet south of the true border, 42°00'00" N.

The northern boundary of Pyramid Point SMCA in the existing MPA regulations (42°00.000' N. lat) currently meets CDFW Feasibility Guidelines. Maintaining the current northern boundary at the 42nd parallel north ensures alignment with established state-managed marine fisheries boundaries (e.g., this boundary is referenced in many existing California state fishing regulations, fishing charts, federal fishery regulations, and Marine Region Geographic Information Systems spatial layers). It also ensures jurisdictional clarity, enforcement efficiency, and administrative consistency across state programs. Conversely, the proposed southward shift by 560 feet would deviate from these long-standing feasibility guidelines and create operational challenges.

From an MPA design perspective, the proposed southward shift of the northern boundary would result in an overall reduction in size of the MPA, offering no added value to the MPA Network relative to science objectives, and would not advance recommendations from the DMR. Furthermore, the current boundary has never been identified as a necessary change during previous MPA adaptive management packages, three of which were cleanup packages specific to MPA boundary changes. MPA boundary changes adopted as part of these packages addressed previously identified enforcement concerns, of which the northern boundary at Pyramid Point SMCA was not included.

CDFW finds the proposed change:

- Does not align with the original intent of this MPA,
- Does not enhance the individual design of the MPA and reduces the size of the MPA,
- Does not enhance enforcement and compliance, and
- Does not advance management of the MPA Network.

CDFW did not evaluate proposed change 2023-21MPA_2 beyond the considerations discussed here in the Evaluation Narrative.

RECOMMENDATION FOR 2023-21MPA_2

Given the considerations discussed above **CDFW recommends CFGC DENY** changing the northern boundary of Pyramid Point SMCA from the official California/Oregon state border (42°00'00" N) to align with the on-land California/Oregon state border (41°59'55" N).

EVALUATION QUESTIONS

2023-21MPA_1_AMI: Remove recreational take allowance for true smelt in Pyramid Point SMCA and retain the existing tribal exemption for Tolowa Dee-ni' Nation.

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?

Yes. The 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 a whole. 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.

As part of California's MPA Network, Pyramid Point SMCA was intended to meet all six MLPA Goals. The proposed change to remove the recreational take allowance for true smelt by dip net or Hawaiian type throw net, while retaining the tribal exemption for the Nation would maintain alignment with these goals and advance MLPA Goals 1, 2, 3, and 4 related to preserving natural diversity, sustaining marine life populations, protecting

marine habitats for their intrinsic and cultural value, and improving management and research opportunities.

The proposed change also aligns with the Master Plan's broader commitment to partner with California Native American tribes and tribal governments to advance MPA management and governance. The Nation has a Natural Resources (Nvn-nust-'aa--ta) Department⁹ that conducts surf smelt eDNA and habitat surveys, including sites within Pyramid Point SMCA. The Nation has expressed a desire to collect more data, especially comparative data, and states in their petition that this will "inform the development of a future conservation plan that can address habitat restoration, best management practices, and related policy and regulatory measures, backed by scientific data, to ensure that this ecological and cultural keystone species can make a robust recovery."

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

Yes. The proposed change to remove the recreational take allowance for true smelt by dip net or Hawaiian type throw net, while retaining the tribal take exemption for the Nation is aligned with the state's commitments to strengthening and sustaining effective government to government relationships between the state and tribes (Governor Brown's Executive Order B-10-11, Governor Newsom's Executive Order N-15-19, the 2020 Ancestral Lands Policy, and the California Natural Resources Agency Tribal Stewardship Policy) and would advance the following DMR Recommendations: (1) Improve state agencies' tribal engagement and relationship building efforts, (2) Create a clear pathway to tribal MPA management, and (24) Work with CFGC and partners to better incorporate marine cultural heritage into the design of the MPA Network, which may lead to advancements in (3) Building tribal capacity to participate in MPA management activities (CDFW 2022).

The Nation has stewarded the area that includes Pyramid Point SMCA since time immemorial. Today, the Nation is a critical partner in marine resource management along the North Coast. In partnership with other tribes and state universities, they have provided key information that has filled gaps in the understanding of true smelt, including baseline data for spawning surf smelt (Lane 2019), population status of night smelt in Northern California (Zenobia 2024), and Tribal/Indigenous Traditional Knowledge of true smelt and other marine indicator species (Van Pelt et al. 2017). Removing recreational take of true smelt at Pyramid Point SMCA will support the Nation in their effort to steward these species and the area of Tr'uu-luu-k'wvt/Pyramid Point SMCA.

⁹ [Tolowa Dee-ni' Nation Marine Monitoring](#)

See Question 2a of Attachment 1 for the Decadal Management Review and adaptive management Recommendations.

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

Not applicable, as the proposed change advances adaptive management recommendations

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. CDFW does not anticipate that CFGC would need to make conforming changes to other regulations, permits, or leases in response to the proposed change to these MPA regulations.

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 proposed new MPA is adjacent to Pelican State Beach, which is managed by California State Parks and designated as a State Recreation Unit under Cal. Code Regs. Tit. 14 section 4753. State Beaches are defined as “consisting of areas with frontage on the ocean, or bays designed to provide swimming boating, fishing, and other beach-oriented recreational activities.” (Pub. Resources Code 5019.56). According to ‘State Parks Guidelines for Creating Marine Managed Areas’ (CDPR 2010),

“When an MPA is proposed offshore of an existing terrestrial California Park System unit, the terrestrial park’s general plan and existing public use patterns should be a guiding element for the designation and shoreline boundaries of the MPA.”

While Pelican State Beach does not have an existing management plan, fishing is an allowed activity¹⁰. Additional coordination with State Parks would be needed to facilitate implementation of the proposed change.

¹⁰ [Pelican State Beach Information](#)

Additionally, Clifford Kamph Memorial Park¹¹ (a Del Norte County Park) is adjacent to Pyramid Point SMCA; implementation of the proposed change may require coordination with Del Norte County Parks and may interact with their management activities.

These interagency considerations are in alignment with the Marine Managed Areas Improvement Act (Pub. Resources Code §§ 36601, 36800). 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 has sufficient information to evaluate and make a recommendation on this proposal. When evaluating this petition, CDFW reviewed the information in the petition as well as information including but not limited to:

- Tribal collaborative project, Informing the North Coast MPA Baseline, Traditional Ecological Knowledge of Keystone Marine Species and Ecosystems (2017),
- CDFW [CDFG] California Living Marine Resources Status Report (2001),
- CDFW Surf Smelt Enhanced Status Report (2021),
- CDFW Recreational Fishing Surveys,
- CDFW commercial landings data for night smelt and surf smelt through 2024, and
- The Safina Center at Stony Brook University and Monterey Bay Aquarium Seafood Watch Report for Surf smelt, California and Washington, Cast nets, Scoop nets, and Beach seines (2018).

There is a lack of recreational fishing and socioeconomic data in this region pertaining to shore-based fishing (see response to Question 15 for more details), and no formal stock assessment exists for surf smelt. However, available data and observations from Tribal/Indigenous Traditional Knowledge (Van Pelt et al 2017) and the Surf Smelt Enhanced Status Report (CDFW 2021), indicate a severe decline in the surf smelt population and fishery. Additional information indicates the fishery has not recovered to pre-2000 levels, with commercial catch remaining at lower levels through 2015, and declining since 2020 (CDFW 2021, Figure 1)¹². These trends further substantiate the Nation's

¹¹ [County of Del Norte Clifford Kamph Memorial Park Information](#)

¹² While CDFW collects recreational fishing data through the California Recreational Fisheries Survey, these surveys are not intended to specifically capture recreational surf smelt harvest at the time of spawning, and thus while there are no records of any true smelt recreationally caught within the bounds of Pyramid Point SMCA, it may not accurately reflect recreational effort.

observations of “a significant decline in the returning numbers of lhwmsr to our traditional fishing grounds.”

The data described here represents a single analysis of potential impacts on fisheries in the area. The full extent of socioeconomic impacts in this area, including on fisheries, is unknown (see Question 5 in Attachment 1).

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.

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

Yes. Beginning in July 2009, CDFW and MLPA Initiative staff began discussions with north coast tribes and tribal communities regarding the MLPA Initiative North Coast planning process. Following input from tribes and guidance from the BRTF “to accommodate non-commercial, traditional subsistence, religious, cultural and other customary tribal gathering uses” (MLPAI 2010a) in MPA design, the revised Round 3 NCRSG proposal pertaining to Pyramid Point SMCA included a recreational take allowance for surf and night smelt by cast net¹³ or dip net¹⁴, in addition to several specific recreational take allowances intended to accommodate such tribal non-commercial uses, including surf smelt by beach net (i.e., seine gear; MLPAI 2010a).

The ultimate intention of the NCRSG (MLPAI 2011), which was further recommended by the BRTF (MLPAI 2010b), was that the “proposed recreational uses intended to accommodate traditional tribal uses be restricted to only tribes and tribal communities when administrative or legislative action is taken that allows only tribes and tribal communities to engage in traditional tribal uses within MPAs and SMRMAs [State Marine Recreational Managed Areas].”

During the regulatory process to adopt the NCRSG Round 3 unified proposal, three options were developed to accommodate tribal take within MPAs on the north coast. CFGC chose Tribal Option 1, which provided a pathway to exempt federally recognized tribes from MPA regulations where applicable, and asked the federally recognized tribes to submit a factual record of historic and current uses in specific geographies, other than

¹³ Includes Hawaiian-type throw nets and other throw nets but not beach nets (i.e., seine gear)

¹⁴ Include A-frame nets.

State Marine Reserves, to the CFGC within 60 days (CFGC 2011b). The CFGC received six factual records representing 24 federally recognized north coast tribes and tribal communities prior to the 60-day deadline, including from the Nation (CFGC 2012). The factual records identified 11 MPAs for tribal use with overlapping requests in some MPAs by specific tribes, including Pyramid Point SMCA. Ultimately, the Nation was the only tribe to submit a Factual Record for the area specific to Pyramid Point SMCA¹⁵.

Although exclusive tribal access in Pyramid Point SMCA was not adopted following the North Coast planning process, the current Pyramid Point SMCA take regulations were intended to continue to allow tribal take by the Nation while being designed to meet the ecological objectives of the MPA. The proposal in petition 2023-21MPA_AM1 to remove the recreational take allowance of true smelt in Pyramid Point and retain the existing tribal take exemption for the Nation, is aligned with the intent of Pyramid Point SMCA as contemplated during the MLPA Initiative 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?

Yes. Since implementation of the MPA Network, Governor Newsom's Executive Order N-15-19 (2019), the 2020 Ancestral Lands Policy (2020), and the CNRA Tribal Stewardship Policy have shaped state policy to incorporate sovereign recognition and prioritize cultural access and preservation, among many other objectives. CDFW is committed to conserve, protect, and manage the state's natural resources in consultation with California Native American tribes. Several DMR recommendations serving to advance tribal stewardship in MPA management and governance in California, include: (1) Improving state agencies' tribal engagement and relationship building efforts, (2) Creating a clear pathway to tribal MPA co-management, and (3) Building tribal capacity to participate in MPA management activities. Additionally, the California Ocean Protection Council and state agencies have formally committed to advancing these executive mandates and actively support the Tribal Marine Stewards Network, which empowers tribes to monitor ancestral waters and incorporate Traditional Ecological Knowledge into the Network's adaptive management. These efforts signal changing conditions since the MLPA Implementation Phase and clear justification in moving toward alignment with stated intentions to ultimately remove the recreational allowance

¹⁵ Although the MLPAl North Coast Study Region Initial Statement of Reasons document lists several tribes, including Smith River Rancheria, for a tribal exemption in Pyramid Point SMCA, this was later noted as being the result of clerical error, and Smith River Rancheria was deemed the only tribe to submit a Factual Record for this specific geography.

for the public that was initially incorporated to accommodate the Nation's traditional uses.

During the regulatory process to adopt the North Coast MPAs, CFGC directed the CNRA to explore a clear pathway "to allow for the tribes to have exclusive use" within MPAs (CFGC 2011a). A working group was assembled by the Secretary of CNRA consisting of two deputy attorney generals, chief counsel for two departments, various non-legal staff, and sovereign tribal nations in the North Coast (CFGC 2011a). Multiple pathways were considered, and though a tribal exemption for the Nation was ultimately adopted for Pyramid Point SMCA, it did not provide exclusive take allowances for the tribe. The proposed change would result in the removal of the recreational take allowance for true smelt and continue the Nation's access through their existing tribal take exemption in Pyramid Point SMCA.

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?

Yes. The proposed change aligns with the original intent of the MPA. See response to Question 7a for more information, including the BRTF's recommendation that proposed recreational uses to accommodate tribes be ultimately limited to only tribes and tribal communities.

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. Pyramid Point SMCA currently meets both minimum criteria (area and LOP), and thus already contributes to foundational ecological MPA Network objectives. Removing the recreational take of true smelt by dip net or Hawaiian type throw net while retaining the tribal take exemption would maintain the SMCA's design, which is aligned with the SAT Science Guidelines. 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 SAT and outlined in the Master Plan were created specifically to provide this scientific foundation and serve as the starting point for evaluating alternative MPA proposals. Alignment with the SAT Science Guidelines established during the MLPA Initiative planning process 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 levels of protection (i.e., Very High, High, or Moderate-high) to

contribute to ecological goals such as habitat replication and representation. See Question 9 of Attachment 1 for the SAT Science Guidelines and additional context.

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

Yes. Pyramid Point SMCA was designed to meet the CDFW Feasibility Guidelines and the request to remove recreational take of true smelt by dip net or Hawaiian type throw net would further simplify the take regulations. In conjunction with this request, the Nation requested to reclassify the MPA to a No-take SMCA because the “designation will be clearer to [the] public, reducing violations.” An SMCA (No-take) classification generally prohibits the take of living, geologic, and cultural marine resources, but allows incidental take such as dredging and maintenance to continue (CFGC 2010). However, since there is an existing tribal take exemption for the Nation at Pyramid Point SMCA, to continue alignment with the CDFW Feasibility Guidelines, the classification should remain an SMCA rather than a No-take SMCA. 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?

Not applicable, as the proposal aligns with CDFW Feasibility Guidelines.

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

Yes. Reducing take allowances and allowed activities in this MPA would maintain or improve enforceability. Removing the recreational take allowance for true smelt by dip net or Hawaiian type throw net would require fewer regulations to enforce. Additionally, the enforceability of the tribal exemption would be maintained, as no change to the exemption was requested. Increased outreach and signage could help with compliance following a regulatory change to remove the existing take allowance for the public.

The proposed tribal take exemption is supported in concept, and Cal. Code Regs. Tit. 14 section 632(a)(11) provides a definition of tribal take for certain existing MPAs. If all the requirements in the subsection are met, then enforcement of the MPA tribal exemption, including a tribal take only MPA, is possible. However, MPA tribal exemptions, including within a tribal take only MPA, can be a challenge to enforce under certain circumstances.

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

Yes. The proposed change will simplify the regulations without changing the intent of the MPA by removing a section of regulations (Cal. Code Regs. Tit. 14 § 632(b)(1)(B)1) intended to be removed. During the MLPA Initiative planning process, Pyramid Point SMCA was designed to balance ecological protection with recognition of tribal cultural and subsistence access (CFGC 2011b & 2012). The original intent of the MPA was to safeguard marine resources while maintaining opportunities for tribes, including Tolowa Dee-ni' Nation (formerly Smith River Rancheria), to continue traditional, non-commercial fishing, gathering, and harvesting for subsistence, ceremonial and/or stewardship purposes (CFGC 2011b & 2012). During the MLPA Initiative planning process, the mechanism to accommodate traditional tribal uses within the MPAs was to incorporate specific non-commercial allowances, with the intent that the allowances eventually "be restricted to only tribes and tribal communities when administrative or legislative action is taken that allows only tribes and tribal communities to engage in traditional tribal uses within MPAs." (MLPA 2010b). Although the original proposed non-commercial allowance to accommodate tribal uses included the take of surf smelt by beach net, and not dip net or Hawaiian type throw net (as is currently specified in the regulations for Pyramid Point SMCA) the Nation cites in their petition, "Lhvmsr are harvested with a traditional A-frame net by the men of the society and then processed by the family members who oversee the family camp unit." A-frame nets are considered a type of dip net (MLPAI 2010a).

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

Yes. Removing the allowance for recreational take of true smelt by dip net or Hawaiian type throw net from the Pyramid Point SMCA regulations has the potential to enhance protection of true smelt, including surf smelt, and aid in the recovery of these species.

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 of Attachment 1.

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

Yes. The proposed action would affect the consumptive activities related to the recreational take of true smelt. The degree to which recreational take of true smelt would be impacted is unclear. Due to budget constraints and other factors, beach and bank angler intercept surveys, conducted by the California Recreational Fisheries Survey to

monitor biological data and provide total catch estimates, have been intermittent across California Recreational Fisheries Survey districts and months since 2018. However, even in years when surveys occurred, survey data may not provide an accurate representation of surf smelt catches. For example, beach and bank survey effort was not designed to systematically capture recreational surf smelt harvest, which is dependent on surf smelt spawning and habitat suitability (i.e. spatiotemporal overlap in beach and bank California Recreational Fisheries Survey effort may not be a reliable representation of the times and beaches when and where surf smelt are targeted by recreational anglers).

The area also provides many opportunities for human connection with the ocean through non-consumptive activities such as swimming, surfing, and wildlife viewing. Understanding how people interact with and derive benefits from the ocean and how these benefits may be affected by MPAs is challenging (Hall-Arber et al. 2021, CDFW 2022, Travis et al. 2026). Social science research within the MPA Monitoring Program is a rapidly expanding field of MPA research, as well as a priority DMR Recommendation to invest in improving understanding of the human dimensions of MPAs and develop a human dimensions working group and research agenda (DMR Recommendation 12).

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 following analysis was prepared by CFGC staff. See Question 17 of Attachment 1 for additional context on CFGC's response. The proposed change would reduce fishing access, particularly for fishing participants associated with the coastal fishing community of Crescent City (~20 nautical miles south of area of proposed change).

Due to the remote location of this SMCA, further engagement with local community members would help clarify the extent of potential impacts to nearby coastal fishing communities.

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

No. The proposed change does not interact with or have the potential to affect proposed changes in other 2023 MPA petitions.

V. SUPPLEMENTAL ANALYSES, DATA AND INFORMATION, AND CITATIONS

TABLES AND FIGURES

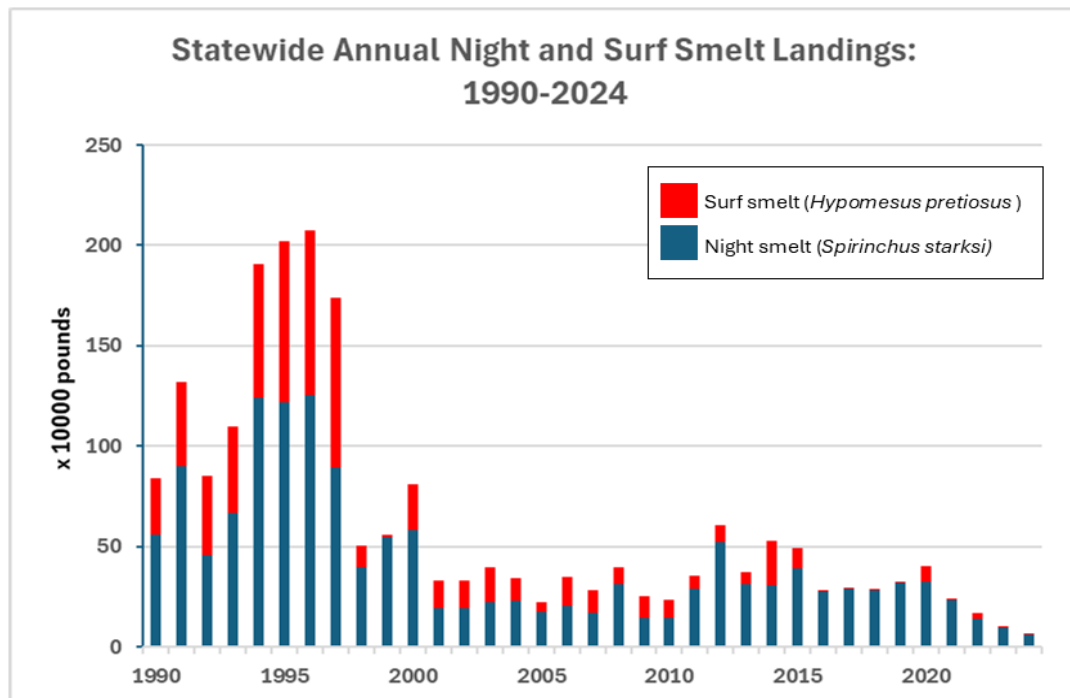


Figure 1. Trends in commercial landings (in thousands of pounds) for night smelt (*Spirinchus starksi*) and surf smelt (*Hypomesus pretiosus*) in California, 1990–2024.

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