

## Chapter 1. Purpose and Need for the Proposed Action

### 1.1 Introduction

The Pacific Ocean and its rich marine living resources are of great environmental, economic, aesthetic, recreational, educational, scientific, nutritional, social and historic importance to the people of California. California's nearshore reef fishes also are of great economic and intrinsic value to the people of the State and have been subjected to increased harvesting over the past century. Reef fishes, such as kelp greenling, California sheephead, and rockfish, settle and remain within a narrow band of rocky habitat off the California coast. Rockfish are long lived (sometimes to 80 years) species that mature slowly and, if depleted, could take decades to come back. All are found in shallow-water, high-relief, hard substrate areas. However, increased fishing pressure, oceanographic fluctuations, and habitat degradation have resulted in a reduction of these nearshore fish populations. Rockfish have been used commercially since the mid-1800s and are sold primarily under the name of rockcod, red snapper, and snapper. Fifty-nine species are known to occur in the marine water off the California coast, of which 85 percent are caught in either commercial or sport fisheries.

The overarching principle or goal of the California Marine Life Management Act of 1998 (MLMA) is sustainability and the act sets forth a comprehensive plan for the management of marine life resources "... to ensure the conservation, sustainable use, and, where feasible, restoration of California's marine living resources for the benefit of all the citizens of the State." The concept of time is also inherent in sustainability. Sustainability means both continuous replacement of resources, taking into account fluctuations in abundance and environmental variability, and securing the fullest possible range of present and long-term economic, social, and ecological benefits, while maintaining biological diversity. In the case of fishery management based on maximum sustainable yield, sustainability means that take in a fishery does not exceed optimum yield. The MLMA also provides guidance for the development of Fishery Management Plans (FMPs) which will form the primary basis for the management and development of regulations for, the State's sport and commercial marine fisheries.

This plan fulfills the requirement of the MLMA that the Department of Fish and Game (Department), on behalf of the Commission, develop a FMP for California's nearshore fishery. Although many recreational and commercial fish species occur in the nearshore environment, this FMP only covers the following 19 species:

- California sheephead (*Semicossyphus pulcher*)
- Cabezon (*Scorpaenichthys marmoratus*)
- Kelp Greenling (*Hexagrammos decagrammus*)
- Rock Greenling (*H. lagocephalus*)
- California Scorpionfish (*Scorpaena guttata*)
- Monkeyface Prickelback (*Cebidichthys violaceus*)
- Black Rockfish (*Sebastes melanops*)
- Black-and-yellow Rockfish (*S. chrysomelas*)
- Blue Rockfish (*S. mystinus*)
- Brown Rockfish (*S. auriculatus*)

- Calico Rockfish (*S. dallii*)
- China Rockfish (*S. nebulosus*)
- Copper Rockfish (*S. caurinus*)
- Gopher Rockfish (*S. carnatus*)
- Grass Rockfish (*S. rastrelliger*)
- Kelp Rockfish (*S. atrovirens*)
- Olive Rockfish (*S. serranoides*)
- Quillback Rockfish (*S. maliger*), and
- Trreefish (*S. serriceps*).

Not all species occur equally in all areas of the State and, therefore, there are marked differences in species composition in catch numbers and ecosystem usage from the Oregon to Mexico border.

The majority of these 19 species comprise the core of the recently developed commercial fishery for a live, or premium quality product. These fish species were, for many years, the mainstay of recreational divers and shore fishermen and a relatively small commercial component. Beginning in the 1980s, a demand for live, plate-sized fish developed, fueled by the high prices offered from number a of Asian restaurants and markets in the State's major metropolitan areas.

This document is intended to fulfill the Commission's obligation to comply with the California Environmental Quality Act (CEQA) Pub. Resources Code, Section 21000 et seq.) in considering and adopting a Nearshore FMP, and associated implementing regulations. In general, public agencies in California must comply with CEQA whenever they propose to approve or carry out a discretionary project that may have a potentially significant adverse impact on the environment. Where approval of such a project may result in such an impact, CEQA generally requires the lead public agency to prepare an environmental impact report (EIR). In contrast, where no potentially significant impacts could result with project approval, a lead agency may prepare what is commonly known as a negative declaration. Where an EIR is required, however, the document must identify all reasonably foreseeable, potentially significant, adverse environmental impacts that may result from approval of the proposed project, as well as potentially feasible mitigation measures and alternatives to reduce or avoid such impacts. Because the lead agency must also subject the EIR to public review and comment, and because the agency must respond in writing to any public comments raising significant environmental issues, compliance with CEQA serves to protect the environment and to foster informed public decision-making.

CEQA also provides an alternative to preparation of an EIR or negative declaration in limited circumstances. Under CEQA, the Secretary of Resources is authorized to certify that a state regulatory program meeting certain environmental standards provides functionally equivalent environmental review to that required by CEQA. (Pub. Resources Code, Section 21080.5; see also CEQA Guidelines, Section 15250-15253; the "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.). As noted by the California Supreme Court, "[c]ertain state agencies, operating under their own regulatory programs, generate a plan or other environmental review document that serves as the

functional equivalent of an EIR. Because the plan or document is generally narrower in scope than an EIR, environmental review can be completed more expeditiously. To qualify, the agency's regulatory program must be certified by the Secretary of the Resources Agency. An agency operating pursuant to a certified regulatory program must comply with all of CEQA's other requirements." [Mountain Lion Foundation v. Fish and Game Comm. (1997) 16 Cal.4th 105, 113-114 (internal citations omitted).]

The Commission's CEQA compliance with respect to the Nearshore FMP and associated regulations is governed by a regulatory program certified by the Secretary of Resources. [CEQA Guidelines, Section 15251, subd. (b).] The specific requirements of the program are set forth in Title 14 of the California Code of Regulations in the section governing the Commission's adoption of new or amended regulations, as recommended by the Department. (Cal. Code Regs., tit. 14, Section 781.5.) Pursuant to section 781.5, this environmental document (ED) contains and addresses the proposed Nearshore FMP and associated implementing regulations, reasonable alternatives to the proposed FMP, and potentially feasible mitigation measures to avoid or minimize any significant adverse impacts associated with adoption and implementation of the FMP. (Id., Section 781.5, subd. (a)(1)-(3).) In so doing, the ED portion of the present document is intended to serve as the functional equivalent of an EIR under CEQA. As noted above, however, preparation of the ED is not a "blanket exemption" from all of CEQA's requirements. [Environmental Protection Information Center v. Johnson (1985) 170 Cal. App.3d 604, 616-618; see also Wildlife Alive v. Chickering (1976) 18 Cal.3d 190.] Instead, the Commission must adhere to and comply with the requirements of its certified program, as well as "those provisions of CEQA from which it has not been specifically exempted by the Legislature." [Sierra Club v. State Board of Forestry (1994) 7 Cal.4th 1215, 1228.]

## **1.2 Location and General Characteristics of the Project Area**

California's nearshore is defined as the area from the high-tide line to a depth of 120 ft and is one of the most productive areas in the world. The nearshore area, comprising only about 2,550 square miles, generates almost \$40 million in revenue to fishers which is almost one-third of the value of all California's fisheries. The area is the home to a wide variety of: fishes, invertebrates (such as spiny lobster, abalone, sea urchin, crabs), marine mammals, and marine and coastal bird species.

The nearshore area contains a variety of habitats ranging from high-relief rocky reefs and kelp forests, to broad expanses of sand and mud. There are distinct differences in the oceanographic conditions from north to south. Much of the state's shoreline is heavily influenced by the cold California current which sweeps south from the Gulf of Alaska. As a consequence, the northern California region, from the Oregon border to Cape Mendocino, is inhabited by plant and animal species which typically range northward to Oregon, Washington, and Alaska. Catches in these waters are dominated by the following species: black rockfish, cabezon, redbtail perch, and night and surf smelt, which are harvested by both commercial and recreational fisheries.

In the central California region, south of Cape Mendocino to Point Conception, rocky-reef habitat dominates, and the prevailing onshore northwest winds result in the upwelling of nutrient-rich waters from the ocean bottom. Kelp beds, consisting of giant

kelp, in the southern part of this region, and bull kelp in the north, are home to a variety of nearshore rockfish, abalone, and sea urchin. Important seabird nesting areas are found at the Farallon Islands and along the central coast region. Here too are the vestiges of the southern sea otter population which once ranged from Baja California to the Gulf of Alaska. Important haul-out and pupping sites for elephant seals and other marine mammals occur here as well.

In the south coast region, which includes the area south of Point Conception to the Mexico border, warmer waters from the south join with the colder California current to provide conditions that are favorable to many species found further north, as well as for a wide variety of seasonal sub-tropical fish like yellowtail, white seabass, Pacific bonito, and California barracuda. These fish are found in close association with the abundant stands of giant kelp around the offshore islands and along the coast. Major resident species like kelp bass, California sheephead, half-moon, and olive rockfish sustain a year-round recreational fishery.

### **1.3 Scope of the Environmental Document**

#### **1.3.1 Proposed Action**

For purposes of CEQA and this ED, the proposed action consists of the adoption of the Nearshore FMP and its associated implementing regulations that govern nearshore fishing activities off the coast of California. The proposed action is intended to be consistent with the FMP prepared by the National Marine Fisheries Service (NMFS) for groundfish, several species of which also are covered in this document. The NFMP itself sets forth various management tools and alternatives for the regulation of the fishery, all of which are based on State policies, goals, and objectives for FMPs in the MLMA. In this sense, the NFMP reflects a historic shift from species-specific management by the Commission to a more ecosystem comprehensive management strategy.

#### **1.3.2 California Environmental Quality Act (CEQA)**

The Legislature enacted CEQA in 1970 to serve primarily as a means to require public agency decision makers to document and consider the environmental implications of their actions. In so doing, CEQA is premised on a number of Legislative findings and declarations, including a finding that it is “necessary to provide a high-quality environment that at all times is healthful and pleasing to the senses and intellect of man.” [Public Resources Code Section 21000 subd. (b).] CEQA also codifies State policy to, among other things, “[p]revent the elimination of fish or wildlife species due to man’s activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities and examples of the major periods of California history.” [Id., Section 21001, subd. (c).] A similar provision in the Fish and Game Code also declares: “It is hereby declared to be the policy of the State to encourage the conservation, maintenance, and utilization of the living resources of the ocean and other waters under the jurisdiction and influence of the State for the benefit of all the citizens of the State and to promote the development of local fisheries and distant-

water fisheries based in California in harmony with international law respecting fishing and the conservation of the living resources of the oceans and other waters under the jurisdiction and influence of the State.” (Fish and Game Code Section 1700.)

CEQA applies to all “governmental agencies at all levels” in California, including “state agencies, boards, and commissions.” [Pub. Resources Code, Section 21000, subd. (g), 21001, subds. (f), (g).] Public agencies, in turn, must comply with CEQA whenever they propose to approve or carry out a discretionary project that may have a significant effect on the environment. (See generally *Id.*, Section 21080.) For purposes of CEQA, a project includes “an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment,” that is, like the proposed project, “directly undertaken by any public agency.” [*Id.*, Section 21065, subd. (a).] Moreover, as mandated by the Legislature, “it is the policy of the state that projects to be carried out by public agencies be subject to the same level of review and consideration under [CEQA] as that of project projects required to be approved by public agencies.” (*Id.*, Section 21001.1.)

Unlike its “procedural” federal counterpart, the National Environmental Policy Act (NEPA) (42 U.S.C. Section 4321 et seq.), CEQA contains a “substantive mandate” that public agencies refrain from approving projects with significant environmental effects if there are feasible mitigation measures or alternatives that can substantially lessen or avoid those effects. (Mountain Lion Foundation, *supra*, 16 Cal.4th at p. 134; Pub. Resources Code, Section 21002.) CEQA, as a result, “compels government first to identify the [significant] environmental effects of projects, and then to mitigate those adverse effects through the imposition of feasible mitigation measures or through the selection of feasible alternatives.” [*Sierra Club v. State Board of Forestry* (1994) 7 Cal.4th 1215, 1233; see also *Sierra Club v. Gilroy City Council* (1990) 222 Cal. App.3d 30, 41.] Public agencies fulfill CEQA’s mandate through required consultation with other interested public agencies and the public; preparation EIRs, functional equivalent documents, or other appropriate CEQA analysis; subjecting their environmental analyses to public review and comment, and preparing responses to public comments concerning the environmental impacts associated with their proposed projects; and ultimately adopting findings detailing compliance with CEQA’s substantive mandate. In this respect, the CEQA process “protects not only the environment but also informed self-government.” [*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564 (internal quotation marks deleted).] Indeed, as recently underscored by the California Supreme Court, compliance with these requirements, even in the context of a certified regulatory program, “ensures that members of the [governmental decision making body] will fully consider the information necessary to render decisions that intelligently take into account the environmental consequences. Its also promotes the policy of citizen input underlying CEQA.” [Mountain Lion Foundation, *supra*, 16 Cal.4th at p. 133 (internal citations omitted).]

### **1.3.3 Scoping Process**

The MLMA calls for meaningful constituent involvement in the development of each fishery management plan, and requires the Department to develop a process to

involve interested parties in that process. In addition, CEQA requires public consultation during lead agency review of all proposed projects subject to a certified regulatory program. [See generally Pub. Resources Code, Section 21080.5, subd. (d)(2); see also Cal. Code Regs., tit. 14, Section 781.5.] The adoption of the Nearshore FMP and its associated implementing regulations is, of course, such a project under CEQA.

Small group meetings were conducted in 13 communities along the California coast in the spring of 2000 to gather information. These meetings focused on gaining an understanding of constituents' expectations for the process of developing the NFMP and suggestions for the best ways to involve constituents in that process. Constituents included those participating in the fishery, marine scientists, and other interested parties.

Prior to the preparation of the NFMP, the Department, on behalf of the Commission, submitted a Notice of Preparation (NOP) to the State Clearinghouse. The NOP requested comments on the scope and content of the NFMP's functional equivalent ED. The State Clearinghouse distributed the NOP to appropriate Responsible and Trustee agencies for their input and comment. The Department also sought input regarding the NOP from various federal agencies involved in activities related to the Nearshore FMP. The 30-day public comment period ended 26 February 2001. The Department received no comments in response to the NOP.

In addition to the NOP, the Department, on behalf of the Commission, undertook a number of other actions to facilitate early public involvement and input regarding the Nearshore FMP and the Draft ED (DED). The Department, for example, held four publicly-noticed scoping sessions (constituent meetings) during February 2001, in northern, central, and southern California to receive input from the public and interested organizations. The Department also conducted three public meetings with the Nearshore Fishery Management Plan Advisory Committee (29-30 March 2001, 20 April 2001, and 23-24 May 2001) and held a noticed public meeting (3 April 2001) to receive input on management alternatives. Finally, the Department sent letters and discussion documents to more than 100 individuals requesting input regarding the Nearshore FMP and the ED. The Department also posted the same documents and solicited public input via the Department's web page.

#### **1.3.4 Public Review and Certification of the Environmental Document**

The Commission's certified regulatory program and CEQA itself require that the DED be made available for public review and comment. (CCR title 14, Section 781.5(f); PRC Section 21091.) Consistent with these requirements, and upon the filing with the Commission of the NFMP and implementing regulations proposed by the Department, as well as the filing of the same documents with the State Clearinghouse at the governor's Office of Planning and Research, the DED will be made available for public review and comment for no less than 45 days. During this review period, the public is encouraged to provide written comments regarding the DED to the Department at the following address: Department of Fish and Game, 20 Lower Ragsdale Drive, Suite 100, Monterey, California 93940. Additionally, oral testimony regarding the proposed NFMP and DED will be accepted by the Commission at the public meetings announced

under a separate cover. Public notice of the Commission meeting will be provided as required by the Fish and Game Code.

The Department is required by law to prepare written responses to all comments on the DED and proposed NFMP received during the public review period that raise significant environmental issues. (CCR Title 14 781.5(h); see also PRC 21092.5.) In some instances, written responses to comments may require or take the form of revisions to the DED or the proposed NFMP, or both. Any such revisions, along with the Department's written responses to comments raising significant environmental issues shall constitute the Final ED (FED). The Commission will consider the FED and the proposed NFMP at a public hearing scheduled to be held in Oakland during August, 2002. Public notice of the Commission meeting will be provided as required by CEQA and the Fish and Game Code. Notice of any final decision by the Commission regarding the FED and NFMP will be provided to the extent required by law.

### **1.3.5 Consultation and Coordination**

#### **1.3.6 Laws and Regulations**

The California constitution gives authority to the State Legislature which may, by statute, provide for the seasons and conditions under which different species of fish may be taken. California law consists of 29 codes including the Fish and Game Code (FGC). Laws in the FGC consist of statutes (chaptered bills that have passed through both houses of the Legislature and ultimately signed by the Governor and recorded by the Secretary of State) and propositions passed by the voters of the State. The FGC is administered and enforced through regulations. The Fish and Game Commission (Commission) was created by the State constitution. The rulemaking powers of the Commission are delegated to it by the Legislature.

The authority and responsibility of the Commission and the Department to make and enforce regulations governing recreational and commercial fishing is provided by the Legislature and, thereby, is the State agency charged with carrying out policies adopted by the Legislature and Commission. The Department enforces statutes and regulations governing recreational and commercial fishing activities, conducts biological research, monitors fisheries, and collects fishery statistics necessary to protect, conserve, and manage the living marine resources of California. General policies for the conduct of the Department are formulated by the Commission.

Recreational fishing regulations are adopted by the Commission following procedures listed in the FGC. General provisions applying to the taking and possession of fish by recreational fishermen are provided in FGC Section 7100-7400. Specific sportfishing regulations are found in the California Code of Regulations (CCR), Title 14, Chapter 4.

Commercial fishing regulations are created by the Legislature and the Commission. Provisions relating to the taking and possession of fish for commercial purposes is provided in FGC Section 7600-9101 and CCR, Title 14, Chapter 6. With the passage of the MLMA, the Commission has been granted additional broad authority to regulate commercial fisheries.

### **1.3.6.1 Marine Life Management Act (MLMA)**

It is the policy of the State of California to ensure the conservation, sustainable use, and, where feasible, restoration of California's marine living nearshore resources for the benefit of all the citizens of the State. Programs for the conservation and management of marine fisheries resources shall be established and administered to rebuild depressed stocks, to ensure conservation, to facilitate long-term protection, and, where feasible, restoration of marine fishery habitats. In addition, whenever feasible and practicable, it is the policy of the State to assure sustainable commercial and recreational nearshore fisheries, to protect recreational opportunities, and to assure long-term employment in commercial and recreational fisheries.

The MLMA was signed into law and incorporated into the FGC (FGC Section 7050-7090) in January 1998. The act created State policies, goals, and objectives to govern the conservation, sustainable use and restoration of California's marine living resources. The MLMA provides guidance to management of the State's living marine resources, in general, and of its fisheries. The general policy on all marine resources is to ensure conservation, sustainable use, and restoration of those resources. Sustainability is to be achieved by allowing only activities and uses that are themselves sustainable. The policy on fisheries management for both recreational and commercial fisheries is meant to maintain the long-term economic, recreational, cultural, and social values of the fisheries and their habitats.

Nearshore waters are described as the ocean waters of the State extending from the shore to one nautical mile from land, including one mile around offshore rocks and islands. Nearshore fisheries means the commercial or recreational take or landing of any species of nearshore finfish stocks. While there has been extensive research conducted on some of the species, there are many gaps in information and there is no program currently adequate for the systematic research, conservation, and management of nearshore fish stocks and the sustainable activity of recreational and commercial nearshore fisheries. As such, FMPs will summarize readily available information about the fishery including: species habitat, natural history and population dynamics, known threats to their habitat, ecosystem role of the fish, economic and social factors related to the fishery, fishery research protocols, description of existing conservation and management measures to obtain a sustainable fishery, summarize anticipated effects of those measures on fish populations and habitats, and where adverse effects on the habitat are identified, and include measures to the extent practicable to minimize adverse effects. Therefore, FMPs will be developed for the use and preservation of marine resources living at the maximum sustainable yield. The Commission will adopt regulations necessary to implement the FMPs.

Maximum sustainable yield and optimum yield are defined as: "the highest average yield over time that does not result in a continuing reduction in stock abundance, taking into account fluctuations in abundance and environmental variability; and the greatest over-all benefit including food production, and recreational opportunities while taking into account the protection of marine ecosystems, and the maximum sustainable yield as reduced by relevant economic, social, or ecological factors" respectively. The act also provides for rebuilding of those depressed/overfished fisheries to a level consistent with producing maximum

sustainable yield. The FMP will provide criteria for identifying when a fishery is overfished.

### **1.3.6.2 Federal Laws**

In addition, marine resources are also managed by federal laws governing the take of seabirds, marine mammals, fish, and shellfish. The Federal government manages the marine resources and fishing activities of the United States through the Magnuson-Stevens Fishery Conservation and Management Act of 1976 and the Sustainable Fisheries Act of 1996 (now called the Magnuson-Stevens Fishery Conservation and Management Act). The purpose of the Act is to provide conservation and management of fishery resources, develop domestic fisheries, and phase out foreign fishing activity within the Exclusive Economic Zone (EEZ) consisting of ocean waters from the edge of State waters (3 miles) to 200 miles offshore.

Eight Regional Fishery Management Councils implement the goals of the Act in coordination with the National Marine Fisheries Service. The Pacific Fisheries Management Council (Council) manages the fisheries resources off Washington, Oregon, and California by developing FMPs for the EEZ. The Act established that FMPs must specify the optimum yield from each fishery that would provide the greatest benefit to the United States and state how much of that optimum yield can be expected to be harvested in U.S. waters. FMPs also must specify the level of fishing that would constitute overfishing. Using the framework of the FMPs and current information about the marine ecosystem, the Council recommends annual Total Allowable Catch (TAC) specifications to the Secretary of the Department of Commerce. The TAC specifications serve as quotas and Prohibited Species Catch (PSC) limits based on biological and economic determinations made by the NMFS. As part of the TAC process, intermediate determinations of Acceptable Biological Catch (ABC) and Overfishing Level (OFL) for each FMP-established target species or species group precedes recommendations of TAC specifications and PSC limits. The ABC and OFL for each target species provide valuable reference points based on the latest scientific information.

In addition to TAC and PSC, each FMP contains a suite of additional management tools that together characterize the fishery management regime. These management tools are either a framework type measure, thereby allowing for annual or periodic adjustment using a streamlined notice process, or are conventional measures that are fixed in the FMP and its implementing regulations. Amendments to the FMP, or its regulations, are considered annually by the Council. As a result, FMPs are dynamic and are continuously changing as new information or problems arise.

Many nearshore species are subject to federal management through the Pacific Coast Groundfish FMP (PCGFMP). The PCGFMP provides management for 83 groundfish species including 16 of the 19 nearshore fish covered in this NFMP. The State of California has representation on the Council. When the Council adopts regulations for nearshore fish included in the PCGFMP, conforming regulations need to be adopted by the Commission so fisheries are managed consistently in both federal and State waters. This complicates independent State regulation of the fishery as a unit because all regulations relating to federally managed species must be evaluated and found consistent with federal fishery management policy to remain in effect. In addition

to the PCGFMP, the Council formed a Groundfish Strategic Planning Committee to provide long-term vision for groundfish fisheries and management.