

STAFF SUMMARY FOR DECEMBER 9-10, 2015

21. ITEMS OF INTEREST FROM PREVIOUS MEETINGS**Today's Item****Information** ☒**Action** ☒

This is a standing agenda item for FGC to provide direction on regulatory petitions and non-regulatory requests from the public, as well as other items of interest from previous meetings. For this meeting:

- (A) Action on petitions for regulatory change received at the Oct meeting and pending items from previous meetings.
- (B) Action on non-regulatory requests received at the Oct meeting and pending items from previous meetings.
- (C) Domoic acid and crab fisheries
- (D) Sea urchin regulations

Summary of Previous/Future Actions

- (A-B) FGC received the requests in exhibits A1 and B1 in three ways: (1) Requests received at the office through Sep 24 were published as tables in the Oct meeting binder, (2) requests received as late handouts were delivered at the Oct meeting, and (3) requests that were received during public forum at the Oct meeting.
- (C) FGC approved emergency regulations delaying the recreational Dungeness crab season and closed the recreational rock crab fishery at the Nov 5, 2015 teleconference meeting.
- (D) At its Oct 7, 2015 meeting, FGC directed staff to work with the California Sea Urchin Commission (CSUC) on a draft initial statement of reasons (ISOR) and appropriate CEQA document for proposed sea urchin regulation changes, and to schedule a 2016 rulemaking.

Background

- (A-B) FGC provides guidance and direction to staff regarding requests from the public received by mail and email and during public forum at the previous FGC meeting. The public request logs listed as exhibits capture the regulatory and non-regulatory requests received through the last meeting that require FGC guidance.
- (C) A massive toxic bloom of the marine diatom *Pseudo-nitzschia* has been detected along the California coast, resulting in significant impacts to coastal resources and marine life. Some *Pseudo-nitzschia* species produce a potent neurotoxin, known as domoic acid, which can accumulate in shellfish, other invertebrates, and sometimes fish, leading to illness and death in a variety of birds and mammals. Recent test results have shown persistently high levels of domoic acid in Dungeness crab and rock crab caught along the California coastline.

Domoic acid levels in recent samples have exceeded the State's action level for the crabs' body meat as well as the viscera, commonly referred to as crab butter, and therefore pose a significant risk to the public if they are consumed, as determined by the California Department of Public Health (CDPH). As a result, the Office of

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Environmental Health Hazard Assessment (OEHHA), in consultation with CDPH, has recommended the fisheries be closed. The Department, CDPH, OEHHA, and the Ocean Protection Council are coordinating efforts to monitor toxicity levels and ensure public safety.

The emergency regulations will remain in effect until the director of the Office of Environmental Health Hazard Assessment, in consultation with the director of the California Department of Public Health, determines that domoic acid levels in crab no longer pose a significant risk to public health and no longer recommends that fisheries be closed.

- (D) CSUC developed a regulation change proposal in consultation with DFW to address industry concerns over the potential for inactive urchin diving permits to become active and result in unsustainable fishery conditions. CSUC proposed to reduce the permit capacity goal from 300 to 150 permits through a revised 10-to-1 permit issuance system; close a loophole in the lottery timing for issuing new permits; and add one day of fishing to the current four allowed Jun – Oct in southern California. In Oct 2014, FGC accepted an MRC recommendation to grant the petition and schedule a rulemaking in 2015, but this was subsequently put on hold. In Oct 2015, FGC agreed to reschedule the rulemaking for 2016 based on CSUC commitment to provide resources to support the rulemaking.

Update: Staff analysis of a timeline necessary to prepare the draft rulemaking and CEQA review suggests that it is not likely to be ready for scheduling until mid-2016. However, this would result in another lottery occurring (in Aug 2016) and further exceeding permit capacity before the loophole is closed. The lottery loophole portion of the rulemaking is simple enough that staff believes it could be completed in time to suspend the next lottery if the rulemaking only focuses on that change, and all other proposed changes are advanced to a subsequent rulemaking. This two-phase rulemaking is supported by CSUC if it is the only avenue to prevent the lottery from occurring again under the current loophole.

Significant Public Comments (N/A)

Recommendation

- (A-B) Adopt staff recommendations for the regulatory and non-regulatory requests with either (1) deny the request, (2) grant the request, or (3) refer the request to MRC, WRC, TC, DFW staff, or FGC staff for further evaluation or information gathering. The exhibits contain staff recommendations for each request.
- (C) N/A
- (D) Schedule sea urchin rulemaking in two phases during the rulemaking calendar updates agenda item (Agenda Item 38(B), this meeting). Staff suggests scheduling phase one for notice in Feb 2016, and discussion/adoption in Apr 2016, to address a lottery loophole. Schedule phase two for the remainder of the proposal, with timing yet to be determined.

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Exhibits

- A1. [Regulatory requests received at the Oct 2015 meeting](#)
- B1. [Non-regulatory requests received at the Oct 2015 meeting](#)
- C1. [Presentation on Domoic acid impacts to crab fisheries](#)

Motion/Direction

(A-B) Moved by _____ and seconded by _____ that the commission adopts the staff recommendations for actions on October 2015 regulatory and non-regulatory requests.

OR

Moved by _____ and seconded by _____ that the Commission adopts the staff recommendations for actions on October 2015 regulatory and non-regulatory requests, except for item(s) _____ for which the action is _____.

Domoic Acid Impacts

Dungeness and Rock Crab

Presented to the California Fish and Game Commission by
Commission Staff on December 9, 2015

Domoic Acid Threat

- Massive toxic bloom of the marine diatom *Pseudo-nitzschia*
- Produces a potent neurotoxin, known as domoic acid (DA), which can accumulate in shellfish, other invertebrates
- Leading to illness and death in a variety of birds and mammals
- Persistently high levels of DA in Dungeness and rock crab

Domoic Acid Threat

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- Pose a significant risk to the public if they are consumed
- The Office of Environmental Health Hazard Assessment (OEHHA), in consultation with the California Department of Public Health (CDPH), has recommended the fisheries be closed

Recreational Crab Closure

- Regulation prohibits recreational take and possession of Dungeness crab and all rock crab from ocean waters, including bays and estuaries, north of the Ventura/Santa Barbara county line
- Closure in effect until OEHHA and CDPH determine that domoic acid levels no longer pose a significant risk to public health and no longer recommends the fishery be closed

Commercial Crab Closure

- The California Department of Fish and Wildlife (CDFW) delayed the start of the commercial Dungeness crab season
- CDFW also closed the commercial rock crab fisheries in the affected area

Commercial D-Crab Closure

- Reopening procedures are designed to maintain the existing structure by providing the recreational sector fishing opportunities prior to the start of the commercial season

More Information

- <http://www.cdph.ca.gov/HealthInfo/Pages/fdbDomoicAcidInfo.aspx>
- <https://www.wildlife.ca.gov/Conservation/Marine/Invertebrates/Crabs#315201115-links-to-the-latest-information>

CALIFORNIA FISH AND GAME COMMISSION
DECISION LIST FOR NON-REGULATORY REQUESTS RECEIVED THROUGH OCT 8, 2015
 Revised 11-23-2015

FGC - California Fish and Game Commission DFW - California Department of Fish and Wildlife WRC - Wildlife Resources Committee MRC - Marine Resources Committee

Grant (previously Accept): FGC is *willing to consider* the petition through a process **Deny (previously Reject):** FGC is *not willing to consider* the petition
Refer: FGC *needs more information* before deciding whether to grant or deny the petition

 **Green cells:** Referrals to DFW for more information
 **Lavender cells:** Accepted and moved to a rulemaking

 **Blue cells:** Referrals to FGC staff or committee for more information
 **Yellow cells:** Current action items

Date Received	Name of Petitioner	Subject of Request	Short Description	FGC Decision	DFW/FGC Staff Response	Final Action, Other Outcomes
9/24/2015	Sean Brady, Michel & Associates, representing National Rifle Association	Committee Procedures	Requests rules and procedures be established for the WRC through normal regulatory approval process before WRC takes any further action.	Action Scheduled 12/9-10/2015 Staff recommendation: Grant; FGC is currently working on both regulations and policies/procedures for committee function		
8/6/2015	Ilson New, representing Dan Yoakum	Herring Eggs on Kelp (HEOK) Experimental Permit	Requests clarification on the definition of HEOK fishing.	Action Scheduled 12/9-10/2015 Staff recommendation: Refer to legal counsel and DFW for evaluation		
9/10/2015	Michael Flores, Al Taucher Conservation Coalition	Predator Policy Workgroup	Requests clarification of actions from FGC Aug 2015 meeting in Fortuna whereby individuals were publicly appointed to the Predator Policy Workgroup in conflict with the process previously established by FGC.	Action Scheduled 12/9-10/2015 Staff recommendation: Grant; FGC will be implementing the approved process at its Dec 2015 meeting		
8/11/2015	Diane Pleschner-Steele, CA Wetfish Producers Association	MRC Meeting Agenda	Request to provide update on industry squid research at MRC and FGC meetings.	Action Scheduled 12/9-10/2015 Staff recommendation: Deny; not timely for oral presentation. Written form welcome.		
9/11/2015 9/13/2015	Hazel Kimberly Leonard Frances LiBrandi	Urban Coyotes	Request to help control urban coyote problems.	Action Scheduled 12/9-10/2015 Staff recommendation: Deny; DFW appropriate entity to address the subject		
6/18/2015	William Lemos	North Coast Human Waste	Requests something be done to address the human waste problem occurring along the north coast during abalone season.	Action Scheduled 12/9-10/2015 Staff recommendation: Deny; not within FGC's authority		
9/25/2015	George Osborn, et al.	Fishing Licenses	Support for moving to a 12-month fishing license; requests FGC support SB 345 with this included.	Action Scheduled 12/9-10/2015 Staff recommendation: Grant; FGC referred to MRC and WRC for evaluation		

Date Received	Name of Petitioner	Subject of Request	Short Description	FGC Decision	DFW/FGC Staff Response	Final Action, Other Outcomes
10/7/2015	Sara Nichols, Sullivan Canyon Property Owners Assoc.	Wetland Permit	Concerned that DFW and FGC do not take the appropriate steps to investigate impacts on ecosystems before granting permits.	Action Scheduled 12/9-10/2015 Staff recommendation: Deny; not within FGC's authority		
10/7/2015	Sara Sickich, Heal the Bay	Pollution Enforcement	Requests more DFW enforcement of pollution issues along the coastline.	Action Scheduled 12/9-10/2015 Staff recommendation: Deny; not within FGC's authority		
10/7/2015	Greg Paully	Non-native Species Identification	Requests DFW dedicate more resources to response for increasing reports of non-native and invasive species.	Action Scheduled 12/9-10/2015 Staff recommendation: Deny; not within FGC's authority		
10/8/2015	Chris Smitz, Democrats of Napa Valley	CA Wolf Pack	Requests update on the status of California wolf packs, specifically an indication about whether DFW plans to collar them.	Action Scheduled 12/9-10/2015 Staff recommendation: Grant; referred to DFW for update		
10/8/2015	Jerry Hans, Friends of Griffith Park	Griffith Park Wildlife	Requests increased dialogue with DFW about wildlife connectivity issues and use of rodenticides in the park and the risk to wildlife.	Action Scheduled 12/9-10/2015 Staff recommendation: Deny; not within FGC's authority		
10/8/2015	Brendan Cummings, Center for Biological Diversity	Trapping Licenses	Requests clarification about FGC Section 4006 which demands that all licensing fees be set to recover fees. Does CBD need to petition for a mandate or not?	Action Scheduled 12/9-10/2015 Staff recommendation: Grant; referred to DFW for evaluation		
10/8/2015	Kathy Lynch	Nonlead Phase-in	Requests (1) DFW provide a formal protocol for annual certification of non-lead ammunition; (2) DFW provide some formal protocol for making a determination about when hunters will be exempted from regulation because of no availability of non-lead ammunition; and (3) some review of the non-lead phase-in process to determine whether adjustments need to be made as we proceed with implementation.	Action Scheduled 12/9-10/2015 Staff recommendation: Grant; referred to DFW for evaluation		

CALIFORNIA FISH AND GAME COMMISSION
DECISION LIST FOR REGULATORY REQUESTS RECEIVED THROUGH OCT 8, 2015
 Revised 11-24-2015

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Tracking No.	Date Received	Date Response Due (10 woking days)	Response letter to Petitioner	Accept or Reject	Name of Petitioner	Subject of Request	Code or Title 14 Section Number	Short Description	FGC Decision
	8/25/2015 8/30/2015				Julia Fuller Barbara Longmuir Raphael Zandra	Trapping		Requests complete ban on trapping of all furbearing animals because taking animals for profit is unnecessary.	Action scheduled 12/9-10/2015 Staff Recommendation: Deny; pending WRC review
	9/2/2015				Carol Johnson	Trapping		Requests ballot initiative to ban commercial and recreational trapping of all furbearers.	Action scheduled 12/9-10/2015 Staff Recommendation: Deny; FGC has no authority over ballot initiatives
	8/27/2015 9/11/2015 9/14/2015				Elaine Trogman Jill Franzke Diane Pease	Drift Gill Nets		Requests ban on drift gill net use in California to curb take of non-target species.	Action scheduled 12/9-10/2015 Staff Recommendation: Deny; FGC has no authority over this matter
	8/11/2015				George Burkhardt	Save Water		Requests two options to reduce water waste: (1) eliminate fish flow release, and (2) raise the level of all existing reservoir dams	Action scheduled 12/9-10/2015 Staff Recommendation: Deny; FGC has no authority over this matter and eliminating fish flow is contrary to FGC policy
	7/31/2015				Greg Helms, Ocean Conservancy; Anna Weinstein, Audubon California, and others	Forage Species Policy		Requests FGC consider planning for a rulemaking process to establish conforming forage regulations such that federal and California actions unfold on roughly parallel timelines.	Action scheduled 12/9-10/2015 Staff Recommendation: Deny; requires fisher management plan for FGC action. DFW has authority under 7652.
	8/10/2015				Jason Robinson	Rock Crab Transfer Process		Requests to amend the south coast rock crab permit process to allow for transfer permits on a first come first serve basis or to give applicants that have been attempting for consecutive years more points in the lottery as is the case with the sea urchin lottery.	Action scheduled 12/9-10/2015 Staff Recommendation: Refer to DFW for evaluation
	8/3/2015				Chris Borden	Fishing		Requests to stop fishing because too many whales are dying.	Action scheduled 12/9-10/2015 Staff Recommendation: Deny; No evidence provided to support request. DFW working on whale entanglement issue.
	8/21/2015				Greg Ross	Tehama Wildlife Area Rules		Requests revocation of the rules banning ATVs in the Tehama Wildlife Area because use does not impact wildlife or plants.	Action scheduled 12/9-10/2015 Staff Recommendation: Refer to DFW for evaluation
	8/28/2015				Del Norte County Board of Supervisors	Klamath River -- Blue Creek Closure		Requests FGC repeal or amend the closure of Blue Creek to fishing because the decision was made without consideration of science or the impact on residents, including small businesses.	Action scheduled 12/9-10/2015 Staff Recommendation: Deny; pending evaluation by DFW.

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	9/24/2015				Mercer Lawing, CA Trappers Association	Bobcat Trapping		Requests FGC reconsider ban on bobcat trapping because the decision failed to address the biological and economic impacts.	Action scheduled 12/9-10/2015 Staff Recommendation: Deny; FGC will only revisit the issue with new information on bobcats.
2015-001	9/29/2015	10/15/15	10/2/2015	A	Curtis Haney	Barnacles		Add barnacles to the list of invertebrates that can be harvested, and remove them from being prohibit to take or possess.	Action scheduled 12/9-10/2015 Staff Recommendation: Deny; no new data to support request.
2015-002	10/2/2015 10/7/2015	10/16/15	10/15/2015	R	Andrea Treece, Earthjustice	Forage Species	New Section	Prohibit new or expanded directed commercial fishing in state waters on seven groups of unmanged forage fish species.	Staff rejected as incomplete

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