

STAFF SUMMARY FOR AUGUST 24-25, 2016

14. MARINE PETITIONS AND NON-REGULATORY REQUESTS FROM PREVIOUS MEETINGS**Today's Item****Information** **Action**

This is a standing agenda item for FGC to act on regulatory petitions and non-regulatory requests from the public that are marine in nature. For this meeting:

- (A) Action on petitions for regulation change received at the Jun 2016 meeting.
- (B) Action on requests for non-regulatory requests received at the Jun 2016 meeting.
- (C) Update on pending petitions and non-regulatory requests referred to staff or DFW for review.

Summary of Previous/Future Actions**(A-B)**

- FGC receipt of new petitions and requests Jun 22-23, 2016; Bakersfield
- **Today FGC action on petitions and requests from Jun Aug 24-25, 2016; Folsom**

(C)

- **Today update and possible action on previous referrals Aug 24-25, 2016; Folsom**

Background

FGC provides direction regarding requests from the public received by mail and email and during public forum at the previous FGC meeting. Public petitions for regulatory change or requests for non-regulatory action follow a two-meeting cycle to ensure proper review and consideration. Petitions for regulatory change or requests for non-regulatory action scheduled for consideration today were received at the Jun 2016 meeting in three ways: (1) submitted by the comment deadline and published as tables in the meeting binder; (2) submitted by the late comment deadline and delivered at the meeting; or (3) received during public forum.

The public request logs provided in exhibits A1 and B1 capture the regulatory and non-regulatory requests received at the last meeting that are scheduled for FGC action today. The exhibits contain staff recommendations for each request.

- (A) Petitions for regulatory change: As of Oct 1, 2015, Section 662, Title 14, requires that any request for FGC to adopt, amend, or repeal a regulation must be submitted on form "FGC 1, Petition to the California Fish and Game Commission for Regulation Change". Petitions received at the previous meeting are scheduled for consideration at the next business meeting, unless the petition is rejected under 10-day staff review as prescribed in subsection 662(b).

One marine petition received in Jun 2016 is scheduled for action at this meeting (See summary table in Exhibit A1 and individual petition in Exhibit A2).

- (B) Non-regulatory requests: Requests for non-regulatory action received at the previous meeting are scheduled for consideration today.

Four non-regulatory requests received in Jun are scheduled for action at this meeting (See summary table in Exhibit B1 and individual requests in exhibits B2-B4).

STAFF SUMMARY FOR AUGUST 24-25, 2016

- (D) Pending petitions and non-regulatory requests: This item is an opportunity for staff to provide an evaluation and recommendation on items previously referred by FGC to DFW or FGC staff for review. FGC may act on any staff recommendations made today.

No previously referred items are scheduled for discussion today.

Significant Public Comments (N/A)

Recommendation

- (A-B) Adopt staff recommendations for the regulatory and non-regulatory requests to (1) deny the request, (2) grant the request, or (3) refer the request to committee, DFW staff, or FGC staff for further evaluation or information gathering. See exhibits A1 and B1 for specific staff recommendations for each request.
- (C) N/A

Exhibits

- A1. [FGC table of marine requests for regulatory change received through Jun 23, 2016](#)
- A2. [Petition #2016-013 \(Use of cast nets\)](#)
- B1. [FGC table of marine requests for non-regulatory change received through Jun 23, 2016](#)
- B2-B4. [Individual written requests for non-regulatory change that are summarized in Exhibit B1](#)

Motion/Direction

- (A-B) Moved by _____ and seconded by _____ that the Commission adopts the staff recommendations for actions on June 2016 regulatory and non-regulatory requests.

OR

Moved by _____ and seconded by _____ that the Commission adopts the staff recommendations for actions on June 2016 regulatory and non-regulatory requests, except for item(s) _____ for which the action is _____.

CALIFORNIA FISH AND GAME COMMISSION
DECISION LIST FOR REGULATORY ACTION THROUGH JUN 23, 2016
 Revised 08-10-2016

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

Grant: FGC is <i>willing to consider</i> the petition through a process Deny: FGC is <i>not willing to consider</i> the petition Refer: FGC <i>needs more information</i> before deciding whether to grant or deny the petition Green cells: Referrals to DFW for more information Blue cells: Referrals to FGC staff or committee for more information Lavender cells: Accepted and moved to a rulemaking Yellow cells: Current action items										
Tracking No.	Date Received	Response Due (10 work days)	Response letter to Petitioner	Accept or Reject	Name of Petitioner	Subject of Request	Code or Title 14 Section Number	Short Description	Staff Recommendation	FGC Decision
2016-013	6/22/2016	7/7/2016	7/7/2016	A	April Wakeman	Use of cast nets	28.80	Permit use of cast nets south of Point Conception for consistency in all state marine waters.	<i>REFER to DFW for evaluation and recommendation.</i>	RECEIPT: 6/22-23/2016 ACTION: Scheduled 8/24-25/16



2016-013

Tracking Number: (Click here to enter text.)

To request a change to regulations under the authority of the California Fish and Game Commission (Commission), you are required to submit this completed form to: California Fish and Game Commission, 1416 Ninth Street, Suite 1320, Sacramento, CA 95814 or via email to FGC@fgc.ca.gov. Note: This form is not intended for listing petitions for threatened or endangered species (see Section 670.1 of Title 14).

Incomplete forms will not be accepted. A petition is incomplete if it is not submitted on this form or fails to contain necessary information in each of the required categories listed on this form (Section I). A petition will be rejected if it does not pertain to issues under the Commission's authority. A petition may be denied if any petition requesting a functionally equivalent regulation change was considered within the previous 12 months and no information or data is being submitted beyond what was previously submitted. If you need help with this form, please contact Commission staff at (916) 653-4899 or FGC@fgc.ca.gov.

SECTION I: Required Information.

Please be succinct. Responses for Section I should not exceed five pages

1. **Person or organization requesting the change (Required)**
Name of primary contact person: April Wakeman, The Sportfishing Conservancy
Address: [REDACTED]
Telephone number: [REDACTED]
Email address: [REDACTED]
2. **Rulemaking Authority (Required)** - Reference to the statutory or constitutional authority of the Commission to take the action requested: Regulation requested to be amended: Title 14 Section 28.80 Authority: Pursuant to Fish and Game Code section 200, power is "delegated to the commission...to regulate the taking or possession of birds, mammals, fish, amphibian, and reptiles..."
3. **Overview (Required)** - Summarize the proposed changes to regulations: Regulations provide that cast nets may only be used north of Point Conception and specify certain species that may be taken by cast net by recreational anglers. We request that: cast nets be allowed in all state marine waters.
4. **Rationale (Required)** - Describe the problem and the reason for the proposed change: There appears to be no rationale for the distinction between using cast nets north or south of Point Conception. While we anticipate use of cast nets to be mostly limited to private boaters, cast nets are appropriate for only certain species. We request that regulatory authority be expanded to cover all of these species. At this time commercial bait boats generally use massive seine nets to harvest these same species. The cast net impact would be limited as currently recreational fishermen would acquire [though not as easily] the same bait by fishing sabiki rigs, squid jigs, brailles, dip nets, or by purchase from the bait haulers.



SECTION II: Optional Information

5. **Date of Petition: June 23, 2016**
6. **Category of Proposed Change**
 Sport Fishing
 Commercial Fishing
 Hunting
 Other, please specify: Click here to enter text.
7. **The proposal is to:** *(To determine section number(s), see current year regulation booklet or <https://govt.westlaw.com/calregs>)*
 Amend Title 14 Section(s):28.80 *Dip nets of any size and baited hoop nets not greater than 36 inches in diameter may be used to take herring, Pacific staghorn sculpin, shiner surfperch, surf smelt, topsmelt, anchovies, shrimp and squid. ~~Hawaiian type throw nets may be used north of Point Conception to take such species.~~*
 Add New Title 14 Section(s): Click here to enter text.
 Repeal Title 14 Section(s): Click here to enter text.
8. **If the proposal is related to a previously submitted petition that was rejected, specify the tracking number of the previously submitted petition** Click here to enter text.
Or Not applicable.
9. **Effective date:** If applicable, identify the desired effective date of the regulation. If the proposed change requires immediate implementation, explain the nature of the emergency: Click here to enter text.
10. **Supporting documentation:** Identify and attach to the petition any information supporting the proposal including data, reports and other documents: Click here to enter text.
11. **Economic or Fiscal Impacts:** Identify any known impacts of the proposed regulation change on revenues to the California Department of Fish and Wildlife, individuals, businesses, jobs, other state agencies, local agencies, schools, or housing: There should be no or minor cost to DFW and would reduce costs of anglers south of Point Conception. Should the department incur costs in implementing this regulation a license stamp similar to the 2nd Rod Stamp could be used to cover those costs.
12. **Forms:** If applicable, list any forms to be created, amended or repealed:
Click here to enter text.

SECTION 3: FGC Staff Only

Date received: Click here to enter text.

FGC staff action:

RECEIVED AT

JUN 22 2016

COMMISSION MEETING
AGENDA ITEM 2



- Accept - complete
- Reject - incomplete
- Reject - outside scope of FGC authority

Tracking Number

Date petitioner was notified of receipt of petition and pending action: July 6, 2016

Meeting date for FGC consideration: August 24-25, 2016

FGC action:

- Denied by FGC
- Denied - same as petition _____
- Granted for consideration of regulation change

Tracking Number

CALIFORNIA FISH AND GAME COMMISSION
DECISION LIST FOR NON-REGULATORY ACTION THROUGH JUN 23, 2016
 Revised 08-10-2016

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

Date Received	Name of Petitioner	Subject of Request	Short Description	Staff Recommendation	FGC Decision
4/7/2016	Brandt Stickle	Frolic Cove abalone	Request comprehensive survey of abalone in Frolic Cove in order to reconsider restoring the northern boundary of Point Cabrillo State Marine Reserve to its original 2013 boundary.	<i>DENY; DFW's abalone staff resources are dedicated to red abalone fishery management plan along the north coast.</i>	RECEIPT: 6/22-23/2016 ACTION: Scheduled 8/24-25/2016
4/12/2016	Neal Maloney Morro Bay Oyster Co.	Add species to state water bottom lease	Request to add Kumamoto oysters (<i>Crassostrea sikamea</i>), Olympic oysters (<i>Ostrea lurida</i>) Pismo clam (<i>Tivela stultorum</i>), seaweed (<i>Gracilaria andersonii</i> and <i>Gracilaria pacifica</i>) to current lease (No. M-614-01, Parcel 2)	<i>REFER to DFW and FGC staff for evaluation and recommendation.</i>	RECEIPT: 6/22-23/2016 ACTION: Scheduled 8/24-25/2016
2/3/2016	Devon Harger Neushul Mariculture	Transfer state water bottom lease	Request to transfer current state water bottom lease No. M-654-03 from Neushul Mariculture to PharmaSea, LLC, owned by Daniel Marquez.	<i>GRANT; scheduled for consideration at August 2016 meeting.</i>	RECEIPT: 6/22-23/2016 ACTION: Scheduled 8/24-25/2016
6/22/2016	Butch Powers	Permit transferability	Verbal request for MRC to schedule discussion of permit transferability of deeper nearshore and shallow nearshore permits.	<i>GRANT; support MRC recommendation to schedule for November 2016 MRC meeting.</i>	RECEIPT: 6/22-23/2016 ACTION: Scheduled 8/24-25/2016

LAW OFFICES OF
HOGAN & STICKEL, INC.
811 NORTH MAIN STREET
P.O. BOX 1286
FORT BRAGG, CALIFORNIA 95437
(707) 961-4400
FAX (707) 961-4410

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FISH AND GAME
COMMISSION

2016 APR 18 PM 3:55

MLS

BRANDT R. STICKEL, JD, LLM

LARRY FLORES, CPA

April 7, 2016

Commissioner of the Department
of Fish and Wildlife
1416 Ninth Street
Sacramento, CA 95814

Dear Sir:

I am writing to request that the Department of Fish and Wildlife re-survey Frolic Cove and restore the northern boundary of Point Cabrillo State Marine Reserve to its original boundaries prior to 2013.

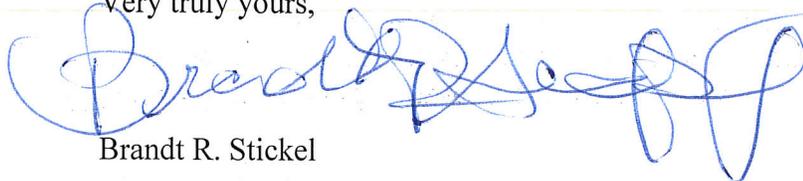
It is not clear to me why the Department determined the abalone fishery in Frolic Cove to be endangered. I live in the residential community of Caspar South, which borders Point Cabrillo Light Station Park. I have dived Frolic Cove regularly for ten years. In the year before the closure, I counted 40 abalone in the course of swimming across the Cove. The abalone were accessible, although you certainly had to search for them.

Now that MPA's and MMA's have been opened to transit for access to open areas, I resumed swimming in Frolic Cove to access the otherwise inaccessible cove directly north of Frolic Cove. I did so this last weekend, and observed abalone are flourishing in Frolic Cove. Within ten feet of the north tideline I observed six full-size abalone in three to four feet of water, and many more beyond. Obviously, the abalone did not reproduce overnight to grow to life size. Last year, I observed a full-size abalone clinging to the end of a kelp stock several feet from the bottom! They have been there all along, but now have spread out.

It is hard for me to understand how a comprehensive survey of Frolic Cove could have suggested that resident abalone population was threatened. The simple fact of the matter is Frolic Cove never was heavily dived by abalone divers.

In sum, I would request Frolic Cove be re-surveyed. I am sure it will lead to the same observations I have made and that the Cove be restored for taking abalone.

Very truly yours,



Brandt R. Stickel

cc: Dept. of Fish & Wildlife (Fort Bragg)

From: [REDACTED]
To: [FGC](#)
Cc: Ramey_Kirsten@Wildlife
Subject: Consideration for the addition of species to DFW Lease M-614-01 Parcel 2
Date: Tuesday, April 12, 2016 12:54:46 PM
Attachments: [SpeciesRequest2016.docx](#)

Executive Director,

I am sending the attached letter as a formal request to add the various species that I have listed. I currently farm Pacific Oysters (*C. gigas*), however, I have a desire to add these species so that we can have more viable options for the success of our business. Thank you for your time and concern on this matter and would love to discuss this further with you at your convenience.

Neal Maloney
Morro Bay Oyster Company



Executive Director
Fish and Game Commission
PO Box 944209
Sacramento, CA 94244-2090
fgc@fgc.ca.gov

April 12th, 2016

RE: Addition of selected species to Morro Bay Oyster Company's Lease M-614-01, #2.

This is a request that the following species be added to our lease:

Oysters

--Kumamoto oysters (*Crassostrea Sikamea*)

--Olympic oysters (*Ostrea Lurida*) – Indigenous

Growing methods will be a combination of the same ones we currently use; long line, floating culture, bottom culture and modified self tipping rack and back.

Clams

--Pismo Clam (*Tivela Stultorum*) – Indigenous

Growing method: No plans for planting yet, growing methods would need more research but most likely planted in sediment and covered with mesh to keep predation out.

Seaweed

--*Gracilaria Andersonii* - Indigenous

--*Gracilaria Pacifica* – Indigenous

Growing methods: Harvest of wild stock on the lease, additional grow out in above ground tanks at our land based facility, 1287 Embarcadero. Morro Bay CA 93442. Possible sea pens at our Land based facility that would allow natural flow of seawater through mesh.

If you have any questions or need additional information, please let us know.

Regards,

Neal Maloney

January, 2016

Fish and Game Commission

P. O. Box 944209

Sacramento, CA 94244-2090

Cc: Kirsten.ramey@wildlife.ca.gov

RE: Neushul Mariculture, Inc. Lease site M-654-03

Dear Fish and Game Commission,

I would like to transfer Lease site M-654-3 to Daniel Marquez's company, Pharmasea, LLC. Would you please add this item to the agenda for consideration at the next Commission meeting.

Sincerely,

Devon Harger

Neushul Mariculture, Inc.

[REDACTED]

[REDACTED]

[REDACTED]