

STAFF SUMMARY FOR JUNE 22-23, 2016

the Trinidad Rancheria, and Santa Ynez Band of Chumash Indians) (see staff summary from Apr in Exhibit B1 for more background). FGC provided the following direction to staff:

- I. Commence with developing a draft rulemaking for exempting the Resighini Rancheria and Cher-Ae Heights Indian Community of the Trinidad Rancheria from Reading Rock SMCA area and take regulations, and updating tribal exemptions references to Smith River Rancheria with its recently-revised name, the Tolowa De Ni' Nation; and
- II. Initiate outreach to the Santa Ynez Band of Chumash Indians regarding its request for tribal take exemptions in State Marine Conservation Areas in Santa Barbara County, as requested during the meeting by Mr. Sam Cohen on behalf of the Tribe. Mr. Cohen extended an invitation for FGC and DFW representatives to visit sites of tribal interest near Santa Barbara area SMCAs, and meet to consult with members of the Tribal Business Committee and tribal elders. FGC directed staff to facilitate site visits and meeting with Tribal leaders, and to provide an update at the Jun meeting, including if more time is needed to coordinate these efforts

At this meeting, FGC staff will provide an update to FGC regarding progress on rulemaking development and outreach to Santa Ynez Band of Chumash Indians.

- (C) Other: Following emergency FGC action to close Dungeness and rock crab recreational fisheries in Nov 2015 due to elevated levels of domoic acid, based on recommendation from the Office of Environmental Health Hazard Assessment (OEHHA), staff has updated FGC as individual areas have opened due to OEHHA notice of sufficiently reduced levels of domoic acid in samples. Since readopting emergency regulations by FGC on Apr 25, the final area closed to Dungeness crab fishing has opened and both recreational and commercial fishing is now open statewide, opening of additional areas to recreational and commercial rock crab fishing has occurred while one area remains closed (see exhibits C1 and C2).

Recreation take of razor clams remains closed due to persisting elevated levels of domoic acid in meat and guts following closure recommendation from OEHHA and resulting FGC emergency action on Apr 25 due to elevated levels (Exhibits C3 and C4).

Recommendations (N/A)

Exhibits

- A1. [Staff Summary from Feb 10-11, 2016 Item 7, Aquaculture Lease Templates/BMPs](#)
- B1. [Staff Summary from Apr 13-14, 2016 Item 12, Tribal Take in MPAs](#)
- C1. [Staff Summary from Apr 13-14, 2016 Item 9, Crab Emergency](#)
- C2. [DFW News Release "Commercial and Recreational Rock Crab Fisheries Open near Channel Islands", Jun 3, 2016](#)
- C3. [Staff Summary from Apr 25, 2016 Item 2, Razor Clam Emergency](#)
- C4. [Email from Gregg Langlois, Department of Public Health, Jun 10, 2016](#)

Motion/Direction (N/A)

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7. AQUACULTURE LEASE TEMPLATE**Today's Item****Information** **Action**

Originally scheduled to receive and approve addition to aquaculture lease template for state water bottom leases related to best management practices. Since legal review is still underway, this item now provides an update.

Summary of Previous/Future Actions (N/A)**Background**

FGC has the authority to lease state water bottoms to any person for the purpose of conducting aquaculture in marine waters of the state under terms agreed upon between FGC and the lessee pursuant to Sections 15400 and 15405, Fish and Game Code. In 2011, FGC approved a new state water bottom lease template that provides a consistent set of lease terms and conditions, with a provision for special conditions to be established specific to an individual lease area.

Since that time, there has been an increase in public attention focused on shellfish aquaculture practices and stewardship, particularly related to marine debris associated with aquaculture leases within bays and estuaries. FGC has received several public requests to hold aquaculture lease holders accountable for debris associated with their operations. In response, DFW and FGC staff hosted a public meeting in Aug 2015 to provide an opportunity for dialogue between stakeholders, regulatory agencies, and shellfish growers. One of the key topics of discussion focused on best management practices (BMPs) for shellfish aquaculture.

Shellfish aquaculture BMPs are a set of procedures that can be voluntary or mandatory, to address areas where attention should be focused to sustain acceptable production levels in concert with promoting sound environmental practices that avoid impact to marine environment. BMP categories may cover site use, "good neighbor" policies, environmental stewardship, monitoring and record-keeping, etc. Several growers with current leases in California have expressed a willingness to formalize BMPs that are beneficial and compatible with their lease operations.

FGC and DFW staff have discussed options for FGC consideration. Two references provide examples: Requirement of BMPs for marine finfish aquaculture leases (Fish and Game Code Section 15400(4)), and the requirement of kelp harvest plans for kelp bed leases using mechanical harvest (sections 165 and 165.5, Title 14, CCR). Both cases require the lessee or harvester to develop BMPs or plans for each lease site to be approved by FGC, and identify the categories that shall be included in the plans. Similarly, in the case of shellfish lease areas, the best practices for any grower would appropriately be tailored to site-specific circumstances, methods, and environmental considerations.

Staff recommends, and is in the process of working with legal counsel from both DFW and FGC to determine the best mechanism for, establishing a requirement that each lessee develop BMPs for each lease area for FGC review and approval. Potential mechanisms

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include a new lease condition in the lease template or a new regulation to apply to all current and future lease holders. Staff anticipates resolution on the approach in the near future.

Significant Public Comments (N/A)**Recommendation**

FGC staff: Delay action on this item until staff has identified a recommended approach to establishing a requirement for lease-specific BMPs.

DFW: Supports new requirement in concept, and commits to work with FGC staff on further development.

Exhibits (N/A)**Motion/Direction (N/A)**

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12. TRIBAL TAKE IN MARINE PROTECTED AREAS**Today's Item**Information Action

Receive presentation from tribal leaders regarding their requests submitted for exemptions from take in certain MPAs. Discuss and provide direction regarding draft rulemaking for current tribal requests for changes to specified MPA regulations (Section 632, Title 14, CCR).

Summary of Previous/Future Actions

- | | |
|--|------------------------------------|
| • TC tribal take discussion | Apr 7, 2015; Santa Rosa |
| • TC tribal take discussion | Jun 9, 2015; Mammoth Lakes |
| • TC discussion to draft rulemaking | Oct 6, 2015; Los Angeles |
| • FGC receives TC recommendation | Oct 7, 2015; Los Angeles |
| • FGC discussion of progress | Feb 11, 2016; Sacramento |
| • Today discuss and provide direction | Apr 13-14, 2016; Santa Rosa |

Background

Over the past two years TC has discussed exemptions for tribal take in specific marine protected areas (MPAs). This topic arose during FGC's regional rulemaking processes to adopt a network of MPAs, where the issue of impacts to traditional gathering by Native American tribes surfaced. In particular, during the north coast planning effort (Point Arena to the California-Oregon border), the issue of tribal take of living marine resources was recognized as a traditional use to avoid impacting when siting and designating MPAs. FGC agreed to exempt area and take regulations for living marine resources in specific MPAs by tribes that could demonstrate traditional use of those resources in those MPAs; this exemption did not apply to MPAs designated as State Marine Reserves (SMRs).

FGC received several requests since the north coast process from tribes that were not afforded the take exemptions in other study regions (exhibits 1-2), or to address follow-up requests in the north coast (exhibits 3-4). TC meetings have provided a forum for tribes to discuss tribal take exemptions in specific MPAs.

Current requests for exemptions to MPA take regulations include:

- Santa Ynez Band of Chumash Indians, at all SMCAs or State Marine Parks in Santa Barbara County.
- Resighini Rancheria, at Reading Rock SMCA in Humboldt County
- Cher-Ae Heights Indian Community of the Trinidad Rancheria, at Reading Rock SMCA in Humboldt County

At the Feb 2016 FGC meeting, TC recommended moving the current requests forward to a rulemaking. However, a policy issue was identified that requires FGC direction prior to addressing the request from Santa Ynez Band of Chumash Indians. In particular, two of the requested SMCAs in Santa Barbara County are designated as *no-take* State Marine Conservation Areas (SMCAs). No-take SMCAs, a unique classification used only in the south coast region, were intended to be designated as SMRs but, in order to address pre-existing activities that would normally not be allowed in an SMR, the areas were designated as SMCAs that only allow non-

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direct take incidental to the pre-existing activities such as maintenance of artificial structures. While individual former commissioners have made statements during FGC meetings that no take should be allowed in no-take SMCAs, staff is not aware of FGC as a body having made a formal statement or determination.

FGC directed staff to schedule a discussion at the April 13-14, 2016 meeting the discussions about (1) a potential rulemaking for tribal take in marine protected areas, to include invited presentations from the tribal elders of those tribes requesting take within MPAs, and (2) discuss and provide direction regarding tribal take in “no-take” SMCAs.

Tribal leaders from the three tribes that submitted factual records and MPA take exemption requests from specific MPAs were invited to attend and give presentations under this agenda item as follows:

1. Presentation from Santa Ynez Band of Chumash Indians
2. Potential presentation from Resighini Rancheria
3. Presentation from Cher-Ae Heights Indian Community of the Trinidad Rancheria

Significant Public Comments

1. Comment from NRDC, concerning original intent of no-take SMCAs in Southern California and the importance of maintaining their protective integrity intact (Exhibit 5).

Recommendation

Clarify requests from each of the three tribes, provide direction on whether an exemption to area and take regulations will be applied to MPAs designated as no-take SMCAs, direct staff to prepare draft regulations.

Exhibits

1. Letter from Santa Ynez Band of Chumash Indians requesting tribal take exemption in SMCAs in Santa Barbara County, received Nov 1, 2011
2. Letter from Santa Ynez Band of Chumash Indians, received Oct 14, 2015
3. Letter from Resighini Rancheria requesting tribal take exemptions in select MPAs in north coast, received Aug 20, 2012
4. Letters from Cher-Ae Heights Indian Community of the Trinidad Rancheria, regarding consultation about tribal take exemption for Reading Rock SMCA, dated Aug 9, 2013 and Aug 14, 2013
5. Informational handout on no-take SMCAs from Jenn Eckerle, Natural Resources Defense Council, received Feb 9, 2016

Motion/Direction

Direct staff to prepare any motions for future agendas or otherwise give staff direction on the tribal requests

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9. RECREATIONAL DUNGENESS AND ROCK CRAB EMERGENCY**Today's Item**Information Action

Consider re-adopting emergency regulations for the emergency closure of portions of the recreational Dungeness and rock crab fisheries due to elevated levels of domoic acid.

Summary of Previous/Future Actions

- Adopt emergency crab regulations Nov 5, 2015; Teleconference
- **Today consider re-adopting emergency crab regulations** Apr 13-14, 2016; Santa Rosa

Background

On Nov 5, 2015, due to persistently high levels of domoic acid and under recommendation from the Office of Environmental Health Hazard Assessment (OEHHA) in consultation with the California Department of Public Health (CDPH), FGC adopted emergency regulations to delay the opening of the recreational Dungeness crab fishery statewide and to close the rock crab fishery north of the Ventura/Santa Barbara county line; DFW adopted similar regulations for the commercial fisheries. The FGC emergency regulations for recreational Dungeness crab and rock crab will expire on May 3, 2016 (Exhibit 1).

Prior to FGC and DFW action, a massive, toxic, algal bloom of the marine diatom *Pseudo-nitzschia* was detected along the California coastline, 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. Monitoring results had shown persistently high levels of domoic acid in Dungeness crab and rock crab along the California coastline.

Pursuant to the regulations adopted by FGC, certain state waters along the California coast have reopened based on the results of domoic acid testing indicating levels below the federal action level and resulting recommendations of OEHHA in consultation with the director of CDPH:

- On Dec 31, 2015, the recreational Dungeness crab and recreational rock crab fisheries were reopened in state waters south of 35° 40' N. Latitude (near Piedras Blancas Light Station).
- On Feb 11, 2016, the recreational Dungeness crab fishery was reopened in state waters south of 38° 00' N. Latitude (near Point Reyes).
- On Mar 18, 2016, the recreational Dungeness crab fishery was reopened in state waters south of the Mendocino/Sonoma county line (near Gualala).
- On Mar 28, 2016, the recreational rock crab fishery was reopened around the Channel Islands, with the exception of state waters between Santa Cruz and Santa Rosa islands.

Current monitoring results (Exhibit 2) indicate that domoic acid levels are persisting above the federal action level in some areas of the state. An emergency closure remains in effect for the

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recreational rock crab fishery in the Channel Islands between Santa Cruz and Santa Rosa islands, and along the mainland coast north of the Piedras Blancas Light Station in San Luis Obispo County. An emergency closure remains in effect for the recreational Dungeness crab fishery north of the Sonoma/Mendocino county line. As determined by the director of OEHHA, in consultation with the director of CDPH, consuming crab from these areas poses a significant risk to public health; since current regulations will expire on May 3, 2016, readopting the emergency closure for a period of 90 days beyond the initial 180-day period is necessary for the preservation of public health.

Recognizing the need for improvements in the way California addresses harmful algal blooms (HABs) and protecting human health, a task force led by the California Ocean Protection Council (OPC) and composed of CDPH, OEHHA, DFW, and FGC staff, is proactively pursuing a science working group and a set of standard operating procedures for the state agencies. The OPC's Science Advisory Team will form a working group to answer short- and long-term questions about HAB toxins along the California coast, specifically providing insight and guidance on seafood testing protocol and monitoring efforts as well as what information is needed to better predict and plan for future events. The task force is creating a standard operating procedure for delineating the process, timing and manner in which a fishery should be closed in the event of another health concern; the procedure will also outline the process and chain of custody for monitoring efforts and is expected to be complete before the end of 2016. FGC staff has suggested that part of the procedure should also delineate the manner in which closed fisheries would be reopened.

Significant Public Comments (N/A)

Recommendation

FGC staff: Re-adopt emergency regulations to retain closure of the recreational Dungeness crab fishery in state waters north of the Mendocino/Sonoma county line (near Gualala) and to retain closure of the recreational rock crab fishery in state waters between Santa Cruz and Santa Rosa islands and north of 35° 40' N. Latitude (near Piedras Blancas Light Station). If this action is approved, the Nov 2015 statement of proposed emergency regulatory action would be adapted for the more narrow geographic scope.

Exhibits

1. Nov 2015 statement of proposed emergency regulatory action, approved by OAL and filed with the California Secretary of State on Nov 5, 2015, effective Nov 5, 2015 – May 3, 2016
2. *Summary of Domoic Acid Levels in Crab*, CDPH, received Apr 5, 2016

Motion/Direction

Moved by _____ and seconded by _____ that the Commission determines, pursuant to Section 11346.1 of the Government Code, that an emergency situations exists. The emergency situation clearly poses a danger of such an immediate, serious harm that delaying action to allow public comment would be inconsistent with the public interest.

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The Commission further determines, pursuant to Section 240 of the Fish and Game Code, that adoption of this regulation is necessary for the immediate protection of public health from ingesting elevated levels of poisonous domoic acid detected in recent samples of Dungeness and rock crab. Specifically, for Dungeness crab, all state waters north of the Mendocino/Sonoma county line (near Gualala). For rock crab, all state waters between Santa Cruz and Santa Rosa islands, and north of 35° 40' N. Latitude (near Piedras Blancas Light Station).

Therefore, the Commission amends and readopts the emergency changes to Section 29.85, Title 14, to retain a partial closure of the recreational Dungeness crab and rock crab fisheries for the immediate preservation of public health in the areas identified above.

CDFW News



UNCATEGORIZED

Commercial and Recreational Rock Crab Fisheries Open near Channel Islands

JUNE 3, 2016 | AHUGHAN

State waters around the Channel Islands are now open to both the recreational and commercial rock crab fisheries. Today, the director of the Office of Environmental Health Hazard Assessment (OEHHA), after consultation with the director of the California Department of Public Health (CDPH), notified the California Department of Fish and Wildlife (CDFW) and the Fish and Game Commission (Commission) that they recommend lifting the remaining closure within the Channel Islands exclusion area between Santa Cruz and Santa Rosa islands. The recreational and commercial rock crab fisheries are also open from 36 58.72 N lat. at Sand Hill Bluff, Santa Cruz County (approximately 9 miles north of Santa Cruz Harbor entrance) to the California/Mexico border. A closure remains in effect north of this location.

As a precaution, CDPH and OEHHA recommend that anglers and consumers not eat the viscera (internal organs, also known as “butter” or “guts”) of crabs. CDPH and OEHHA are also recommending that water or broth used to cook whole crabs be discarded and not used to prepare dishes such as sauces, broths, soups or stews. The viscera usually contain much higher levels of domoic acid than crab body meat. When whole crabs are cooked in liquid, domoic acid may leach from the viscera into the cooking

liquid. This precaution is being recommended to avoid harm in the unlikely event that some crabs taken from an open fishery have elevated levels of domoic acid.

CDFW will continue to closely coordinate with CDPH, OEHHA and fisheries representatives to monitor domoic acid levels in rock crabs to determine when the fishery can safely be opened statewide.

Areas open to crab fishing include:

- Commercial and recreational rock crab fisheries are open along the mainland coast south of 36 58.72 N Lat. at Sand Hill Bluff, Santa Cruz County (approximately 9 miles north of Santa Cruz Harbor entrance).
- Commercial and recreational rock crab fisheries are open in state waters off the Channel Islands.
- Recreational Dungeness crab fishery is open statewide. South of the Sonoma/Mendocino county line the recreational season is scheduled to close on June 30 and north of this line the recreational season is scheduled to close on July 30.
- Commercial Dungeness crab fishery is open statewide. South of the Sonoma/Mendocino county line the commercial season is scheduled to close on June 30 and north of this line the commercial season is scheduled to close on July 15.

Areas closed to rock crab fishing include:

- Commercial and recreational rock crab fisheries are closed north of 36 58.72 N lat.

OEHHA Memo (<http://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=123978>)

Media Contact:

Clark Blanchard, CDFW Communications, (916) 651-7824

STAFF SUMMARY FOR APRIL 25, 2016

2. EMERGENCY CLOSURE**Today's Item**Information Action

Adoption of proposed emergency regulation to close the recreational razor clam fishery for Humboldt and Del Norte counties.

Summary of Previous/Future Actions (N/A)**Background**

Current regulations for recreational take of razor clams specify seasons, size limits, bag limits and special gear provisions. The razor clam season for Humboldt County between Mad River and Strawberry Creek is open only during even-numbered years and between Strawberry Creek and Moonstone Beach open only during odd-numbered years. The razor clam season for Del Norte County north of Battery Point is open only during odd-numbered years and south of Battery Point is open only during even-numbered years. All other areas are open year-round.

On Apr 20, 2016, California Department of Public Health (CDPH) re-issued a health advisory, in place since Aug 2015, reminding individuals to avoid eating razor clams due to the detection of high levels of domoic acid. The advisory was followed by a recommendation to FGC from the director of the Office of Environmental Health Hazard Assessment (OEHHA), in consultation with the director of CDPH, that the recreational razor clam fishery be closed in Humboldt and Del Norte counties, in particular due to observations that numerous anglers have continued to harvest razor clams recently despite the advisory.

Domoic acid is a naturally occurring toxin that is related to a "bloom" of a particular single-celled plant called *Pseudo-nitzschia*. The conditions that support the growth of *Pseudo-nitzschia* are impossible to predict. Crustaceans, fish and shellfish are capable of accumulating elevated levels of domoic acid without apparent ill effects on the animals. Domoic acid poisoning in humans may occur within minutes to hours after consumption of affected seafood and can result in signs and symptoms ranging from vomiting and diarrhea to permanent loss of short-term memory (Amnesic Shellfish Poisoning), coma, or death. Similar to crabs, razor clams are known to retain domoic acid for long periods of time (more than a year in some cases).

Significant Public Comments

Staff will provide a verbal report on comments received by 10:00 a.m. on Apr 25, 2016.

Recommendation

FGC staff: Adopt the proposed emergency regulations to protect public health.

Exhibits

1. Statement of Proposed Emergency Regulatory Action
2. CDPH Reminds of Warning on Razor Clams from Humboldt and Del Norte Counties, CDPH News Release, dated Apr 20, 2016
3. Domoic Acid Threat to Public Safety, OEHHA Memo, received Apr 20, 2016.

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4. Possible Recreational Razor Clam Closure in Humboldt and Del Norte Counties DFW News Release, dated Apr 20, 2016, available at <https://cdfgnews.wordpress.com/2016/04/20/possible-recreational-razor-clam-closure-in-humboldt-and-del-norte-counties/>.

Motion/Direction

Moved by _____ and seconded by _____ that the Commission determines, pursuant to sections 11125.5(b) and 11349.6 of the Government Code, that an emergency situation exists. The emergency situation clearly poses a danger of such an immediate serious harm that delaying action to allow public comment would be inconsistent with the public interest.

The Commission further determines, pursuant to Section 11125.5(b)(1) of the Government Code, that ingesting razor clams with high levels of domoic acid is a matter upon which urgent action is necessary to avoid severely impairing public health and safety and therefore holds this meeting without complying with the 10-day notice requirement of Section 11125 of the Government Code.

The Commission further determines, pursuant to Section 15061(a), Title 14, that the action is exempt from CEQA as an action necessary to prevent or mitigate an emergency as specified in 15269(c), Title 14.

The Commission further determines, pursuant to Section 240 of the Fish and Game Code, that adoption of this regulation is necessary for the immediate protection of public health and safety from ingesting elevated levels of poisonous domoic acid detected in recent samples of razor clams.

Therefore, the Commission adopts the proposed emergency changes to Section 29.45, Title 14, related to closure of the recreational razor clam fishery for the immediate preservation of public health.

Pope, Elizabeth@Wildlife

From: Ashcraft, Susan@FGC
Sent: Friday, June 10, 2016 5:36 PM
To: Pope, Elizabeth@Wildlife
Subject: FW: Razor Clam Update

From: Langlois, Gregg (CDPH-DDWEM)
Sent: Friday, June 10, 2016 5:10 PM
To:
Subject: Razor Clam Update

Our volunteer provided 5 razor clams from Crescent Beach in Crescent City, with all but one having domoic acid concentrations above the alert level in the meat and viscera (see below). Interestingly, the previous clam samples from this site were all below 20 ug/g. An argument for a lonfer time period between samples perhaps. We did see an increase in Pseudo-nitzschia at the B St. Pier in Crescent City at the end of May, but it wasn't at a bloom level.

This week we assisted DFW biologists James Ray and Kirsten Ramey in collecting razor clams from several locations along Clam Beach; those samples will be run early next week.

MDL	Species	Result (ppm)	Coll_Date	Collector	Agency	Site
M16D00076	Razor Clams - Meat	85	6/5/2016	Graves	DHSVOL	Crescent Beach
M16D00077	Razor Clams - Viscera	69	6/5/2016	Graves	DHSVOL	Crescent Beach
M16D00078	Razor Clams - Meat	18	6/5/2016	Graves	DHSVOL	Crescent Beach
M16D00079	Razor Clams - Viscera	28	6/5/2016	Graves	DHSVOL	Crescent Beach
M16D00080	Razor Clams - Meat	35	6/5/2016	Graves	DHSVOL	Crescent Beach
M16D00081	Razor Clams - Viscera	60	6/5/2016	Graves	DHSVOL	Crescent Beach
M16D00082	Razor Clams - Meat	43	6/5/2016	Graves	DHSVOL	Crescent Beach
M16D00083	Razor Clams - Viscera	59	6/5/2016	Graves	DHSVOL	Crescent Beach
M16D00084	Razor Clams - Meat	57	6/5/2016	Graves	DHSVOL	Crescent Beach
M16D00085	Razor Clams - Viscera	67	6/5/2016	Graves	DHSVOL	Crescent Beach

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California Department of Public Health

