

STAFF SUMMARY FOR FEBURARY 8-9, 2017

35. MARINE REGULATION PETITIONS AND NON- REGULATORY REQUESTS**Today's Item**Information Action

This is a standing agenda item for FGC to act on regulation 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 Dec 2016 meeting.
- (B) Action on non-regulatory requests received at the Dec 2016 meeting.
- (C) Update on pending regulation 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 Dec 7-8, 2016; San Diego
- **Today's FGC action on petitions and requests Feb 8-9, 2017; Rohnert Park**

(C)

- **Today's update and possible action on referrals Feb 8-9, 2017; Rohnert Park**

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 regulation change or requests for non-regulatory action follow a two-meeting cycle to ensure proper review and consideration.

Petitions for regulation change or requests for non-regulatory action scheduled for consideration today were received at the Dec 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 at the meeting.

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 regulation change: As of Oct 1, 2015 any "request for FGC to adopt, amend, or repeal a regulation" is required to be submitted on form "FGC 1, Petition to the California Fish and Game Commission for Regulation Change" (Section 662, Title 14). 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).

Today, one marine petition for regulation change received in Dec 2016 is scheduled for action (see summary table 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.

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Today, four non-regulatory requests received in Dec 2016 are scheduled for action (see summary table Exhibit B1).

- (C) Pending regulation 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.

Today, there is an update for one non-regulatory request previously referred for review. At the Dec 2016 FGC meeting, FGC referred to DFW the non-regulatory request of Mr. Bill James to modify his deeper nearshore permit due to disability. On Dec 8, 2016, DFW Marine Regional Manager, Dr. Craig Shuman, responded directly to Mr. James regarding his request to lease or substitute another user for his deeper nearshore fishery permit (Exhibit C1). Dr. Shuman indicated that DFW is unable to accommodate Mr. James' request as leasing or substitution is precluded by Fish and Game Code Section 7857(c), which requires the licensed or permitted commercial fisherman to be present aboard the vessel. Given that the request of Mr. James is outside the purview of FGC, both DFW and FGC staff recommends that Mr. James' request be denied.

Significant Public Comments (N/A)

Recommendation

- (A-B) Adopt staff recommendations for regulation petitions and non-regulatory requests, as listed in exhibits A1 and B1, to (1) deny, (2) grant, or (3) refer to committee, DFW staff, or FGC staff for further evaluation or information gathering. See exhibits A1 and B1 for staff recommendations for each regulation petition and request.
- (C) Adopt staff recommendation to deny the Bill James request.

Exhibits

- A1. [FGC table of marine requests for regulation change received by Dec 7, 2016](#)
- A2. [Petition #2016-029 from Susannah Manning seeking tribal exemption to Redding Rock SMCA for the Big Lagoon Rancheria, originally received Oct 31, 2016; revision correcting location name received Nov 22, 2016](#)
- B1. [FGC table of marine requests for non-regulatory change received by Dec 7, 2016](#)
- C1. [DFW letter to Bill James regarding his request for ADA accommodation for deeper nearshore permit leasing and/or substitution, dated Dec 8, 2016](#)

Motion/Direction

Moved by _____ and seconded by _____ that the Commission adopts the staff recommendations for actions on Dec 2016 regulation petitions and non-regulatory requests

OR

(see next page)

STAFF SUMMARY FOR FEBURARY 8-9, 2017

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

CALIFORNIA FISH AND GAME COMMISSION
DECISION LIST FOR REGULATORY ACTION THROUGH Dec 8, 2016
 Revised 1-26-2016

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

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

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
2016-029	11/22/2016 (revision submitted to original 10/31/2016 version)	12/2/2016	11/22/2016	A	Susannah Manning	MPA take exemption for Big Lagoon Rancheria	632(b)(6), T14	Provide a tribal take exemption for Big Lagoon Rancheria at Reading Rock SMCA	Refer to FGC staff for review of historical record and recommendation	Receipt scheduled 12/7-8/16 Action scheduled 2/9-9/17



2016-029

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: Susannah Manning

Address:

Telephone number:

Email address:

2. Rulemaking Authority (Required) - Reference to the statutory or constitutional authority of the Commission to take the action requested: 200, 202, 205(c), 220, 240, 1590, 1591, 2860

3. Overview (Required) - Summarize the proposed changes to regulations: Big Lagoon Rancheria would like to be exempt from the regulations at the Wedding Rock area MLPA.

11/22/2016: Correction from "Wedding Rock" to "Reading Rock"

4. Rationale (Required) - Describe the problem and the reason for the proposed change: Members of Big Lagoon would like to reserve the right to fish and forage in the area of Wedding Rock as our ancestors did historically.

SECTION II: Optional Information

5. Date of Petition: October 10, 2016

6. Category of Proposed Change

Sport Fishing

Commercial Fishing

Hunting

Other, please specify: Tribal take exemption



- 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):632
 - 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: As soon as possible

- 10. **Supporting documentation:** Identify and attach to the petition any information supporting the proposal including data, reports and other documents: A factual history of the tribal uses, historic and/or current, will follow at a later date.

- 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: *Click here to enter text.*

- 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 Received
10/31/2016 @ 4:01pm*

FGC staff action:

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

Date petitioner was notified of receipt of petition and pending action: _____

Meeting date for FGC consideration: _____

FGC action:

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

From:
To: [Pope, Elizabeth@Wildlife](mailto:Pope.Elizabeth@Wildlife)
Cc: [FGC](#)
Subject: Re: Petition 2016-029 Wedding Rock
Date: Tuesday, November 22, 2016 11:44:56 AM

Hello,

Can this please serve as the correction to the petition I submitted changing the area of interest to Reading Rock from Wedding Rock? Sorry, again, for my mistake and the confusion it caused!

Thank you for your patience,
Susannah Manning

> On Nov 21, 2016, at 9:53 AM, Pope, Elizabeth@Wildlife <Elizabeth.Pope@wildlife.ca.gov> wrote:

>

> Susannah,

>

> Thank you for the clarification on the Wedding Rock/Reading Rock issue. Can you please make the correction to the petition and re-submit? Please feel free to contact me if you have any questions.

>

> -Elizabeth

>

> Elizabeth Pope

> Acting Senior Marine Environmental Scientist

> California Fish and Game Commission (On Assignment)

> California Department of Fish and Wildlife

> 707-445-5301

> Elizabeth.Pope@Wildlife.ca.gov

> <image001.jpg>

> SaveOurWater.com · Drought.CA.gov

>

>

> From: Susannah Manning

> Sent: Saturday, November 19, 2016 4:02 PM

> To: Pope, Elizabeth@Wildlife

> Subject: Re: Petition 2016-029 Wedding Rock

>

> Hello,

> That was my mistake, sorry! I live by wedding rock and I used that name by habit; I meant to say Reading Rock.

> Thank you,

> Susannah Manning

>

> On Nov 18, 2016, at 2:42 PM, Pope, Elizabeth@Wildlife <Elizabeth.Pope@wildlife.ca.gov> wrote:

>

> Hello Susannah,

>

> I am looking to confirm information on the petition for regulation change that you submitted to the California Fish and Game Commission. In the petition overview section the request is stated as follows: "Big Lagoon Rancheria would like to be exempt from the regulations at the Wedding Rock area MLPA."

>

> Do you mean Wedding Rock near Patrick's Point? If so, that area is not included within an existing marine protected area (MPA) designated under the Marine Life Protection Act (MLPA). Or are you referring to Reading Rock in the Crescent City area (by another name)?

>

> Please feel free to respond directly to this message or to call the number listed below. Thank you for helping to clarify the information.

>

CALIFORNIA FISH AND GAME COMMISSION
DECISION LIST FOR NON-REGULATORY ACTION THROUGH Dec 8, 2016
 Revised 1-24-2017

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
11/22/2016	Justin Mezey	New mussel gear	Request for an experimental permit to test a mussel grow-out trap.	<i>Deny; outside FGC authority. Petitioner is referred to DFW Aquaculture permits.</i>	Receipt scheduled 12/7-8/2016 Action scheduled 2/8-9/2017
12/7/2016	Jenn Eckerlee	Offshore oil and gas drilling	Requests FGC adopt a resolution similar to the State Lands Commission to ban offshore oil and gas drilling in California waters.	<i>Grant; request petitioner draft a resolution for FGC consideration</i>	Receipt scheduled 12/7-8/2016 Action scheduled 2/8-9/2017
J	Wayne Kotow Shad Catarius John Law Dave Rudie Peter Halmay Mike Conroy	Lobster poaching	Requests FGC assistance to resolve the increase in lobster poaching and lack of follow-through with due process with local DA offices.	<i>Grant; under development with FGC and DFW staff.</i>	Receipt scheduled 12/7-8/2016 Action scheduled 2/8-9/2017
12/7/2016	Chris Voss	Marine issues	(1) Requests FGC contemplate dedicating more time and resources to detailed discussions of marine issues, and (2) Consider splitting FGC into two separate bodies to better engage regulation and decisions concerning marine and terrestrial matters.	<i>(1) Grant; MRC already provides opportunity for detailed discussions of marine issues. (2) Deny; outside FGC authority. Requires constitutional amendment.</i>	Receipt scheduled 12/7-8/2016 Action scheduled 2/8-9/2017



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Marine Region
1933 Cliff Drive, Suite 9
Santa Barbara, CA 93109
www.wildlife.ca.gov

EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



December 8, 2016

Mr. William James

Re: Leasing of Deeper Nearshore Species Fishery Permit or Substitution of User.

Dear Mr. James:

This letter is in response to requests you have recently made to both the California Department of Fish and Wildlife (Department) and California Fish and Game Commission (Commission), concerning the above-referenced subject and your claim that post-polio effects have impaired your ability to commercially fish. As described below, we are not able to accommodate your request.

There are no lease or substitution provisions established in statute or by regulation for this permit. Leasing or substitution is also precluded by Fish and Game Code section 7857(c), which requires the commercial fisherman to be present aboard the vessel, and section 8043, which requires the commercial fisherman who takes and delivers the catch to sign the landing receipt. With regard to the federal Rehabilitation Act which you have cited, that law prohibits discrimination on the basis of disability in programs run by federal agencies; programs that receive federal financial assistance; in federal employment; and in the employment practices of federal contractors, none of which are applicable here. We are aware of no other applicable law that allows the Department or Commission to waive or change commercial fishing permit requirements in order to assist a commercial fisherman in pursuit of his or her occupation due to physical impairment.

At its meeting on December 7, 2016, the Commission authorized staff to work with the Department to prepare a regulatory package to change shallow nearshore transferability to 1-for-1 and allow deeper nearshore permits to transfer 1-for-1. While this does not directly address your requests, we believe such a change provides a more equitable means for all permittees looking to transfer their interest in the fishery for any number of reasons.

Thank you for your interest in nearshore fishery management issues. If you have any questions or need additional information, please contact Ms. Traci Larinto in the Department's Marine Region via phone at (562) 355-7061, or via e-mail at Traci.Larinto@wildlife.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Craig Shuman".

Craig Shuman, D. Env
Regional Manager
Marine Region

Mr. William James
December 8, 2016
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ec: Valerie Termini, Executive Director
Fish and Game Commission
Valerie.Termini@fgc.ca.gov

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