

**State of California
FISH AND GAME COMMISSION**

Staff Summary, Meeting of October 19, 2011

Following is a summary of the subject meeting. The official record of the meeting may be obtained from the Commission's website or Cal-span.

Pursuant to the call of the President, the Commission met at the Beach Resort Monterey, 2600 Sand Dunes Drive, Monterey, California on October 19, 2011. The meeting was called to order at 10:00 a.m. by President Kellogg.

FISH AND GAME COMMISSION

Jim Kellogg	President	Present
Richard Rogers	Vice-President	Present
Michael Sutton	Member	Present
Daniel Richards	Member	Present
Jack Baylis	Member	Present

Persons present:

COMMISSION STAFF

Sonke Mastrup	Executive Director
Jon K. Fischer	Deputy Executive Director
Craig Shuman	Marine Advisor
Sherrie Fonbuena	Associate Governmental Program Analyst
Anita Biedermann	Associate Governmental Program Analyst

OFFICE OF THE ATTORNEY GENERAL

Rick Thalhammer	Deputy Attorney General
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DEPARTMENT OF FISH AND GAME

Charlton Bonham	Director
Dan Yparraguirre	Acting Deputy Director, Wildlife and Fisheries Division
Nancy Foley	Deputy Director, Law Enforcement Division
Jordan Traverso	Deputy Director, Office of Communications, Education & Outreach
Marija Vojkovich	Marine Region
Tony Warrington	Law Enforcement Division
Don Kelly	Law Enforcement Division
Jeff Heitzenrater	Law Enforcement Division
Sarah Weimer	Law Enforcement Division
Becky Ota	Marine Region
Steve Wertz	Marine Region
Stafford Lehr	Chief, Fisheries Branch
Scott Osborn	Wildlife Branch (via Skype from DFG Eureka Office)

The following persons were present and heard:

<u>Name</u>	<u>Organization</u>	<u>Agenda Item(s)</u>
Charlie Moss	Chairman, CalTIP Foundation	1

Jennifer Fearing	CalTIP Foundation	1
Kaitilin Gaffney	Ocean Conservancy, NRDC, Oceana	1, 3
Julie Vasquez	Legalize Ferrets	1
George Osborn	CA Game Wardens Association, United Anglers, Coastside Fishing, Partnership for Sustainable Oceans	1, 2
Paul Weakland	Commercial Fisherman	1, 2, 3, 11(A), 12(A)
Michael Sheehy	Santa Barbara Channelkeeper	2
Sarah Sikich	Heal the Bay	2
Louie Zimm	San Diego Yacht Club/San Diego Fly Fishers	2
Karen Garrison	NRDC/Ocean Conservancy	2, 3
Calla Allison	Orange County Marine Protected Council	2
Nathan Voegeli	Yurok Tribe	3
Hawk Rosales	InterTribal Sinkyone Wilderness Council	3
Dan Kruger	Soper Company	3
Jim Martin	Recreational Fishing Alliance/Sonoma Co. Network	3, 10E
Anna Kimber	Smith River Rancheria	3
Larry Knowles	Commercial Seaweed Harvester	3
Sara Aminzadeh	California Coastkeeper Alliance/Humboldt Baykeeper	3
Rick Copeland	Wilderness Unlimited	3
Tom Raftican	The Sportfishing Conservancy	12(A)

President Kellogg introduced members of the Commission, its staff, Directorate and Rick Thalhammer of the Attorney General's Office.

1. PUBLIC FORUM.

Received public testimony from the following individuals: Charlie Moss, Jennifer Fearing, Kaitilin Gaffney, George Osborn, and Paul Weakland.

2. CONSIDERATION AND ADOPTION OF CHANGES TO SECTION 632, TITLE 14, CCR, AS PROVIDED IN THE OCTOBER 3, 2011 NOTICE, RE: SOUTH COAST STUDY REGION MARINE PROTECTED AREAS.

Executive Director Mastrup provided a summary and reviewed staff recommendations. Received public testimony.

MOVED BY R. ROGERS, SECONDED BY M. SUTTON, THAT THE FISH AND GAME COMMISSION ADOPTED THE PROPOSED CHANGES TO SAN DIEGUITO LAGOON SMCA, BIRD ROCK (CATALINA ISLAND) SMCA, LONG POINT (CATALINA ISLAND) SMR, AND OTHER CHANGES FOR CLARITY AND CONSISTENCY, OUTLINED IN THE OCTOBER 3, 2011 NOTICE; AND CONFIRMS ITS DECEMEBER 15, 2010 DECISION FOR ALL OTHER CHANGES FOR SECTION 632, TITLE 14, CCR.

ROLL CALL VOTE:

AYES: J. BAYLIS, M. SUTTON, R. ROGERS.

NOES: J. KELLOGG, D. RICHARDS.

MOTION PASSED.

3. RECEIPT OF DEPARTMENT UPDATE AND REQUEST FOR COMMISSION DIRECTION ON OVERARCHING ISSUES FOR INCLUSION IN THE DRAFT INITIAL STATEMENT OF REASONS FOR MARINE PROTECTED AREAS WITHIN THE MARINE LIFE PROTECTION ACT NORTH COAST STUDY REGION.

Received the Department's update and review from Becky Ota and Steve Wertz. Received public testimony.

MOVED BY M. SUTTON, SECONDED BY R. ROGERS, THAT THE FISH AND GAME COMMISSION DIRECTED THE DEPARTMENT TO ADD THE FOLLOWING OPTIONS TO THE INITIAL STATEMENT OF REASONS FOR NORTH COAST MARINE PROTECTED AREAS:

- ☐ GENERAL PROVISION TO DEFINE ALL REQUIREMENTS APPLYING TO ALL MEMBERS OF FEDERALLY RECOGNIZED TRIBES FOR TRIBAL TAKE WITHIN AUTHORIZED AREAS.**
- ☐ ALLOW TRIBAL TAKE IN SOUTH HUMBOLDT BAY SMRMA IF HISTORIC AND CURRENT USES BY FEDERALLY RECOGNIZED TRIBES IS PROVIDED.**
- ☐ GENERAL PROVISION TO DEFINE SHORE FISHING SIMILAR TO THAT FOUND IN GROUND FISH REGULATIONS**
- ☐ CREATE EXEMPTION FOR THE USE OF FLOAT TUBES OR SIMILAR DEVICES WHILE SHORE FISHING AT SPECIFIC MPAS.**

THE COMMISSION REQUESTED THAT THE DEPARTMENT MEET WITH THE TRIBES TO DISCUSS/IDENTIFY APPROPRIATE FORMS OF IDENTIFICATION TO ENABLE TRIBAL TAKE TO OCCUR WITHIN AUTHORIZED AREAS.

THE COMMISSION ALSO DIRECTED THE DEPARTMENT TO INCLUDE TRIBAL TAKE FOR THE EIGHT PREVIOUSLY-UNIDENTIFIED TRIBES IN STATE MARINE CONSERVATION AREAS (SMCAS) AND/OR THE SOUTH HUMBOLDT BAY STATE MARINE RECREATIONAL MANAGEMENT AREA CONSISTENT WITH COMMISSION PREVIOUS DIRECTION FOR TRIBAL TAKE; CHANGE THE PREFERRED OPTION FOR DOUBLE CONE ROCK SMCA TO OPTION B; AND ADD OTHER PERMITTED ACTIVITIES IN SMCAS WHERE SUCH ACTIVITIES WERE RECENTLY IDENTIFIED, CONSISTENT WITH PREVIOUS COMMISSION DIRECTION FOR SUCH ACTIVITIES.

AYES: J. BAYLIS, J. KELLOGG, M. SUTTON, R. ROGERS.

NOES: D. RICHARDS.

MOTION PASSED.

4. CONSIDERATION AND POSSIBLE AMENDMENT/REVISION OF COMMISSION FINDINGS ON THE PETITION TO LIST THE CEDARS WILD BUCKWHEAT (*Eriogonum cedrorum*) AS AN ENDANGERED SPECIES.

Deputy Attorney General Thalhammer provided an overview of the item and recommended adopting the revised findings. No public testimony.

MOVED BY R. ROGERS, SECONDED BY D. RICHARDS, THAT THE FISH AND GAME COMMISSION HEREBY SETS ASIDE ITS SEPTEMBER 15, 2011 FINDINGS ON THE PETITION TO LIST THE CEDARS WILD BUCKWHEAT (*Eriogonum cedrorum*) AS AN ENDANGERED SPECIES AND HEREBY RATIFIES ITS AMENDED FINDINGS, TO REJECT THE PETITION TO LIST THE CEDARS WILD BUCKWHEAT (*Eriogonum cedrorum*) AS AN ENDANGERED SPECIES.

AYES: J. BAYLIS, J. KELLOGG, D. RICHARDS, R. ROGERS, M. SUTTON.

PASSED UNANIMOUSLY.

5. UPDATE ON THE DEPARTMENT'S ONE YEAR STATUS REPORT/RECOMMENDATION ON THE PETITION TO LIST THE MOUNTAIN YELLOW-LEGGED FROG (*Rana muscosa* and *Rana sierrae*) AS AN ENDANGERED SPECIES.

Stafford Lehr reported that the Department would submit its final status report to the Commission in late November, and the final status report would be available for receipt at the Commission's December 14-15, 2011, meeting. No public testimony.

6. (A) PURSUANT TO SECTION 2074.2 OF THE FISH AND GAME CODE, CONSIDERATION OF THE DEPARTMENT'S INITIAL REVIEW AND RECOMMENDATION, AND POSSIBLE ACTION ON THE PETITION TO LIST AMERICAN PIKA (*Ochotona princeps*) AS A THREATENED SPECIES UNDER THE CALIFORNIA ENDANGERED SPECIES ACT. Note: At its February 3, 2011 meeting, the Commission resubmitted the petition (and supplemental materials) to the Department for further review as an amended petition pursuant to Fish and Game Code Section 2073.7, and at its May 4, 2011 meeting, the Commission resubmitted the petition (and additional supplemental materials) to the Department for further review as a second amended petition pursuant to Fish and Game Code Section 2073.7.

Received the Department's presentation from Scott Osborn via Skype. No public testimony.

MOVED BY M. SUTTON, SECONDED BY J. BAYLIS, THAT THE FISH AND GAME COMMISSION, PURSUANT TO SECTION 2074.2 OF THE FISH AND GAME CODE, HEREBY FINDS THAT THE PETITIONED ACTION TO LIST AMERICAN PIKA (*Ochotona princeps*) AS AN ENDANGERED SPECIES MAY BE WARRANTED; AND THEREFORE, DESIGNATES AMERICAN PIKA AS A CANDIDATE FOR ENDANGERED SPECIES STATUS. FURTHERMORE, PURSUANT TO SECTION 2074.6 OF THE FISH AND GAME CODE, THE DEPARTMENT IS TO PROMPTLY COMMENCE A STATUS REVIEW OF THE SPECIES AND REPORT BACK TO THE COMMISSION WITHIN ONE YEAR FROM THE DATE OF THE COMMISSION'S PUBLISHED FINDINGS WITH A RECOMMENDATION AS TO WHETHER THE SPECIES SHOULD OR SHOULD NOT BE LISTED AS ENDANGERED.

AYES: J. BAYLIS, J. KELLOGG, M. SUTTON, R. ROGERS.

NOES: D. RICHARDS.

MOTION PASSED.

- (B) (Note: This item will only be considered if the Commission makes a finding in 6. (A) that listing American pika as threatened or endangered may be warranted.)

RECEIPT OF DEPARTMENT RECOMMENDATION CONCERNING THE ISSUANCE OF INCIDENTAL TAKE PERMITS PURSUANT TO SECTION 2080 OF THE FISH AND GAME CODE.

OR

PURSUANT TO SECTION 2084 OF THE FISH AND GAME CODE, CONSIDERATION AND POSSIBLE EMERGENCY ACTION TO ADD SECTION 749.7, TITLE 14, CCR, RE: SPECIAL ORDER RELATING TO INCIDENTAL TAKE OF AMERICAN PIKA DURING CANDIDACY PERIOD.

No request for 2084 was made; therefore, no action was taken.

7. SCOPING OF POSSIBLE 2012 MAMMAL REGULATION CHANGES.
Acting Deputy Director Yparraguirre provided an update. No public testimony.
8. DISCUSSION AND POSSIBLE ADOPTION OF MEETING DATES AND LOCATIONS FOR 2012.
Executive Director Mastrup reviewed the meeting dates and locations and reported that the focus would be for 1 day meetings when possible and that rulemaking items would be scheduled for the first day of the two day meetings.

MOVED BY J. KELLOGG, SECONDED BY R. ROGERS, THAT THE FISH AND GAME COMMISSION HEREBY ADOPTS ITS 2012 MEETING SCHEDULE AS FOLLOWS:

FEBRUARY 1-2	SACRAMENTO
MARCH 7-8	RIVERSIDE
APRIL 11-12	EUREKA
APRIL 18 (WED.)	SACRAMENTO (VIA PHONE—ADOPT OCEAN SALMON?)
MAY 23-24	MONTEREY
JUNE 20-21	BISHOP
AUGUST 8-9	VENTURA
OCTOBER 3-4	SACRAMENTO
NOVEMBER 7-8	LOS ANGELES
DECEMBER 12-13	SAN DIEGO

**AYES: J. BAYLIS, J. KELLOGG, R. RICHARDS, R. ROGERS, M. SUTTON.
PASSED UNANIMOUSLY.**

9. CONSIDERATION OF DEPARTMENT RECOMMENDATIONS FOR SPECIES TO BE DEPICTED ON THE CALIFORNIA DUCK STAMP, 2013-2017.
Acting Deputy Director Yparraguirre presented the Department's recommendations for species to be depicted on the California Duck Stamps. Commissioners encouraged youth artists to compete.

MOVED BY R. ROGERS, SECONDED BY M. SUTTON, THAT THE FISH AND GAME COMMISSION HEREBY APPROVES THE DEPARTMENT OF FISH AND GAME RECOMMENDATIONS FOR THE 2013-2017 CALIFORNIA DUCK STAMPS SPECIES AS FOLLOWS: AMERICAN WIGEON-2013, LESSER SCAUP-2014, AMERICAN GREEN-WINGED TEAL-2015, LESSER SNOW GEESE-2016, AND RUDDY DUCK-2017.

**AYES: J. BAYLIS, J. KELLOGG, D. RICHARDS, R. ROGERS, M. SUTTON.
PASSED UNANIMOUSLY.**

10. RECEIPT OF DEPARTMENT OF FISH AND GAME INFORMATIONAL ITEMS.
 - (A) RECEIPT OF DEPARTMENT OF FISH AND GAME DIRECTOR'S REPORT.
Received Director Bonham's report and his commitment to improve all communications in the Department. No public testimony.
 - (B) WILDLIFE AND FISHERIES DIVISION UPDATE.
Received Acting Deputy Director Yparraguirre's update on salmon, the fisheries committee to simplify fishing regulations, and aquaculture. No public testimony.
 - (C) ECOSYSTEM CONSERVATION DIVISION UPDATE.
Received Acting Deputy Director Yparraguirre's update on quagga mussels and a new fish screen at Patterson. No public testimony.

- (D) LAW ENFORCEMENT DIVISION UPDATE.
Chief Foley reported on the numbers of wardens being recruited and case information. Chief Foley introduced Captain Don Kelly who reviewed enforcement issues in the area. No public testimony.
- (E) UPDATE ON PACIFIC FISHERY MANAGEMENT COUNCIL (PFMC) ACTIVITIES.
Marine Regional Manager Vojkovich provided an update on the PFMC activities including swordfish management workshop report, 2011 salmon methodology review, 2011 pacific halibut fishery regulations, Monterey Bay National Marine Sanctuary proposed ecosystem based management initiative, current habitat issues, trawl rationalization trailing actions, consideration of inseason adjustments and legislative matters. Received public testimony. Executive Director Mastrup reported that he would be attending the PFMC meeting in November.
- (F) PRESENTATION OF NEW MOBILE MPA WEBSITE.
Deputy Director Traverso provided a demonstration of the new mobile MPA website. No public testimony.
- (G) OTHER.
Fisheries Branch Chief Lehr reported that the Department would be submitting a proposal to the Commission in December to amend the striped bass regulations.

Commissioners expressed concerns about the print rubbing off license/tags. The Department will provide an ALDS update and other license issues at the Commission's February meeting in Sacramento.

Received update from Becky Ota on review of the Central Coast MPAs.

No public testimony.

11. RECEIPT OF COMMISSION INFORMATIONAL ITEMS.

- (A) ITEMS THAT DID NOT MAKE AGENDA AND NEED TO BE RESCHEDULED.
 - I. UPDATE ON STATUS OF REGULATORY NOTICE TO AMEND SECTION 238.5, TITLE 14, CCR, PRIVATE STOCKING PERMIT, REGULATORY PROPOSAL AND POSSIBLE COMMISSION ACTION. (Note: This item will be placed on the December 2011 meeting agenda.)
 - II. UPDATE ON STATUS OF REGULATORY NOTICE TO AMEND SECTION 550, TITLE 14, CCR, RE: METHODS AUTHORIZED FOR TAKE OF RESIDENT SMALL GAME, BIG GAME, AND NONGAME BIRDS AND MAMMALS ON LANDS ADMINISTERED BY THE DEPARTMENT OF FISH AND GAME. (Note: This item will be scheduled for a meeting in 2012.)
 - III. UPDATE ON STATUS OF REGULATORY NOTICE TO AMEND SECTIONS 401, 472, 475 AND 487, AND ADD SECTION 250.7, TITLE 14, CCR, RE: LEAD PROJECTILES, CONDOR RANGE. (Note: This item will be scheduled for a meeting in 2012.)

Executive Director Mastrup summarized this item and the process of how agenda items are placed on an agenda. Received public testimony.

12. SUBCOMMITTEE REPORTS AND RECOMMENDATIONS.
 - (A) MARINE RESOURCES COMMITTEE.
Marine Advisor Shuman recapped the recent meeting held on September 27 in Monterey. He reviewed the summary of the MRC recommendations for kelp leases, abalone educational video and report cards and the halibut stock assessment. Received public testimony.
 - (B) BUDGET COMMITTEE.
Executive Director Mastrup reported that he was still waiting for results from the Strategic Vision Committee before moving forward. No public testimony.
 - (C) OTHER.
Deputy Executive Director Fischer inquired if the Commissioners wanted an AI Taucher Advisory meeting scheduled for the fall in Pasadena and the consensus was "yes". No public testimony.
 13. RECEIPT OF LEGISLATIVE REPORTS.
 - (A) DEPARTMENT OF FISH AND GAME REPORT.
Director Bonham highlighted the legislation of interest to the Commission. No public testimony.
 14. RECEIPT OF FEDERAL AGENCIES INFORMATIONAL ITEMS.
There was no report. No public testimony.
 15. RECEIPT OF LEGAL COUNSEL INFORMATIONAL ITEMS.
There was no report. No public testimony.
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EXECUTIVE SESSION
(NOT OPEN TO PUBLIC)

PURSUANT TO THE AUTHORITY OF GOVERNMENT CODE SECTION 11126(a)(1) AND (e)(1), AND SECTION 309 OF THE FISH AND GAME CODE, THE COMMISSION WILL MEET IN CLOSED EXECUTIVE SESSION. THE PURPOSE OF THIS EXECUTIVE SESSION IS TO CONSIDER:

- A. PENDING LITIGATION TO WHICH THE COMMISSION IS A PARTY.
 - I. BIG CREEK LUMBER COMPANY AND CENTRAL COAST FOREST ASSOC. vs. CALIFORNIA FISH AND GAME COMMISSION RE: COHO LISTING, SOUTH OF SAN FRANCISCO.
 - II. JAMES BUNN AND JOHN GIBBS vs. CALIFORNIA FISH AND GAME COMMISSION RE: SQUID PERMITS.
 - III. KERN COUNTY WATER AGENCY vs. CALIFORNIA FISH AND GAME COMMISSION, DEPARTMENT OF FISH AND GAME, DEPARTMENT OF WATER RESOURCES RE: STATE WATER PROJECT AND CALIFORNIA ENDANGERED SPECIES ACT.
 - IV. CENTER FOR BIOLOGICAL DIVERSITY vs. CALIFORNIA FISH AND GAME COMMISSION RE: AMERICAN PIKA.

- V. TACY LEE vs. CALIFORNIA FISH AND GAME COMMISSION AND DEPARTMENT OF FISH AND GAME RE: DENIAL OF TRANSFER OF LOBSTER OPERATOR PERMIT.
 - VI. CENTER FOR BIOLOGICAL DIVERSITY vs. CALIFORNIA FISH AND GAME COMMISSION AND DEPARTMENT OF FISH AND GAME RE: PACIFIC FISHER.
 - VII. UNITED ANGLERS OF SOUTHERN CALIFORNIA; COASTSIDE FISHING CLUB; AND ROBERT C. FLETCHER vs. CALIFORNIA FISH AND GAME COMMISSION RE: SOUTH COAST STUDY REGION AND NORTH CENTRAL COAST STUDY REGION MARINE PROTECTED AREAS UNDER THE MARINE PROTECTION ACT.
 - VIII. MARILLEY vs. FISH AND GAME COMMISSION AND DEPARTMENT OF FISH AND GAME RE: COMMERCIAL FISHING PERMIT FEES.
- B. POSSIBLE LITIGATION INVOLVING THE COMMISSION.
 - C. STAFF PERFORMANCE AND COMPENSATION.
 - D. RECEIPT OF HEARING OFFICER RECOMMENDATIONS ON LICENSE AND PERMIT ITEMS.
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There being no further business, the Fish and Game Commission meeting recessed at 3:32 p.m. to reconvene on October 20, 2011, at 8:30 a.m.