

Appendix A. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations.

Commenter Name, Date, Format	Comment #	Res #	Response
<p>Comments a through n were received from the public concerning the Draft Initial Statement of Reasons (ISOR) presented to the Commission at the Notice Hearing December 11, 2013. Because these comments were received prior to the notice period, they are considered as recommendations for rulemaking.</p>			
<p>a Diane Pleschner-Steele, California Wetfish Producers Association 12/6/2013 Letter</p>	<p>1</p>	<p>Supports the proposed Draft ISOR regulations that clarify Pacific bonito as a pelagic finfish, allow for 5 percent by weight incidental landings of non-target species for pelagic and coastal pelagic species and market squid in designated MPAs, and include brail gear and light boats in MPAs that authorize the take of coastal pelagic species and squid.</p>	<p>a1 The proposed regulation concerning incidental allowance was modified from “Not more than five percent by landed weight of any commercial [market squid and/or pelagic finfish and/or coastal pelagic species] catch may be other incidentally taken species” in the draft ISOR to “Not more than five percent by weight of any commercial [market squid and/or pelagic finfish and/or coastal pelagic species] catch landed or possessed shall be other incidentally taken species” in the final ISOR and noticed text to address concerns regarding discard of incidentally taken species and the accounting for all incidentally taken species. The noticed incidental take regulation and the other proposed regulations supported by this commenter were adopted by the Commission.</p>
<p>b Linda G. McIntyre General Manager/Harbor Master, Moss Landing Harbor District 12/4/2013 Letter</p>	<p>1</p>	<p>Supports the proposed Draft ISOR regulatory language in subsection 632(b)(70) for a boundary change that would exclude Kirby Park from within the Elkhorn Slough State Marine Reserve (SMR).</p>	<p>b1 This recommendation was not accepted. This rulemaking was intended to clarify take regulations and correct errors and inconsistencies. The boundary change for Elkhorn Should SMR as outlined in the Draft ISOR falls outside of the intended scope of the proposed regulation.</p>
<p>c Samantha Murray, Ocean Conservancy, Karen Garrison, Natural Resources Defense Council, Ray Hiemstra, Orange County Coastkeeper, Sarah Sikich, Heal the Bay, Steve Shimek, The Otter Project/Monterey Coastkeeper,</p>	<p>1</p>	<p>Opposes the proposed Draft ISOR regulatory language in subsection 632(b)(70) for a boundary change that would exclude Kirby Park from within the Elkhorn Slough State Marine Reserve (SMR).</p>	<p>c1 Comment noted. A boundary change for Elkhorn Slough was not included in the final ISOR and noticed text. Also see response b1.</p>
	<p>2</p>	<p>Opposes the proposed Draft ISOR regulatory language in subsection 632(a)(8) concerning transiting through MPAs with spearfishing gear. Expressed that allowing spear fishermen to transit with gear and catch in MPAs will have an effect on enforceability. They prefer that instead of applying this rule to all MPAs, that it be applied on a case by case basis for each individual MPA.</p>	<p>c2 This recommendation was not accepted. It would be less efficient to apply the rule on a case by case basis for each individual MPA, rather than to apply the transiting rule to all MPAs. Additionally, the Department’s Law Enforcement Division (LED) greatly influenced the language drafted in the proposed regulations. To improve enforceability, the proposed regulation concerning transiting with spearfishing gear was modified from “Spearfishermen with our without</p>

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<p>Michael Quill, Los Angeles Waterkeeper, Stefanie Sekich, Surfrider Foundation</p> <p>12/6/2013</p> <p>Letter</p>			<p>catch may transit through MPAs and marine managed areas that prohibit spearfishing. While transiting, spearfishing gear shall be in an unloaded condition and the diver shall remain at the surface” in the Draft ISOR to “Spearfishermen with or without catch shall be allowed to transit through MPAs and MMAs. While transiting MPAs and MMAs that prohibit spearfishing or while in possession of species not identified as allowed for take in the MPA or MMA being transited, spearfishing gear shall be in an unloaded condition, not carried in the hand, and the diver shall remain at the surface” in the final ISOR and noticed text. The noticed transiting regulation was adopted by the Commission.</p>
	<p>3 Supports the language that clarifies which species may be taken by recreational spearfishing, except that they would like to modify the language at Farnsworth (Catalina Island) Offshore State Marine Conservation Area to read “the recreational take of white seabass by spearfishing; other pelagic finfish by hook and line and spearfishing; market squid by hand held dip net; and marlin, tunas and dorado (dolphinfish) (<i>Coryphaena hippurus</i>) by trolling is allowed.”</p>	<p>c3</p>	<p>This recommendation was not accepted. The commenter’s recommended language implies that white seabass are pelagic finfish, which they are not. The adopted regulation has the same effect as the recommendation, minus the implication mentioned above; however, species are listed in a different order.</p>
	<p>4 Supports adding language to allow for incidental take in the round haul net fishery; however recommends that the maximum incidental take be 2 percent by landed weight.</p>	<p>c4</p>	<p>This recommendation was not accepted. The adopted regulation establishes a maximum five percent by weight allowance for the incidental take of non-target species landed or possessed on commercial vessels targeting market squid, pelagic finfish, or coastal pelagic species. Consultation with the Department’s LED indicated that anything less than a five percent allowance would be difficult to detect at the dock and enforce. The 5 percent threshold is consistent with existing regulatory language in subsection 632(b)(68)(B)2.</p>
	<p>5 Recommends modifying the southern boundary at Natural Bridges SMR, either through this rule change or through subsequent rule changes when MPAs are revisited by the Commission.</p>	<p>c5</p>	<p>This recommendation was not accepted. This rulemaking was intended to clarify take regulations and correct errors and inconsistencies. The recommended boundary change for Natural Bridges SMR falls outside of the intended scope of the proposed regulation.</p>

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d	<p>Samantha Murray, Ocean Conservancy, Karen Garrison, Natural Resources Defense Council, Steve Shimek, The Otter Project/Monterey Coastkeeper, Laura Kasa, Save Our Shores</p> <p>12/6/2013</p> <p>Letter</p>	1	<p>Opposes the proposed Draft ISOR regulatory language in subsection 632(b)(70) for a boundary change that would exclude Kirby Park from within the Elkhorn Slough State Marine Reserve (SMR).</p>	d1	<p>See response c1.</p>
e	<p>Volker Hoehne, Chairman, Watermans Alliance</p> <p>12/9/21013</p> <p>Letter</p>	1	<p>Supports the proposed Draft ISOR regulatory changes, particularly the provisions included for transiting in MPAs by spear fishermen.</p>	e1	<p>Support noted. To improve enforceability, the proposed regulation concerning transiting with spearfishing gear was modified from "Spearfishermen with our without catch may transit through MPAs and marine managed areas that prohibit spearfishing. While transiting, spearfishing gear shall be in an unloaded condition and the diver shall remain at the surface" in the Draft ISOR to "Spearfishermen with or without catch shall be allowed to transit through MPAs and MMAs. While transiting MPAs and MMAs that prohibit spearfishing or while in possession of species not identified as allowed for take in the MPA or MMA being transited, spearfishing gear shall be in an unloaded condition, not carried in the hand, and the diver shall remain at the surface" in the final ISOR and noticed text. The noticed transiting regulation was adopted by the Commission.</p>

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f	Diane Pleschner-Steele, California Wetfish Producers Association 12/11/2014 Oral Comment	1	Supports the proposed Draft ISOR regulations that clarify Pacific bonito as a pelagic finfish, allow for 5 percent by weight incidental landings of non-target species for pelagic and coastal pelagic species and market squid in designated MPAs, and include brail gear and light boats in MPAs that authorize the take of coastal pelagic species and squid.	f1	See response a1.
g	Dana Murray, Heal the Bay 12/11/2013 Oral and written Comments	1	Thanked the Department for their efforts.	g1	Support of the Department is noted.
		2	Supports the proposed Draft ISOR regulation regarding the definition of pelagic finfish.	g2	Support noted. This regulation was adopted.
		3	Concerned that setting the incidental allowance at 5 percent is too high and recommended it be set at 2 percent, as this should be the maximum.	g3	See response c4.
		4	Provided MPA Watch data analysis.	g4	Data analysis noted.
h	Joe Exline 12/11/2013 Oral Comment	1	Expressed that he would like to have a continued discussion on the best way to deal with infrastructure and incompatible use within MPAs and would like to see options in a future regulatory package that address this issue.	h1	This recommendation was not accepted. This rulemaking was intended to clarify take regulations and correct errors and inconsistencies. The issues of infrastructure and incompatible uses falls outside the intended scope of the proposed regulations. However, the Department intends on exploring this in future regulatory packages and feels this requires substantial thought and scoping before moving forward.
		2	Recommended that the Laguna Beach SMR northern boundary be corrected as it appears that it is falling slightly offshore and not at mean high tide line.	h2	This recommendation was not accepted at this time; however, the Department will be addressing these types of boundary issues in a future rulemaking package that focuses on correcting boundaries that don't reflect in the field what the regulations are dictating. The Department has been verifying the accuracy of the coordinates found in regulations by using handheld global positioning system (GPS) units in the field. Once this work is done, a future rulemaking package will be put together to correct any glaring discrepancies.

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i	Samantha Murray, Ocean Conservancy 12/11/2013 Oral Comment	1	Opposes the proposed Draft ISOR regulatory language in subsection 632(b)(70) for a boundary change that would exclude Kirby Park from within the Elkhorn Slough State Marine Reserve (SMR).	i1	See response c1.
j	Volker Hoehne, Chairman, Watermans Alliance 12/11/2013 Oral Comment	1	Supports the MPA cleanup package and is pleased that provisions for transiting by spear fishermen were included.	j1	See response e1.
k	David Pierce, San Diego Council of Divers 12/11/2013 Oral Comment	1	Supports the spearfishing language in the MPA cleanup package.	k1	See response e1.
l	George Osborn, Coastside Fishing Club 12/11/2013 Oral Comment	1	Generally supports most of the rule change except the 5 percent take allowance for incidental landings for the round haul net fishery. Coastside Fishing Club would rather see the take allowance be dropped to 1 percent or maybe 0.5 percent.	l1	See response c4.
		2	Recommended that overfished rockfish should not be included in the incidental allowances.	l2	This recommendation was not accepted because this is already covered under the commercial permit for coastal pelagic species (CPS) and the groundfish regulations which prohibit the sale of overfished rockfish, should they be landed incidentally. All fishing regulations apply in MPAs so commercial fishermen need to abide by the other commercial regulations within MPAs that restrict the take of sensitive or overfished species should they be captured incidentally within a State Marine Conservation Area

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				that allows the take of CPS species.
		3	I3	This recommendation was accepted and the proposed amendments were adopted by the Commission. Incidental take of sea grasses, kelp, or rock would count toward the incidental take allowance should the fisherman be in possession of these items while fishing for Coastal Pelagic Species.
m	Ray Hiemstra, Orange County Coastkeeper 12/11/2013 Oral Comment	1	m1	See response c2.
n	Jenn Eckerle, Natural Resources Defense Council 12/11/2013 Oral Comment	1	n1	See response c5.
o	Paul Weakland 12/11/2013 Oral Comment	1	o1	This comment does not address the proposed regulations.
		2	o1	This comment does not address the proposed regulations.
		3	o3	This comment does not address the proposed regulations.
		4	o4	This comment does not address the proposed regulations.
		5	o5	This comment does not address the proposed regulations.

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		6	Stated only the public is harmed by these MPA regulations and is that really acceptable? Bag limits, size and gear restrictions have historically protected the resources and have been proven to work unlike the MPAs. The next problem will be sea urchins. What are you going to do about them?	o6	This comment does not address the proposed regulations.
Comments p through ac were received during the comment period.					
p	Samantha Murray, Ocean Conservancy, Karen Garrison, Natural Resources Defense Council, Ray Hiemstra, Orange County Coastkeeper, Sarah Sikich, Heal the Bay, Steve Shimek The Otter Project/Monterey Coastkeeper, Michael Quill, Los Angeles Waterkeeper, Stefanie Sekich, Surfrider Foundation 01/31/2014 Letter	1	Concerned that the proposed addition of the word "education" to subsection 632(a)(1)(A), which discusses scientific collecting, would lead to some confusion on how education is defined.	p1	Comment noted. The proposed addition was not adopted.
		2	Concerned that allowing transiting by spear fishermen with gear and catch would be an enforcement problem. The group would like to encourage the Department to reach out to local, non-state enforcement officers to discuss the most pragmatic approach to improving enforceability and public understanding of the rules.	p2	The Chief of the Department's LED stated during the discussion hearing on February 5, 2014, that local LED officers would work closely with city and county enforcement officers to ensure better communication between the enforcement groups, which should increase compliance and enforceability of the new rule.
		3	Expressed and reiterated their view that total take allowance for any incidental landings associated with market squid, pelagic finfish and coastal pelagic species taken in an MPA should be less than 5 percent. They understand that LED has said anything under 5 percent would be difficult to detect and enforce at the docks. They still believe that the maximum incidental take allowance for SMCA's should be set at 2 percent by landed weight.	p3	The adopted regulation establishes a maximum five percent by weight allowance for the incidental take of non-target species landed or possessed on commercial vessels targeting market squid, pelagic finfish, or coastal pelagic species. Consultation with LED indicated that anything less than a five percent allowance would be difficult to detect at the dock and enforce. The 5 percent threshold is consistent with existing regulatory language in subsection 632(b)(68)(B)2.
q	Daniel Shafer, Recreational Spear fisherman 02/03/2014 Email	1	Supports the language that clarifies the actions spear fishermen need to take to transit through an MPA with gear and catch on their persons. However, he would like to recommend that the diver should be allowed to carry a speargun in hand.	q1	Support is noted. Recommendation that spearfishermen be allowed to carry spearguns in hand while transiting is rejected. The adopted transiting regulation [Section 632(a)(8)(B)], provides that 1) spearfishermen with or without catch must remain at the surface, 2) spearfishing gear must remain in an unloaded condition, and 3) spearfishing gear cannot be in the hand of the diver while transiting

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	John Weymouth, Spear fisherman 02/04/2014 Email				the MPA. These criteria clearly demonstrate that the person is not spearfishing in an MPA that prohibits spearfishing.
r	Lance Davis, Spear fisherman 02/03/20104 Email	1	Supports the language that clarifies the actions spear fishermen need to take to transit through an MPA with gear and catch on their persons.	r1	Support noted.
s	Paul Romanowski, Free Diver 02/05/2014 Email	1	Fully supportive of transiting in MPAs. However, he would like to recommend that the gear still allowed to be carried in hand.	s1	See response q1.
t	Josh Russo, Watermans Alliance 02/05/2014 Oral Comment	1	Supports the Department's recommendation for the regulation regarding transiting for spear fishermen.	t1	Support noted.
u	Karen Garrison, National Resources Defense Council 02/05/2014 Oral Comment	1	Concerned about the clarity of adding the word "education" subsection 632(a)(1)(A).	u1	See response p1.
		2	Expressed the spearfishing rules for transiting will be difficult to enforce and that there should be good coordination between the Department and local enforcement personnel.	u2	See response p2.
		3	Recommends the maximum allowed incidental catch should be set at 2 percent and not 5 percent.	u3	See response p3.

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		4	If adopted, the 5 percent incidental take allowance and spearfishing transiting regulations should be reevaluated in a year or so.	u4	Comment noted. The Commission may consider amending or repealing the regulations pursuant to the Administrative Procedure Act, if, at any time, it is petitioned to do so.
v	Sarah Sikich, Heal the Bay 02/05/2014 Oral Comment	1	Expressed that they will work closely with local enforcement officers and feel that the changes made to the transiting provision should alleviate their previous concerns.	v1	Comment noted.
		2	Recommends the incidental take allowance be lowered to 2 percent.	v2	See response p3.
w	Paul Weakland 02/05/2014 Oral Comment	1	Stated these no fishing zones are still looking for the spill over and we were told these would be a panacea to solve our problems.	w1	This comment does not address the proposed regulations.
		2	Stated these MPAs are in the most pristine areas and you took away the best fishing zones from people.	w2	This comment does not address the proposed regulations.
x	Ray Heimstra, Orange County Coastkeeper 02/05/2014 Oral Comment	1	Stated that he does not recall transiting while spearfishing being discussed during the original development of the MPA regulations. It is different than transiting in a vessel. The proposed regulation regarding transiting while spearfishing feels like a relaxing of the rules.	x1	Current regulations for transiting through MPAs and other MMAs only address vessels. As a result, there is public confusion about whether spearfishermen transiting an MPA or other MMA with or without catch is a legal activity. The proposed amendment clarifies that this activity is allowed. The adopted regulation does not relax the rules but rather increases the feasibility of enforcing the existing rules by adding parameters which multiple user groups can now follow when transiting within an MPA.
y	Diane Pleshner-Steele, California Wetfish Producers Association 02/05/2014 Oral Comment	1	Supports the Department's recommendations that clarify Pacific bonito as a pelagic finfish; establish a 5 percent by weight allowance for the incidental take of non-target species landed or possessed on commercial vessels targeting market squid, pelagic finfish or coastal pelagic species in designated MPAs; and include brail gear and light boats in MPAs that authorize the take of coastal pelagic species and squid.	y1	Support noted. The Commission adopted the regulations as proposed.

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z	Samantha Murray, Ocean Conservancy 02/05/2014 Oral Comment	1	Submitted a letter to talk about the addition of the word “education”, the 5 percent incidental take allowance, and the transiting.	z1	See responses p1, p2 and p3.
		2	Supports the removal from consideration the boundary change near Kirby Park in the Elkhorn Slough from the proposed package.	z2	See response c1.
aa	Paul Weakland 04/16/2014 Oral Comment	1	Expressed the Blue Ribbon Task Force failed.	aa1	This comment does not address the proposed regulations.
		2	This is ill conceived using flawed and failed concepts.	aa2	This comment does not address the proposed regulations.
		3	Expressed only the most productive habitats were encompassed in the MPA proposals.	aa3	This comment does not address the proposed regulations.
		4	Stated the Commission is bending to the corporate ties in California, which is the big plan from OPC.	aa4	This comment does not address the proposed regulations.
ab	Sarah Sikich, Heal the Bay 04/16/2014 Oral Comment	1	Expressed support for proposed changes and stated that the changes will go a long way to increase compliance in areas such as Point Dume and Abalone Cove SMCAs.	ab1	Support noted. The Commission did not adopt the proposed addition of the word education to subsection 632(a)(1)(A) and adopted the remainder of the regulations as originally proposed.
		2	Encourages continued collaboration between the community collaborative groups.	ab2	Comment noted.
ac	Gia Brazil, Ocean Conservancy 04/16/2014 Oral Comment	1	Stated that they echoed the comments by Heal the Bay and supports the rule making package.	ac1	See responses ab1 and ab2.
		2	The Ocean Conservancy encourages collaborations with other groups at the local level, and provided thanks for the Commissions continued support of MPAs and fully supports the rule making package.	ac2	See responses ab1 and ab2.