



February 15, 2022

Secretary Wade Crowfoot
California Natural Resources Agency
715 P Street
Sacramento, CA 95814

Sent electronically to californianature@resources.ca.gov

Dear Secretary Crowfoot,

On behalf of the California Sea Urchin Commission (“Commission”), I am pleased to offer the following comments on the on the Resources Agency’s draft of the document titled “Pathways to 30x30” (“*Pathways*”), prepared in response to Governor Newsom’s Executive Order N-82-20. Thank you for the opportunity to comment on this draft document. The Commission supports the wellbeing of our State’s coastal communities, the nearly 300 sea urchin divers who rely on the fishery for their economic sustainability, and the historically significant cultural and maritime heritage attributes of California’s sea urchin fishery. In this spirit, we offer the following comments on *Pathways*.

I. A history of sea urchin conservation in California & an introduction to the Commission

California’s sea urchin fishery stakeholders have been working at the leading edge of ocean conservation for decades. They have also borne witness to long periods of policy decision making that have systematically disenfranchised them and done harm to their livelihoods and communities. It is the Commission’s intention to continue to be a voice for conservation in California’s ocean conservation and management deliberations, including the 30x30 process.

The sea urchin fishing industry’s history of engagement with state agencies includes its share of sordid moments. Early in the 20th century, all species of sea urchins were considered to be pests by State agencies. Beginning in 1962, the Department of Fish and Game (as it was then known) operated a program authorized by the Fish and Game Commission in coordination with organizations including the California Institute of Technology, the Scripps Institution of Oceanography, and others for the mass application of the pesticide quicklime (CaO) in nearshore habitats in Southern California to destroy sea urchins and preserve giant kelp for commercial harvest¹. Quicklime is incredibly toxic to echinoderms including sea urchins, starfish, and abalone, and mass application of the pesticide proved highly lethal to all echinoderm species within the State’s nearshore ecosystem. In 1975, 175 tons of quicklime were dispersed throughout Southern California kelp ecosystems under this state sanctioned program.

¹ Bernstein, Brock & Welsford, Richard (1982). *An Assessment of Feasibility of Using High-Calcium Quicklime as an Experimental Tool for Research Into Kelp Bed/Sea Urchin Ecosystems in Nova Scotia*. 968.

Through this ignoble period of coastal management, California sea urchin harvesters recognized the deleterious impacts of the State's sea urchin eradication program to the ecosystem and their industry. From the 1960s through the early 1980s, they regularly protested the program at the Fish and Game Commission. They were summarily ignored, until a hearing circa 1984 when an attorney working with sea urchin harvesters pointed out that the sea urchin eradication program was unlawful. The Fish and Game Commission ceased permitting the program thereafter.

This dark episode demonstrates both the value of knowledge and experience of fishery stakeholders concerning the ocean environment, and the capacity of state and academic institutions to systematically ignore this knowledge and experience, to the peril of the environment and California's seafood security. The Commission's members and stakeholders sincerely wish for the Natural Resources Agency to take serious and meaningful steps to learn from them in this new conservation and management discussion, rather than ignoring their perspectives once again.

While fighting against State-sanctioned pesticide application in the State's kelp forest, California's sea urchin stakeholders were simultaneously fighting for fishery management at the Fish and Game Commission. The industry's pleas were ignored until 1987, when industry-supported legislation passed establishing the Director's Sea Urchin Advisory Committee (DSUAC), funded by a self-tax, for the purposes of establishing a sustainable and well-regulated fishery. Through the years, it has been the fishing industry that has sought and successfully implemented sea urchin fishery conservation measures, including closures, limited entry, and size limits.

By the early 2000s, sea urchin fishery stakeholders realized the need to accelerate the use of conservation and enhancement project funds that had been accruing unspent at the Department of Fish and Wildlife. To further improve the conservation and management of the sea urchin resource, in 2004 the Commission was established, with a mission to "ensure a reliable, sustainable supply of quality sea urchin products to consumers and enhance the performance of California's sea urchin industry". The Commission operates under State law² as an organ of State Government to ensure the sustainable conservation and management of the sea urchin resource and establish a research program to enhance harvesting practices, support integrated fishery management, and efficient assessment, monitoring, and protection of the resource.

The Commission is proud of its legacy and the work it continues to undertake to enhance the conservation and sustainable management of the State's sea urchin fishery in all relevant aspects of policy making, including the Governor's Executive Order N-82-20 and the draft *Pathways* document.

II. The definition of 'conservation' contained within *Pathways* is inappropriately narrow and is inconsistent with established State law and policy

The conservation of ocean ecosystems that support sea urchins is of paramount importance to the Commission. Supporting conservation is fundamental to the Commission and the sea urchin fishery stakeholders it represents. Indeed, the conservation of California's marine habitats entirely frames the regulatory environment in which we operate. In 1973 the California Legislature delegated the conservation and management of the sea urchin fishery to the California Fish and Game Commission, which under the California Constitution has granted "such powers relating to the protection and propagation of fish and game as the Legislature sees fit". The Fish and Game Commission manages the

² California Food and Agricultural Code §79000 *et seq.*

sea urchin fishery under established policy of the State to “prevent overfishing, to rebuild depressed stocks, to ensure conservation, to facilitate long-term protection and, where feasible, restoration of marine fishery habitats, and to achieve the sustainable use of the State’s fishery resources.”³ The Fish and Game Commission has extensively exercised its authority delegated to it by the Legislature to ensure conservation of the State’s sea urchin populations and fishery (and the ecosystems in which they occur); these regulations can be found at 14 CCR §120.7 and elsewhere.

The California Legislature, in assigning jurisdiction and delegating authority over the management of the State’s sea urchin and other fisheries to various agencies, has established in law a policy “to encourage the preservation, conservation, and maintenance of wildlife resources under the jurisdiction and influence of the state.”⁴ This foundational policy frames and binds the actions of the Natural Resources Agency, the Fish and Game Commission, and the Department of Fish and Wildlife. It should be noted that the Legislature’s conservation policy applies to every organ of State government under the jurisdiction of California’s wildlife management agencies. It is important to recognize that this policy applies to “resources”, which consist of the resources held in trust by the State for the benefit of the people.

The Legislature enumerated a set of objectives that comprise the State’s policy for the preservation, conservation, and management of resources, commencing with:

“...(a) To maintain sufficient populations of all species of wildlife and the habitat necessary to achieve the objectives stated in subdivisions (b), (c), and (d).”⁵

As with the laws enacted by the California Legislature (including its policy for the conservation of wildlife resources), Governor Newsom’s Executive Order N-82-20 also addresses conservation via the establishment of “the goal of the State to conserve at least 30 percent of California’s land and coastal waters by 2030”. The Executive Order diverges from the Legislature’s directives in Fish and Game Code §1801 (as well as throughout the Marine Life Management Act⁶, which “applies not only to fish and shellfish taken by commercial and recreational fishermen, but to all marine wildlife”⁷) to conserve a certain set of *resources* by calling for the conservation of a certain set of *areas* within the jurisdiction of the state. However, it is important to note that, as with Executive Order N-82-20, the Legislature’s conservation policy addresses the conservation of land and coastal waters, which is referred to by the term “habitat” in statute. “Habitat” can be understood to be functionally equivalent to “land and coastal waters” for the purposes of the Executive Order, although of course there are other habitat types besides land and coastal waters.

The Legislature has specified a set of objectives to be met by State agencies in their work achieving the “preservation, conservation, and maintenance of wildlife resources” within “habitat”:

“(b) To provide for the beneficial use and enjoyment of wildlife by all citizens of the state.

(c) To perpetuate all species of wildlife for their intrinsic and ecological values, as well as for their direct benefits to all persons.

³ California Fish and Game Code §7055(b)

⁴ California Fish and Game Code §1801

⁵ *Ibid*

⁶ California Fish and Game Code §7050 *et seq*

⁷ See <https://wildlife.ca.gov/Conservation/Marine/MLMA#info>

(d) To provide for aesthetic, educational, and nonappropriative uses of the various wildlife species.

(e) To maintain diversified recreational uses of wildlife, including the sport of hunting, as proper uses of certain designated species of wildlife, subject to regulations consistent with the maintenance of healthy, viable wildlife resources, the public safety, and a quality outdoor experience.

(f) To provide for economic contributions to the citizens of the state, through the recognition that wildlife is a renewable resource of the land by which economic return can accrue to the citizens of the state, individually and collectively, through regulated management. Such management shall be consistent with the maintenance of healthy and thriving wildlife resources and the public ownership status of the wildlife resources.”⁸

Thus, the Legislature has established a worthy and appropriate definition of the term “conservation” that State agencies have used in accomplishing their statutorily mandated objectives for decades: consistent with the statutory language above, for the purposes of achieving the State’s 30x30 goal, an area should be considered to be “conserved” when it is managed to provide for beneficial use and enjoyment of wildlife; perpetuates all species of wildlife for their intrinsic and ecological value & direct benefits to all persons; provides for aesthetic, educational, or nonappropriative use; maintains recreational use under regulation, and/or provides for economic use through regulated management.

Unfortunately, *Pathways* adopts a definition of the term “conservation” that inappropriately deviates from the objectives established by the Legislature for use by the natural resources management agencies of the state. In the definition of “conservation” proposed in *Pathways*, the operative term “durably protected and managed” is narrowly construed to apply solely to “areas” or “designations”. The draft document’s narrow focus on spatial approaches to conservation is inconsistent with the Legislature’s charge to wildlife management agencies and the approaches used by those agencies to conserve habitats and provide for the conservation of the public trust resources of the State.

Unlike extractive uses such as mining, drilling, or energy production which are permitted by the State through the allotment of spatial use rights including leasing or ownership, California’s commercial sea urchin harvesters rely on and conform to regulations promulgated via rulemaking that apply within all habitats in which the resource is found. These regulations are designed to have a minimal habitat impact, achieved by limiting the methods used to harvest sea urchins solely to fishing gear employed by hand by divers.

Therefore, the Commission recommends that the definition of “conservation” be significantly revised in the *Pathways* document to become consistent with State law and to reflect the non-spatial nature of the durable legal and regulatory approaches to conservation of the State’s marine resources employed by its natural resource management agencies.

III. The Commission and sea urchin fishery stakeholders have not been adequately consulted in the development of *Pathways*

The Commission notes with concern the failure of the Natural Resources Agency and the draft *Pathways* document to execute the numerous well-articulated directives contained in Executive Order N-82-20 to

⁸ *Ibid*

engage with or support the activities of entities like the Commission and stakeholders like the sea urchin harvesters of California. Here we list these directives, describe the Natural Resources Agency's or *Pathways*' level of compliance with them, and suggest ways to achieve each of them in context.

The Executive Order calls for the establishment of a California Biodiversity Collaborative with a listed set of issues it is to be consulted on. The Collaborative is charged with "bringing together governmental partners" and "business and community leaders", among others. The Collaborative is ordered to "establish a baseline assessment of California's biodiversity..." and to "inventory current biodiversity efforts across all sectors", ostensibly including assessments of fishery activity and including the sea urchin fishing sector. The Commission is not aware of any progress made towards the convening of the Collaborative or the engagement of fishing industry organizations to provide their expertise. As the Commission is a statutorily established organ of State government, it should be considered a governmental partner and should therefore be consulted in the implementation of the order. Additionally, Commission members are business and community leaders who have significant expertise in the field of natural resource and biodiversity conservation. We strongly encourage you to include the Commission and its members in forming the Collaborative and executing its tasks under the Executive Order, including in particular stakeholder engagement.

In establishing the State's 30x30 goal, the Executive Order lists the ways in which the goal shall be achieved. We note that the very first of these calls for "[safeguarding] our State's economic sustainability and food security". We do not see this same emphasis placed on economic sustainability and food security reflected in *Pathways*, and we recommend that the document be reframed after further consultation with stakeholders to reflect an accurate understanding of what measures might be necessary to achieve economic sustainability of the California seafood economy and the food security provided by our sustainably harvested public trust marine resources.

The second way the 30x30 goal shall be achieved is via the "[protection] and [restoration] of biodiversity", which is wholly consistent with the management and regulation of the State's sea urchin fisheries. Unfortunately *Pathways* fails to contemplate or analyze the ways in which the management regulations governing fisheries contemplates impacts to biodiversity generally, nor does it adequately contemplate coastal water quality issues. Ocean environments do not exist in a vacuum. By virtue of its myopic focus on spatial designations for biodiversity conservation, *Pathways* ignores a readily available set of well-articulated and statutorily authorized regulatory approaches to biodiversity conservation under the State's fishery management process. *Pathways* also takes a weak approach to evaluating ways to reduce coastal runoff and other sources of non-point source pollution, which collectively comprise some of the most deleterious impacts to coastal biodiversity and ecosystem integrity. Simply put, coastal ocean conservation won't be meaningfully achieved under the State's 30x30 program unless water quality impacts from human uses on land are a core focus of its conservation efforts. We recommend that *Pathways* be updated to reflect a recognition of California's world leading biodiversity conservation approaches under the Marine Life Management Act and other processes, as well as an expansion of the document's scope to include a comprehensive evaluation of water quality impacts to ocean biodiversity.

The third way the 30x30 goal shall be achieved is by "[enabling] enduring conservation measures on a broad range of landscapes,"⁹ including natural areas and working lands, in partnership with land managers and natural resource user groups". While a plain reading of this requirement indicates its focus on terrestrial habitats, we believe that it applies to the management of coastal waters and the State's

⁹ We take the words "landscapes" and "working lands" to be inclusive of submerged landscapes/working lands including fishing grounds

fisheries insofar as it specifies conservation approaches that should necessarily include fishery conservation and management measures (i.e. regulations), not exclusively spatial designations, which is but one type of conservation measure among many. Further, the order calls for the establishment of partnerships with user groups, including commercial fishery stakeholders, in achieving the 30x30 goal. We are not aware of any serious efforts undertaken by the Natural Resources Agency or proposed in *Pathways* to establish partnerships with the Commission or the sea urchin industry for the purposes of conservation in California. We strongly urge you to reevaluate the ways in which *Pathways* fails to adequately contemplate non-spatial conservation measures and to work with us and other fishing industry groups to establish appropriate pathways to real partnerships based on equity and inclusion.

IV. The ocean conservation baseline in *Pathways* is inconsistent with Executive Order N-82-20 and State law

The most serious flaw in *Pathways* with respect to ocean conservation and management is the supposition that “coastal waters that currently meet California’s 30x30 definition of conserved account for ... 16% of total coastal water area.” We assume that this area is reflective of the 16.1% of the coastal waters of California that are enclosed by the State’s marine reserves designated under the Marine Life Protection Act. We note that sea urchin fisheries under the rules and regulations enacted by the Fish and Game Commission take place in certain areas that are considered within the 16% area listed in *Pathways*. For many of the reasons stated above, this delineation is arbitrary and is based on the improper definition of “conservation,” thus it is plainly inconsistent with the conservation of the State’s fishery resources. This language should be removed from *Pathways*.

If there is to be a partnership-based approach to evaluating the nature and extent of the State’s existing conservation measures, then the *Pathways* should not draw the predetermined conclusion that conservation is only taking place today within the State’s marine reserves. The document should be revised accordingly, and instead clearly articulate the approaches that will be taken to evaluate which habitats are “managed to support functional ecosystems ... and the species that rely on them.” We believe that such an evaluation will plainly show that California’s sea urchin fisheries and fishing industry stakeholders, as well as those of other seafood sectors managed by the State, are an integral component of the overall holistic approach of managing for functional ecosystems.

We will also note here that the partnerships that might be established with the Commission and the sea urchin harvesters we represent could achieve significant ecological and biodiversity benefits via the physical removal of purple sea urchins. Excessive purple sea urchin grazing, in combination with climate change impacts to coastal kelp forest ecosystems, has caused severe impacts to this critical coastal ocean habitat type as well as serial federally declared fishery disasters and resulting impacts to coastal communities.

V. Conclusion

Rather than excluding well-managed fisheries from high-visibility conversations about California conservation, *Pathways* and the approach taken by the Natural Resource Agency to achieve the State’s 30x30 goal should embrace the opportunity to work collaboratively and in partnership with fishing industry stakeholders, who are united in their significant concerns with the approaches taken in *Pathways*.

The California Sea Urchin Commission is and will continue to be a reliable partner in the State's efforts to conserve its fishery resources and resource-dependent communities. Thank you for your consideration.

Respectfully submitted,

A handwritten signature in black ink, reading "David J. Goldenberg". The signature is fluid and cursive, with the first name "David" being more prominent and the last name "Goldenberg" following in a similar style.

David J. Goldenberg
Executive Director

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