

## **FINAL STATEMENT OF REASONS**

### **TITLE 2. ADMINISTRATION DIVISION 3. STATE PROPERTY OPERATIONS CHAPTER 1. STATE LANDS COMMISSION ARTICLE 2.9.1. PERMITS FOR GEOPHYSICAL SURVEYS**

#### **UPDATES TO THE INITIAL STATEMENT OF REASONS**

All of the data and technical, theoretical, and empirical studies, reports, and similar documents identified in the Initial Statement of Reasons were made available by the Commission staff for public review during the entirety of the rulemaking process.

Commission staff did not introduce or rely on any new data or technical, theoretical, or empirical study, report, or document other than those indicated in the Initial Statement of Reasons. As discussed immediately below, two nonsubstantial changes to the definitional sections of the proposed regulations were made to reduce surplusage and potential confusion to stakeholders.

#### **NONSUBSTANTIVE CHANGES MADE SINCE THE PUBLICATION OF THE NOTIFICATION**

Section 2100.03, subdivision (d), of the proposed regulations, as originally noticed, expressly identifies geophysical surveys as surveys conducted to map the ocean floor. This created a clarity concern about whether the definition limited permitted geophysical surveys to only those occurring on the open ocean. The substantive requirements of the proposed regulations are clear that permits are required for geophysical surveys that occur on any waterway under the Commission's jurisdiction. The nonsubstantial revision to subdivision (d) removes the term "ocean" and instead references "marine waters," a term that is defined in the proposed regulations in subdivision (h) and a term that encompasses tidally influenced waterways including, and in addition to, the ocean. This change is for clarity and consistency without altering the express or intended scope of the proposed regulations.

Section 2100.03, subdivision (m), of the proposed regulations, as originally noticed, defines "remotely operated vehicle," or "ROV" but the defined term is not found anywhere else in the proposed regulations. Earlier drafts of the proposed regulations expressly exempted ROV operations that utilized passive, or non-acoustic generating equipment, from permit requirements. The currently proposed regulations were redrafted to exempt all surveys using passive equipment (whether using an ROV or not), removing the need to specifically refer to ROV as it pertains to survey activities. The section 2100.03 subdivision (m) definition of "ROV" is an artifact from earlier drafts of the proposed regulations that, inadvertently, was not deleted.

Under the Administrative Procedure Act, nonsubstantial changes can be made to proposed regulations without the need for an additional public comment period or further noticing. Nonsubstantial changes are those that “clarify without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text” (title 1, California Code of Regulations § 40). Changing the term “ocean” to “marine waters” in section 2100.3 subdivision (d) is a nonsubstantial change because the subdivision’s purpose is definitional, not jurisdictional, and the substantive portions of the proposed regulations make it clear that permits are required for surveys conducted on any waterway under the Commission’s jurisdiction. Section 2100.04 states that “[a]ll geophysical surveys on State sovereign lands . . . must be permitted . . . .” This directive fully contemplates that survey activity on marine waters and nonmarine waters will require a permit. Additionally, section 2100.05 identifies the type of permit issued for geophysical surveys on marine waters (which includes the open ocean) and those on nonmarine waters, providing full notice to the public that the proposed regulations were intended to affect all geophysical surveys, regardless of whether occurring on the ocean or not. Therefore, this change is solely for clarification and is otherwise nonsubstantial.

Similarly, the removal of the ROV definition in section 2100.03 subdivision (m) has no effect on any requirement of the proposed permit program because the program, as currently proposed, regulates acoustic noise generating sources, not the platforms that they are installed upon. Since no requirements, rights, responsibilities, conditions, or prescriptions are altered by the removal of the ROV definition, the change is nonsubstantial and did not require any additional noticing, prior to Commission approval of the proposed regulations.

#### MANDATE ON LOCAL AGENCY OR SCHOOL DISTRICTS

The proposed regulations do not impose a mandate upon local agencies or school districts.

#### ALTERNATIVES CONSIDERED

After receiving comments suggesting alternatives, the Commission has determined that no alternative considered by the Commission or that has otherwise been identified and brought to the attention of the Commission would be:

- More effective in carrying out the purpose for which the regulatory changes are proposed;
- As effective and less burdensome to affected private persons than the adopted regulations; or
- More cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of the law.

As detailed in the Commission's responses to comments # 1-2,7,9-12, commenters proposed 3 alternatives to focused portions of the proposed rulemaking. Comments # 1 and 2 propose exempting all geophysical surveys that use autonomous vehicles and ROVs, regardless of the type of acoustic generating equipment they use to perform a survey. The authorizing statute for the proposed regulations (Pub. Resources Code § 6212.3) directs the Commission to establish terms and conditions for geophysical surveys " . . . to ensure public safety and protection of the environment." The environmental impacts of the proposed regulations were analyzed in the Mitigated Negative Declaration (CSLC MND No. 751, State Clearinghouse No. 2013072021, adopted September 20, 2013) and addendum (adopted April 23, 2014). The MND identified the potential for impacts to marine mammals from vessel strikes and from the sound generated from acoustic equipment (e.g., sonars, sparkers, multibeam echosounders) (see MND, page 3-32). Under the impact analysis, equipment operating under 200 kilohertz (kHz) has the potential to cause Level B (harassment) take of marine mammals without proper mitigations. Additionally, the potential for vessel strikes remains present with the use of ROVs because they are tethered to a support vessel, which must transit and remain in the survey area. Key requirements of the proposed regulations include mitigations to ensure impacts to marine mammals and the marine environment are at a minimum (see MND page 5-3). The commenter's proposed alternative would, according to the analysis of the MND, potentially increase impacts to marine mammals by increasing risks related to noise and vessel strike. As a result, the proposed alternative is not more effective in carrying out the purpose of the proposed regulations, which is to ensure protection of the marine environment, and was therefore not implemented.

Comment # 7 proposed a second alternative to include geophysical surveys occurring in the Delta region of the State as a part of the General Permit issued under the proposed regulations. Like the Commission's response to alternative one, the MND analyzed impacts specific to marine mammals as well as the marine environment, which is distinct from the inland waterways of the State. There are marine-specific mitigations incorporated into General Permits, as integrated into the proposed regulations, that do not apply to surveys outside marine waters. Surveys performed outside marine waters, including the Delta region, either require an Environmental Impact Report if the use of high-energy equipment (i.e., airguns) is being proposed, or rely on a categorical exemption for low-energy geophysical surveys. As such, surveys in the Delta region do not qualify for the General Permit because the marine-specific mitigations are not tailored for that region. For example, maintaining safety zones (designed for open marine waters) in a narrow water channel is neither practical nor useful. Of note, Project-Specific Permits can be issued for up to 3 years, the same period as General Permits, so a permittee will be able to operate for the same amount of time, regardless of the permit type. Therefore, the alternative is neither more effective in carrying out the purpose of the regulations, nor less burdensome to affected parties.

Finally, the third alternative, located in comments # 9-12, proposed that the notification period in the proposed regulations be shortened, in section 2100.08 from 21 days to 14 days or less. As indicated in the response to comments, below, section 2100.08(d)

allows a shortened notification period in order to allow for situations where 21 days' notice is not possible. Therefore, the recommended change is already instituted into the proposed regulations. Commission staff insist on retaining the 21-day notice period, as a default, because it was identified as a mitigation in the MND for avoiding recreational impacts. Because the proposed regulations already allow for the requested change, no change was made nor needed.

## ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS

The third alternative (comments # 9-12) was proposed to the Commission as lessening the adverse economic impact on small business. The claim was that the 21-day notice period would impact small businesses' ability to compete for projects. However, as described above, section 2100.08(d) allows for a shortened notice period that can be utilized if the circumstances for a geophysical survey preclude meeting the 21-day notice requirement. This shortened period was included considering stakeholder and staff experience showing that the need for geophysical surveys can be urgent and that flexibility in the notice requirement is essential to allow for these activities. Commission staff insist on retaining the 21-day notice period, as a default, because it was identified as a mitigation in the MND for avoiding recreational impacts. Surfers, fisherman, and the recreational community could be impacted by unnoticed geophysical surveys (see MND page 5-10); the proposed regulations seek to limit and eliminate these impacts. Therefore, since the proposed regulations already allow for the alternative, no changes are needed to the proposed regulations.

## DOCUMENTS INCORPORATED BY REFERENCE

The proposed rulemaking incorporates one document by reference in its entirety—the "Pre-Survey Notification Form," dated September 5, 2018. This is the same document identified in the Notice of Proposed Action, published on November 16, 2018.

## SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE COMMENT PERIOD OF NOVEMBER 16, 2018, THROUGH JANUARY 4, 2019

The original proposed amendments were subject to an initial Public Comment Period (45 days) held from November 16, 2018, through January 4, 2019. The Commission held a public hearing on January 4, 2019, at the Commission's Sacramento headquarters. No comments were received during the public hearing. The Commission received two letters, comprising 20 comments, via email during this initial Public Comment Period, as numbered below.

**Table 1. Comments received during first Public Comment Period**

Numbered Comments	Name	Affiliation	Submission Date
1-4	Michael Kelly	Monterey Bay Aquarium Research Institute	January 2, 2019
5-20	Eddie Stutts	Fugro USA Marine, Inc.	January 3, 2019

All comments are presented according to the specific topic addressed. Many of the comments are not recommendations specifically directed at the proposed regulations or rulemaking procedures but, rather, seek clarification on how the Commission’s staff might interpret aspects of the proposed regulations, once effective. Staff believes that the Initial Statement of Reasons (ISOR) provides enough background on the purpose and necessity of each proposed change and that the language of the proposed regulations is clear and speaks for itself. However, below, staff answers each comment submitted in order to provide its understanding of each proposed regulation identified by comment.

Comment 1: Commenter submitted a specific change to section 2100.04(b)(2), as follows. “Use of Autonomous or Remotely operated vehicles equipped with low-energy equipment ~~operating at 200 kilohertz or higher.~~”

Response: This comment is made in connection with comment # 2, below. The comment seeks to add, as an activity excluded from the Commission’s permit requirements, geophysical surveys conducted with ROVs. The commenter suggests that the comment was made because of the inclusion, in the noticed regulations, of the definition “remotely operated vehicle” (§2100.03(m)). The Commission rejects the proposal, as requested by the commenter. The proposed regulations primarily regulate sources of acoustic sound and impacts to marine mammals that could result from vessel strikes. Section 2100.03 exempts those activities that are either not geophysical surveys, and therefore not regulated by the Commission, or geophysical surveys where both acoustic impacts and vessel strike impacts to marine mammals are negligible or nonexistent. This second category places these activities outside the need for specific enforcement monitoring, as identified in the Commission’s 2013 MND (cited in the ISOR). Section 2100.04(b)(2), as noticed, exempts autonomous vehicles (AV) using acoustic generating equipment over 200 kHz because sound at or above that frequency is beyond the functional hearing range of marine mammals and the risk of vessel strikes to mammals is nonexistent because there is no surface support vessel transiting with the AV. The Commission expressly chose not to exempt ROV operations because ROVs are tethered to transiting surface vessels which creates a risk of vessel strike to marine mammals. Additionally, removing the 200 kHz limit on the exemptions would create an environmental risk according to the MND. Implementing the commenter’s changes would require additional environmental impact analysis under the MND and an addendum to

that document showing that the proposed changes do not create a risk of significant environmental impact—a conclusion unreachable at this time.

Although not a change requested by the commenter, the Commission has made one indirect and nonsubstantive change concerning the definitions used in the proposed rulemaking. The definition of “remotely operated vehicle” has caused confusion mostly because, while it is defined, the term is not located anywhere else in the proposed regulations. The definition is an artifact from previous versions of the proposed regulations and has no operative or substantial bearing on the regulations, as noticed; therefore, the Commission removed the definition as a nonsubstantial change.

Comment 2: Commenter states its belief that not including “remotely operated vehicles” as a program exemption was an administrative error and that ROVs are similar to AVs as they both conduct low-energy geophysical surveys close to the ocean floor.

Response: These comments are an observation and explanation with relation to comment # 1. For an explanation of why ROVs were not included as a program exemption, please see the Commission’s response to comment # 1. No changes to the proposed regulations were made in response to these comments.

Comment 3: Commenter proposes deleting the condition “operating at 200 kilohertz or higher” from section 2100.04(b)(2) and explains that equipment on AVs and ROVs do not ensonify the entire water column, thus limiting impacts.

Response: These comments are an observation and explanation with relation to comment # 1. For an explanation of why ROVs were not included as a program exemption, please see the Commission’s response to comment # 1. In 2013, the Commission adopted the MND, which serves as the environmental analysis underlying the proposed regulations. The MND analyzed noise impacts from vessel mounted and towed array acoustic-generating equipment, generally used in geophysical surveys. The analysis showed that potential impacts to marine mammals could occur within certain distances of operating equipment, depending on the frequency and decibel levels. To minimize these impacts, safety zones around acoustic-generating equipment were identified in the MND as a measure to protect marine mammals from potentially injurious noise levels. As a result, safety zones are incorporated into the proposed regulations. Additionally, the MND analyzed noise impacts from equipment towed at or near the ocean surface, where most survey operations occur. While the commenter may be correct that survey operations conducted near the ocean floor minimize impacts, that statement has not been analyzed under CEQA and cannot be implemented at this time. Therefore, this comment was not implemented.

Comment 4: Commenter states its belief that that its proposed changes provide protection while ensuring an efficient and safe process for the use of technology for basic research and the public’s benefit.

Response: This comment is a general observation referencing its prior comments asking for specific changes. No changes were made to the proposed regulations in response.

Comments 5: Commenter asks why the Commission believes that the activities in section 2100.04(b)(2)-(4) do not have the same impacts as activities that require a permit, under the proposed regulations.

Response: This comment is not an objection or recommendation specifically directed at the Commission's proposed adoption or to the procedures followed by the Commission in proposing the adoption and is rather a request for how Commission staff interprets the proposed regulations. As such, this comment is irrelevant and does not require a response by the Commission, per Government Code section 11346.9(a)(3). However, to aid in the commenter's understanding of the proposed regulations, Commission staff adds as follows:

The primary purpose of the proposed regulations is to protect the environment. Section 2100.04(b)(2) was added as an exception to the permit requirement because it is an activity that avoids the two major impact areas identified in the Commission's 2013 MND: noise and vessel strikes to marine mammals. Sound frequencies at or over 200 kHz are outside the functional hearing ranges of marine mammals; therefore, surveys operating at these frequencies do not have the potential to cause noise impacts. Secondly, AVs operate without the need of surface support vessels, thus removing the potential for vessel strike impacts. These two aspects combined made subsection (b)(2) an activity with no discernible impacts and, therefore, was considered an acceptable exemption under the proposed regulations. Subsection (b)(3) was added because, through discussions with stakeholders over two technical advisory group meetings, Commission staff became aware that biological surveys are distinct from geophysical surveys. Under Public Resources Code section 6212.3, the Commission has authority over geophysical surveys only. A task in the proposed rulemaking was defining the elements of a geophysical survey, which include defined tracklines and using the gathered data for ascertaining the physical characteristics of the ocean floor and subfloor, or the beds of inland waterways. Biological surveys, as they have been described to Commission staff, primarily gather data on organisms within, or characteristics of, the water column without necessarily following predetermined track lines or collecting geophysical data. As such, an attempt to regulate biological surveys that do not meet all the elements of a geophysical survey would be an overreach in the Commission's statutory authority. Similarly, subsection (b)(4) exempting dredging activities, is a statutory exemption found within Public Resources Code section 6212.3(b) and it would be outside the Commission's authority to regulate that activity.

Comment 6: Commenter asks for Commission staff to clarify that use of AVs, both on the surface, or below, would be exempt from a permit.

Response: This comment is not an objection or recommendation specifically directed at the Commission's proposed adoption or to the procedures followed by the Commission in proposing the adoption and is rather a request for how Commission staff interprets the proposed regulations. As such, this comment is irrelevant and does not require a response by the Commission, per Government Code section 11346.9(a)(3). However, to aid in the commenter's understanding of the proposed regulations, Commission staff adds as follows:

The definition of "Autonomous Vehicle" in section 2100.03(a) of the proposed regulations is interpreted by Commission staff to include both surface and subsurface AVs.

Comment 7: Commenter asks for clarification whether permits issued under section 2100.05(a)(2)(B) include the Delta region and states that surveys performed in that region should be included in the General Permits issued under subsection (a)(1).

Response: Permits issued under section 2100.05(a)(2)(B) include all surveys conducted in areas outside the definition of marine waters, found in section 2100.03(h), which would include the Delta. As to the commenter's second statement, the proposed regulations have two different permit types: General Permits and Project-Specific Permits. There are two permits because there is a different environmental review and CEQA compliance analysis for each permit. The 2013 MND analyzed impacts to marine waters resulting from low-energy geophysical surveys, primarily addressing impacts to marine mammals. As such, there are marine-specific mitigations incorporated into General Permits, as integrated into the proposed regulations, that do not apply to surveys outside marine waters. Surveys performed outside marine waters, including the Delta region, either require an Environmental Impact Report if the use of high-energy equipment (i.e., airguns) is being proposed, or rely on a categorical exemption for low-energy geophysical surveys. Surveys in the Delta region do not qualify for the General Permit because the marine-specific mitigations are not tailored for that region. Of note, Project-Specific Permits can be issued for up to 3 years, the same period as General Permits, so a permittee will be able to operate for the same amount of time, regardless of the permit type. No changes to the proposed regulations were made in response to these comments.

Comment 8: Commenter asks for clarification whether the permit types in Section 2100.05 cover surveys conducted on rivers, lakes, and reservoirs.

Response: This comment is not an objection or recommendation specifically directed at the Commission's proposed adoption or to the procedures followed by the Commission in proposing the adoption and is rather a request for how Commission staff interprets the proposed regulations. As such, this comment is irrelevant and does not require a response by the Commission, per Government

Code section 11346.9(a)(3). However, to aid in the commenter's understanding of the proposed regulations, Commission staff adds as follows:

The Project-Specific Permit would allow surveys to be performed on rivers and lakes under the Commission's jurisdiction or those legislatively granted. Inquiries regarding which permit type is required for a proposed survey can be directed to the Commission's Geophysical Survey Coordinator.

Comment 9: Commenter asks whether the Commission considered reducing the 21-day Pre-Survey Notification period to 15 days, as many of their clients have projects that are agency regulated/driven and require multiple vendors' participation, which creates several scheduling challenges for their clients.

Response: Twenty-one-days' notice provides sufficient time for Commission staff to thoroughly review the Pre-Survey Notification Package materials submitted and provide timely notice to the public via the Commission's listserv. Additionally, as this notice is provided to the U.S. Coast Guard Local Notice to Mariners and local harbormaster's offices of regional harbors, this noticing requirement provides these entities sufficient time to post the notice for view by vessel operators, including recreational and commercial fishing vessels, as well as divers, surfers, and other recreationists that may co-occur in the proposed survey area. Furthermore, this notification procedure provides an opportunity for industry or the public to notify the Commission or the operator about any potential use conflicts or environmental concerns (e.g., large concentrations of marine mammals) near the survey area. That said, however, the Commission recognizes that adequate notice is not always provided to permittees for survey work, and emergency events requiring surveys cannot be predicted. As such, the Commission included a provision (§ 2100.08(d)) in the regulations allowing permittees to provide shorter notice in the event a 21-days' notice cannot be provided. This would allow for permittees to provide shorter notice when it is not possible for them to meet the 21-day notice requirement due to project limitations—which directly addresses the commenter's concerns. No changes to the proposed regulations were made in response to these comments.

Comments 10: Commenter wants the Commission to provide a maximum limit (in days) within which a permittee can expect a response regarding a submitted petition for alternate marine wildlife monitor (MWM) requirements.

Response: Commission staff are unable to commit to a more limited time period to respond to the adequacy of submitted information. Providing adequate time for analysis and public notice was the purpose of the 21-day notice. Twenty-one-days' notice provides sufficient time for Commission staff to thoroughly review the Pre-Survey Notification Package materials submitted and provide timely notice to the public via the Commission's listserv. Additionally, as this notice is provided to the U.S. Coast Guard Local Notice to Mariners and local harbormaster's offices of regional harbors, this noticing requirement provides

these entities sufficient time to post the notice for view by vessel operators, including recreational and commercial fishing vessels, as well as divers, surfers, and other recreationists that may co-occur in the proposed survey area. Furthermore, this notification procedure provides an opportunity for industry or the public to notify the Commission or the operator about any potential use conflicts or environmental concerns (e.g., large concentrations of marine mammals) near the survey area. That said, however, the Commission recognizes that adequate notice is not always provided to permittees for survey work, and emergency events requiring surveys cannot be predicted. As such, the Commission included a provision (§ 2100.08(d)) in the proposed regulations allowing permittees to provide shorter notice in the event a 21-days' notice cannot be provided. This would allow for permittees to provide shorter notice when it is not possible for them to meet the 21-day notice requirement due to project limitations—which directly addresses the commenter's concerns. The proposed regulations also offer the option of submitting General Marine Wildlife Contingency Plans (MWCPs) and General Oil Spill Contingency Plans (OSCPs) to keep on file so that nearly all pre-survey notice requirements are met well prior to submitting notice. No changes to the proposed regulations were made in response to these comments.

Comment 11: Commenter states 21 days is a very lengthy amount of time when trying to put together cruise schedules and personnel assignments, especially if a project is scheduled to commence very shortly after the 21-day notice submittal.

Response: This comment is not an objection or recommendation specifically directed at the Commission's proposed adoption or to the procedures followed by the Commission in proposing the adoption and is rather a request for how Commission staff interprets the proposed regulations. As such, this comment is irrelevant and does not require a response by the Commission, per Government Code section 11346.9(a)(3). However, to aid in the commenter's understanding of the proposed regulations, Commission staff adds as follows:

Please see the responses to comments # 9 and 10 above. The Commission included a provision (§ 2100.08(d)) in the proposed regulations allowing permittees to provide shorter notice in the event a 21-days' notice cannot be provided. This would allow for permittees to provide shorter notice when it is not possible for them to meet the 21-day notice requirement due to project limitations—which directly addresses the commenter's concerns. No changes to the proposed regulations were made in response to these comments.

Comment 12: Commenter states that commercial decisions need to be made prior to commencement of the survey; therefore, providing a verdict on their petition/request would allow the permittee to make any adjustments and convey any impacts from the Commission's decisions to project stakeholders.

Response: This comment is not an objection or recommendation specifically directed at the Commission's proposed adoption or to the procedures followed by the Commission in proposing the adoption and is rather a request for how Commission staff interprets the proposed regulations. As such, this comment is irrelevant and does not require a response by the Commission, per Government Code section 11346.9(a)(3). However, to aid in the commenter's understanding of the proposed regulations, Commission staff adds as follows:

Commission staff understand the need for flexibility in the notification period and the period for staff approval. As such, the Commission included a provision (§ 2100.08(d)) in the proposed regulations allowing permittees to provide shorter notice in the event a 21-days' notice cannot be provided. This would allow for permittees to provide shorter notice when it is not possible for them to meet the 21-day notice requirement due to project limitations—which directly addresses the commenter's concerns. The proposed regulations also offer the option of submitting General MWCPs and OSCP's to keep on file so that nearly all pre-survey notice requirements are met well prior to submitting notice.

Comment 13: Commenter states that using the same safety zone radius and shut down procedures for small marine mammal (i.e., pinnipeds and delphinids) will greatly increase the duration of the survey, especially near platforms.

Response: This comment is a general observation referencing a subsequent comment asking for specific changes. No changes were made to the proposed regulations in response.

Comment 14: Commenter states that the Commission may want to consider employing special shut-down provisions to the following: (a) If at any time a federally threatened or endangered whale species (i.e., blue whale, fin whale, humpback whale, sei whale, north pacific right whale or sperm whale) is visually detected at any distance, the MWM will call for the immediate shut down of the equipment; and (b) no mitigation action will be required if a delphinid or otariid pinniped (i.e., short or long-beaked common dolphin or California sea lion) is visually observed to be "voluntarily approaching" the safety zone.

Response: In 2013, the Commission adopted the MND which serves as the environmental analysis underlying the proposed regulations. The analysis showed that potential impacts to marine mammals could occur within certain distances of acoustic-generating equipment, depending on the frequency and decibel levels of the operating equipment. To minimize these impacts, safety zones around acoustic-generating equipment were identified in the MND as a measure to protect marine mammals from potentially injurious noise levels. As a result, safety zones are incorporated into the proposed regulations. Thus, while the proposed safety zone radius and shutdown procedures may increase the duration of the survey, that statement has not been analyzed under the California

Environmental Quality Act (CEQA) and cannot be implemented at this time. Therefore, this comment is not implemented.

Comment 15: Commenter asks what would constitute an “unusual” concentration of diving birds.

*Response:* This comment is not an objection or recommendation specifically directed at the Commission’s proposed adoption or to the procedures followed by the Commission in proposing the adoption and is rather a request for how Commission staff interprets the proposed regulations. As such, this comment is irrelevant and does not require a response by the Commission, per Government Code section 11346.9(a)(3). However, to aid in the commenter’s understanding of the proposed regulations, Commission staff adds as follows:

A primary mitigation in the 2013 MND was the inclusion of MWMs aboard survey vessels to monitor for marine wildlife, including birds, within the areas of a geophysical survey. MWMs are trained in spotting marine mammals along with usual and unusual habits of life in the vicinity of vessels. Unusual circumstances may vary depending on the species in question. As such, the MWMs are given discretion to make the determination, based on their training, as to what an unusual concentration may be. An unusual concentration, or high densities, of diving seabirds in an area may indicate that the area is foraging hot spot; thus, marine mammals and turtles may be in the vicinity taking advantage of potentially large concentrations of prey below the sea surface.

Comment 16: Commenter asks for clarification regarding acceptable models and the limitations for the modeling when survey operations will be conducted in an area with changing water depths, substrate types, etc.

*Response:* This comment is not an objection or recommendation specifically directed at the Commission’s proposed adoption or to the procedures followed by the Commission in proposing the adoption and is rather a request for how Commission staff interprets the proposed regulations. As such, this comment is irrelevant and does not require a response by the Commission, per Government Code section 11346.9(a)(3). However, to aid in the commenter’s understanding of the proposed regulations, Commission staff adds as follows:

An acceptable model/calculation is provided in the proposed regulations in section 2100.07(a)(5)(D), including an adjustment for when the water depth is less than 1 wavelength of the predominate sound energy of the active source, or less than 3 meters. No changes to the proposed regulations were made in response to these comments.

Comment 17: Commenter states that a General MWCP has already been provided and asks whether permittees can submit amendments to existing General MWCPs.

Response: This comment is not an objection or recommendation specifically directed at the Commission's proposed adoption or to the procedures followed by the Commission in proposing the adoption and is rather a request for how Commission staff interprets the proposed regulations. As such, this comment is irrelevant and does not require a response by the Commission, per Government Code section 11346.9(a)(3). However, to aid in the commenter's understanding of the proposed regulations, Commission staff adds as follows:

Permittees may submit updated General MWCPs to Commission staff for review and are free to make amendments. No changes to the proposed regulations were made in response to these comments.

Comment 18: Commenter states that for equipment >200 kHz, one MWM is required, and asks, if this is specifically for the purpose of vessel strike, can the vessel operator fulfill this role, and if this requirement can be waived if there are no towed systems in the water.

Response: This comment is not an objection or recommendation specifically directed at the Commission's proposed adoption or to the procedures followed by the Commission in proposing the adoption and is rather a request for how Commission staff interprets the proposed regulations. As such, this comment is irrelevant and does not require a response by the Commission, per Government Code section 11346.9(a)(3). However, to aid in the commenter's understanding of the proposed regulations, Commission staff adds as follows:

As described in the ISOR for the proposed regulations, for equipment operating at frequencies at or above 200 kHz (above the known function hearing ranges of marine mammals), the MWM will ensure the protection of marine mammals from risk of collision during vessel transit and survey activities. For alternate MWM requirements, a petition must be submitted to Commission staff, who will then evaluate the permittee's request on a case-by-case basis and consider factors including the equipment type, frequency, and source level; timing, type, and location of the survey; the size of the survey vessel and availability of alternate vessels; and the ability to effectively implement the marine mammal and reptile mitigation measures. No changes to the proposed regulations were made in response to these comments.

Comment 19: Commenter asks whether nighttime operations are permitted for systems above 200 kHz.

Response: This comment is not an objection or recommendation specifically directed at the Commission's proposed adoption or to the procedures followed by the Commission in proposing the adoption and is rather a request for how Commission staff interprets the proposed regulations. As such, this comment is irrelevant and does not require a response by the Commission, per Government

Code section 11346.9(a)(3). However, to aid in the commenter's understanding of the proposed regulations, Commission staff adds as follows:

As stated in section 2100.07(b)(1) of the proposed regulations, the Commission may authorize, at its discretion, permittees to operate at night if the proposed survey allows the MWMs to fully monitor operations consistent with section 2100.07(b)(5). As such, permittees must provide Commission staff with information regarding how MWMs can fully implement safety zones (when necessary) and monitor for marine wildlife. No changes to the proposed regulations were made in response to these comments.

Comment 20: Commenter asks for clarification regarding what "other circumstances" entails in section 2100.08(d), as this is important to know when conducting project survey planning and so that all permittees are well informed of any possible variances to Commission requirements.

Response: This comment is not an objection or recommendation specifically directed at the Commission's proposed adoption or to the procedures followed by the Commission in proposing the adoption and is rather a request for how Commission staff interprets the proposed regulations. As such, this comment is irrelevant and does not require a response by the Commission, per Government Code section 11346.9(a)(3). However, to aid in the commenter's understanding of the proposed regulations, Commission staff adds as follows:

As stated in response to comments # 9-12 above, the purpose of section 2100.08(d) is to provide an option for shorter notice, if meeting the 21-day notice requirement is not possible. Commission staff intend the shorter notice period to be flexible to allow for situations beyond emergencies, such as when surveys are bid and must be performed on a shorter period, based on commercial necessity. The goal of the proposed regulations is for 21-day notice for maximum public notice and time for staff processes; however, the proposed regulations allow for these shorter periods, if 21-days' notice is not possible. No changes to the proposed regulations were made in response to these comments.

Comment 21: Commenter asks how section 2100.09, Geophysical Permit Suspension or Revocation, will be monitored and enforced.

Response: This comment is not an objection or recommendation specifically directed at the Commission's proposed adoption or to the procedures followed by the Commission in proposing the adoption and is rather a request for how Commission staff interprets the proposed regulations. As such, this comment is irrelevant and does not require a response by the Commission, per Government Code section 11346.9(a)(3). However, to aid in the commenter's understanding of the proposed regulations, Commission staff adds as follows:

Public Resources Code section 6212.3 grants the Commission cease and desist authority. The proposed regulations establish the format and purpose for cease

and desist letters. The intention of the letters will be to notify parties of impending judicial enforcement. Monitoring of suspension and revocation will rely, in large part, on participation by stakeholders to notify the Commission of operations occurring without a valid permit.