

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE COMMENTS ON
THE PRELIMINARY RANGE OF ALTERNATIVES FOR DEEP-SET BUOY GEAR

In the process of discussing existing and proposed exempted fishing permits (EFPs) and a range of potential alternatives for authorizing a Federal west coast swordfish deep-set buoy gear (DSBG) fishery, California Department of Fish and Wildlife (CDFW) staff have received a number of inquiries regarding the potential use of these gears in state waters between 1- and 3-nautical miles offshore around the Channel Islands, and the formal definition of the State and Federal waters boundary off the coast of California.

In March 2016, under Agenda Item F.3, the Council adopted a motion associated with DSBG scoping. The motion included an amendment specifying that the DSBG fishery's geographic range be initially limited to federal waters off California.

CDFW has several concerns regarding any DSBG fishery within State waters, and notes that the appropriate venue for such a decision is the State Legislature or the California Fish and Game Commission. DSBG is not a legal gear type under state law, and allowing it would require state regulatory action. Authorizing the gear in state waters would also require a number of other independent actions by the state of California.

Analysis pursuant to the California Environmental Quality Act (CEQA) would require a significant evaluation of the potential environmental impacts of a new fishery, a determination of potential conflicts with existing fisheries, and other assessment of impacts to the environment. CDFW has no plans to undertake a discussion with the State Legislature or Commission, nor conduct such an analysis under CEQA to authorize DSBG in state waters at this time.

The California gillnet fisheries, while generally prohibited within 3 nautical miles of shore, are permitted to operate in waters deeper than 70 fathoms or greater than 1 mile from shore (whichever is nearer to shore) around the Channel Islands (California Fish and Game Code §8610.2). In this area, the fisheries primarily targets White Seabass, California Halibut and Pacific Angel Shark. Establishing a new fishery in this same area could have negative impacts on this and other existing fisheries.

Given this, CDFW recommends that the preliminary range of alternatives for authorizing a Federal DSBG fishery off California be specifically limited to Federal waters, consistent with the March 2016 motion approved by the Council.

State Waters Definition

State waters are generally defined by the Submerged Lands Act (SLA, United States Code 43 §§1301-1315) as “a line three geographical miles distant from [a coastal state’s] coast line or, in the case of the Great Lakes, to the international boundary.” A geographical mile (hereafter referred to as mile) is, for all practical purposes, the same as a nautical mile, measured as 1 minute of arc along the equator or approximately 6,076 feet. SLA grants states the rights to submerged lands under these waters and natural resources within them. While the defined boundary is 3 miles offshore, SLA includes provisions for states to extend their boundaries further from the coastline.

California has extended its boundary in a variety of locations beyond 3 miles from shore (e.g., across the mouth of Monterey Bay and several locations around offshore rocks in far northern California). It is important to note that, because the Channel Islands are part of the State, the State Waters boundary also extends 3 miles offshore each of the islands. These boundaries are incorporated into navigational charts and on chart plotters now in common use.

The California State Waters boundary has been challenged on multiple occasions in Federal courts. On 15 December, 2014, a final decree was made by the United States Supreme Court, defining the boundary with specific waypoints and directions (Figure 1).

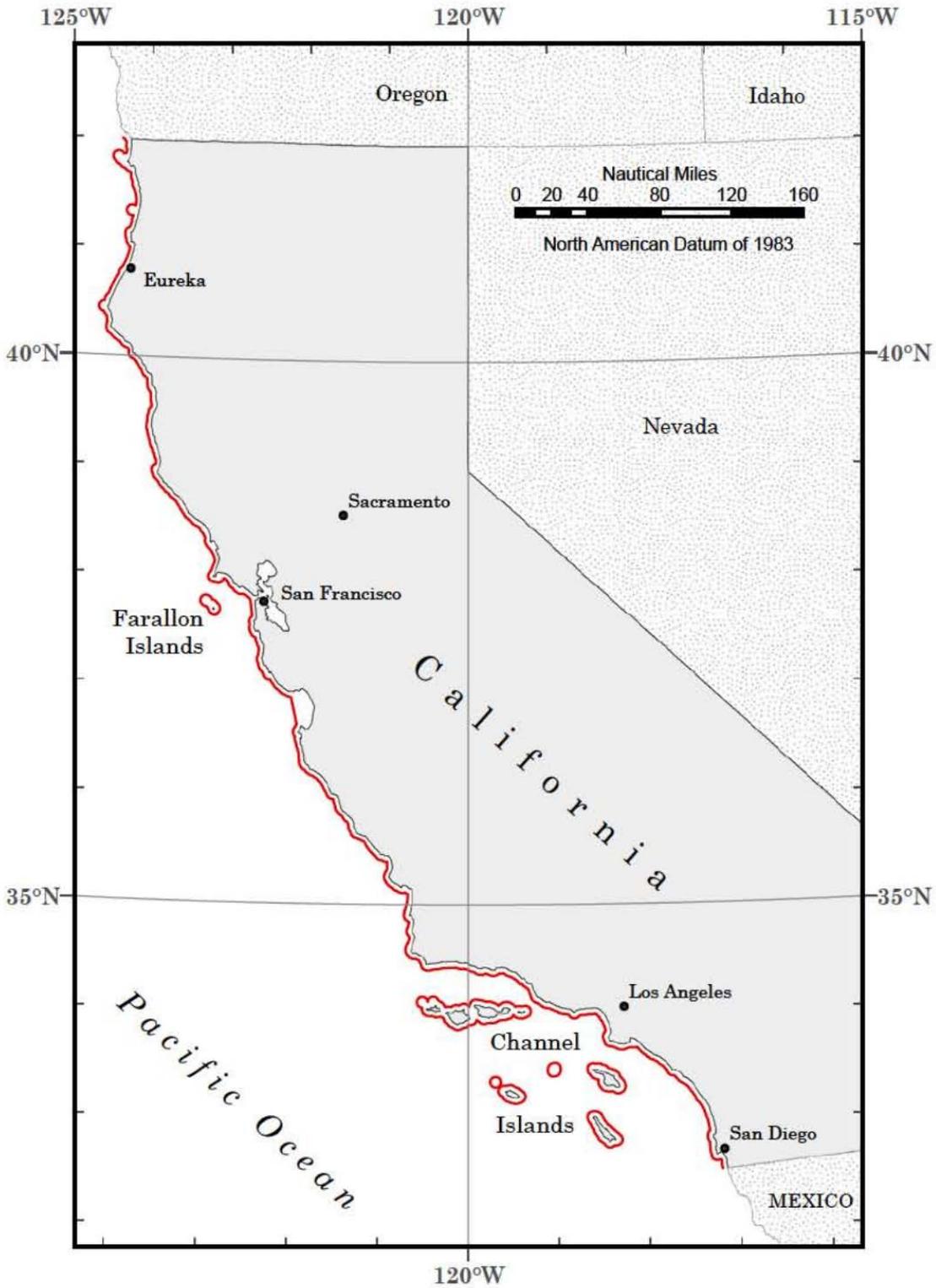


Figure 1. California State Waters boundary.