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November 28, 2001

Mr. Robert C. Hight, Director
California Department of Fish and Game
1416 Ninth Street 12th Floor
Sacramento, California 95814

Dear Director Hight:

I represent the Pacific Grove Tidepool Coalition. As you are the Chief Officer of the California Fish and Game (DFG), I am writing to you for a definitive answer as to how your department will handle legal enforcement of Fish and Game 1002(h) in the Pacific Grove Marine Gardens Fish Refuge.

As you are aware, Pacific Grove City Clerk, Peter Woodruff, transmitted an official "objection to the taking" by a letter dated June 8, 2000. The filing of this "objection" was the result of the efforts of a successful People's Initiative to permanently protect and preserve marine life within the Pacific Grove Marine Gardens Fish Refuge (DFG 10660). When the City Council passed the Initiative without change, it became City Ordinance 00-12, which cannot be changed without a vote of the electorate. It is my belief that the filing of the "objection" then makes the provisions of Section 1002 (h) effective and binding upon the Department. In the Objection letter to your agency, the City Clerk also wrote "The City expects that action will be taken immediately with respect to both outstanding Section 1002 permits and all such permits issued in the future. As soon as possible, please advise the City of Pacific Grove of all actions taken to respond to the filing of the objection."

Your letter in response to the "objection" dated March 23, 2001 to Pacific City Manager, Ross Hubbard, determining Section 1002 to be inapplicable" remains unclear and subject to legal interpretation. It did not address the issue of legal enforcement, which remains the question to be defined by your Department. Failure to respond with a written substantive and concrete policy has placed the Pacific Grove Police Department in somewhat of a quandary when a permit holder is observed collecting in the Refuge which has been the case on a number of occasions since June 8, 2000.

Captain Carl Miller of the Pacific Grove Police Department is now in charge of the city's coastal protection program. Recently he had a telephone conversation with DFG legal counsel, Joseph Milton. I understand the City intends to enforce City Ordinance 00-12 as well as Municipal Code, Chapter 14.04 Marine Refuges.

From an historical perspective, Pacific Grove has demonstrated a keen appreciation of its irreplaceable and preeminent intertidal marine resources dating as far back as 1931 when the State of California granted to the city of Pacific Grove title to the water front of said city together with certain submerged lands in the Bay of Monterey contiguous thereto (approved by the Governor June 9, 1931 Chapt. 690, amended May 27, 1935 Chapt 231).

There have been two subsequent Senate Bills sponsored by the City of Pacific Grove and its residents in their efforts to preserve and protect the city's marine resources. Specifically, Senate Bill No.1006 sponsored by the City was introduced by Senator Fred Farr in 1963 to establish the Pacific Grove Fish Refuge under Section 10660 of the Fish and Game Code. Incidentally, this is the only Fish Refuge in the State of California. In support of S.B.1006, Lowell W. Morse, Pacific Grove City Manager, sent a telegram to Governor Edwin G. Brown urging passage of the bill "which was important to the City and State for beautification and conservation of our natural resources."

Again, in 1984 at the request of the City of Pacific Grove, Senator Henry J. Mello introduced Senate Bill 1812 expanding the boundaries of the Pacific Grove Marine Gardens Fish Refuge. In his letter to Governor George Deukmejian, Senator Mello noted "The city is concerned that their tidepool resources are being depleted by visitors removing the tidepool life. My bill would change the Refuge boundaries to match the city limits boundary, and restrict take to fishing only. SB 1812 never received a "no" vote in either the Senate or Assembly." In the Senate Democratic Caucus summary, there was no opposition to the Bill and the most telling argument in support reads: **Proponents (City of Pacific Grove and United States Coast Guard) state that this bill will protect the tidepool animals that are being systematically stripped from the area.**"

Unfortunately, these previous legislative acts did not fully nor permanently protect the city's incomparable tidelands. Thus in this new millennium the people have again acted in good faith as responsible stewards of their natural resources, a worthy goal and totally compatible with the Department's mission statement, "**Conserving California's Wildlife Since 1876**" If one reads the Initiative carefully, there was never an intent to negate or supplant the Department's regulatory or management responsibilities.

It is a fact that Assemblyman Fred Keeley, Speaker pro Tem, James Willoughby, Chairman of the Coalition and the Pacific Grove Police Department have made written inquiries to your legal department for a definitive position on the your agency's law enforcement policy in this Refuge. With all due respect, it is taking an inordinate amount of time to answer these inquiries.

On behalf of the Tidepool Coalition and all of the environmental conservationists who supported the Initiative, I am requesting a timely reply to this inquiry. Thank you very much.

Yours very truly,


Susan M. Goldbeck

cc: Fred Keeley, Assemblyman 27th District
Fish and Game Commission
City of Pacific Grove
Joseph Milton, DFG Counsel
Chief Carl Miller, P.G. Police Department
James Willoughby, Tidepool Coalition Chair
MBNMS SAC members