State of California
Department of Fish and Game

Memorandum

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To: Marine Life Protection Act
Blue Ribbon Task Force

From: Donald Koch
Director
Department of Fish and Game

Subject: Policy Guidance for Consideration of Fisheries Management in Implementation of the Marine Life Protection Act (MLPA)

Attached is a guidance document on existing fisheries management in relation to the development of alternative marine protected area (MPA) proposals for the MLPA Initiative. This document responds to a request from the MLPA Blue Ribbon Task Force and incorporates policy guidance previously provided in the MLPA Initiative process. This is a living document and may be updated with future guidance.

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Attachment(s)

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California Department of Fish and Game
Policy Guidance for Consideration of Fisheries Management in Implementation of the Marine Life Protection Act

May 28, 2009

This document provides guidance on existing fisheries management in relation to the development of alternative marine protected area (MPA) proposals for the Marine Life Protection Act (MLPA) Initiative. This memorandum responds to an information request from the MLPA Blue Ribbon Task Force and incorporates policy guidance previously provided in the MLPA Initiative process. This is a living document that may be updated with future guidance.

I. Background on Fisheries Management in Relation to the MLPA

Many have argued that MPAs are unnecessary because existing fishery conservation and management are capable of performing the same function, with less impact to commercial and recreational fishing interests. Others have asked why MPAs were necessary when particular fish stocks were either healthy, or rebuilding on their own.

The MLPA expressly states that MPAs and fisheries management are complementary [Fish and Game Code (FGC) subsection 2851(d)]. Similarly, the Marine Life Management Act (MLMA) [MLMA, Statutes 1999 Chapter 483] declares that "conservation and management programs prevent overfishing, rebuild depressed stocks, ensure conservation, facilitate long term protection and, where feasible, restore marine fishery habitats" [FGC, subsection 7055(b); see also Section 7056(b), (c)].

Although MPAs and fisheries management are complementary, they are not equivalent. The purpose of habitat protection in the MLMA is to advance the "primary fishery management goal" of sustainability (FGC, Section 7056). Moreover, that which is being managed is a specific fishery - which may be based on geographical, scientific, technical, recreational and economic characteristics (FGC, Section 94) - and so may only provide limited protection of a particular habitat. Conversely, although the MLPA considers managing fishery habitat [FGC, subsections 2851(c), (d)], it also encompasses broader, ecosystem-based objectives that are not limited to *only* managing fisheries. If only existing fishery conservation and management measures were considered in designing the MLPA networks, then arguably only some of the ecosystem goals and objectives might be met. Other goals and elements would be undervalued (e.g. improving "recreational, educational and study opportunities provided by marine ecosystems" and protecting "marine natural heritage...for their intrinsic value" [FGC, subsection 2853(b)].

The MLPA also states that one of the purposes of the marine reserve component is to generate baseline data that allows the quantification of the efficacy of fishery management practices outside the reserve [FGC, subsections 2851(e), (f)]. This would be difficult to implement if the MPA design itself must consider those very same existing conservation and management measures. In addition, because the MLPA was enacted after the MLMA, this strongly suggests the Legislature recognized that fishery

conservation and management measures alone were inadequate to the address broad ecosystem protection.

Finally, had the Legislature intended existing fishery conservation and management measures to be considered in designing MPAs, then it plainly would have said so, as it did in the MLMA (FGC, Section 7083). As it is, the fact that the MLPA allows the Fish and Game Commission (Commission) to "regulate commercial and recreational fishing and any other taking of marine species in MPAs" [FGC, subsection 2860(a)] strongly suggests that fishery measures are not intended to be considered in the design of MPAs but may in fact be subject to limitations beyond those already existing under fishery management regimes. In particular, the Nearshore Fisheries Management Plan (NFMP) developed pursuant to MLMA is specifically designed to adapt management in the presence of MPAs. Similarly, other fishery management changes, if necessary, would occur after the implementation of MPAs through the MLMA process. Thus, while the design of fishery management measures should properly consider the existence of MPAs, the reverse is not true. The conclusion that existing fishery management measures are not properly considered in designing MPAs is further bolstered by three "real world" considerations. First, the direction from the Legislature is to use "the best readily available information" and studying the interaction of existing fishery management practices could retard, not facilitate, the process. Second, the subject of interaction with existing fishery management processes reflects exactly the kind of "scientific uncertainty" acknowledged by the Legislature when it authorized the application of adaptive management to the MLPA process. Third, fisheries management processes suffer from inherent scientific and management uncertainty and can result in management failure, as evidenced by some overfished species in the west coast groundfish fishery. Fishery conservation and management measures alone do not necessarily guarantee either fishery sustainability or ecosystem health. The MLPA is designed to seek these key features, in addition to existing fishery management.

II. Overview of Fisheries Management in California

Traditionally, California fisheries management focused on single species or groups of species. However, since the passage of the MLMA in 1998, the focus has begun to shift in California to an ecosystem-based management approach. Commercial and recreational fisheries are highly regulated in California's marine and estuarine waters, as well as the adjacent federal waters, with a suite of fishery management tools. These tools are regularly revised to reflect the changing status of fished populations.

Management tools used to regulate California's fisheries include but are not limited to: gear and catch limits such as total allowable catch (TAC), seasonal and depth restrictions, effort restrictions (e.g., limited entry fishery programs), and spatial/area closures. Year-round large scale spatial closures are most similar to the type and degree of ecosystem protection provided by MPAs for species and their habitats, except that their boundaries can be adjusted in-season or inter-annually, and may not cover representative depths for all fished species in state waters. Seasonal closures tend to reduce overall fishing effort and increase some protection to individual species,

but they do not generally protect whole ecosystems or provide protection for natural size and age structure found in unfished populations. Also, seasonal closures do not provide year-round habitat protection and cannot be considered to provide ecosystem protection. Gear and catch limits, while protecting some species populations, also do not provide ecosystem protection.

Jurisdictional Authority

In the United States, individual states are responsible for managing fisheries within state waters, generally defined as within three nautical miles from mainland shore and islands. In addition, state laws must be consistent with federal laws. Individual states may also manage fisheries beyond state waters if there is no federal management plan in place, and may regulate vessels landing fish in their ports.

The California Legislature traditionally managed California's commercial fisheries, while the Commission managed California's recreational fisheries. The MLMA delegated increased management authority of commercial fisheries to the Commission, though many commercial fisheries are still managed by the Legislature.

The Pacific Fishery Management Council (PFMC) is one of eight regional advisory councils to the National Oceanic and Atmospheric Administration Fisheries Service (NOAA Fisheries) and is responsible for coordinating federal fisheries management in California, Oregon, Washington, and Idaho. The PFMC advises NOAA Fisheries on fisheries for which a federal management plan has been adopted. Current federal management plans include: groundfish, highly migratory species, salmon, and coastal pelagic species. Although the PFMC is an advisory body, its recommendations are typically adopted by NOAA Fisheries.

III. Fisheries Management Tools and the MPA Design Process

Total Allowable Catch

As previously discussed, MPAs and fisheries management tools are complementary components of a comprehensive effort to protect and sustain California's marine life, habitats and ecosystems. However, anticipation of modifications to existing fisheries management tools such as TAC for a species or a group of species should not influence the design of MPAs under the MLPA.

The California Nearshore Fishery Management Plan[1] (NFMP) notes that TAC is currently based on estimates of biomass, not available fishing area. The TAC is intended to provide for a sustainable fishery, with increasing precaution for stocks that are poorly understood due to data limitations. Comprehensive fishery management under the NFMP is designed to be accomplished through a combination of limits on total fishing mortality, regional management, restricted access, and a network of MPAs. For stocks that have not been assessed, a network of MPAs could serve a precautionary role in management. For assessed stocks, TAC adjustments in response

[1] Department of Fish and Game. 2002. Nearshore Fishery Management Plan. http://www.dfg.ca.gov/marine/nfmp/index.asp.

to MPAs were not deemed appropriate in developing the harvest formula, because MPAs are not expected to encompass large portions of a stock's habitat over its range.

Similarly, TAC levels in the California Abalone Recovery and Management Plan[2] (ARMP) can be adjusted according to recruitment and density estimates of abalone from key locations. Presumably, MPAs would lead to increased abalone densities within MPAs and potentially increased recruitment to areas adjacent to them. Ongoing monitoring of density and recruitment would determine if management changes are necessary for the remaining fished areas.

TAC adjustments in response to implementation of new or revised MPAs, if any, will be discussed in the ongoing adaptive fishery management process once final regional MPA decisions are made. At this time, harvest control rules that explicitly respond to changes in available fishing area have not yet been developed or approved for establishing TACs. Consequently, it is premature to speculate what TAC changes might occur, if any, and it is likely that any proposed changes would first need to be fully vetted under the review process of existing fishery management plans.

Existing Spatial Fishery Closures

The following is a summary of existing major spatial commercial and recreational fishery closures effective in 2009 that provide some form of protection to marine species and habitats in California's jurisdictional waters or adjacent federal waters. It is appropriate and necessary to consider them when developing proposals for MPAs.

Federal Commercial Rockfish and Cowcod Conservation Areas

Several groundfish conservation areas (GCAs) occur in waters adjacent to California. Coastwide depth-based rockfish conservation areas (RCAs) were established in January 2003, two southern California Cowcod Conservation Areas (CCAs) were established in 2001. These groundfish conservation areas were established to protect and assist in the rebuilding of stocks of lingcod and seven species of rockfishes which had been declared overfished by NOAA Fisheries and managed under rebuilding plans[3]. These area closures, which occur largely in federal waters, were adopted by NOAA Fisheries following recommendations of the PFMC. In addition to protecting overfished stocks, these conservation areas incidentally protect other species of groundfish that co-occur within these relatively large closures. The commercial RCAs establish separate depth-based restrictions for four federal gear type designations: federal limited entry trawl, non-groundfish trawl, federal limited entry fixed gear, and open access non-trawl. The first two will be referred to as "trawl" and the latter two will be called "non-trawl".

Commercial: The following is a general summary of the federal commercial RCA and CCA rules in 2009 along California, divided by management areas:

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[2] Department of Fish and Game. 2005. Abalone Recovery and Management Plan. http://www.dfg.ca.gov/marine/armp/index.asp.
[3] Lingcod has since been declared rebuilt by NOAA Fisheries.

Northern California (California-Oregon border to Point Conception at 34° 27' N. latitude): the use of bottom trawl gear is prohibited year-round from 100 fathoms to 150 fathoms from Point Conception to 40°10' N. latitude (near Cape Mendocino); and from 75 fathoms to 200 fathoms from 40° 10' N. latitude to the California-Oregon border in the commercial trawl RCAs. Exceptions: 1) the pink shrimp non-groundfish trawl fishery is exempted from the RCA restrictions in federal waters; and 2) mid-water trawl gear is permitted only for vessels participating in the primary whiting season. The commercial non-trawl RCA also prohibits retention of some federally-managed shelf and nearshore groundfish species using non-trawl fishing gear from 30 fathoms to 150 fathoms year-round from Point Conception to 40°10' N. latitude; and 20 fathoms to 100 fathoms from 40° 10' N. latitude to the California-Oregon border. Exceptions: 1) south of 40° 10' N. latitude, certain flatfish species in the non-trawl RCA may be retained; and 2) lingcod retention is also prohibited in all bottom depths from December through April in all depths within the entire northern California biogeographic region.

Southern California (34° 27' N. latitude at Point Conception to U.S.-Mexico border): the use of bottom trawl gear is prohibited year-round from 100 fathoms to 150 fathoms along the mainland coast and from shore to 150 fathoms around the islands in the commercial trawl RCAs from Point Conception (at 34° 27' N. latitude) to the U.S.-Mexico border. However, the pink shrimp non-groundfish trawl fishery is exempted from the RCA restrictions in federal waters. The commercial non-trawl RCA also prohibits retention of some federally-managed shelf and nearshore groundfish species using non-trawl fishing gear from 60 fathoms to 150 fathoms year-round. Exceptions: 1) certain flatfish species may be retained; and 2) fishing for and retention of some federally-managed shelf and nearshore groundfish is prohibited from March through April in all depths, and lingcod retention is also prohibited from December through April in all depths. The CCAs prohibit the use of bottom trawl gear, and prohibit the retention of federally-managed groundfish species using non-trawl gears year-round, except that non-trawl gears can fish for some groundfish species over bottom depths less than 20 fathoms during the open season.

Recreational: The following is a general summary of the federal recreational RCA and CCA rules in 2009 along California, divided by management areas:

Northern California (California-Oregon border to Point Conception at 34° 27' N. latitude): the area north of Point Conception is divided into five unique recreational groundfish management areas, and the RCA restrictions can vary from one region to the next.

1. Northern Management Area (California-Oregon border to 40° 10' N. latitude): retention of federally-managed groundfish year round is prohibited seaward of 20 fathoms. Exceptions for this area include: 1) groundfish and lingcod retention is prohibited from January through May 14, and September 16 to December 31 in all depths; 3) divers and shore-base anglers are exempted from closed periods; and 4) certain flatfish species may be retained in the RCA or during closed periods using specified gear.

2. North Central North of Point Arena Management Area (38° 57.5' N. latitude near Point Arena to 40° 10' N. latitude near Cape Mendocino): retention of federally-managed groundfish year round is prohibited seaward of 20 fathoms. Exceptions for this area include: 1) groundfish and lingcod retention is prohibited from January through May 14, and August 16 to December in all depths; 2) divers and shore-base anglers are exempted from closed periods; and 3) certain flatfish species may be retained in the RCA or during closed periods using specified gear.

3. North Central South of Point Arena Management Area (38° 57.5' N. latitude near Point Arena to 37° 11' N. latitude near Pigeon Point): retention of federally-managed groundfish year round is prohibited seaward of 30 fathoms. Exceptions for this area include: 1) groundfish and lingcod retention is prohibited from January 1 through May 14, and November 1 through December 31 in all depths; 2) divers and shore-base anglers are exempted from closed periods; and 3) certain flatfish species may be retained in the RCA or during closed periods using specified gear.

4. Monterey South Central Management Area (37° 11' N. latitude near Pigeon Point to 36° 00' N. latitude near Lopez Point): RCA restrictions and groundfish season are the same as the Morro Bay South Central Management Area.

5. Morro Bay South Central Management Area (36° 00' N. latitude near Lopez Point to 34° 27' N. latitude at Point Conception): fishing for and retention of some federally-managed shelf and nearshore groundfish is prohibited year-round seaward of 40 fathoms. Exceptions include: 1) groundfish and lingcod retention is prohibited from January 1 through April 30, and October 15 to December 31 in all depths; 2) divers and shore-based anglers are exempted during closed periods; and 3) retention of certain flatfish species is permitted in the RCA and during closed periods using specified gear.

Southern California (South of 34° 27' N. latitude at Point Conception to U.S.-Mexico border): the recreational RCA generally prohibits retention of federally-managed groundfish year-round seaward of 60 fathoms with the following exceptions: 1) fishing for and retention of California scorpionfish (sculpin) is allowed in waters less than 40 fathoms during the January and February federal groundfish closure period; 2) fishing for and retention of some federally-managed shelf and nearshore groundfish is prohibited from January to February in all depths; 3) lingcod retention is also prohibited December through March in all depths; 4) divers and shore-based anglers are exempted during closed periods; and 5) certain flatfish species may be retained in the RCA or during closed periods using specified gear, and leopard sharks may be retained year-round in Newport Bay, Alamitos Bay, Mission Bay and San Diego Bay. The CCAs prohibit retention of federally-managed groundfish seaward of the 20 fathom depth contour. Fishing in waters less than the 20 fathom depth contour within the CCA is also subject to the January through February closure period.

Overall Differences between Rockfish,and Cowcod Conservation Areas and Marine Protected Areas:

1. RCAs, and CCAs, are established to rebuild specific fished populations within the primary depth ranges of those species, while MPAs are established to achieve various ecosystem goals of the MLPA in a broad range of depths and habitats.

2. The boundaries of the RCAs, and CCAs are subject to change within and among years based upon stock assessments and in-season catch levels of overfished federally-managed groundfish species. Boundaries can be eliminated or modified as rockfish populations rebuild (or decline). In contrast, MPA boundaries are maintained over long periods of time (currently on a five-year review schedule) and thus provide some degree of permanence to achieve broader ecosystem goals.

3. The establishment, modification and removal of RCAs, and CCAs within state and federal waters is managed through the PFMC and NOAA Fisheries (with concurrence from the Commission regarding recreational RCAs), while the Commission controls the establishment, modification and removal of MPAs within state waters.

Federal Essential Fish Habitat No Trawl Zones and No Bottom Contact Zones

Off the coast of California, federal no trawl zones and no bottom contact zones have been established to protect Groundfish Essential Fish Habitat (EFH) in spatially discrete areas largely outside of state waters. The EFH no trawl zones are largely in areas in which trawling did not occur historically and were implemented to prevent the possible expansion of the current trawling footprint.

State Bottom Trawl Prohibitions

Bottom trawling is prohibited in state waters, except for certain designated waters within the California Halibut Trawl Grounds. These trawl grounds were established in 1971 and encompass three specified areas within state waters not less than one nautical mile from mainland shore between Point Arguello (Santa Barbara County) and Point Mugu (Ventura County).

State Gill Net Prohibitions

Gill netting is generally prohibited in state waters, except for certain designated waters around the Channel Islands (San Miguel, Santa Rosa, Santa Cruz, Anacapa, San Nicolas, Santa Barbara, Santa Catalina, and San Clemente islands). Within these designated waters, fishing is managed with spatial and/or temporal closures and this gear is prohibited in waters less than 70 fathoms in depth or within one mile of the islands, whichever is less. In federal waters adjacent to California, the gill net fishery is managed with a multitude of tools including seasons and large spatial closures.

Recommended Approach to Marine Protected Area Development

The MLPA does not provide for exemptions to establishing MPAs based on the status of local fisheries, nor does it provide for removal of MPAs should certain depleted stocks recover. While MPAs may be established to help rebuild a stock of economic value, the other goals of the MLPA must still be achieved. When developing MPA proposals within each MLPA study region it is appropriate to consider incorporating portions of already-closed areas such as the RCAs, provided that the area can also contribute to achieving the goals of the MLPA. This is consistent with the MLPA, which instructs consideration of adjacent management.

It is clear that not all areas affected by existing fishery regulations will be incorporated by the proposed MPAs. All state waters are affected by multiple fishery regulations, whether spatial, temporal, or other. Some of the more significant regulations, such as the RCAs, CCAs, and the federally-adopted EFH areas, were developed after the enactment of the MLPA. Thus, the regulatory environment for fisheries is much different now than when the authors of the MLPA legislation were developing their concepts. However as explained above, the MLPA is not directed primarily at fishery management in its goals and objectives.

Alternative MPA proposals developed by a regional stakeholder group may address existing major fishery management areas to different degrees. However, there is a common thread: since fishing for most federally-managed groundfish is already prohibited within the RCAs and CCAs, the implementation of an MPA which incorporates those areas causes no additional near term negative socioeconomic impact. However, it is important to recognize that, should any of the fishery management-based closures (e.g., RCAs) change, an MPA boundary would persist.