

**California Marine Life Protection Act Initiative
Responses to Questions Raised at SCRSG January 29, February 10 and
March 3 Work Sessions, and March 4, 2009 SCRSG Meeting
Revised April 27, 2009**

This document provides responses to questions that were captured by staff in the MLPA South Coast Regional Stakeholder Group (SCRSG) work sessions on January 29, February 10 and March 3, 2009 and at the March 4, 2009 SCRSG meeting. Responses are provided by the MLPA Initiative (I-Team) and the California Department of Fish and Game. Some responses are preliminary in nature; as additional information becomes available, further responses will be transmitted to the SCRSG.

Please note: Questions raised during the January 13-14, 2009 meeting of the MLPA South Coast Regional Stakeholder Group (SCRSG) were all referred to the MLPA Master Plan Science Advisory Team (SAT) for response. These questions were answered in a document, *Science Questions Received at the January 13-14 2009 Meeting of the MLPA South Coast Regional Stakeholder Group (April 6, 2009)* that was distributed to the SCRSG for its April 28, 2009 meeting; a draft version of that document was distributed to the SCRSG at its March 4, 2009 meeting.

I. SCRSG Work Session Questions raised on January 29, 2009

- 1. *What type of designation would a marine protected area (MPA) be if it prohibited all take except take by Native Americans? What language would DFG recommend using?***

DFG Response: This question has been referred to and is being discussed between legal counsels of the management agencies.

- 2. *How does DFG's cultural uses permit fit into this process?***

DFG Response: DFG does not issue such permits. Also see question #1.

- 3. *Are there any legal restrictions against removing or altering current "no go" regulations for state marine reserves put in place under the Marine Resources Protection Act (example: Big Sycamore Canyon SMR)?***

DFG Response: The Marine Resources Protection Act (MRPA) was added to the California Constitution (Article 10B) in 1990. A response to this question is being explored with legal counsel.

- 4. *Does an MPA named after a Chumash cultural site meet DFG feasibility criteria?***

DFG Response: DFG's feasibility guidelines state that MPA's should not be named after individuals or groups, and that they should be named based on adjacent geography.; however, the California Fish and Game Commission has, in certain instances, adopted an MPA with a name of local or historic relevance. If the SCRSG

would like to name an MPA to honor the history of the Chumash – or other tribes – in the traditional homeland of its people, it is certainly valid for the commission to consider.

5. Will a state marine reserve (SMR) designation for an estuary prohibit dredging?

I-Team Response: Currently it is unclear whether certain activities, such as dredging, can be allowed within a state marine reserve and whether the California Fish and Game Commission has the authority to regulate such activities within MPAs. This question has been referred to legal counsel.

6. Can we expand an existing MPA and not go out [offshore] to three miles?

DFG Response: Yes, MPAs can be designed with seaward boundaries that do not extend to the state waters boundary (generally three nautical miles offshore); however, this will create "hanging corners," so special attention should be paid to DFG's feasibility criteria regarding coordinates for hanging corners and designing boundaries, to ensure the design is simple, enforceable and easily understandable by the public. Note that the guidance in the Master Plan for MPAs to extend MPAs to offshore waters serves the purpose of ensuring protections for organisms that exhibit migratory shifts from shallow habitats to deeper habitats during their life time. An MPA that does not extend to deeper waters may not accommodate ontogenetic movements or unique life history requirements.

7. Is there a specific distance that SMRs need to be placed away from public piers?

I-Team Response: This question has been forwarded to DFG and the California Department of Parks and Recreation for a response from enforcement, legal and policy perspectives.

8. Can motor boating or other non-take activities be restricted?

I-Team Response: Yes, the California Fish and Game Commission and California State Park and Recreation Commission can restrict certain activities if necessary to achieve the resource protection goal(s) for that particular MPA; such restrictions may present significant enforcement effort.

9. How will management be implemented where there is overlapping jurisdiction among multiple agencies?

I-Team Response: Management of MPAs will be determined by the agencies of jurisdiction. The SCRSG may make recommendations for management, especially where there may be opportunities for collaboration among multiple organizations.

10. Does adaptive management mean that MPA designations can/will be changed once the area “recovers” or “comes back”?

I-Team Response: Yes, it is possible that an MPA designation will change over time, but not necessarily.

As defined in section 2852 of the California Fish and Game Code, "adaptive management" with regard to marine protected areas, means a management policy that seeks to improve management of biological resources, particularly in areas of scientific uncertainty, by viewing program actions as tools for learning. Actions shall be designed so that, even if they fail, they will provide useful information for future actions, and monitoring and evaluation shall be emphasized so that the interaction of different elements within marine systems may be better understood.

If an MPA is achieving its objectives, that alone does not automatically dictate that the MPA will be changed; such decisions are based on many factors, including regional and statewide goals and objectives and how that individual MPA fits into the overall network. Adaptive management decisions about individual MPAs and study regions will be made by the California Fish and Game Commission at a later date (currently defined as approximately once every five years in the *California Marine Life Protection Act Master Plan for Marine Protected Areas*).

11. What would be the resulting SAT evaluation for a proposed MPA array with no MPAs around San Nicolas or San Clemente islands?

I-Team Response: This question would need to be applied to a particular MPA array before the SAT could provide a response.

The SAT developed an analysis of the ecology of military use areas, including state waters around San Nicolas and San Clemente islands, in response to a request from the MLPA Blue Ribbon Task Force (BRTF) for such input. The SAT analysis provides an overview of habitats in state waters around San Nicolas and San Clemente Islands, including sand and gravel beaches, rocky intertidal and cliff, kelp forest (linear and aerial measures), and area within depth zones at 0-30 meters (m), 30-100m, 100-200m and 200-1000m depths. Qualitative descriptions of ecological characteristics of state waters around San Nicolas and San Clemente islands are also provided and linkages between these and other areas in the MLPA South Coast Study Region are described. From this evaluation, the SAT determined that these islands are important to the ecology and interconnected with other areas of the study region. Additionally the SAT evaluated all draft MPA arrays and draft external MPA proposals for Round 1, some of which include the pending military closures; the SAT will extract information about the pending military closures from these evaluations. Evaluations focused on pending military closures will be discussed during the May 5, 2009 SAT meeting.

12. How can connectivity with Baja, Mexico be considered?

I-Team Response Although there is connectivity with northern Baja, its consideration is outside of the scope of the MLPA.

Nevertheless, efforts to track the progress of and coordinate MPA development along the west coast of North America is part of the National MPA Center's efforts (see http://mpa.gov/helpful_resources/international.html for more information from NOAA's National MPA Center). The North American MPA Network (NAMPAN) is a tri-national effort (Mexico, U.S. and Canada) working with the Commission for Environmental Cooperation to establish an effective system of MPAs along the west coast of North America. A useful reference to this effort is *Marine Priority Conservation Areas from Baja to the Bering Sea*.

Reference: Morgan, L., Maxwell, S., Tsao, F., Wilkinson, T. A. C., and P. Etnoyer. 2005. *Marine Priority Conservation Areas from Baja to the Bering Sea*. Commission for Environmental Cooperation of North America and the Marine Conservation Biology Institute. Montreal. 124pp.

13. How are man-made structures, such as sewer pipes, and hardened shores, to be considered in MPA placement?

I-Team Response: In general, with the exception of considering potential water quality impacts, such structures should not affect decisions about where to place MPAs, but may affect stakeholder decisions about what MPA designation to use (depending on the extent of potential impacts and, hence, the ability of that MPA to meet the goals of the Marine Life Protection Act). The SAT is developing a background document with information about how to potentially consider man-made structures.

14. Where are the California Halibut Trawl Grounds?

DFG Response: The boundaries of the California Halibut Trawl Grounds are defined in Title 14, Section 124 as:

(1) Open Areas. Because the commission has made the requisite findings for three of the aforementioned four sub-areas within the California Halibut Trawl Grounds, the commission authorizes the following waters to remain open to trawling commencing June 16, 2008, and thereafter when the season is open, notwithstanding subdivision 8495(c) of the Fish and Game Code:

(A) Rocky Point (near Point Arguello) to Point Conception: From a line extending from Rocky Point true south (180°) and out three miles, the ocean waters extending south and east lying between one and three nautical miles from the mainland shore to a line extending true west (270°) from a point on land approximately one-half mile north of Point Conception at latitude 34° 27.5'.

(B) Santa Barbara Point to Pitas Point: The ocean waters lying between one and two nautical miles from the mainland shore lying east of a line extending true south (180°) from Santa Barbara Point and west of a line extending true south (180°) from Pitas Point.

(C) Hueneme Canyon to Laguna Point: From the eastern border of the IMO Vessel Traffic Safety Zone on NOAA/NOS Chart 18725 in Hueneme Canyon, the ocean waters extending south and east lying between one and three nautical miles from the mainland shore to a line extending true south (180°) from Laguna Point.

Note that the California Halibut Trawl Grounds are mapped in the regional profile for the south coast study region and are available as a data layer within MarineMap.

15. What is the level of protection (LOP) for: (1) commercial purse seine targeting Pacific bonito, (2) recreational spearfishing targeting yellowtail/white seabass/Pacific bonito/California halibut, (3) catch and release fishing using barbless hooks/artificial baits to target California halibut/spotted bass/bonfish/corvina/croakers/sharks/other San Diego Bay species, (4) commercial spot prawn trap, (5) commercial top loader trap for rock crab, (6) commercial lobster trap, (7) pelagic lure trolling, (8) catch and release generally, (9) purple sea urchin, (10) "long line" bivalve aquaculture, and (9) commercial wetfish? [Note that this questions combines LOP queries from all three work sessions.]

Status of Response: This question has been forwarded to the SAT.

16. What is the LOP for allowed uses in the existing Irvine Coast State Marine Conservation Area?

I-Team Response: Moderate-Low (see Description of Marine Protected Areas in Proposal 0 (Existing MPAs), revised March 18, 2009).

II. SCRSG Work Session Questions raised on February 10, 2009

17. Can size limits be changed inside of a MPA?

DFG Response: See February 10, 2009 DFG enforcement memo regarding size and bag limits inside MPAs (http://www.dfg.ca.gov/mlpa/pdfs/agenda_030309e2.pdf).

18. Can an MPA be created around Ship Rock (Catalina), avoiding Isthmus Cove, still fall within feasibility guidelines?

DFG Response: It is possible to exclude a cove from a surrounding MPA (see Harris Point SMR in the Northern Channel Islands), provided that clear boundaries are established to divide the cove from the MPA (see DFG feasibility guidelines).

19. Does Ship Rock fall within U.S. Bureau of Land Management (BLM) management jurisdiction? If so, what are the implications for MPA designation?

I-Team Response: The California Coastal National Monument is managed from above the mean high tide, while MLPA jurisdiction is from the mean high tide line seaward. Therefore, the portion of Ship Rock above the mean high tide line falls within BLM management. Establishing an MPA would be unlikely to interfere with BLM management, but the objectives of the adjacent management area should be considered to ensure they are compatible and complementary.

20. What is the guidance for creating a series of MPAs “back to back” with variable designations/allowed uses?

DFG Response: Multiple adjoining MPAs (i.e., >2) with different regulations do not meet the DFG guidelines for MPA design and multiple zoning. In general, simple designs are preferred for MPA clusters, and care should be taken to avoid creating complicated and confusing MPA designs. See DFG's feasibility document (*Feasibility Criteria and Evaluation Components for Marine Protected Area Proposals, Revised 12 November 2008*) for the DFG's guidelines for designing MPAs and avoiding multiple zoning. If a proposal does include multiple adjoining MPAs, factors that may assist with overcoming public understanding and enforcement problems (e.g., enforcement partners, signage assistance) should be identified.

21. Can we provide for catch and release fishing in an MPA?

DFG Response: See January 7, 2009 DFG enforcement memo regarding catch and release fishing at http://www.dfg.ca.gov/mlpa/pdfs/agenda_030309e1.pdf.

22. Is there a single data layer that shows substrate type by study-region, bioregion, etc.?

I-Team Response: Yes, MarineMap includes a data layer called "Predicted Substrata." These data are derivatives of a collection of the best available bathymetric mapping data that could be compiled for the area. These same data are used in the habitat reports that return substrate types. Summary statistics for each bioregion and all draft MPA arrays and proposals are available for review.

23. Can clarification be provided on the U.S. Department of Defense closed areas (are they no access or no take)?

I-Team Response: The pending military closures at San Clemente Island are proposed as no access areas, while the closure at San Nicholas Island is a no take area where access is sometimes limited during military operations.

24. What LOP designation would an MPA that allows cultural take receive?

I-Team Response: The proposed method of take and species to be taken must be specified in order for the SAT to assign an LOP.

25. Why are certain data layers within MarineMap only available to the SCRSG and not to the general public?

I-Team Response: We are working on a means within MarineMap to allow sharing of the MPA data layers with stakeholders and viewing MPA proposals as a member of the general public. Currently, there is no good way to do this in MarineMap. For now, we recommend SCRSG members either print their MPAs or export the shapes to KML and sharing these with MLPA Initiative staff or another individual. Similarly, the public will be limited to viewing Round 1 draft MPA arrays and proposals in PDF files. Within a few weeks we will have a good solution for members of the public to view draft proposals and share MPAs in MarineMap.

26. Can Title 14 regulations (size and bag limits) be modified within an SMCA to meet the goals and objectives for that MPA?

DFG Response: See DFG February 10, 2009 enforcement memo regarding size and bag limits inside MPAs (http://www.dfg.ca.gov/mlpa/pdfs/agenda_030309e2.pdf).

27. Why is Famosa Slough not included in the study region?

I-Team Response: Staff have completed a review of several inland boundaries for bays and estuaries and some revisions have been made with SAT input, including, the boundaries falling within the study region for Famosa Slough. The revised study region boundaries are now available in MarineMap.

28. What is the definition of a special closure, and how can it be used in this process?

DFG Response: A special closure is a named, discrete geographic marine or estuarine area with boating or access restrictions for specific protection purposes, and is generally much smaller than an MPA (300- or 1000-foot radius). A special closure is not an MPA or MMA designation and, as directed by the BRTF, should be used sparingly and selectively to provide complementary protections. Background and guidance regarding

special closures is provided in the DFG memo dated November 1, 2007, *Special Closures as they apply to the Marine Life Protection Act (MLPA)* (see the MLPA website at http://www.dfg.ca.gov/mlpa/pdfs/agenda_112807i.pdf)

29. What type of restrictions, if any, would be placed on a sanitation district's quarterly trawl surveys if an MPA were to be established within the district's study zone for wastewater discharge sites?

I-Team Response: This question is under review.

30. What is the appropriate avenue for making recommendations that an area be considered as a state water quality protection area?

I-Team Response: The SCRSG may make recommendations to the BRTF by including such them as an accompaniment to a draft MPA proposal. The BRTF will then consider such recommendations during its deliberations and may choose to forward the recommendations to the proper agency of jurisdiction.

31. How are we to consider the California Halibut Trawl Grounds in this process, when the California Fish and Game Commission has designated areas in state waters for this fishery?

I-Team Response: Trawl ground areas should be considered in the same manner that other fishing areas are considered. The SAT fishing evaluation includes California halibut trawl fishery impacts.

32. When the intent of an MPA is to protect estuarine habitat, is it necessary/logical to default to boundaries that extend out to the three mile state waters boundary?

DFG Response: If an MPA is desired in an enclosed estuary, MPA boundaries may extend to the mouth of the estuary, or to another type of boundary delineation (such as a landmark) that meets feasibility guidelines.

33. How will restoration activities be impacted by SMR designations (will wetland and kelp restoration efforts be permitted within SMRs)?

I-Team Response: This question is under review.

34. Is there a possibility of controlled, scientifically-triggered harvest of sea urchin in an SMR to control urchin populations and protect kelp? If this were allowed, what LOP would be assigned? If not allowed in an SMR, but in an SMCA, what LOP would be assigned?

DFG Response: This is a fisheries management issue outside the purview of the MLPA and should be directed to the California Fish and Game Commission. Take is not

allowed in an SMR so an LOP assignment cannot be made; take of sea urchin in an SMCA or SMP has been assigned an LOP of moderate-low by the SAT.

35. Can an area allowing educational tidepooling (no take) be designated an SMR?

DFG Response: Public access to SMRs, including tidepools, is generally permitted; however, “take” of any marine resource (living or dead) is prohibited unless under a valid scientific collection permit. DFG enforcement considers possession to constitute “take,” which means that any person, child, docent, etc., holding a marine organism, or stepping on an animal, would be in violation. Therefore, it is not advisable to apply an SMR designation where tidepooling is desired due to the risk of violation and difficulty with enforcement.

36. Can we [recommend] closing intertidal areas to access in an SMR designation?

DFG Response: Yes, an intertidal portion of an MPA can be closed if the resource protection goal is justified for that particular MPA. Any proposed access restrictions would need to be specified with coordinates in regulation; such restrictions may present significant enforcement effort. Scientific collection permits may still be granted, however. Also see response to SCRSG questions from January 13-14, 2009 meeting.

37. Is King Harbor (Redondo Beach) fisheries data (Ecotrust) separated out? Is this still to come?

Status of Response: This question has been forwarded to Ecotrust.

38. The Ecotrust data in Marine Map are not persistent. Additionally, composites of ports are needed for areas used by multiple port areas.

Status of Response: This question has been forwarded to Ecotrust.

39. Is there kelp leasing flexibility in the Santa Barbara area if kelp harvest is restricted in an existing lease? If an MPA is proposed in a leased area, what happens to the lease holder?

DFG Response: California Fish and Game Code Section 2857(d) states, with regard to redesigning the statewide system of MPAs, “The department and team, in developing the preferred siting alternative, shall take into account the existence and location of commercial kelp beds.” Lease agreements and terms may be subject to restrictions or limitations imposed by regulatory actions of the California Fish and Game Commission.

In the case of the currently leased kelp bed near Santa Barbara, the permit highlights that further restrictions may be applied through MLPA planning. The California Fish and Game Commission, not the California Department of Fish and Game, issues kelp bed leases; the commission has the authority to issue, renew, or deny kelp bed leases as

well as establish, modify, or eliminate marine protected areas it has designated. Accordingly, the appropriate time for the commission to consider a change in status of leases for kelp beds in areas that contain proposed MPAs would be after they receive the alternative MPA proposals and begin the formal regulatory process.

There are additional, leasable, administrative kelp beds in the MLPA South Coast Study Region.

40. How will beach grooming activities be impacted by SMR designation?

I-Team Response: This question is under review; however, the SAT has developed a document highlighting the impacts of beach manipulation activities like beach grooming which provides useful information for the SCRSG to consider when designing MPAs. See *Background Information on Beach Manipulation Activities in the MLPA South Coast Study Region*, revised March 20, 2009 and approved at the April 6, 2009 SAT meeting.

III. SCRSG Work Session Questions raised on March 3, 2009

41. It may be useful to consider another form of spatial management that combines some of the attributes of small scale fishery management and marine conservation zoning; we can call this area a territorial user privilege area (TUPA). A management program would be established for this area that restricts access to fishermen who meet some qualifications regarding historical fishing and also agree to take on some management duties. This TUPA would serve as a transition to community-based ecosystem management and allow for reduction in the transaction costs since fisherman would take on the duties of data collection, management, and enforcement. Is this feasible?

DFG Response: This proposal constitutes a form of fisheries management that falls outside of the purview of MLPA. The proposal should be directed to the California Fish and Game Commission for consideration, whether it is proposed to be applied within an MPA or elsewhere.

42. What consideration will be made for allowing/not allowing moorings (special closure) within an MPA?

I-Team Response: Response pending until clarification of question is received.

43. Where is the sea otter population on San Nicolas Island?

I-Team Response: Between 1987 and 1990, 139 southern sea otters were translocated to San Nicolas Island in an attempt to re-establish an extirpated population. In 1999, the effort to re-establish the population was considered a failure because fewer than 25 sea otters were observed around the island nine years after the last translocation (USFWS

1999). The population has grown since then, and, based on the high count for 2008, the current colony numbers about 42 animals (37 independent sea otters and 5 dependent pups) (U.S. Geological Survey unpub. data). The colony at San Nicolas Island is considered to be a “non-essential experimental” population under the Endangered Species Act (USFWS 2008).

During population counts over the last several years, over 95% of the sea otter sightings at San Nicolas Island have been along the south side of the island, with most of those sightings occurring along the southwestern portion of the island (area from Sea Lion Beach to West Point), including the kelp bed off the northwest point of the island (area known as the Boilers) (Hatfield 2009). Sea otters are also known to pup in these areas. Few sea otters are seen along the north side of the island (Hatfield 2009).

USFWS. 2008. Southern Sea Otter Stock Assessment Report. U.S. Fish and Wildlife Service, Ventura, California. Revised December 2008.

USFWS. 1999. Draft reports released on southern sea otter translocation program. Ventura, California. <http://www.fws.gov/cno/news/1999/9912.htm> (accessed 04/17/09).

Hatfield. 2009. Personal communication between Brian Hatfield, Wildlife Biologist, USGS, and Dominique Monie, Marine Planner, MLPA Initiative.

44. Agua Hedionda Lagoon has a power plant, [plans for] a desalination plant, and aquaculture. How will the SAT evaluate an MPA placed in this area?

I-Team Response: Guidance for consideration of power plants and desalination plants as it relates to MPA siting are included in the SAT water quality guidance document that was distributed to the SCRSG (see the document and associated maps posted at http://www.dfg.ca.gov/mlpa/pdfs/agenda_042809k1.pdf and http://www.dfg.ca.gov/mlpa/pdfs/agenda_042809k2.pdf). The SAT did not conduct a water quality evaluation for Round 1 but will do so for Round 2 and Round 3.

Aquaculture within an MPA has been assigned an LOP by the SAT and DFG has provided guidance that an MPA where shellfish aquaculture occurs should not use an SMR designation but may use an SMCA designation which allows shellfish aquaculture under regular permitting requirements. Note that several draft arrays include proposed MPA's in Agua Hedionda. Additionally, the SAT has evaluated the no action alternative, which includes an evaluation of the existing MPA in the lagoon.

45. When we're considering catch and release, should we consider how we can decrease mortalities such as use of circle hooks, etc.?

I-Team Response: The SAT has developed LOPs for catch and release fishing with gear considerations, and approved these LOPs at its April meeting. In addition to SAT LOP guidance, the SCRSG should take into account DFG enforcement and feasibility considerations regarding catch and release when developing allowed use proposals

(see January 7, 2009 DFG enforcement memo regarding catch and release at http://www.dfg.ca.gov/mlpa/pdfs/agenda_030309e1.pdf).

46. Does the wetfish fishery, based on current management (plans) as outlined in the letter to Mr. Phelps warrant a high LOP? What is the SAT's opinion on FMPs and stock assessment methods?

I-Team Response: Success and/or failure of management plans does not warrant changes in LOP. How the SAT considers the status of fish stocks in its work will be addressed at the May 5, 2009 SAT and June 4, 2009 BRTF meetings.

47. Will the BRTF engage with water boards and other respective agencies regarding water quality issues?

I-Team Response: While water quality issues are important, they are not the primary focus of the MLPA Initiative process. The BRTF engaged the state and regional water boards in a previous study region, where the California Fish and Game Commission and staff to the California Ocean Protection Council committed to engaging the water boards in a more formal consultation process. The BRTF continues to support the consideration of water quality issues in the MLPA Initiative as a secondary consideration.

48. What is the impact on the operations and maintenance of existing pipelines in an SMR, SMP and SMCA?

I-Team Response: It is staff's understanding that there is no impact on the operations and maintenance activities for existing pipelines within an MPA.

49. Would the placement of an MPA require stricter regulations by water quality monitoring agencies?

I-Team Response: There is no language in the MLPA requiring stricter regulation of water quality by water quality oversight agencies. Any further response on this issue will need to be provided by those agencies, as regional water quality control boards or the State Water Resources Control Board may have different policies regarding water quality regulations and MPA's.

50. The master plan for MPAs language indicates that activities that degrade water quality should be restricted in an MPA. Please clarify.

I-Team Response: MLPA staff is unable to locate in the January 2008 master plan language that specifically suggests restricting activities that degrade water quality.