

# California Marine Life Protection Act Initiative

1416 Ninth Street, Suite 1311 Sacramento, CA 95814 916.653.5656

**To:** MLPA Blue Ribbon Task Force  
**From:** MLPA Initiative Staff  
**Subject:** Staff Recommendations Regarding Military Use Areas in the MLPA South Coast Study Region  
**Date:** May 17, 2009

---

## Purpose of Memo

BRTF members have indicated a desire to provide definitive guidance regarding how to consider military use areas, especially those around the islands, to the Marine Life Protection Act Initiative (MLPA) South Coast Regional Stakeholder Group (SCRSG) to ensure its ability to move forward with marine protected area (MPA) proposal design in the MLPA South Coast Study Region.

This memo outlines how you arrived at this decision point, previous guidance you have provided related to military use areas, key documents developed to help inform your decisions, and some potential options for definitive guidance as suggested by staff.

Note that throughout this memo the two pending military closures at San Clemente Island and the existing military closure at San Nicolas Island are, taken together, referred to as “pending military closures.”

## Background

When the MLPA South Coast Project began, the United States Department of Defense (DoD) requested that, in the south coast MPA planning process, proposals for MPAs in areas where the military conducts activities (referred to as military use areas) should be avoided. In response, staff presented you with a memo summarizing the DoD request at your December 2008 meeting. At the same meeting you received input from the MLPA Master Plan Science Advisory Team (SAT) regarding habitat distribution within and oceanography of the study region; using this information the SAT identified five bioregions to be used for evaluation purposes. Based on the science, it became apparent that some military use areas may need to be considered for the placement of MPAs in order to meet the goals of the MLPA. A decision was made to seek additional information before definitive guidance could be provided on the subject of military use areas.

Since December a number of presentations have been made to the BRTF, with accompanying background and legal documents providing relevant information. At your February 26, 2009 meeting in Santa Barbara, California, you received briefing documents and presentations from:

- DoD regarding pending military closures and military use areas,

- The SAT regarding the general ecological characteristics and linkages of the military use areas areas, and
- Staff with background information and a range of potential actions.

During your April 15-16, 2009 meeting in Dana Point you received briefing documents and/or presentations from:

- J. Michael Harty that provided significant background and policy context for your potential actions;
- David Nawi regarding state legal authority with regard to MPAs and military use areas;
- The SAT with an analysis of the ecological characteristics of military use areas around the islands and along the mainland, the habitats represented in those areas, and the ecological linkages between these areas and other study region sites; and
- Staff summarizing potential actions given the additional context and information you had received.

Throughout this process, the public and members of the SCRSG have provided comments and feedback on the DoD request to avoid military use areas when designing MPA proposals. In addition, DoD organized a tour of San Clemente Island for members of the BRTF and the California Fish and Game Commission.

A BRTF discussion on military use areas and pending military closures will continue on Monday, May 18, 2009 when new information will be presented from the SAT. The SAT has evaluated the ecological values of the pending military closures along with other proposed MPA designs at different locations around San Clemente and San Nicolas islands and Begg Rock. The SAT has analyzed how military activities may affect the ability of the pending military closures or proposed MPAs to meet the ecological goals of the MLPA.

### **Previous Guidance to SCRSG and SAT**

Since receiving the request to avoid military use areas, you have encouraged DoD to share information about the potential impacts of its activities on military use areas and potential marine protected areas in order to help determine the consistency of military use areas with the MLPA's ecological goals. You have also encouraged SCRSG members to confer with DoD representatives to identify potential solutions that best meet the goals of the MLPA and various guidelines to incur minimal conflict with DoD mission-critical activities.

The guidance you provided to the SCRSG in developing the first round of draft MPA proposals, in large part to maximize the amount of information to be gleaned from the various reviews and evaluations, was:

- For the mainland, to allow proposed MPAs within military use areas on the mainland in either of the draft MPA arrays for each work group.

- For the islands, to allow proposed MPAs within military use areas at the islands in one of two draft MPA arrays for each work group and to include *only* pending military closures in the second of the two draft MPA arrays within each work group.

After receiving further information at the April 15-16, 2009 meeting, you again provided interim guidance to the SCRSG in developing the second round of MPA proposals, pending the completion of two additional SAT analyses regarding the ecology and impacts of military activities within military use areas:

- In military use areas at San Clemente and San Nicolas islands, include pending military closures or propose new MPAs.
- For the mainland, to allow proposed MPAs within military use areas.
- Consider available information on where different military activities occur that may be inconsistent with MPA goals

### **Potential Further Guidance from the BRTF**

1. At the May 15, 2009 SAT meeting presentations were made of the analyses of how military activities may affect the ability of pending military closures or proposed MPAs in military use areas to meet the ecological goals of the MLPA. With that new information, MLPA Initiative staff proposes that there are a number of options available to the BRTF with regard to how military use areas, including pending military closures, are addressed in the MLPA South Coast Study Region. These options are not necessarily mutually exclusive nor are they exhaustive:

Option #1a: Include Area G at San Clemente Island in all MPA proposals for the study region and consider it as contributing to the ecological goals of an MPA network.

Option #1b: Include Wilson Cove at San Clemente Island in all MPA proposals for the study region and consider it as contributing to the ecological goals of an MPA network.

Option #1c: Include Area Alpha at San Nicolas Island in all MPA proposals for the study region and consider it as contributing to the ecological goals of an MPA network.

Option #2a: Outside of pending military closures, additional MPAs or special closures at San Clemente Island may be included in any MPA proposal for the study region at the discretion of stakeholders.

Option #2b: Outside of pending military closures, additional MPAs or special closures at San Nicolas Island may be included in any MPA proposal for the study region at the discretion of stakeholders.

Option #2c: Additional MPAs or special closures at SanBegg Rock may be included in any MPA proposal for the study region at the discretion of stakeholders.

Option #3: Any MPAs or special closures on the mainland in military use areas may be included in any MPA proposal for the study region, at the discretion of stakeholders.

2. If any pending military closures are directed to be included in MPA proposals for the study region, staff does not recommend that a decision be made regarding whether some or all of the pending military closures be recommended as state MPAs. Such a decision should be contingent upon further discussion with DoD and resolution of a number of administrative issues including access, responsibility and costs for scientific monitoring; access for enforcement purposes; and the adequacy of enforcement of pending military closures under federal law as compared to enforcement of MPAs under state law. While these administrative issues still need to be resolved, they should in no way affect or delay the SCRSG from moving forward with its MPA design responsibilities.
3. If any pending military closures are directed to be included in MPA proposals for the study region, for evaluation purposes staff recommends that the pending military closures not be given an official MPA designation. Instead, staff recommends that pending military closures be evaluated under a new, stand-alone category entitled, "Military Closure" that helps meet the goals of the MLPA. Staff recommends that this new category be depicted in a separate category from MPA designations in all evaluation materials and not be grouped with any state MPA classifications. Staff further recommends that the BRTF consider results from the eight anticipated SAT evaluations in the following manner:
  - Habitat representation – consider contributions of Military Closures to the overall percentage of habitats captured within MPAs proposed for the study region
  - Habitat replication – consider habitats sufficiently captured within Military Closures as replicates for the study region
  - MPA spacing – a spacing analysis is not conducted by the SAT at any islands
  - MPA size – include the size of Military Closures in the MPA size analysis
  - Bioeconomic modeling – consider Military Closures in the bioeconomic modeling analysis
  - Benefits to marine birds and mammals – consider potential benefits to birds and mammals from the Military Closures
  - Evaluation of potential impacts to commercial and recreational fisheries – consider potential impacts to fisheries in the Military Closures
  - Water quality – consider water quality concerns within Military Closures
4. Consistent with the April 1, 2009 policy memorandum from J. Michael Harty, staff asserts that any decisions made by the BRTF regarding pending military closures reflect a number of circumstances which, taken together, create a unique policy and legal situation that does not apply to other types of closures in state waters and, therefore, does not create a precedent:

- DoD's national security concerns;
  - In order to meet the basic scientific MPA design guidelines, the consequence of not including the pending military closures at San Clemente Island in the network of MPAs would be to require relatively much greater MPA coverage at Catalina Island where potential, negative economic impacts would be higher;
  - The pending military closures do not allow fishing and, in two cases, no access;
  - The pending military closures are impacted by comparatively lower levels of military activity likely to result in take or habitat damage;
  - DoD acts in the capacity of a natural resources trustee at these islands and has devoted significant assets to environmental protection;
  - Military operations take place under approved environmental impact statements that, although not permanent, require significant public input to alter and help ensure that pending military closures will continue to contribute to the ecological goals of the act.; and
  - The state's limited ability to regulate military activities.
5. As with any interests represented in SCRSG deliberations, it will be important that SCRSG members and proponents of external proposals continue to strive to address the interests of DoD in military use areas on the mainland. However, staff does not recommend that the presence of a military use area on the mainland necessarily preclude the proposal of an MPA in that area, depending upon the impact of military activities in the area. Staff recommends that stakeholders use information developed by the SAT regarding the impact of various military activities combined with their best judgment about which areas are or are not appropriate for MPA designation.

With any decisions made by the BRTF, staff will continue to work closely with military representatives to bring into the MLPA Initiative planning process the best readily available information about military use areas in the study region.