

## **Appendix H. Summary of Recent and Ongoing Processes Related to the MLPA Initiative**

**(Revised November 2004)**

Several state, federal, and local agencies have either jurisdictional authority for or a vested interest in establishing marine protected areas (MPAs) in California. This document describes these various entities and their roles and provides a summary review of recent or ongoing processes that are separate from, but related to, the Marine Life Protection Act Initiative. Note that these summaries have not been reviewed by the organizations whose activities are described.

### **List of Ongoing and Recent MPA Processes**

These state, federal and local processes are described in more detail in section III.

#### *State Processes*

- Channel Islands MPAs (Department of Fish and Game) - State waters monitoring of an MPA network implemented in 2003

#### *Federal Processes*

- Presidential Executive Order on MPAs (National MPA Center) - Charges federal agencies with the task of establishing a national network of MPAs
- Channel Islands National Marine Sanctuary - Federal waters implementation of the joint state/federal MPAs recommendation
- Monterey Bay National Marine Sanctuary – Working group is reviewing the need for MPAs in the sanctuary
- Gulf of the Farallones National Marine Sanctuary - Working group is reviewing the need for additional protection in coastal estuaries
- California Coastal National Monument (Bureau of Land Management) - Established by presidential proclamation to protect important biological and geological values
- Point Reyes National Seashore (National Park Service) - Evaluating a potential new MPA around Bird Rock

#### *Local Processes*

- Fitzgerald State Marine Park (San Mateo County Department of Parks and Recreation) - Interested in changing the park designation to a state marine reserve.
- Ed Ricketts Park, Monterey (City of Monterey) - The city has established a park which prohibits the use of spearguns or pole spears without the concurrence of the Department of Fish and Game or Fish and Game Commission.
- Pacific Grove State Marine Conservation Area (City of Pacific Grove) - The city has established restrictions on the take of marine invertebrates without the concurrence of the Department of Fish and Game or Fish and Game Commission.
- Diablo Canyon Nuclear Power Plant (Regional Water Quality Control Board) - Pacific Gas & Electric suggested that the creation of new MPAs could serve as partial mitigation for the impacts associated with the power plant, though the Department of Fish and Game has not determined that MPAs are appropriate or complete mitigation for these impacts.

## **State, Federal and Local Agencies with MPA Interests and their Authority to Establish MPAs**

### *State Agencies*

#### California Department of Fish and Game (Department)

The California Department of Fish and Game has management authority over living marine resources within state waters (generally between 0 and 3 nautical miles from shore or around offshore islands, with a few exceptions such as Monterey Bay) as well as authority to regulate fisheries that deliver catch to California ports. Thus, Department has some authority beyond state waters and often enforces regulations outside the 3 nautical mile line. Department enforces laws established by the California Legislature and regulations established by the Fish and Game Commission (Commission). The Commission has authority to establish, modify, or delete state marine reserves and state marine conservation areas. The Commission may establish fishing regulations for state marine parks, but must have the concurrence of the Park and Recreation Commission (see below) to establish, modify or delete a state marine park. Other Commission fishing regulations may also affect or be affected by MPA designations.

#### California Department of Parks and Recreation (State Parks)

Responsible for almost one-third of California's scenic coastline, the Department of Parks and Recreation manages coastal wetlands, estuaries, beaches, and dune systems within State Park units. Through State Water Bottom Leases, State Parks has management authority over several underwater areas, though does not have authority to restrict the take of living marine resources. State Parks enforces regulations established by the Park and Recreation Commission. The Park and Recreation Commission has authority to establish, modify or delete state marine reserves, state marine parks, and state marine conservation areas, but must have the concurrence of the Fish and Game Commission on any proposed restrictions to the extraction of living marine resources.

#### State Water Resources Control Board (SWRCB)

The State Water Resources Control Board has regulatory authority over discharges into marine waters from point and nonpoint sources, as well as other water-quality related aspects. SWRCB has authority to create state water quality protection areas and areas of special biological significance, which are classifications of marine managed areas (MMAs) and are not MPAs. Regional water quality control boards are the units within the SWRCB that oversee local management issues throughout the state.

### *Federal Agencies*

#### National Oceanic and Atmospheric Administration (NOAA)

The National Oceanic and Atmospheric Administration conducts research and gathers data about the global oceans, atmosphere, space, and sun. A U.S. Department of Commerce agency, NOAA provides these services through five major organizations, three of which have direct interest in MPA issues: the National MPA Center, the National Ocean Service (under which the National Marine Sanctuary Program is found) and NOAA Fisheries.

National MPA Center - The Executive Order on MPAs (see below) established the National MPA Center to oversee national efforts to create a national system of MPAs

and to assist government agencies in participating in this effort. The National MPA Center also supports the MPA Federal Advisory Committee established under executive order as well as a Science Institute which provides scientific information and policy analysis to support the planning, management and evaluation of the nation's MPAs.

National Marine Sanctuaries - The sanctuaries' primary objectives are resource protection, research, education, and public use. Sanctuaries have broad authority for establishing regulations under the Sanctuaries Act to protect sanctuary resources. The designation documents of the four California sanctuaries (Channel Islands, Monterey, Gulf of the Farallones and Cordell Bank) do not currently allow for the imposition of fishing regulations. They may, however, amend their designation through a management plan review process. For changes to designation documents that may impact state waters, the governor has the power to overrule such changes.

NOAA Fisheries (the National Marine Fisheries Service or NMFS) - NMFS has regulatory authority for marine finfishes, invertebrates, and marine mammals other than sea otters in waters 3-200 nautical miles from shore. Among other laws, NMFS derives its authority from the Magnuson-Stevens Fisheries Conservation Act of 1976. Under the Magnuson-Stevens Act, NMFS manages any fishery that is the subject of a fishery management plan developed by regional fishery management councils (see below) as well as some non-FMP species.

Pacific Fishery Management Council (PFMC) - PFMC is one of eight regional fishery management organizations established by the Magnuson-Stevens Act. The councils develop fishery management plans for fisheries within 200 miles of shore; these plans must be approved by the Secretary of Commerce and are implemented by NMFS. The PFMC has management authority for approximately 80 species of finfishes, primarily those associated with the bottom (groundfish), but also highly migratory species and others.

United States Fish and Wildlife Service (USFWS) - USFWS has regulatory authority for managing seabirds and sea otters.

Unlike the California MPA program, the federal government does not have a standardized system for classifying MPAs in federal waters. Also, it is unclear whether the National Marine Sanctuaries Act authority or Magnuson-Stevens Act authority would be used in the various federal processes described below. Under the Sanctuaries Act, if a sanctuary designation document lists fishing as an activity that may be regulated and it is determined that fishing must be regulated in order to meet the sanctuary's goals, the sanctuary must provide the appropriate regional fishery management council with the opportunity to prepare draft fishing regulations. If a regional council does not do so, or if the sanctuary program determines that the draft regulations are insufficient, the sanctuary program itself may prepare draft fishing regulations. These regulations may be adopted under the National Marine Sanctuaries Act or under the Magnuson-Stevens Act. Under the National Marine Sanctuaries Act, fishing and other regulations may be adopted for state waters only with the concurrence of the appropriate state agency, such as the Fish and Game Commission.

### National Park Service (NPS)

NPS has regulatory authority for certain activities within its jurisdiction, but cannot regulate the harvest of living marine resources.

### Bureau of Land Management (BLM)

BLM has management responsibility for the recently-established California Coastal National Monument, an aggregation of thousands of small rocks and pinnacles above mean high tide in state and federal waters off California. BLM works cooperatively with the appropriate state and federal agencies with authority to regulate the extraction of living marine resources, including Department, for marine resource issues.

### *Local Agencies*

Many county, city and local organizations have taken interest in MPA issues for their jurisdictions. None has regulatory or management authority over living marine resources, nor the statutory authority to establish MPAs. Even so, several existing county and city areas were established with the intent of protecting marine resources and in some cases function as MPAs.

One example is the City of Avalon Casino Point Underwater Park at Catalina Island. This area was established in 1964 with a city ordinance that prohibits the use of spearguns. There are no state regulations regarding take in the area, and by the letter of the law, one could take lobster or even fish from a boat or the shore. The public, however, generally believes this is a no-take area and it is enforced as such.

The following local agencies are discussed in greater detail in section III:

San Mateo County Parks and Recreation Division - San Mateo County has management responsibility over the county park adjacent to Fitzgerald Marine Reserve and co-management responsibility with Department over Fitzgerald State Marine Park. San Mateo County has no regulatory authority over harvest of marine resources, but can restrict activities or access from shore

City of Monterey - Monterey has no regulatory authority over the harvest of marine resources adjacent to the city but has taken action to attempt to prohibit certain activities in an area along Cannery Row.

City of Pacific Grove - Pacific Grove has no regulatory authority over the harvest of marine resources adjacent to the city but has taken action to attempt to prohibit certain activities in an area along the city's shoreline.

## Recent and Ongoing MPA Processes

### *State Processes*

#### Channel Islands National Marine Sanctuary - State Waters

In April, 1998, a group of concerned recreational anglers, with support from the Channel Islands National Park, submitted a proposal to the Fish and Game Commission to close 20% of the waters within 1 mile of the northern Channel Islands to all fishing. Following nearly a year of commission meetings on the topic, Department and the Channel Islands National Marine Sanctuary (CINMS, which includes waters six miles around the northern Channel Islands - Anacapa, Santa Cruz, Santa Rosa, and San Miguel - and Santa Barbara Island) offered to establish a stakeholder process to discuss the issue at a local level.

The Fish and Game Commission accepted the offer and Department and CINMS established a marine reserves working group (MRWG) composed of representatives from diverse interest groups. The MRWG considered alternative networks of marine reserves (no-take MPAs) in both state and federal waters. The MRWG met monthly between July 1999 and June 2001 before forwarding their work to the Sanctuary Advisory Council (SAC). The MRWG achieved consensus on a problem statement, goals and objectives, and implementation recommendations for MPAs. Though the MRWG did not reach consensus on a single network proposal, they did provide more than 40 fully analyzed alternatives and areas of agreement and disagreement to the SAC. The SAC asked Department and CINMS to use the information to create a preferred alternative, which was presented to the commission in August 2001.

On October 23, 2002 the Fish and Game Commission voted to adopt the preferred alternative for MPAs within the state waters of the CINMS. These areas represent 19% of state waters within the sanctuary; they include 95 square nautical miles in 10 no-take state marine reserves and 7 square nautical miles in 2 limited-take state marine conservation areas. The new MPAs became effective on April 1, 2003.

The original MPA network proposed by Department and CINMS included additional area offshore of, and contiguous with, the new MPAs. Most of this area was in federal waters and all was within the sanctuary. A separate process is now underway to consider establishing MPAs in the federal waters.

The Channel Islands proposal came more than a year before the MLPA and was pursued independently of the MLPA process. While the stated goals of the two processes were very similar, the Channel Islands process was focused on a specific area. Furthermore, at Channel Islands only the state marine reserve classification, in which all extractive activity is prohibited, was formally considered for MPAs. However, the designation of state marine conservation areas was discussed throughout the process and included in the final recommendation.

A monitoring program is now in place within and adjacent to the new Channel Islands MPAs. The program is a cooperative venture among state and federal agencies, universities and other research institutions, and fishermen. The program builds on existing long-term monitoring programs and is obtaining data, intertidally and in shallow and deep water, at all of the MPAs in order to determine changes in species diversity, relative abundance, and size

distribution, with which to evaluate the effectiveness of the MPAs in meeting their established goals.

### *Federal Processes*

#### Presidential Executive Order 13158

In May 2000, President Clinton signed Executive Order 13158 regarding marine protected areas. This order was reaffirmed in June 2001 by President George W. Bush. The executive order charges federal agencies, consistent with domestic and international law, to:

- Strengthen the management, protection, and conservation of existing MPAs and establish new or expanded MPAs;
- Develop a scientifically based, comprehensive national system of MPAs representing diverse U.S. marine ecosystems, and the nation's natural and cultural resources;
- Avoid causing harm to MPAs through federally conducted, approved, or funded activities; and
- Consult with states, territories, tribes, regional fishery management councils, and other entities as appropriate to facilitate coordination of federal, state, territorial, and tribal actions to establish and manage MPAs.

The National MPA Center is working closely with Department to assist in the implementation of the MLPA wherever possible. They have offered technical expertise, in-kind services and financial assistance to the MLPA Initiative.

#### Channel Islands National Marine Sanctuary - Federal Waters

As noted above, most of the alternative MPAs developed by MRWG included federal as well as state waters. While the Fish and Game Commission had the authority to designate MPAs in state waters within the sanctuary, designation of MPAs outside state waters is a federal responsibility and requires the completion of a separate process.

Upon the commission's establishment of the MPAs in state waters, CINMS initiated the federal process to consider establishing a network of MPAs to complement the MPAs in state waters. They are working in conjunction with the Pacific Fishery Management Council (PFMC). As described previously, PFMC is given the opportunity to draft sanctuary fishing regulations to meet sanctuary goals and objectives. The focus of the current process is the preparation of a draft environmental impact statement (DEIS) which examines a range of management and regulatory alternatives associated with consideration of MPAs within the Sanctuary.

The DEIS is expected to be completed and released for comment in the spring of 2005. PFMC will comment on the DEIS for the Channel Islands and has already provided input on a preliminary range of options. PFMC has established a marine reserves subcommittee to review the CINMS DEIS and provide recommendations to the council members. The subcommittee has been meeting regularly for several years to discuss the issue of MPAs. This federal phase of the CINMS MPA process may take more than two years to complete.

## Monterey Bay National Marine Sanctuary

The Monterey Bay National Marine Sanctuary (MBNMS) extends from Marin County south to Cambria in San Luis Obispo County and is the largest sanctuary on the West Coast. In 2001 MBNMS staff began a public process to review and update the sanctuary's 1992 management plan. Two years later, after extensive public outreach and input, the MBNMS produced a series of proposed action plans in its joint management plan review document, which have been approved by the Sanctuary Advisory Council (SAC) and are now being reviewed by the National Marine Sanctuary Program headquarters.

One of these action plans is titled "Special Marine Protected Areas." A formal working group with a diverse array of stakeholder representation was formed during the management plan review process. Due to the considerable interest in, and sensitive nature of, the topic, this group continues to meet three to four times per year under the guidance of the MBNMS superintendent. The Department of Fish and Game has a representative on the working group.

The stated goal of the Special MPA Action Plan is as follows:

"To determine the role, if any, of additional marine protected areas in maintaining the integrity of biological communities in the Monterey Bay National Marine Sanctuary, and to protect, where appropriate, restore and enhance natural habitats, populations and ecological processes. If additional MPAs are to be created, provide for the design of MPAs that are compatible with the continuation of long-term sustainable fishing in the Sanctuary, as fishing is a key cultural and economic component of the region.

The action plan will outline the framework for coordinating with and providing input to appropriate state and federal agencies on the need for, purpose, design and implementation of MPAs within the MBNMS region, whether initiated or coordinated by the sanctuary or other agencies. A multi-stakeholder workgroup will work together to implement the components of the action plan."

Recently the MBNMS SAC recommended that this action plan receive high priority by sanctuary staff. While there is no target date for the completion of the working group's activities, much useful information has already been generated, including a draft list of conservation goals and objectives related to MPAs and information on the socioeconomic value of different portions of Sanctuary waters.

The sanctuary working group efforts are being coordinated with the MLPA Initiative process, which are related in two important ways. Part or all of the state waters within the sanctuary may be within the MLPA Initiative central coast project region. Many of the members of the sanctuary MPA working group were part of the original regional working group in the Monterey-Santa Cruz area for the previous MLPA process.

## Gulf of the Farallones National Marine Sanctuary

Staff at the Gulf of the Farallones National Marine Sanctuary recently formed a working group to discuss additional protection for estuarine areas called esteros, which border the sanctuary. While the additional protection focuses on water quality, which is not a stated goal of the MLPA process, one of the esteros is already a state-designated MPA. Currently, the working group is not considering MPAs within state waters outside the esteros.

## California Coastal National Monument

Designated by presidential proclamation on January 11, 2000, the California Coastal National Monument (Monument) runs the entire length of the California coast and extends 12 nautical miles from the shoreline. The Monument encompasses thousands of unincorporated islands, rocks, exposed reefs, and pinnacles above mean high tide. Since 1983, the BLM has managed these resources in cooperation with Department; a memorandum of understanding formalizes this agreement and includes the Department of Parks and Recreation. The primary purpose of the Monument is to protect important biological and geological values. The islands, rocks, reefs, and pinnacles provide forage and breeding grounds for significant populations of birds and sea mammals.

In September 2004 the Bureau of Land Management (BLM) released for public review and comments a draft resource management plan (RMP)/draft environmental impact statement (EIS) for the Monument. The draft RMP/draft EIS focuses on protection of the scenic and geologic formations of the monument and the habitat they provide for seabirds, marine mammals, and vegetation. In the document, BLM states, "many of the regulations needed to manage the resources are already in place; therefore, this plan is not proposing any new regulations." However, the preferred alternative describes a process by which seasonal restrictions on fishing and other activities would be imposed around rocks and islands to protect sensitive populations of marine birds and mammals. BLM would need to work with the Fish and Game Commission to establish regulations within state waters, which are under state jurisdiction.

BLM is aware of the MLPA Initiative and has been encouraged to coordinate any efforts related to increased protection for marine birds and mammals with that effort.

## National Park Service

The National Park Service (NPS) manages Point Reyes National Seashore, a federally-designated marine managed area (MMA) along the Marin County coast. Park Service staff have stated their intention to create an MPA around Bird Rock, a popular recreational fishing site in close proximity to a public launch ramp in Tomales Bay. NPS has chosen not to take their proposal to the Fish and Game Commission separately, and is aware of the MLPA Initiative. Bird Rock has existing state MMA status as an area of special biological significance (ASBS or water quality protection area).

## *Local and Regional Efforts within the Central Coast*

### San Mateo County Parks and Recreation Division

The San Mateo County Parks and Recreation Division (PRD) provides on-site management and enforcement for the Fitzgerald State Marine Park (formerly called Fitzgerald Marine Reserve), presently the only MPA in ocean waters between San Francisco and Monterey. PRD staff recently produced a final environmental impact report for the "Fitzgerald Marine Reserve Master Plan". The master plan includes supporting the reclassification of the park designation to a state marine reserve, which would by definition prohibit all extractive uses. Any increased restrictions on recreational fishing within the MPA are controversial. PRD is aware of the MLPA Initiative but has chosen not to take their proposal to the Fish and Game Commission. The county has no authority to establish an MPA or change the current designation.



### City of Monterey

The City of Monterey has taken independent action to establish an underwater park in depths out to 60 feet between the Coast Guard breakwater and Hopkins Marine Station. The city has approved regulations which prohibit the use of spear guns and pole spears to take finfish. The Department of Fish and Game has informed the city that the city has no jurisdiction over the management of marine resources, and the state does not recognize the establishment of the city park. The MLPA process would be the proper forum to consider an increase in the degree of protection for this area.

### City of Pacific Grove

As with the City of Monterey, the City of Pacific Grove has taken independent action to protect marine resources. Primarily due to grass roots efforts of a local conservation organization called the Tidepool Coalition, the city passed an ordinance which prevents all extraction of marine invertebrates within the intertidal area of the city limits, including extraction related to scientific collecting. Similar to the situation in Monterey, Department has informed the city that the city has no jurisdiction over the management of marine resources. Present state regulations prohibit the commercial harvest of all marine organisms except squid, sardines, mackerel, anchovies, and herring, and prohibit the recreational harvest of all marine plants, mollusks, and crustaceans out to a depth of 60 feet, in the area now designated as a Pacific Grove State Marine Conservation Area. In response to the city and Tidepool Coalition's concerns, Department instituted a policy prohibiting scientific collecting in the southern half of the MPA, although scientific collecting with a permit is technically allowed throughout the entire area. The Tidepool Coalition objects to this policy, but has yet to take a proposal for increased intertidal protection to the Fish and Game Commission. Through membership on a previous working group, the Tidepool Coalition was actively engaged in the MLPA process. The MLPA process would be the proper forum to consider an increase in the degree of protection for this area.

### San Luis Obispo County

Department has been involved in reviewing and commenting on plans to mitigate for impacts to receiving waters by the operation of the Diablo Canyon Nuclear Power Plant by Pacific Gas and Electric Company (PG&E) since the conception and siting stage for the power plant. The most recent discussions began in the mid-1990s as a result of allegations that PG&E, the power plant owner and operator, were violating the terms of the existing National Pollution Discharge Elimination System permit (a discharge permit).

In response, PG&E suggested that creating new MPAs could serve as partial mitigation for the impacts associated with the operation of Diablo Canyon. Shortly after September 2001, a new, de facto no-take MPA was established within a one-mile radius of the Diablo Canyon power plant for national security reasons (no access is permitted). The Department does not believe that MPAs are appropriate or complete mitigation for impacts associated with power plants. The Department has drawn attention to the MLPA process and indicated that some mitigation funds could potentially be used for monitoring or management of existing areas.