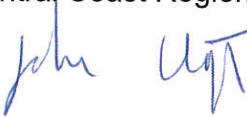


Memorandum

Date: January 31, 2008

To: Marine Life Protection Act North Central Coast Regional Stakeholder Group

From: **John Ugoretz**
Department of Fish and Game 

Subject: **Private Land Ownership and Marine Protected Areas**

As the North Central Coast Marine Life Protection Act process develops, three questions have been posed concerning private land ownership and marine protected areas (MPAs). The Department of Fish and Game (Department) is providing these general responses to help respond to the issues.

- 1. Will MPAs change existing property ownership?** No. The MLPA is an ecosystem-based conservation and management act for public trust resources that does nothing to affect private property rights. MPAs only exist seaward of the mean high tide line¹, so the potential for overlap with other property interests is very limited. If such overlap occurs, the MPA designation process must take into account existing California State Lands Commission leases, California Fish and Game Commission state water bottom and kelp leases, tide and submerged lands grants, private tidelands, and any other legal entitlements. The state marine reserve prohibition on "other activities that upset the natural ecological functions of the area" is limited to activities within the authority of the Fish and Game Commission².
- 2. How would MPAs affect access from private properties?** The MLPA does not change any existing authority governing how an MPA may be accessed through adjacent private property³. In any case, no Department employee, agent, or licensee has a special right or privilege to knowingly enter private land without either the consent of the owner or a warrant⁴. This provision does not apply in cases of an emergency or for law enforcement. However, ownership of adjacent property does not confer any special right or privilege of access to an MPA or resources within an MPA. Conversely, the MLPA in no way diminishes the right of adjacent property owners to exclude the public from accessing an MPA through their land.

¹ Fish and Game Code §2852(c).

² Fish and Game Code §2852(d).

³ As a practical matter, management and enforcement activities would ordinarily be undertaken by boat.

⁴ Fish and Game Code §857.

With regard to access from sea, the general regulation for State MPAs is that transit across or through an MPA is allowed⁵. While access may be restricted in special cases, this would only occur where a specific resource concern warrants such restriction and where the restriction has been reviewed in public process.

3. **How will marine stewardship be addressed along private properties if MPAs are established there?** Resource stewardship under the MLPA is no different than in any other fish and game context, particularly when Department-managed areas lie adjacent to private lands. It is well-settled that fish and wildlife are public trust resources, and the Department retains jurisdiction over these resources even when they are on private property⁶. The conditions under which the Department may enter onto private lands in the exercise of that jurisdiction are statutorily defined. The MLPA additionally encourages public participation in the management of MPAs, and this includes cooperation with adjacent landowners through the regional planning process⁷.

cc: Secretary Mike Chrisman, California Resources Agency
President Richard Rogers, California Fish and Game Commission
Executive Director John Carlson, California Fish and Game Commission
MLPA Blue Ribbon Task Force
MLPA Initiative staff
MLPA Master Plan Science Advisory Team
MLPA Statewide Interests Group

⁵ Title 14, California Code of Regulations, §632(a)(8)

⁶ Fish and Game Code §§ 711.7(a), 1802.

⁷ Fish and Game Code §§ 2853(c)(4); 2855(c)(4).