

# Memorandum

Date: January 24, 2006

To: Marine Life Protection Act Blue Ribbon Task Force

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



Subject: **Marine Life Protection Act provisions related to state marine reserves and commercial kelp harvesting**

This memo addresses questions regarding candidate marine protected area (MPA) packages that allow commercial kelp harvesting within state marine reserves (SMRs). Specifically, several candidate MPA packages have proposed SMRs in areas that include leased administrative kelp bed. Based on the definition of SMRs found in the Marine Life Protection Act (MLPA, Statutes 1999, Chapter 1015) and the Marine Managed Areas Improvement Act (MMAIA, Statutes 2000, Chapter 385) they must prohibit all extractive activities. Because leased administrative kelp beds are required to have harvest plans and are actively harvested, they may not be included in SMRs.

## **Definition of a "marine life reserve" and "state marine reserve"**

Section 2852 (d) of the MLPA defines a "marine life reserve" as:

a marine protected area in which all extractive activities, including the taking of marine species, and, at the discretion of the commission and within the authority of the commission, other activities that upset the natural ecological functions of the area, are prohibited. While, to the extent feasible, the area shall be open to the public for managed enjoyment and study, the area shall be maintained to the extent practicable in an undisturbed and unpolluted state.

This definition is consistent with the definition of a state marine reserve in the MMAIA. Further, pursuant to MMAIA, Public Resources Code, Section 36710 (a), an SMR prohibits the take of any living, geological, or cultural marine resources, except under a permit or specific authorization from the managing agency for research, restoration, or monitoring purposes

## **Kelp harvesting and administrative kelp leases in SMRs**

Because it is an extractive activity, kelp harvest is prohibited in SMRs. The presence of a leased kelp bed within a proposed MPA is therefore incompatible with the designation of that MPA as an SMR because it specifically allows kelp extraction.

## **Treatment of commercial kelp beds in the MLPA process**

California Fish and Game Code Section 2857(d) states “The department and team, in developing the preferred siting alternative, shall take into account the existence and location of commercial kelp beds.” The attached table describes the status and location of all administrative kelp bed within the central coast study region.

Notably, ISP Alginates had several leases in central coast kelp beds that expired on December 31, 2005. ISP has moved the bulk of their operations out of California and has stated that they have no intention of renewing their leases in the central coast region.

The California Fish and Game Commission, not the Department of Fish and Game, issues kelp bed leases. While the department does not have authority to withhold renewal of a kelp bed lease, department staff can provide input to the commission. The commission can issue or deny kelp bed leases as well as establish, modify, or eliminate marine protected areas.

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 packages of MPA alternatives from the Department and begin their formal regulatory process. The Department will provide information to Commission staff related to proposed MPAs that include parts of any leased or leasable kelp beds.

Summary of Administrative Kelp Beds in Central Coast Study Region

<b>Bed number</b>	<b>Geographical area</b>	<b>Type</b>	<b>Status</b>	<b>2004 Harvest in tons or, * = no reported harvest</b>
33	Pt. Conception to Espada Bluff	Open	No known commercial harvesting at present.	*
34	Espada Bluff to Pt. Arguello	Leasable	Until the bed is leased, kelp may be harvested by anyone with a kelp harvesting license.	*
202	Pt. Arguello to Pt. Sal	Leasable	Until the bed is leased, kelp may be harvested by anyone with a kelp harvesting license.	*
203	Pt. Sal to Pismo Beach Pier	Closed	Has no kelp. Harvest not permitted.	*
204	Pismo Beach Pier to Pt. San Luis	Leased	Mechanical harvesting occurs.	92 tons
205	Pt. San Luis to Pt. Buchon	Open	No known commercial harvesting at present.	149 tons
206	Pt. Buchon to Morro Rock	Closed	Harvest not permitted.	*
207	Morro Rock to Pt. Estero	Leased	Mechanical harvesting occurs.	1692 tons
208	Pt. Estero to Von Helm Rock	Leased	Mechanical harvesting occurs; two leases exist; the lease by ISP Alginates expired 12/31/05	379 tons
209	Von Helm Rock to San Simeon Pt.	Leased	ISP Alginates lease expired 12/31/05; Nature Conservancy has sublease for experimental harvest.	* Experimental
210	San Simeon Pt. to Pt. Piedras Blancas	Leased	ISP Alginates lease expired 12/31/05. This will then become a leasable bed.	*
211	Pt. Piedras Blancas to Salmon Head	Leasable	Until the bed is leased, kelp may be harvested by anyone with a kelp harvesting license.	*
212	Salmon Head to Cape San Martin	Leasable	Until the bed is leased, kelp may be harvested by anyone with a kelp harvesting license.	*
213	Cape San Martin to Lopez Pt.	Open	No known commercial harvesting at present.	*
214	Lopez Pt. to Partington Pt.	Leased	Nature Conservancy has a new lease for experimental harvest; an existing state marine reserve and an existing state marine conservation area are within the boundaries of this bed.	* Experimental
215	Partington Pt. to Pfeiffer Pt.	Open	No known commercial harvesting at present.	*
216	Pfeiffer Pt. to Pt. Sur	Leased	ISP Alginates lease expired 12/31/05.	*

			This will then become a leasable bed.	
217	Pt. Sur to Yankee Pt.	Open	No known commercial harvesting at present.	*
218	Yankee Pt. to Pt. Lobos	Open	A state marine reserve is within the boundaries of this bed.	*
219	Pt. Lobos to Cypress Pt.	Open	Considered to be important to aquaculture industry; an existing state marine conservation area and an existing state marine reserve are within the boundaries of this bed.	*
220	Cypress Pt. to Monterey Pier	Open	Hand harvesting occurs; an existing state marine reserve and an existing state marine conservation area are within the boundaries of this bed.	219 tons
221	Monterey Pier to Santa Cruz Pier	Open	Hand harvesting occurs; some kelp is used for herring eggs-on-kelp fishery in SF Bay.	292 tons
222	Santa Cruz Pier to Sand Hill Bluff	Open	Hand harvesting occurs; some kelp is used for herring eggs-on-kelp fishery in SF Bay.	92 tons
223	Sand Hill Bluff to Pt. Año Nuevo	Leased	New lease was issued in 2005 to California Abalone Company. Considered to be important to aquaculture industry.	*
224	Pt. Año Nuevo to Pescadero Pt.	Closed	Harvest not permitted.	*