


Memorandum

Date: January 24, 2006

To: Marine Life Protection Act Blue Ribbon Task Force

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

Subject: **Existing fishing regulations and statutes related to the development of marine protected area packages for the Marine Life Protection Act**

Background

The Marine Life Protection Act, Fish and Game Code Section 2851(d), states “MPAs and sound fishery management are complementary components of a comprehensive effort to sustain marine habitats and fisheries.” Section 2855(c) states that relevant information shall be taken into account concerning “areas where fishing is currently prohibited”.

Marine and estuarine recreational and commercial fishing is highly regulated in California’s state waters as well as the adjacent federal waters. Laws and regulations, in particular the latter, are revised periodically to reflect the changing status of those fished populations. Laws and regulations traditionally have focused on single species or groups of species, and only recently, with the passage of the Marine Life Management Act (MLMA, Statutes 1999 Chapter 483), that focus has begun to shift towards an ecosystem approach.

Some fishing regulations have remained constant over many decades, such as the minimum size limit for recreationally-caught red abalone and commercially-caught Dungeness crab. Others, such as the seasonal and depth restrictions on recreational fishing for rockfish, have been revised annually or more frequently in recent years.

A distinction must be made between spatial and temporal laws and regulations. The former, if in place year round, are most equivalent to the type and degree of ecosystem protection provided by marine protected areas (MPAs) for habitats and the species living in those habitats. On the other hand, temporal laws and regulations generally prohibit harvest in particular areas at certain times of the year, while allowing harvest in those same areas at other times. While temporal laws and regulations tend to reduce overall fishing effort and thus afford some protection to individual fished species, they do not allow the establishment of natural size and age structure of fished populations or provide year-round habitat protection and thus cannot be considered to provide ecosystem protection.

Jurisdictional Authority

In the United States, individual states are responsible for managing fisheries within state waters, generally defined as within three miles from shore with some exceptions (e.g., Monterey Bay in California), and state laws must be consistent with federal laws. States may also manage fisheries outside state waters if there is no federal management plan in place and for any vessel landing fish in the state or permitted by the state. Traditionally, commercial fisheries management in California was under the purview of the **State Legislature** while recreational fisheries management was conducted by the California **Fish and Game Commission**. The MLMA, delegated greater management authority from the State Legislature to the commission.

The Pacific Fishery Management Council (PFMC) is one of 8 regional advisory councils to the **National Oceanic and Atmospheric Administration Fisheries Service** (NOAA Fisheries) in the Department of Commerce and is responsible for some fisheries management in California, Oregon, Washington, and Idaho. The PFMC advises NOAA Fisheries on fisheries for which a federal management plan has been adopted. Current federal management plans include groundfish, highly migratory species, salmon, and coastal pelagic species. Although the PFMC is legally only an advisory body, NOAA Fisheries adopts most recommendations submitted to it from the PFMC.

Applicable Laws and Regulations

The following is a summary of the major commercial and recreational fishery spatial laws and regulations effective in 2005 which provide some form of protection to marine species and habitats in waters off the central California coast. It is appropriate and necessary to consider them when developing proposals for MPAs. However, they do not substitute for the long-term protection provided by MPAs, in particular that provided by state marine reserves. While fishery regulations may appear to be equivalent to protection afforded by a state marine conservation area, this protection may change within a year or during the course of several years as the status of the stocks designated for protection and rebuilding is re-assessed.

Commercial Rockfish Conservation Area

The coastwide commercial rockfish conservation area (RCA) was established in January 2003 to protect and assist in the rebuilding of stocks of lingcod and seven species of rockfishes, all of which were formally declared overfished by NOAA Fisheries. The RCA was established by NOAA Fisheries following recommendations of PFMC. The RCA within the central coast study region is categorized by four gear types: trawl limited entry, trawl open access, fixed gear limited entry, and non-trawl open access. The latter two will be called "non-trawl".

The trawl and non-trawl RCAs vary seasonally and regionally. Effective protection equivalent to that of an MPA occurs where the RCA is closed year-round to particular gear types. In 2005, the trawl RCA prohibited all bottom fishing using

trawl gear in the 100-150 fathom depth range **year-round** (figure 1). The non-trawl RCA prohibited all bottom fishing for federally-managed groundfish species in the 30-150 fathom depth range **year-round** (figure 1). There is one exception for the non-trawl RCA: when fishing for "other flatfish," (butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder) vessels using specified hook-and-line gear with no more than 12 hooks per line are not subject to the RCA. At certain times of the year, the non-trawl RCA expanded to 20-150 fathoms. Within the RCA, commercial invertebrate trap fisheries such as spot prawn, Dungeness crab, and rock crab, are permitted.

Recreational RCA

Within the central coast study region, the recreational RCA uses different depth restrictions north and south of Lopez Point and these depth restrictions may change annually and/or seasonally. In 2005 north of Lopez Point, the recreational RCA prohibited all bottom fishing for federally-managed groundfish species (except "other flatfish") in depths greater than 20 fathoms **year-round** (figure 2). South of Lopez Point, the recreational RCA prohibited all bottom fishing for federally-managed groundfish species (except "other flatfish") in depths greater than 40 fathoms and less than 20 fathoms **year-round** (figure 2).

When considering both the commercial and recreational RCAs, certain areas, especially soft bottom habitats outside of the 100-150 fm depth range, are provided relatively little protection by the RCA designation, primarily due to the allowance of take of "other flatfishes". The areas with the most protection afforded by the RCA designation in 2005 are between 100 and 150 fathoms in general, and rocky habitat between 20 (or 40 in the south) and 150 fathoms.

While some people equate the RCAs to MPAs, in particular to a state marine conservation area in which certain fisheries are permitted while others are restricted, there are important distinctions between the two:

1. RCAs and MPAs have different goals. RCAs are established to rebuild specific fished populations. MPAs are established to achieve various ecosystem goals of the MLPA (i.e., goals 1-6);
2. The boundaries of the RCA are subject to change within and among years based upon stock assessments of single species and annual catch rates;
3. When stocks of lingcod and the seven rockfish species are rebuilt, the RCA will likely be removed - i.e. when the RCA has achieved its goal, it will no longer be needed. In contrast, an MPA requires some degree of permanence to achieve its broader ecosystem goals; and
4. RCAs and MPAs established pursuant to the MLPA are subject to different jurisdictional controls. The establishment and removal of RCAs within state and federal waters is managed through the PFMC and NOAA Fisheries, while the California Fish and Game Commission controls the establishment, modification and removal of MPAs within state waters.

Essential Fish Habitat (EFH) No-trawl Zone

PFMC amended its Pacific Coast Groundfish Fishery Management Plan, pursuant to the Magnuson-Stevens Act, to (1) describe and identify EFH for the groundfish fishery; (2) minimize to the extent practicable the adverse effects of fishing on EFH; and (3) identify other actions to encourage the conservation and enhancement of EFH. One of these measures includes the establishment of a no-trawl zone. After a lengthy series of negotiations with the fishing industry and other interested parties, a proposed no-trawl zone was developed which generally consists of areas not routinely trawled historically, with a few exceptions.

Within the central coast study region, the EFH no-trawl zone is in that portion of Monterey Bay within state waters greater than 3 miles from shore (figure 3, this is one of the few exceptions in which state waters beyond 3 miles from shore; trawling is presently allowed in the portion of this area outside of the trawl RCA). EFH regulations have NOT been formally adopted, but are expected to be soon. Since the proposed EFH no-trawl zone is largely in areas in which trawling has not occurred historically, there will be little additional protection afforded by this designation.

Summary of Effective Groundfish Closure (with flatfish exception) Provided by the RCA and Proposed EFH in 2006:

- Pigeon Point to Monterey Bay: 30-150 fathoms
- Monterey Bay: 100-150 fathoms, except where prohibited by EFH designation or inside 3 nm from shore.
- Monterey Bay to Lopez Point: 30-150 fathoms
- Lopez Point to Point Conception: 40-150 fathoms

It should be noted that this summary depicts a PRE-SEASON set of regulations for the RCA. These regulations can and do change during the season and may reduce the overall area effectively protected.

Other Trawl Regulations

All bottom trawling is prohibited in state waters within three miles of shore in the central coast study region (fig 4). As stated above, trawling is permitted in state waters greater than three miles from shore within Monterey Bay. The traditional trawl fishery in this area is over soft bottom and targets flatfishes such as California halibut, starry flounder, and Pacific sanddab.

In 2003, the California Fish and Game Commission prohibited the use of trawl gear to take spot prawns. Although trawling occurred primarily in federal waters, this restriction most likely provided increased habitat protection which could benefit the spot prawn trap fishery. The trap fishery occurs within the central coast study region, primarily in submarine canyon areas.

Gill Net Regulations

Gill net fishing only occurs in commercial fisheries and is restricted by depth as well as latitude. Within the central coast study region, the use of gill nets is prohibited within the RCA. The use of gill nets is also prohibited in depths of 60 fathoms or less (fig 5). The use of gill nets for the take of rockfish is prohibited in all state waters. Gill nets are legal for the take of sablefish, shark and swordfish, and California halibut. Among these, only a modest amount of landings have occurred for sablefish and shark within the central coast study region in the past two years.

Recommended Approach to MPA Development

The recommended course of action in developing MPA proposals within the central coast study region is to incorporate portions of areas such as the RCA into specific proposed MPAs as appropriate. This serves two primary purposes:

1. Achieves a long-term/permanent degree of protection to those portions of the RCA within proposed MPAs.
2. Achieves MLPA Regional Objective 1 under Regional Goal 5: "Minimize negative socio-economic impacts and optimize positive socio-economic impacts for all users, to the extent possible, and if consistent with the Marine Life Protection Act and its goals and guidelines."

It is clear that not all areas affected by fishery regulations will be incorporated by the proposed MPA packages. In fact, all state waters are affected by multiple fishery regulations, whether spatial, temporal, or other. Some of the more significant regulations, such as the RCA and the proposed EFH no-trawl zone, were developed after the enactment of the MLPA. Thus, the regulatory environment for fisheries is much different now than when the authors of the MLPA legislation were developing its concepts. However, the MLPA is not directed primarily at fishery management in its goals and objectives.

The primary MPA packages have addressed the existing major fishery management regulations summarized above in different degrees. However, there is a common thread. Since fishing for groundfish is already prohibited within the RCA, the implementation of an MPA which incorporates a portion of this fishery management tool and includes comparable regulations causes no additional negative socioeconomic impact to fishermen already excluded from fishing within the RCA.

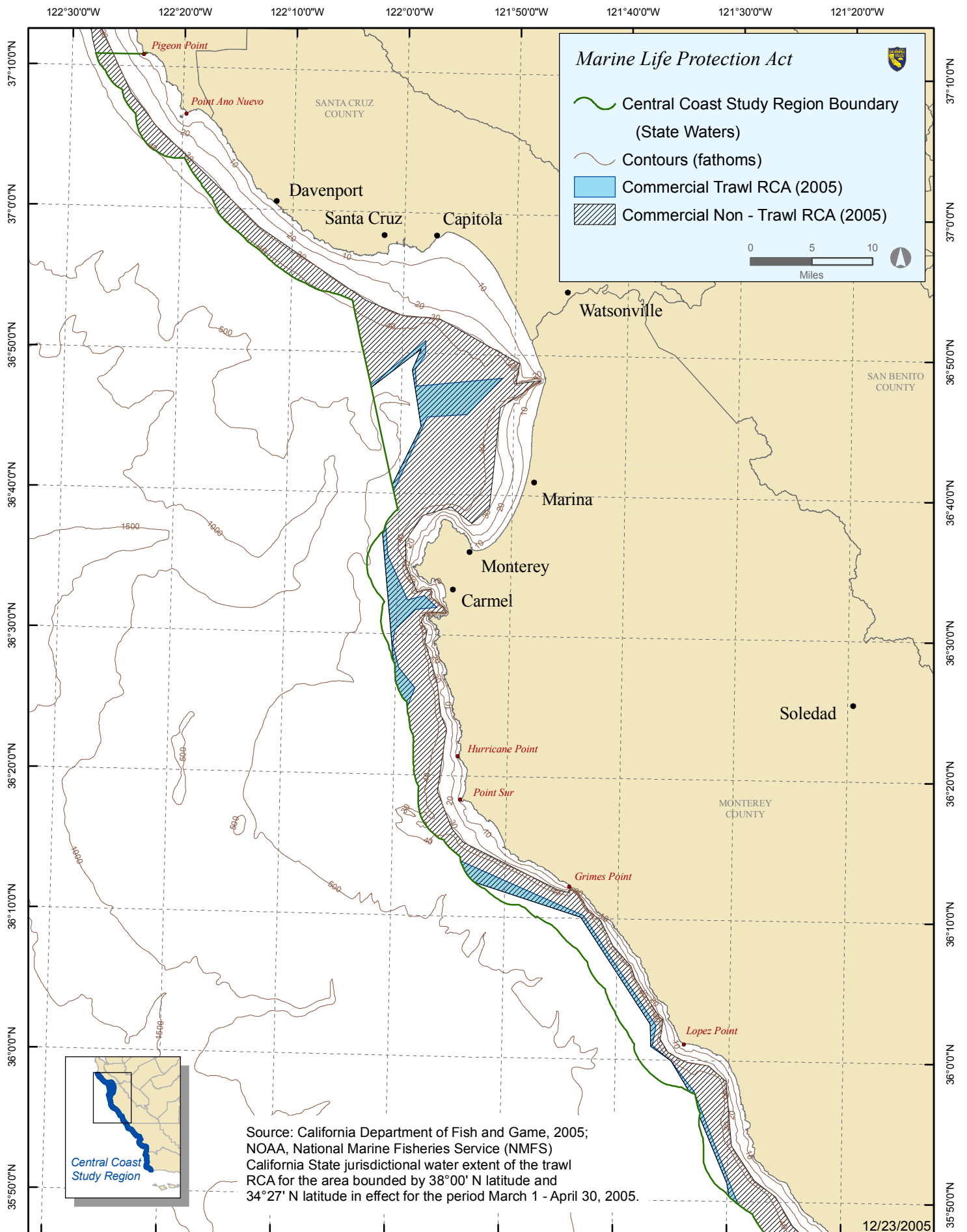


Figure 1a. Commercial Trawl and Non-Trawl Rockfish Conservation Areas (RCA) 2005: North Central Coast Study Region

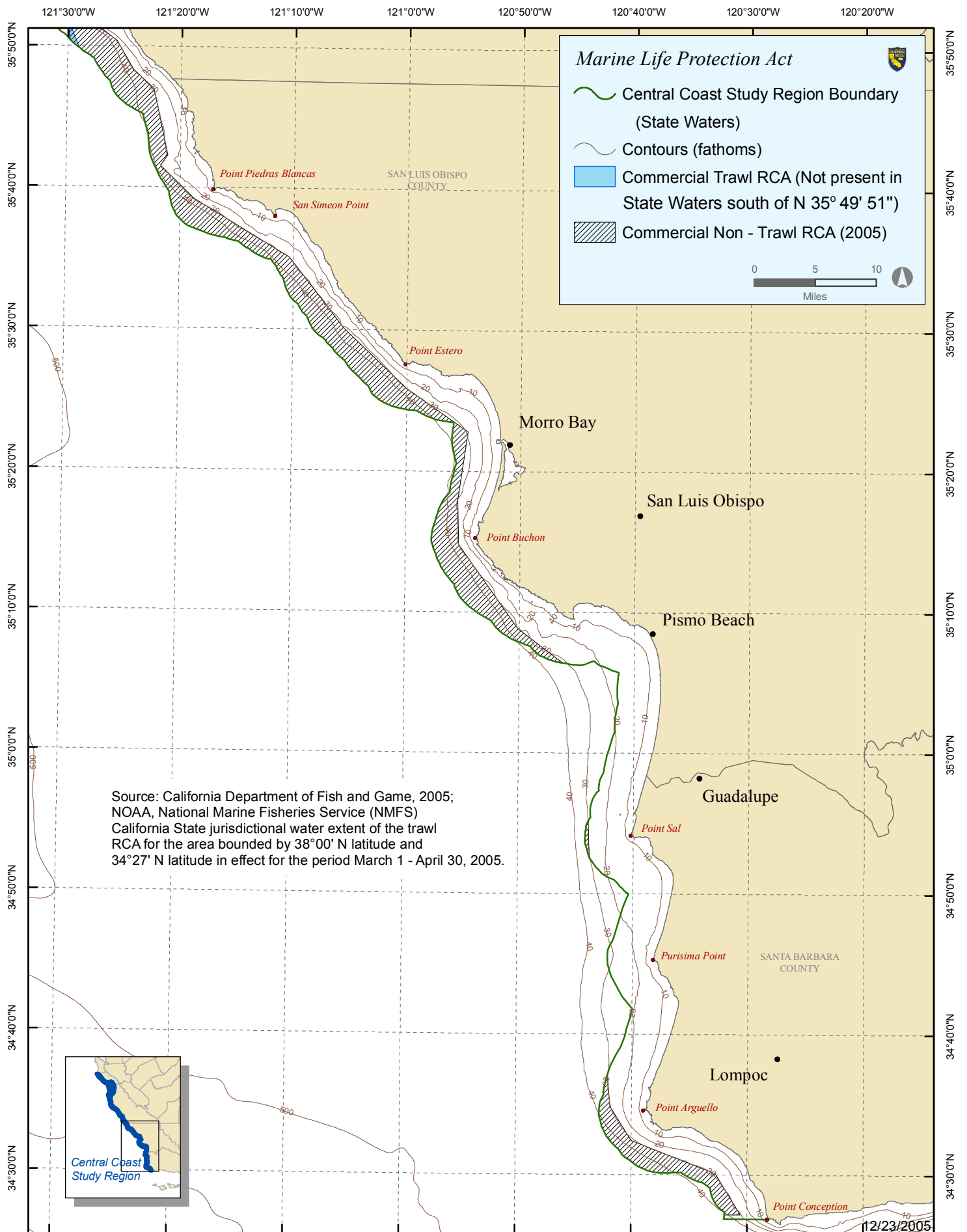


Figure 1b. Commercial Trawl and Non-Trawl Rockfish Conservation Areas (RCA) 2005: South Central Coast Study Region