

# Memorandum

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To: Marine Life Protection Act Blue Ribbon Task Force

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Subject: **Fisheries Management in Relation to the Marine Life Protection Act**

Many have argued that MPAs are unnecessary because existing fishery conservation and management are capable of performing the same function, with less impact to commercial and recreational fishing interests. Others have asked why MPAs were necessary when particular fish stocks were either healthy, or rebuilding on their own.

The MLPA expressly states that MPAs and fisheries management are complementary [Fish and Game Code (FGC) subsection 2851(d)]. Similarly, the Marine Life Management Act [MLMA, Statutes 1999 Chapter 483] declares that "conservation and management programs prevent overfishing, rebuild depressed stocks, ensure conservation, facilitate long term protection and, where feasible, restore marine fishery habitats" [FGC, subsection 7055(b); see also Section 7056(b), (c)]. Although MPAs and fisheries management are complementary, they are not equivalent. The purpose of habitat protection in the MLMA is to advance the "primary fishery management goal" of sustainability (FGC, Section 7056). Moreover, that which is being managed is a specific fishery - which may be based on geographical, scientific, technical, recreational and economic characteristics (FGC, Section 94) - and so may only provide limited protection of a particular habitat.

Conversely, although the MLPA considers managing fishery habitat [FGC, subsections 2851(c), (d)], it also encompasses broader, ecosystem-based objectives that are not limited to *only* managing fisheries. If only existing fishery conservation and management measures were considered in designing the MLPA networks, then arguably only some of the ecosystem goals and objectives might be met. Other goals and elements would be undervalued (e.g. improving "recreational, educational and study opportunities provided by marine ecosystems" and protecting "marine natural heritage...for their intrinsic value" [FGC, subsection 2853(b)]. The MLPA also states that one of the purposes of the marine reserve component is to generate baseline data that allows the quantification of the efficacy of fishery management practices outside the reserve [FGC, subsections 2851(e), (f)]. This would be difficult to implement if the MPA design itself must consider those very same existing conservation and management measures.

Moreover, it is important to remember that the MLMA is the most comprehensive revision of state marine fishery management procedures in history. The subsequent enactment of the MLPA the following year strongly suggests the Legislature recognized that fishery conservation and management measures alone

were inadequate to the task of broad ecosystem protection. Finally, had the Legislature intended existing fishery conservation and management measures to be considered in designing MPAs, then it plainly would have said so, as it did in the MLMA (FGC, Section 7083). As it is, the fact that the MLPA allows the Commission to "regulate commercial and recreational fishing and any other taking of marine species in MPAs" [FGC, subsection 2860(a)] strongly suggests that fishery measures are not intended to be considered in the design of MPAs but may in fact be subject to limitations beyond those already existing under fishery management regimes. In particular, the Nearshore Fisheries Management Plan (NFMP) developed pursuant to MLMA is specifically designed to adapt management in the presence of MPAs. Similarly, other fishery management changes, if necessary, would occur after the implementation of MPAs through the MLMA process. Thus, while the design of fishery management measures should properly consider the existence of MPAs, the reverse is not true.

The conclusion that existing fishery management measures are not properly considered in designing MPAs is further bolstered by three "real world" considerations. First, the direction from the Legislature is to use "the best readily available information" and studying the interaction of existing fishery management practices would add another dimension of complexity that retards, not facilitates, the process. Second, the subject of interaction with existing fishery management processes reflects exactly the kind of "scientific uncertainty" acknowledged by the Legislature when it authorized the application of adaptive management to the MLPA process. Third, the unfortunate reality is that existing fishery management processes do not always work. Indeed, as evidenced by the collapse of the west coast groundfish fishery, they can fail entirely. Fishery conservation and management measures alone do not necessarily guarantee either fishery sustainability or ecosystem health. The MLPA is designed to seek these key features, in addition to existing fishery management.