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DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR) APR 11 2012

for the NORTH COAST STUDY REGION COMMISSION MEETING
 Submitted by David Gurney, April 11, 2012 AGENDA ITEM 2

I. Science related aspects of the Draft EIR1.) Chapter 1.4 — **“Topics Dismissed From Detailed Analysis—Mineral Resources”**

The issue of protection of Marine Reserves from oil/gas drilling and infrastructure, or any other ocean industrialization projects, in or around Marine Reserves, was not addressed, and was deliberately kept off the table during the entire MLPAI process.

The president of the “Western States Petroleum Association,” Catherine Reheis-Boyd sat on the “Blue Ribbon Task Force” throughout the MLPAI process, representing a gross conflict of interest.

2.) Chapter 6-4 of the the Draft EIR states: “scientific and educational research” will have “no significant impact.” Yet the EIR identifies 20 organizations, institutions, and governmental agencies, and four non-governmental organizations (NGOs), with an interest in these marine reserves.”(pg. 6.4.3)

In addition, the EIR states there are now 562 “scientific collecting permits” valid for our Marine Region. (pg. 6.4-8)

I question whether 562 loosely regulated “scientific collecting permits” - for the potential take of fish in Marine Protected Area closures - will have “no significant impact” on the ocean or the culture of the North Coast region.

3.) Seventeen Native American Tribes from throughout Northern California have expressed a renewed interest in harvesting marine resources in the “North Coast Study Region,” as a result of the MLPAI. The increased pressure on marine resources has not been addressed as an “impact” by this Draft EIR for the North Coast region.

Neither the California nor the United States Constitution allows for special, discriminatory access to the ocean for spiritual, scientific or subsistence use of marine resources, as mentioned in (2) & (3) above.

4.) In Section 4.3 of chapter 4: **“Biological Resources”** the EIR states: “the majority of the study region’s habitats occur in areas 100 m or shallower. In fact 93% of the study region occurs in water 100 m or less.” The section lists as “unknown habitats” 127 mi.² of the marine study region from 0 to 30 meters deep. In a strip coastal habitat from Point Arena to the Oregon border, to three miles out, the EIR identifies 127 square miles as “unknown habitat” in the 0 to 98 foot depth range. According to the DEIR figures, this is over a quarter (27%) of the study region, from the shoreline, 0 to 98 feet deep.

The EIR also claims on page 4-31, in section 4.3 – **“Environmental Setting”** that the 127.9 mi.² or 27% pof the region is “unknown substrata.” This represents a severe lack of data for the process of choosing MPAs.

5.) The MLPai's sonar mapping vessel, working to identify undersea habitats through marine mapping, struck and killed a 72 foot blue whale. The vessel at the time was operating illegally without a valid permit, and without the required marine mammal observer onboard, whose job it is to spot whales and avoid such accidents during hydrographic operations.

The data supplied by a contractor willing to violate the law in both the permitting and operation of their sonar surveys must be called into question, along with the gap of over 25% of the critical 0 - 100ft habitat in the Study Region. As a result the entire Marine Mapping project needs to be re-done, for credible and usable scientific data to be used implementing meaningful marine protected areas.

AF-5

6.) Mr. Ron LeValley, Co-Chair of the MLPai "Initiative's" "Science Advisory Team", was recently arrested on felony fraud and embezzlement charges. Although we do not know the outcome of these allegations, the very fact and circumstances of this arrest call into question the integrity of the entire scientific process used in the MLPai.

In my opinion, the science used for implementation of the MLPA needs to be fully and independently investigated and verified following Mr. LeValley's felony arrest. Otherwise, the science for this DEIR cannot be considered valid.

AF-6

The standards for the "best readily available science" used in the MLPai project may need to be set higher.

7. Members of the MLPai and its science team have improperly secured jobs and grants for themselves to "research & monitor" new MPAs, in a blatant display of cronyism and nepotism with this privatized process. Perks, hotel rooms, meals, travel expenses, per diems, and "grants" - were freely offered through the Resources Legacy Fund Foundation (RLFF) throughout the MLPA process, to both individuals and organizations.

AF-7

II. Analysis of other improper/illegal actions by the MLPai

1.) The privately funded implementation of the MLPA, nor the law itself, was ever voted on by the people of this state, though this project alters the California State Constitution (See: Article 1, Section 25), which guarantees equal ocean access to all Californians.

AF-8

2.) California, through the Department of Fish and Game and the Fish and Game Commission, already has "statutory authority to determine season and conditions" under which any plant or animal species may be taken. Hence the MLPA limited access program is unnecessary under existing law, as any or all species may be listed, in both time and place, by "seasons and conditions."

AF-9

3.) The MLPA process called itself an “Initiative.” But an Initiative in California has a specific legal definition. An initiative is the process of collecting signatures for a measure to be put on the ballot, and then voted on by the people.

AF-10

The MLP AI “Initiative” was not an initiative.

4.) Private aquariums will be allowed take in the new Marine Protected Areas, under the legal umbrella of “education and research.”

The people who funded this “Initiative” (through the RLFF) own the Monterey Bay Aquarium, contractors for them “take” marine resources for profit, on behalf of their own and other private, public, and commercial aquariums. A vested conflict of interest in the creation of the MLPA “Initiative” is being granted exclusive rights to “take” within MPA’s they have devised.

AF-11

5.) The privately funded “Initiative” violated numerous law in the course of it’s 2009-2011 process in the North Coast Region. Among the violations committed during the North Coast MLP AI “Initiative” process:

a.) The MLP AI repeatedly violated Bagley-Keene open meeting laws by improperly noticing their public meetings. It changed the location of a Sept. 2009 meeting without proper notice, and it announced a follow-up meeting for the following evening, all without proper notice and in violation of B-K.

b.) Members of the public, while seated in the audience, were repeatedly and improperly approached by initiative staff during public meetings.

c.) The MLP AI engaged in secret, non-noticed meetings with Tribal representatives, without oversight or proper representation of the public, in violation of Bagley-Keene Open Meeting laws.

d.) The MLP AI seriously violated Bagley-Keene open-meeting and civil rights laws, by prohibiting public comment and press coverage at some of their public meetings. This writer was repeatedly harassed for trying to legally record MLP AI public meetings. I was finally falsely arrested, and charged with “disrupting” the meetings, for legally asserting rights under the Bagley-Keen Open Meetings Act.

AF-12

The Mendocino County District Attorney categorically refused to prosecute the false charges and arrest by the MLP AI.

e.) The MLP AI “Initiative” engaged in the illegal financing of individuals, organizations, agencies, and government entities throughout the course of their project.

f.) The MLP AI misleadingly called itself an “Initiative,” when in fact an “initiative is a specifically defined process of obtaining signatures to put a measure on the ballot, to be decided by the voters. The Initiative process is clearly defined by the California Secretary of State anf the Office of the Attorney General.

(Other MLP AI “Initiative” violations may be referenced in Section I of this document.)

7. I object to the naming of the Ten Mile State Marine Reserve after Skip Wollenberg. Mr. Wollenberg staunchly insisted that marine protected areas have, written into law, an absolute prohibition of underwater pipelines, cables, or any other infrastructure related to industrial development, oil and gas drilling.

AF-13

I believe Mr. Wollenberg would have demanded that these prohibitions be in place, before his name would be attached to any MPA.

To do less is disrespectful Skip Wollenberg’s memory.

8. It is illegal and unjust to delegate access to the ocean for only certain individuals, for the take of plants and animals, or access for spiritual communion, public or private, or for subsistence food gathering – on the basis of race, religion, national origin, cultural identity, professional, economic or scientific status.

AF-14

The access to interrelate with nature should be based solely a human being’s respect for nature.

In my opinion, abrogation of these rights is a violation of both the United States, and the California Constitutions, and the essence of equality, civil rights, and fair play.

9.) The end result of denying access, to areas already severely regulated to public, and opening these MPAs up to 562 “scientific take” permits, twenty research and educational organizations, seventeen tribes, four NGO’s, possible oil/gas interests, energy interests, aquaculture interests, Navy testing and training, and the increased pressure on other areas from displaced fishing interests, will more than likely have the opposite effect of that intended by the MLPA in the first place.

AF-15

10.) Finally, how can a Draft EIR - be paid for by the same private parties (the RLFF) - who financed the MLPA “Initiative” in the first place, and still claim to be independent, fair, accurate, just, or comprehensive - or even legal?

AF-16

The gross conflict of interest in the financing of this EIR by the same private funding sources as the project itself, should be ample cause for this EIR to be immediately and totally invalidated.

Other Observations:

The maps and descriptions of MPA’s are inadequate. Coordinates for MPAs are not included. Maps are inaccurate.

AF-17

Comment Letter AF – Gurney, David

Response to Comment AF-1

Please refer to *Master Response 1: Scope of the MLPA and Regulatory Authority* for a discussion on regulation of future mineral resource extraction regulations.

Also see *Master Response 3: Inadequacy or Application of Data Gathered During the MLPA Initiative Planning Process, and Adequacy of the Science Standard*.

The CEQA analysis did not include evaluation of mineral resources because the project does not propose any regulations related to mineral resource extraction. The CEQA analysis does consider cumulatively considerable effects of implementation of the Proposed Project with reasonably foreseeable future projects in Chapter 7 of the DEIR. See *Master Response 2: Analysis of Other Activities within the North Coast Study Region*.

Response to Comment AF-2

See *Response to Comment A11-3*.

Response to Comment AF-3

These comments raise complex issues of law and policy and do not address the sufficiency of the EIR.

Response to Comment AF-4

Refer to *Response to Comment A11-4*.

Response to Comment AF-5

See *Response to Comment A6-11*.

Response to Comment AF-6

This comment raises complex issues of law and policy, and does not address the EIR or its sufficiency. However, see *Master Response 3: Inadequacy or Application of Data Gathered During the MLPA Initiative Planning Process, and Adequacy of the Science Standard*.

Response to Comment AF-7

These comments do not address the sufficiency of the EIR. The legitimacy of using private funds for the MLPA was decided in *Coastside Fishing Club v. California Resources Agency* (2008) 158 Cal.App.4th 1183. Assertions that the MLPA is somehow “privatizing” marine resources constitute unsubstantiated opinion.

Response to Comment AF-8

See *Response to Comment AF-7*.

Response to Comment AF-9

See *Response to Comment AF-7*.

Response to Comment AF-10

Comment Noted. This comment speaks to the MLPA planning process and do not address the sufficiency of the EIR.

Response to Comment AF-11

These comments raise complex issues of law and policy and do not address the sufficiency of the EIR.

Response to Comment AF-12

See *Response to Comment AF-7*.

Response to Comment AF-13

This comment contains statements not related to the environmental review published in the DEIR, but rather related to proposed MPA regulations and/or regulatory sub-options under consideration by the Commission as part of its current rulemaking process conducted pursuant to the APA. See *Response to Comment A1-6*.

Response to Comment AF-14

These comments raise complex issues of law and policy and do not address the sufficiency of the EIR.

Response to Comment AF-15

The CEQA analysis did not include evaluation of mineral resources because the project does not propose any regulations related to mineral resource extraction. See *Master Response 1: Scope of the MLPA and Regulatory Authority* for a discussion on regulation of future mineral resource extraction regulations.

The CEQA analysis does consider cumulatively considerable effects of implementation of the Proposed Project with reasonably foreseeable future projects in Chapter 7 of the DEIR. See *Master Response 2: Analysis of Other Activities within the North Coast Study Region*.

Response to Comment AF-16

See *Response to Comment AF-7*.

Response to Comment AF-17

See *Response to Comment S15-1*.



Wilderness Unlimited - 22425 Meekland Ave., Hayward, CA 94541

March 30, 2012

MLPA North Coast- Fish and Game Commission

Attn: Fish and Game Commission-
Pres. Dan Richards

To whom it may concern:

My name is Rick Copeland I am the president of Wilderness Unlimited (W.U.), a highly regarded conservation entity on the west coast. As such, I represent its over 6000 California members. W.U. manages the Soper Company's DeVillbiss Ranch, an equally highly regarded land steward. That property includes approximately 5 miles of oceanfront directly adjacent to the Double Cone Rock (DCR), formally referred to as Vizcaino SMCA in the North Coast MLPA plan.

Over the course of the MLPA process, Wilderness Unlimited and Soper Co. have used the public comment process to engage the NCRSG, BRTF and ultimately the DF&G Commission. It is fairly well documented that we did not receive much of an ear until reaching the Commission level.

At the Stockton meeting, you may recall, we illustrated the coastline ruggedness and presented documentation of the management and protection provided by the 30-year conservation agreement. Our position of being unheard during the process was reiterated including feeling that the process itself was very regionally biased.

As neither Soper Co nor Wilderness Unlimited are based in the local area, it was easy for the planners to "close" what wasn't available to them anyway. This was clearly stated by a north coast representative at the Commission Meeting in Stockton. The quote was I believe, "If it is so good, why can't we go there?"

Wilderness Unlimited has submitted independent assessments from wildlife biologists familiar with this area as far back as 2010 via the public input process. Their briefs were submitted with far more variables back in Round 2 and 3.

I have attached a couple of updated assessments, as there is only one viable option now, Option B. One prior independent assessment cannot comment now via the public process due to conflict of interest as that person is now employed by the Department.

Finally, I would like to address the Commissioner's request for how closing the shoreline access off could affect Wilderness Unlimited. Obviously the net result of such a closure is undeterminable to W.U. unless it is actually is closed.

For the record, Wilderness Unlimited is not just a hunting club, but in fact is the largest manager of private fisheries on the west coast. Indeed, all memberships have fishing privileges but 30% of the membership are "fishing only" memberships, which illustrates the viability of W.U. as a fishery desired operation.

We manage over 25 fisheries that include private stretches of rivers, private ponds, and access areas to public fisheries. This includes fly fishing for trout, to steelhead and bass fishing. Only one fishery out of all these is ocean access. One. The DeVillbiss Ranch.

Other access points aren't as critical as this one. For example, W.U. has three access points to the Fall River. If we were to loose one we'd be ok. However, since the MLPA CEQA report became public at the Fort Bragg session, we've received several calls on what was going to happen to DeVillbiss. I have already promised a couple of members their dues back if we lose access.

A huge point to whether the agreement with Soper will continue if the closure occurs is based on use days of the property. Access to fishing is for several months a year. Abalone, a key interest here is open seven months of the year. Rifle deer season (zone B4) is open for 4 weeks. The limiting factor in the ocean access is still the ocean conditions (rough more times than not). So while folks are there for many days, the days capable of fishing are far more limited.

The net result of closure would more likely than not reduce the usage to a point where the ranch would not be worth keeping in the program. I defer to Soper Company to illustrate where the funds of the current conservation agreement are utilized.

It is the feeling of Wilderness Unlimited that the north coast stakeholder's group did an exemplary job of diving through the data, politics and special interest

AG-1

groups in an attempt to present a "plan" at this forum on time and in their minds "UNIFIED".

However, they never had a Shore Fishing Access Option. From speaking with members of the stakeholder's group, I believe that they would have endorsed this option had they had it.

In the following months, Staff has done a wonderful job of creating a tool providing for shore access that is being referred to as Option B in the Double Cone Rock SMCA.

In closing, Wilderness Unlimited asks the Commission to adopt Option B for the Double Cone Rock SMCA.

Respectfully,

WILDERNESS UNLIMITED

Rick Copeland

Rick Copeland, President

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AG-1

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Comment Letter AG – Copeland, Rick

Response to Comment AG-1

The Commission acknowledges your comment regarding the Proposed Project's potential for conflict on existing land use activities. The Double Cone Rock SMCA Option was developed specifically to address this conflict.

The commenter is directed to review DEIR Chapter 6, Section 6.3 *Recreation*, and specifically Impact REC-2: *Decreased Recreational Opportunities*. The beneficial fishing opportunities of the proposed Double Cone Rock SMCA Option are identified on page 6.3-22, fourth bullet from the top. The discussion states that increased opportunities for shore-based recreational take of salmon, Dungeness crab, cabezon, rockfish, surfperch, surf smelt, and abalone (by authorized methods) would occur under the Option, compared to the Proposed Project. CEQA does not require identification of beneficial impacts; the primary focus of CEQA analyses is to identify and disclose potential adverse impacts on the environment.

The Commission developed the Double Cone Rock SMCA Option with the specific activities of the property owner (Soper Company) and commercial recreation contractor (Wilderness Unlimited) in mind. The proposed MPA regulatory options were fully evaluated according to State CEQA Guidelines. No further analysis is required under CEQA. Comments expressing a preference for specific regulations are noted and will be considered by the Commission as they contemplate final action.

Please also refer to *Response to Comments AH-1 and AI-1*.

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March 30, 2012

Fish and Game Commission

RE: MLPA North Coast Double Cone Rock SMCA

Dear Commissioners,

I am requesting the DFG Commission adopt the Option B alternative of the Double Cone Rock SMCA.

I have a degree in Animal Science with an emphasis in Aquaculture from UC Davis (B.S. 1986) and am an avid abalone diver and fisherperson. I have spent many days each year diving for abalone up and down the north coast. However, most of my abalone diving over the past twenty years has occurred on the DeVillbiss Ranch. In addition I have been Wilderness Unlimited's lead security officer on the DeVillbiss for almost the entire time.

I can tell you that the "abalone beds" located directly off of the DeVillbiss Ranch contain some of the best aquatic habitat and marine wildlife, in particular abalone, I have experienced on California's north coast. In addition, although a very healthy and abundant population of abalone exists, the harvest of abalone is very, very limited for several reasons:

- Access is very difficult. Abalone Harvesters must scale steep bluffs using ropes to access the abalone.
- This section of the coast has limited protection from the impacts associated with the ocean (wave action, surge and visibility) due to the lack of major substrate (rocks or topographical features) protection. For this reason I am able to enter the water less than 50% of the days I plan to dive.
- Travel distance for members of Wilderness Unlimited many who reside in the Bay Area.

AH-1

With respect to rock or surf fishing I can offer you the following:

- In all the years I have visited the property (since 1986) I have only run into one other person surf fishing.
- In all the years I have visited the property (since 1986) the rock fishing has been very productive but just like the abalone the population is in fantastic shape due to the limited pressure from fisherpersons.

AH-1

Given the very low use of the coast directly off of the DeVillbiss Ranch I find it very difficult to understand from a scientific perspective why the Task Force considered closing it to recreational use in the first place. Although the shore fishing access language now provided in the CEQA document was not an option when I previously submitted comments I wish to extend thanks and appreciation to the Commissioners and DFG staff for including this option as it is reasonable, fair and appropriate given the very limited shore fishing and impact (if any) over the past 25 plus years.

Again, I strongly request you adopt Double Cone Rock Option B.

Respectfully,



Weston Arvin
25060 Central Way
Davis, CA 95616
530-758-5251

Comment Letter AH – Arvin, Weston

Response to Comment AH-1

Comment noted. The Double Cone Rock SMCA Option was developed specifically to address potential conflicts on existing land use activities.

The commenter is directed to review Chapter 6, Section 6.3 *Recreation* of the DEIR, and specifically, Impact REC-2: *Decreased Recreational Opportunities*. The beneficial fishing opportunities of the proposed Double Cone Rock SMCA Option are identified on page 6.3-22, fourth bullet from the top. The discussion states that increased opportunities for shore-based recreational take of salmon, Dungeness crab, cabezon, rockfish, surfperch, surf smelt, and abalone (by authorized methods) would occur under the Option, compared to the Proposed Project.

The Commission developed the Double Cone Rock SMCA Option with the specific activities of the property owner (Soper Company), commercial recreation contractor (Wilderness Unlimited), and their clients in mind. No further analysis is required under CEQA. Comments expressing a preference for specific regulations are noted and will be considered by the Commission as they contemplate final action.

Please also refer to *Response to Comments AG-1 and AI-1*.

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March 30, 2012

MLPA North Coast- Fish and Game Commission

Attn: Fish and Game Commission- Pres. Dan Richards

To whom it may concern:

On behalf of the Wilderness Unlimited Foundation, I respectfully request that you adopt Option B regarding the Double Cone Rock SMCA.

For the record, the entire land parcel north of Rockport Bay to Usal Point is owned by one entity, Soper Co. The property and shore access has been managed for years by Wilderness Unlimited and is a heralded example of protection of natural resources through private stewardship.

The CEQA assessment itself states that the level of protection under option 2 is low in both option A and B. (B allows for shore access to the existing group). It is also stated and true that the take is insignificant.

I submitted back in October of 2010 additional options and map suggestions but at the time the shore fishing access tool was not available. I commend staff for coming up with this tool.

For the record, I am the Wilderness Unlimited Foundation's (WUF) principal wildlife and habitat coordinator. I graduated from Sacramento State University with a degree in Biological Conservation in 1990, was a wildlife biologist for Jones & Stokes for 7 years and the Lands Manager for Wildlands Inc. for 5 years prior to opening my own business. As the WUF's principal advisor, I oversee all habitat restoration and conservation programs including all administered by Wilderness Unlimited. For nearly ten years I have owned and operated an environmental consulting firm, Visger and Associates, and have specialized in mitigation and habitat restoration plans, and conservation easements, and other natural resource protective measures.

The Soper/Wilderness Unlimited conservation agreement is a true example of private conservation at work. While the ocean and shoreline are public, this conservation plan with the aid of limited public access and often-turbulent seas has left a truly

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ENVIRONMENTAL CONSULTING

spectacular ocean habitat. The 0-30' rock substrate provides unparalleled marine life (finfish and invertebrates) because the above-mentioned program has protected it. Due to near impossible access, impacts to marine species are negligible, if any.

It would be prudent for the State of California, Fish and Game Commission to adopt Option B for Double Cone Rock. Wilderness Unlimited has a proven track record of unparalleled resource protection through proper utilization and could be an important ally for continued protection of additional properties.

Too much good comes from the foresight of these conservation pioneers to allow a government process to bring it down. ☐ ☐

AI-1

Sincerely,

George Visger

Principal Wildlife Biologist
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Comment Letter AI – Visger, George

Response to Comment AI-1

See *Response to Comment AG-1*.

Please also refer to *Response to Comments AG-1 and AH-1*.

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March 28, 2012

HUMBOLDT COUNTY BOARD OF SUPERVISORS

825 5TH STREET

EUREKA, CA 95501

RECEIVED
BOARD OF SUPERVISORS

APR 9 2012



Honorable Supervisors:

It has come to my attention that the Department of Fish and Game has recommended: South Humboldt Bay State Marine Recreational Management Area: "Move northern boundary south to a prominent point of land on the west side of the bay. Extend the northern and southern boundaries east across the entire bay."

This expanded fish and game marine protected area option will take a large portion of south bay. Although the larger area proposed by the Department of Fish and Game does not impact waterfowl at this time, all other extractive (clamming, fishing etc.) would be prohibited. I am opposed to this option. It is redundant as it adds unnecessary additional restrictions to an area that has been determined to be adequately protected.

Please keep the original recommendation which was for a small area off PL point and was agreed upon by the MLPA Stakeholder and Blue Ribbon Task Force.

Sincerely,

DANIEL L. DOBLE

4727 CUMMINGS RD

EUREKA, CA 95503

AJ-1

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Comment Letter AJ – Doble, Daniel

Response to Comment AJ -1

Your comment expressing opposition to Option 1 of the South Humboldt Bay State Marine Recreational Management Area (SMRMA) of the Proposed Project is noted. The DEIR including a description of the proposed regulations was circulated to solicit public comments regarding the sufficiency of the related environmental analysis. Comments expressing a policy preference are noted and will be considered by the Commission as they contemplate final action.

No changes to the DEIR are necessary.