

California Marine Life Protection Act Initiative

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To: MLPA Blue Ribbon Task Force
From: MLPA Initiative Staff
Subject: Planned Process Design for Developing Round 3 Marine Protected Area Proposals
Date: July 16, 2010

This memorandum outlines the Marine Life Protection Act (MLPA) Initiative staff's planned process design for developing Round 3 marine protected area (MPA) proposals by the MLPA North Coast Regional Stakeholder Group (NCRSG). The planned approach will support the NCRSG in accomplishing its stated charge of developing "alternative proposals for MPAs within the north coast study region by September 2010 that meet the goals of the MLPA, for consideration by the MLPA Blue Ribbon Task Force (BRTF)."

The process design builds on and is consistent with previous BRTF process guidance provided to the NCRSG. It also incorporates NCRSG interests and draws on MLPA Initiative staff's experience and best professional judgment, including the facilitation team's years of experience in designing and facilitating collaborative stakeholder processes, which includes the design and facilitation of three previous MLPA Initiative regional stakeholder groups.

It is requested that the BRTF consider and approve this process design at its July 21-22, 2010 meeting in Fort Bragg.

This memorandum is organized into the following sections:

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I. Basis for Round 3 Process Design

The Round 3 process design is based on previous guidance received from the BRTF, interests expressed by NCRSG members, and MLPA Initiative staff's experience and best professional judgment.

A. Recap of Key BRTF Guidance to Date

The Round 3 process design has been developed based on previous BRTF guidance and, in particular, guidance provided at its May 3-4 and May 17, 2010 meetings. Key elements of this guidance are:

- Meeting the science guidelines in the MLPA and in the *California Marine Life Protection Act Master Plan for Marine Protected Areas*, and further science guidance from the MLPA Master Plan Science Advisory Team (SAT), should be central to MPA proposals developed by the NCRSG.

- MPA proposals should have a backbone of MPAs that have a very high or high level of protection (as assigned by the SAT), including some state marine reserves.
- Stakeholders should strive for cross-interest support in their MPA designs.
- As in previous study regions, the NCRSG should consider unique aspects of the study region, including weather conditions, safety concerns, existing fisheries management measures, and aspects of local economies, while still meeting the science guidelines.
- Stakeholder input and local knowledge is important, and should be used to supplement the best readily available scientific information.
- In the past three study regions, instances where MPA proposals failed to meet the science guidelines were the exception and not the rule. Exceptions were made for habitats that were not available or rare. In those cases where the habitats were available, exceptions were considered only after a strong effort was made to meet the guidelines and a very compelling reason was given as to why they would not be met.
- BRTF members prefer to select a preferred alternative to recommend to the California Fish and Game Commission from NCRSG MPA proposals that meet the range of science and other guidelines, rather than having to propose their own solutions to address gaps within NCRSG proposals in meeting the guidelines.
- BRTF members noted that it is helpful for their decision making to receive proposals that meet the preferred size and spacing guidelines wherever possible, proposals that minimize potential negative socioeconomic impacts, while still meeting minimum size and spacing guidelines, and proposals that fall somewhere between these two approaches.

Additionally, in past study regions, the BRTF has recommended Round 3 process designs that give “safe harbor” for regional stakeholder group members to pursue creative new options and combinations. The intent here is to ensure that all regional stakeholder group members are able to work on and contribute toward a Round 3 proposal that satisfies their interests, and that they and their constituents can live with.

B. Summary of Expressed NCRSG Interests and Preferences

NCRSG members have expressed a variety of interests and preferences regarding Round 3 process design:

- Many NCRSG members have expressed the importance of having all NCRSG members discuss MPA designs in the same group to help ensure that all key perspectives and information are shared to support the discussions.
- Other NCRSG members have expressed an interest in promoting efficient deliberations to ensure that the NCRSG is able to accomplish its core charge of developing alternative MPA proposals for consideration by the BRTF within the available time.
- NCRSG members have expressed the strong interest of producing Round 3 MPA proposals that they and their broader constituents can support. To this effect, some NCRSG members have requested the opportunity for the entire NCRSG to come to consensus around a single Round 3 MPA proposal, while others have expressed the preference of producing multiple Round 3 MPA proposals to help ensure that all interests are being met in at least one proposal.

- Some NCRSG members have expressed an interest in working on a proposal that primarily focuses on minimizing potential, negative, socioeconomic impacts, while other NCRSG members have expressed an interest in working on a proposal that strives to meet preferred science guidelines, where appropriate.
- Finally, many NCRSG members have expressed a general reluctance to develop MPAs that would restrict traditional, non-commercial, gathering activities of California tribes and tribal communities.

II. Planned Round 3 Process Design

A. Developing Round 3 MPA Proposals

Drawing on the above BRTF guidance, expressed NCRSG interests, and MLPA Initiative staff's experience and best professional judgment, we plan to implement the following NCRSG Round 3 process design:

1. In Round 3, the NCRSG will work primarily in the full group setting toward producing a cross-interest Round 3 MPA proposal that improves on the evaluation results for the Round 2 proposals and that all NCRSG members can live with. This proposal must meet the minimum science guidelines to the extent possible, recognizing that some key habitats are unevenly distributed, making it impossible for the spacing guidelines to be met for those habitats. Specific focus should be on meeting science guidelines for habitat replication and MPA spacing—guidelines which were not fully met for Round 2 draft MPA proposals. The NCRSG also should consider the SAT guidance that MPA proposals meeting the preferred science guidelines are more readily assured of meeting the goals of the MLPA.
2. If the NCRSG is not able to come to agreement around a single Round 3 MPA proposal, the NCRSG should work to identify key areas of disagreement and create multiple (i.e., two or three) MPA proposals to address these areas. Developing alternative proposals that emphasize different interests in key geographies will help clarify for the BRTF the key tradeoffs involved.
3. The intent is that all NCRSG members should be able to “live with” at least one NCRSG Round 3 MPA proposal. Full NCRSG support is not required for the individual Round 3 proposals or for specific MPAs within a given proposal (i.e., individual NCRSG members cannot veto an MPA or proposal just because they do not agree with it).
4. The primary opportunity for each NCRSG member to express his/her level of support and preference for the Round 3 proposal(s) will be during discussions with the BRTF at the joint BRTF-NCRSG meeting recently rescheduled to October 25-27, 2010. This discussion will be informed by evaluations of the Round 3 MPA proposals and public input.
5. The NCRSG should develop Round 3 MPA proposals working from the following key sources of information produced to date:
 - external MPA arrays generated in Round 1 and draft MPA proposals generated in Round 2,
 - BRTF and staff guidance, including guidance from the California Department of Fish and Game and the California Department of Parks and Recreation,
 - rounds 1 and 2 evaluation results,

- NCRSG members' local knowledge,
- additional ideas generated by NCRSG members between meetings, and
- public input received from written comments (including those submitted on the website and at the July 6-8, 2010 open houses) and shared with NCRSG members.

B. Round 3 Guidance to Address Traditional, Non-commercial, Tribal Gathering Activities

The BRTF provided the NCRSG with previous guidance to both meet science guidelines and accommodate traditional, non-commercial, tribal gathering activities, to the extent possible. Accomplishing both of these goals is challenging due to several factors, including a lack of information regarding the location and nature of traditional tribal gathering, a legal structure that the State of California has indicated does not allow for exclusive tribal gathering, and the existence of key habitats necessary for inclusion in MPAs to meet science guidelines but which are located in areas where tribal gathering activities occur. Some proposed uses that allow for continued traditional tribal gathering activities may reduce the levels of protection in MPAs below moderate-high.

For geographies where the science guidelines cannot be met without adversely affecting traditional tribal gathering activities, MLPA Initiative staff seeks to create a process to identify the tradeoffs between meeting science guidelines and accommodating traditional, non-commercial, tribal gathering activities using the best readily available information.

1. Round 3 Information on Traditional, Non-commercial, Tribal Gathering Activities

In Round 2 of the MPA proposal development process, the NCRSG lacked sufficient information regarding species and gear types used in traditional, non-commercial, tribal gathering activities, so placeholder language was inserted into proposed regulations for Round 2 draft MPA proposals ("Tribal Uses Proposed"). In the spirit of bringing the best available information to inform the development and evaluation of Round 3 MPA proposals, MLPA Initiative and California Department of Fish and Game staff are working with California tribes and tribal communities to review Round 2 proposed MPAs and identify potential allowed methods of take and species that are consistent with traditional, non-commercial, tribal gathering activities. Two resources will be developed as a result of this effort:

- First is an aggregated list of potential allowed methods of take and species associated with each Round 2 proposed MPA.
- Second is a general list of traditional, non-commercial, tribal gathering activities¹ to reference if the NCRSG intends to propose species and methods of take that are consistent with traditional tribal gathering activities in a geography where Round 2 draft MPA proposals did not propose an MPA.

The two lists are intended to help the NCRSG in Round 3 define species and methods of take used by tribes and tribal communities when designing MPAs to accommodate traditional, non-commercial, tribal gathering activities.

¹ This list will be based on information in the north coast regional profile and additional input from meetings with north coast tribes and tribal communities.

2. Round 3 Guidance

In Round 3, the NCRSG will be asked to propose regulations consistent with the California Fish and Game Code and the California Code of Regulations, Title 14, which require that proposed allowed methods of take be identified by species (or species group) and gear type, including those intended to accommodate tribal gathering activities.

- a. The NCRSG should refer to the two lists of aggregated information on traditional, non-commercial, tribal gathering activities to help determine which species and methods of take to specify in proposed MPAs. Within the current legal framework as defined by the State of California, proposed allowed methods of take will apply to all non-commercial users and not exclusively to California tribes and tribal communities. California's current legal framework also indicates that any allowed uses that do not identify species (or species groups) and gear types cannot be legally implemented by the California Department of Fish and Game and should not be proposed.
- b. To help the BRTF understand which MPA designs accommodate tribal gathering activities, NCRSG members should specify for each proposed, non-commercial, allowed use whether it is the underlying intention to: i) only accommodate traditional gathering activities of tribes and tribal communities, or ii) accommodate the activities of tribes and tribal communities as well as all other recreational users.
- c. All proposed allowed species and methods of take will be assigned a level of protection consistent with the SAT protocol described in the *Draft Methods for Evaluating Marine Protected Area Proposals in the North Coast Study Region* and will be included in Round 3 SAT evaluations. It is important to note that some activities may receive a level of protection below moderate-high level of protection and would result in the MPA not meeting science guidelines. The NCRSG should not include proposed allowed species and methods of take with levels of protection below moderate-high in MPAs that are intended to form the backbone of MPAs in an MPA proposal. Any proposed allowed species and method of take identified as only intended to accommodate tribal activities and that receives a level of protection below moderate-high will be noted in the proposed regulations.
- d. For proposed MPAs with levels of protection below moderate-high to accommodate traditional, non-commercial, tribal gathering, and otherwise intended as backbone MPAs, MLPA Initiative staff recommends that SAT evaluations present results with and without those proposed allowed species and methods of take. In particular, MLPA Initiative staff recommends two approaches for Round 3 SAT evaluations:
 - Approach 1: Evaluate Round 3 MPA proposal(s) according to SAT evaluation methods, using levels of protection for proposed uses to identify MPAs with at least moderate-high levels of protection that will be included in evaluations of habitat replication, MPA size and MPA spacing.
 - Approach 2: Evaluate Round 3 MPA proposal(s) and include MPAs with proposed uses that have below moderate-high levels of protection if the

NCRSG has identified its intention to only accommodate traditional tribal gathering activities in those MPAs.

The SAT evaluation work group will determine the most appropriate methods of integrating this guidance for Round 3. In sum, this recommendation is intended to maximize the information presented to the BRTF so that an informed policy decision can be made regarding meeting science guidelines and accommodating traditional, non-commercial, tribal gathering.

III. Addressing Potential Process Challenges

The process design described above contains key challenges that must be addressed in order to help ensure successful completion of the Round 3 NCRSG proposals by the end of the August 30-31, 2010 meeting in Eureka. First, it will be challenging to have efficient MPA planning deliberations in a group with over 30 diverse stakeholder members. Second, with a large group, there is greater risk that individual voices and interests may not be sufficiently heard and incorporated into the Round 3 NCRSG MPA designs.

To address these challenges, the Round 3 process design described above will be contingent upon the NCRSG making sufficient progress toward achieving its Round 3 charge. Throughout the Round 3 process, and explicitly during a designated agenda item on the afternoon of the July 30, 2010 meeting, MLPA Initiative staff will assess the extent to which either of the following scenarios is in effect:

- 1) Sufficient progress is not being achieved in developing the Round 3 NCRSG MPA proposal(s) and the NCRSG is at risk of not completing its charge by the end of the August 30-31, 2010 meeting. Key criteria for assessing the progress made by the NCRSG by the afternoon of its July 30, 2010 meeting include:
 - Whether the “backbone” of MPAs has been discussed and potential MPA design options have been identified for the Round 3 NCRSG MPA proposal(s).
 - The extent to which the MPA “attribute” information has been completed in MarineMap for the proposal(s)
 - A manageable amount of work remains to be done between the July and August NCRSG meetings, and there is clear commitment on the part of the NCRSG to complete that work between meetings.
- 2) Some NCRSG members believe that they are not able to satisfy their interests or contribute ideas toward a Round 3 MPA proposal that they and their constituents can live with (i.e., they are not able to find “safe harbor” as intended by the BRTF). A key criterion for assessing this situation includes:
 - Extent to which interests and ideas expressed are systematically or consistently being excluded from the Round 3 proposal(s).

If either of these scenarios is found to be in effect, the facilitators and the NCRSG members will discuss what steps need to be taken between the July and August NCRSG meetings and at the August meeting to help ensure that the work is completed. The facilitation team may elect to modify the Round 3 process design to help ensure completion of the NCRSG’s charge in a timely fashion.