

California Marine Life Protection Act Initiative

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To: MLPA Blue Ribbon Task Force
From: Ken Wiseman, Executive Director
Subject: Update on recommendations for coordinating management of marine protected areas (MPAs) with federal agencies
Date: February 24, 2009

Background

An August 2004 memorandum of understanding (MOU) among the State of California's Resources Agency and Department of Fish and Game and the Resources Legacy Fund Foundation structured the first phase of the Marine Life Protection Act Initiative (MLPAI). One of the objectives of that MOU stated, "Develop recommendations for coordinating the management of MPAs with the federal government by November 2006."

In November 2006, the MLPA Blue Ribbon Task Force received and approved a document entitled, "*Improving Coordination among State and Federal Agencies with MPA Responsibilities.*" The purpose of that report was to help the task force achieve the referenced objective from the first phase MOU, and included 16 recommendations for actions the State of California could take to improve state/federal MPA management coordination.

In December 2006, a second MOU was signed by the original parties, with several objectives, including to "prepare and make publicly available information and recommendations for coordinating management of MPAs with federal agencies."

At your December 10, 2008 meeting, you directed staff to provide a status update on the November 2006 recommendations and to identify potential additional recommendations the task force could make.

Summary of 2006 Recommendations

The November 2006 document entitled, "*Improving Coordination Among State and Federal Agencies with MPA Responsibilities.*" included 16 recommendations related to oversight coordinating bodies, design of MPAs in federal waters, education and outreach, surveillance and enforcement, water quality programs, monitoring and adaptive management, and emergency and contingency planning. See the executive summary in Appendix A for the specific recommendations; MLPA staff are in the process of determining what actions the State of California has taken on the recommendations and will provide summaries for each in a separate report.

The November 2006 report was a first step towards achieving the task force charge. Accompanying the report was also a *Draft Recommended Executive Order by the Governor of the State of California* (see Appendix B). However, this Executive Order was never signed.

Current Coordination Efforts

The MLPA Initiative is by design a collaborative process and some state and federal agencies have created or improved working relationships as a result; among others, the California Department of Fish and Game, California State Parks, National MPA Science Center, and National Marine Sanctuary Program are all active participants in the MLPA Initiative and are working toward even greater cooperation and collaboration in the future.

Potential Opportunity for Enhancing State and Federal Agency Coordination

MLPA staff are currently investigating the possibility of the MLPA being featured as a meeting topic for a future meeting of the California Biodiversity Council (CBC).

The CBC was formed in 1991 to improve coordination and cooperation between the various resource management and environmental protection organizations at federal, state, and local levels. Strengthening ties between local communities and governments has been a focus of the CBC by way of promoting strong local leadership and encouraging comprehensive solutions to regional issues.

The CBC was not created to independently establish new projects nor to become another bureaucracy. Rather, its purpose is to discuss, coordinate, and assist in developing strategies and complementary policies for conserving biodiversity. Members exchange information, resolve conflicts, and promote development of regional conservation practices.

The CBC has 42 members, including 20 state agencies, 12 federal agencies, and 10 local governments. It is chaired by California Secretary for Natural Resources Mike Chrisman and Bureau of Land Management California State Director Mike Pool. The Council meets 2-3 times a year on issues relating to natural resource conservation in California.¹

Future CBC Meetings

The purpose of being featured at a future CBC meeting would be two-fold: 1) to educate CBC members about the MLPA and, specifically, the master plan for MPAs and the current status of MPA designation, and 2) to invite deliberations regarding ways to improve coordination and collaboration in MPA management.

Participation at a future CBC meeting is an excellent opportunity to begin a dialogue with agencies that will be directly or indirectly affected by MPA designation. All the CBC members carry out work in one or more of the management functions described above. Participation in a CBC meeting contains the additional benefit of communicating a clear and consistent message to multiple agencies with MPA management responsibilities.

¹ See California Biodiversity Council. About the California Biodiversity Council at <http://biodiversity.ca.gov/> (last visited on February 18, 2009).

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Next Steps for Continuing to Fulfill the Charge of the Task Force

MLPA staff will (1) complete a report on the status of the November 2006 recommendations, (2) submit a meeting topic proposal to the CBC for late 2009 and (3) solicit feedback from existing state and federal agency partners for additional ways in which state and federal agency coordination can be improved.

CALIFORNIA MARINE LIFE PROTECTION ACT INITIATIVE

Improving Coordination among State and Federal Agencies with MPA Responsibilities

November 8, 2006

**Prepared by Amy Boone
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Executive Summary

In recent years, there has been increasing interest in ecosystem-based management of ocean resources and recognition that the division of federal and state ocean jurisdictions at 3 nautical miles from shore complicates ecosystem-based management efforts. The recent Pew Oceans Commission and the U.S. Commission on Ocean Policy reports call for greater coordination between federal and state governments for the management of ocean resources.

The Marine Life Protection Act (MLPA) calls for the use of ecosystem-based management as it seeks to protect the structure, function, and integrity of ecosystems rather than to protect individual species. A memorandum of understanding (MOU) between the California Resources Agency, California Department of Fish and Game, and Resources Legacy Fund Foundation establishing the California Marine Life Protection Act Initiative stipulates “the development of recommendations for coordinating the management of marine protected areas with the federal government by November 2006.” The MOU further states that the recommendations will draw from the U.S. Commission on Ocean Policy and the Pew Oceans Commission. This report seeks to describe opportunities for coordination and collaboration between the federal and state governments for managing marine protected areas designated through the MLPA process.

The recommendations drawn from this report are organized by management function and summarized below. Please see the text of the report for a more detailed description of each recommendation.

Oversight coordinating bodies

The potential for coordination among high-level decision-makers between California state agencies and among the states of California, Oregon, and Washington has increased substantially in the last few years. The California Ocean Protection Council (OPC) was established in 2004 with the express purpose of coordinating activities of ocean-related agencies. The OPC Steering Committee, consisting of high-level decision-makers of thirteen state agencies, met for the first time in August 2006 and is expected to meet semi-annually. The West Coast Governors’ Agreement on Ocean Health, announced in September 2006, also represents a significant effort to coordinate activities among the states of California, Oregon, and Washington. While it may be too early to evaluate these nascent coordinating bodies, there is significant increased potential for high-level coordination in which federal agencies can become involved.

Recommendation 1: Establish a Federal Ocean Protection Council Working Group, consisting of the existing OPC Steering Committee and regional representatives of federal agencies that would address all ocean and coastal management issues and which would meet at regularly scheduled OPC Steering Committee meetings.

Recommendation 2: Establish a working group between representatives of the states of California, Oregon, and Washington; and representatives of federal agencies with interest in MPAs.

Design of MPA’s in federal waters

There is currently a moderate degree of federal-state coordination in the effort to establish marine protected areas. National Marine Sanctuary Program staff have served as members of the MLPA Central Coast Regional Stakeholder Group and CDFG staff have served on

sanctuary advisory councils considering the establishment of MPAs within sanctuaries. These efforts to involve federal agency staff should be continued as the MLPA is implemented in other study regions. CDFG staff have and should continue to provide staff support to the efforts of the National MPA Center. In addition, efforts to share information and tools should be continued. However, formal collaboration between state and federal agencies in the design of MPAs is not recommended at this time because of legal uncertainties and delays in the designation of MPAs in federal waters.

Recommendation 3: State agencies should provide staff support to federal MPA designation efforts but the state process to establish MPAs should not be slowed so that the federal and state processes may occur concurrently.

Education and outreach

Education and public outreach is a management activity for which there has been a moderate degree of federal-state coordination and collaboration, mainly between CDPR and federal partners. CDFG has informally partnered with federal agencies for education and public outreach for MPAs around the Channel Islands. The Elkhorn Slough National Estuarine Research Reserve, a partnership between CDFG and NOAA, is the only formal CDFG-federal partnership in the area of education and outreach. The NMSP, NERR, NPS, and USFWS have substantial existing capacity for education and public outreach that state agencies may be able to leverage.

Recommendation 4: State agencies should coordinate education and outreach efforts related to MPAs among themselves and with federal partners. Efforts may include placing educational dioramas regarding marine protected areas in state parks, national marine sanctuary visitor centers, estuarine research reserve visitor centers, national wildlife refuges, and national parks. In addition, educational curricula may be developed that address the educational mandates of several agencies.

Recommendation 5: Depending upon the success of the 2006 general agreement signed between the National Marine Sanctuary Program, the Estuarine Reserves Division, the U.S. Fish and Wildlife Service, and the National Park Service to improve conservation efforts, state agencies should consider becoming party to the general agreement.

Surveillance and enforcement

Currently, there is a high degree of federal-state coordination and collaboration with respect to surveillance and enforcement of marine regulations as evidenced by the joint enforcement agreements between CDFG and NOAA. However, there are opportunities to improve the collaboration between CDFG and NOAA, as described below. The NPS has a high degree of internal capacity in the area of surveillance and enforcement which may be leveraged by state agencies. Finally, there is a considerable opportunity to improve surveillance and enforcement functions through a cooperative agreement between state partners, CDFG and CDPR.

Recommendation 6: CDFG should renegotiate the joint enforcement agreement with NOAA Fisheries to obtain more funding and to arrange for a more consistent stream of funds. CDFG should discuss with NOAA the possibility of basing federal funding on the number of marine commercial and recreational fishers rather than tons of landings.

Recommendation 7: CDFG should pursue legal means to access vessel monitoring system data from NOAA Fisheries in order to better enforce federal laws and prosecute violators in the state judicial system.

Recommendation 8: CDFG should develop a joint enforcement agreement with the National Park Service to take advantage of NPS rangers located in coastal NPS lands.

Recommendation 9: CDFG should establish a cooperative enforcement agreement with CDPR to allow CDPR rangers to enforce the California Fish and Game Code and Title 14 regulations outside the boundaries of CDPR lands.

Water quality programs

There is a high degree of coordination between state and federal agencies with respect to water quality regulation, largely because California has been delegated authority by USEPA to implement the Clean Water Act. There is a moderate degree of collaboration between SWRCB and CDFG to monitor ambient water quality, primarily through SWAMP, State Mussel Watch and the Bay Protection and Toxic Cleanup programs.

Recommendation 10: CDFG or another monitoring entity should coordinate water quality monitoring efforts with SWRCB and the regional water quality control boards.

Permitting

Permitting is an area in which the degree of coordination between state and federal agencies is relatively low. However, the benefits of increased coordination or collaboration are also relatively low because of distinct jurisdictional boundaries and the fact that the permitting process does not consume a large share of agencies' resources. One area which may benefit from increased coordination and possible collaboration is permitting for aquaculture.

Recommendation 11: Depending on future demand for marine aquaculture permits within national marine sanctuaries, the CDFG should consider entering into a memorandum of agreement with the NMSP for joint permitting.

Monitoring and adaptive management

Currently, federal-state coordination and collaboration occurs in several research and monitoring programs. However, MPA monitoring will require new expertise, tools, and approaches distinct from monitoring for fisheries management. The NMSP, NPS, NERR, and USFWS each has certain monitoring capacities that, through expanded partnerships, could aid in monitoring California's MPAs. The proposed California Marine Monitoring and Evaluation Institute could take the lead in developing these working relationships.

Recommendation 12: CDFG or the proposed California Marine Monitoring and Evaluation Institute, where appropriate, should develop effective partnerships that would bring the resources and infrastructure of relevant federal and state science programs to bear in furthering California's MPA monitoring strategies.

Recommendation 13: In order to coordinate state and federal monitoring strategies with respect to MPAs, the directors of state and federal monitoring programs should have an advisory role to the proposed California Marine Monitoring and Evaluation Institute.

Recommendation 14: Require that any entity, including state and federal agencies, seeking funding from the proposed California Marine Monitoring and Evaluation Institute comply with the institute's protocols and data standards, ownership, and access policies. This compatibility would facilitate integration of data collected by federal and state entities and their partners.

Emergency and contingency planning

Emergency and contingency planning is an activity in which a high degree of federal and state collaboration is already taking place. CDFG, through its Office of Spill Prevention and Response (OSPR), is the lead state agency for marine oil spill and other deleterious materials prevention and response. The State Interagency Oil Spill Committee, chaired by OSPR and composed of 22 agencies, shares responsibility for oil spill prevention.

Recommendation 15: In order to protect marine resources from the damaging effects of oil spills, the Marine Region of CDFG should work with OSPR and the USCG to update the Area Contingency Plan to include MPAs designated as a result of the MLPA process.

Conclusion

The dynamics of state and federal coordination and collaboration in ocean resource management are constantly changing. Legislation, budgets, and political will all influence the potential for state and federal agencies to work together. Because of the changing nature of state and federal coordination and collaboration, efforts should be made to periodically update this report and brief decision-makers on the status of efforts to work together.

Recommendation 16: This report should be updated and status reports on MPA designation processes by California and federal representatives should be made on an annual basis to the Federal OPC working group (described above). If no such Federal OPC working group is formed, the updated report and status briefings shall be presented to the appropriate state and federal bodies.

APPENDIX B**California Marine Life Protection Act Initiative
Recommended Executive Order by the Governor of the State of California
November 20, 2006**

WHEREAS, California has been a national and global leader in ocean and coastal management, and the state should continue this leadership role; and

WHEREAS, ocean planning and regulation has historically been fragmented at both the federal level and within California, resulting in reduced efficiency and effectiveness of efforts to ensure clean water, productive habitats, sustainable fisheries and functioning recreational beaches; and

WHEREAS, the Marine Life Protection Act recognizes that California's marine protected areas (MPAs) have been established on a piecemeal basis rather than according to a coherent plan and sound scientific guidelines; and,

WHEREAS, the first Master Plan to guide the adoption and implementation of the Marine Life Protection Program has been drafted; and,

WHEREAS, the California Fish and Game Commission has identified its first preferred alternative package of MPA for the central coast; and

WHEREAS, implementation of the Master Plan should be completed by 2011 pursuant to commitments and activities by and among state agencies; and

WHEREAS, the California Ocean Protection Act established a high-level California Ocean Protection Council with a mission to help ensure comprehensive and coordinated management, conservation and enhancement of California's ocean and coastal resources for their intrinsic value and for the benefit of current and future generations; and

WHEREAS, the California Ocean Protection Act charges the Ocean Protection Council with coordinating activities of state agencies to improve the effectiveness of state efforts to protect ocean and coastal resources and to establish policies to coordinate the collection and sharing of scientific data related to coastal and ocean resources; and

WHEREAS, it is important for the state to seek consensus (where possible) with stakeholder groups on ocean and coastal research priorities for California and then to work with these stakeholder groups to obtain the funding, to share resources and to apply the knowledge gained to real world management challenges; and

WHEREAS, the state should form collaborative partnerships with not only those providing K-12 and collegiate formal education, but also institutions, organizations and governmental agencies providing informal education opportunities for the public, from pre-schoolers to senior citizens, including underserved minorities, on ocean and coastal resources management issues; and

WHEREAS, the California Ocean Protection Council will identify and prioritize issues that may benefit from additional coordination.

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby issue this Executive Order to become effective immediately:

Implementation of the Marine Life Protection Act

1. To further implementation of the Marine Life Protection Act, and consistent with the recommendations of the MLPA Blue Ribbon Task Force, the California Ocean Protection Council shall immediately prepare an agreement between the Ocean Protection Council and each state agency or department with jurisdiction over ocean and coastal resources (or with jurisdiction over matters affecting the state's ability to regulate ocean and coastal resources), committing each such agency or department to assist in developing and supporting any marine protected areas established pursuant to the Marine Life Protection Act and to implement the provisions of the Marine Life Protection Act with a goal of full implementation of the Master Plan for MPAs by 2011.
2. The lead executive officer of each such agency or department under my direct executive authority shall execute the agreement prepared by the Ocean Protection Council, and I respectfully request that all other agencies or departments with jurisdiction over ocean and coastal resources join the agreement.
3. The Ocean Protection Council shall support the Department of Fish and Game and the Fish and Game Commission in implementing the Marine Life Protection Act beyond the central coast region to other areas in the state and will assist in securing funding that the Department of Fish and Game and any other state agencies or departments will need to manage a statewide network of MPAs.
4. The Department of Fish and Game shall expedite the expenditure of funds for implementing the Marine Life Protection Act, including but not limited to funds authorized by the Legislature or by bonds or ballot measures that approve the expenditure of funds for ocean or coastal protection.

California Ocean Protection Council

5. The California Ocean Protection Council shall coordinate activities of state agencies to improve the effectiveness of state efforts to protect ocean and coastal resources and shall establish policies to coordinate the collection and sharing of scientific data related to ocean and coastal resources.
6. All agencies with jurisdiction over ocean and coastal resources, or with jurisdiction over matters affecting the ability to regulate ocean and coastal resources, shall work with the Ocean Protection Council to improve the coordination of ocean and coastal resource policy development, implementation and enforcement.
7. The Ocean Protection Council shall develop policies, practices and recommendations to be followed by all state agencies to improve coordination with federal, regional and local government entities in regulating ocean and coastal resources.

8. By December 2006, the Ocean Protection Council shall inventory laws and identify gaps or overlapping jurisdictions affecting priority ocean and coastal issues, and by May 2007, working with all relevant state agencies, shall identify necessary changes to regulations, legislation or other tools to improve ocean governance.
9. By May 2007, the Ocean Protection Council shall identify all ocean and coastal protection enforcement authorities, programs and budgets, and convene a task force to provide recommendations to the Ocean Protection Council on more efficient ways of conducting and coordinating enforcement.
10. The Ocean Protection Council shall report to me every six months on its progress to improve collaboration and cooperation in managing ocean and coastal resources. The report shall specifically identify obstacles in securing collaborative and cooperative regulatory activities and, when identified, recommend strategies to reduce or overcome such obstacles.

IT IS FURTHER ORDERED that agencies under my direct executive authority shall cooperate in implementing this order. Other entities of state government not under my direct executive authority, including the University of California, the California State University, California Community College System, constitutional officers, and legislative and judicial branches, are requested to assist in its implementation.

IT IS FURTHER ORDERED that as soon as hereafter possible, this order shall be filed with the Office of the Secretary of State and that widespread publicity and notice shall be given to this Order.

IN WITNESS WHEREOF, I have here unto set my hand and caused the Great Seal of the State of California to be affixed this ___ day of [Month] 2006.

Arnold Schwarzenegger
Governor of California

ATTEST:

Bruce McPherson
Secretary of State