

California Marine Life Protection Act Initiative

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To: MLPA Blue Ribbon Task Force
From: MLPA I-Team
Subject: Status report on recommendations for improving coordination among state and federal agencies with marine protected areas responsibilities
Date: Revised May 22, 2009

At your February 26, 2009 meeting, you directed staff to provide a status report on implementation of recommendations made in November 2006 by the MLPA Blue Ribbon Task Force to the State of California for improving coordination among state and federal agencies with marine protected areas responsibilities. Attached please find the requested report.

California Marine Life Protection Act Initiative
Status of Recommendations for Improving Coordination of
Marine Protected Areas Management among State and Federal Agencies
Revised May 22, 2009

The first memorandum of understanding (MOU) that created the California Marine Life Protection Act (MLPA) Initiative for a pilot project along the central California coast included an objective of developing recommendations for coordinating the management of marine protected areas with the federal government. The MOU further stated that the recommendations draw from the U.S. Commission on Ocean Policy and the Pew Oceans Commission reports.

In November 2006 the MLPA Blue Ribbon task Force approved a report that described opportunities for coordination and collaboration between the federal and state governments for managing marine protected areas designated through the MLPA process, including 16 specific recommendations. This report provides a status on the progress made to implement those recommendations.

This report is organized in the same fashion as the original report, where recommendations are presented by management function. Please see the text of the report (<http://www.dfg.ca.gov/mlpa/pdfs/coordination110806.pdf>) for a more detailed description of each management function and recommendation. Page numbers listed below refer to this document.

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 (see p. 5).

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.

Status of Recommendation 1

The Ocean Protection Council (OPC) Program Manager indicates that the OPC Steering

Committee does not currently have regularly scheduled meetings; however, the OPC is receptive to the idea of convening future OPC Steering Committee meetings on the subject of MPAs and would like to take the lead in doing so in the near future. The addition of regional representatives of federal agencies would also be a welcome approach. A suggested change to the title of this potential meeting group was provided as the Federal and State MPA Coordinating Group.¹

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.

Status of Recommendation 2

The protection of marine resources is being approached differently within the states of California, Oregon and Washington and currently there is not an effort to create a working group as described in the recommendation. However, the recently released Ocean Action Plan for the West Coast Governors' Agreement on Ocean Health contains several actions that may inform the establishment of marine protected areas.

Action 2.1 commits the three states to "document, describe, and map marine and estuarine ecological communities throughout West Coast waters, characterize existing human uses of those areas, and establish measures to ensure effective habitat protection." Action 3.2 calls for the development of integrated ecosystem assessments and Action 6.3 commits the states to complete seafloor mapping for all state waters. Working groups for some of these actions have already been established, including representative of state, federal and tribal governments; research institutions; industry; and non-governmental organizations.

However, California's commitment to establishing and monitoring marine protected areas (MPAs) is much more developed than Oregon and Washington. Both of these states are still in the formative and exploratory stages of considering how to address the topic of MPAs. Therefore while the West Coast Governor's Agreement would appear to be a good platform for addressing inter-state coordination as it pertains to MPAs, it may be more productive to consider other platforms such as the California Biodiversity Council (discussed in your February 24, 2009 memo) or the State Interagency Coordinating Committee for Marine Managed Areas (CALSIACC).² CALSIACC is defined in the Marine Managed Areas Improvement Act as consisting of representatives of state agencies, departments, boards, commissions, and conservancies with jurisdiction or management interests over marine managed areas. Its general purpose is to review new or amended Marine Managed Areas proposals and ensure proposed regulations are consistent with the state system as a whole. Further consideration of the most appropriate coordinating bodies and/or augmentation of existing bodies is needed.

¹ Personal communication with Christine Blackburn, Program Manager, Ocean Protection Council on April 1, 2009.

² Personal communication with Amy Vierra, Ocean and Coastal Policy Analyst, California Natural Resources Agency throughout March and April 1- 8, 2009.

Design of MPAs 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 DFG 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. California Department of Fish and Game (DFG) 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 (see p. 5-6).

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.

Status of Recommendation 3

This recommendation is presently being carried out. For example, the central coast MLPA process was completed in September 2007 and later that year the MBNMS again began considering MPAs in federal waters. MPA nominations from the State of California have been submitted for potential inclusion in a national system of MPAs and there is a state appointee to the MPA Federal Advisory Committee. Although the federal process is not as far along as the state process, this has not negatively impacted or slowed the state process in any respect. No further action is suggested at this time.

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. DFG 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 DFG and NOAA, is the only formal DFG-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 (see p. 6).

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.

Status of Recommendation 4

Implementation of this recommendation has begun in the central coast, with an overall framework, and short- and long-term priorities, identified by DFG with input from state and federal partners. Priorities include updated regulations, publications and postings, and MPA signage placement. DFG and California Natural Resources Agency staff completed an initial central coast MPA brochure that has been widely distributed. A second more detailed brochure is in final stages for printing and will be distributed to state, federal, and local agencies, non-profit outreach and education partners, and interested parties. Efforts to create and install MPA signs have been hampered in part by limited funding. However, DFG staff created and will be posting temporary signage for all central coast MPAs, and is working in partnership with Monterey Bay National Marine Sanctuary (MBNMS) and California Department of Parks and Recreation (CDPR) staff to confirm which locations are in greatest need of signage.

Some permanent signs have been developed by partners: MBNMS staff has created signs in consultation with DFG for four MPAs in the Monterey area; and non-profit funds have been provided to the Monterey Bay Sanctuary Foundation, which has committed to assist in developing and placing approximately 16 site-specific, central coast MPA signs. An informal coordination committee has been created to help facilitate the development of the central coast signs. Long-term involvement with signage efforts will also involve CDPR staff. DFG continues to seek funding for signage in more locations including public access points to MPAs and boat launch ramps and harbors

Enforcement partnerships exist between DFG and some CDPR staff who have been provided with: the *DFG Enforcement Guide to the Central Coast MPAs*, public “contact cards” that direct members of the public to websites for more information about MPAs and the MLPA process, and a GARMIN Global Positioning System (a company providing GPS data) information update that provides central coast and Channel Islands MPA coordinate boundaries information as well as a link to MPA regulatory information on the DFG website. Note that GARMIN has committed to update its California MPA information to include the new MPAs as each study region regulations are adopted.

DFG staff has also provided guidelines for how to present MPA information to state and federal partners, have given post-adoption presentations on the central coast MPAs, and provided review and feedback on multiple central coast-related outreach and education efforts. One large review project that has been completed is an exhibit for the Pacific Grove Museum of Natural History, which opened on March 28, 2009. This exhibit involved collaboration between state and federal agencies and non-profits, under the lead of the Monterey Bay Sanctuary Foundation and funded through the Resources Legacy Fund Foundation. The exhibit provides an overview of MPAs and is intended to become a statewide traveling exhibit and, ultimately,

contribute to informational kiosks in State Parks along the central coast. Ongoing collaborative efforts include the potential for another exhibit with CDPR at the San Simeon interpretive center that, if successful, could then be adapted for viewing/use at other visitor centers throughout the state, with minor modifications to adapt the exhibit to each region.

Regarding the development of education curricula, DFG does have some K-12 curricula infrastructure in place to help with long-term development of curricula. However, discussions on the development of an MPA curriculum are very preliminary at this time. There is a potential for DFG to contribute to the development of statewide K-12 education principles and curricula under the Education and Environment Initiative (EEI). The EEI allocates state funds of \$7 million dollars over two years for environmental education curricula development and has the potential to include education and information about California's developing MPA network.

As the lead managing agency, DFG is working to formulate and execute a feasible outreach and education plan that will have both short- and long-term goals and products. Because the central coast was the first study region completed, it represents the beginning of MPA-related state, federal and non-profit outreach and education collaborative efforts and, therefore, most of the communication and planning for this is taking place for the first time. There is a steep learning curve involved in consistency and messaging, and strong, coordinated partnerships may take a bit longer to develop. However, once a framework for outreach and education partnerships is developed, it is expected that future partnerships will form more quickly.

DFG and MLPA staff believe these examples of ongoing projects on the central coast are just the beginning of the work that could be undertaken, and that adequate support of education and outreach will be a key factor in the long-term success of MPAs.³

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.

Status of Recommendation 5

According to the Office of National Marine Sanctuaries, the agreement has been signed and is simply a statement of intent to collaborate and may not be possible for California to sign onto.⁴ However, the stated purpose of the agreement is for the agencies to articulate and establish a formal working relationship to provide the means for cooperation that can be carried out at national, regional, and local levels; facilitate inter-agency communication and coordination of programs; and provide a means to share knowledge, resources, and staff, consistent with the

³ Personal communication with Elizabeth Pope-Smith, Marine Biologist, California Department of Fish and Game on March 31, 2009.

⁴ Personal communication with Brad Barr, Senior Policy Analyst, Office of National Marine Sanctuaries on April 9, 2009.

authorities and missions of the agencies. An example of implementation cited within the agreement is for these agencies to identify appropriate states to participate in cooperative conservation efforts. This could perhaps indicate a potential path for California to follow, once the level of success of this agreement is ascertained.

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 DFG and NOAA. However, there are opportunities to improve the collaboration between DFG 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, DFG and CDPR (see p. 6-7).

Recommendation 6

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

Status of Recommendation 6

DFG enforcement staff report that they are satisfied with the current JEA and recently applied for, and signed, a new agreement for 2009. The funding has not decreased a substantial amount and is sufficient for the current capacity. Consistency of funding is contingent upon when and how the U.S. Congress passes the annual budget and is therefore beyond the control of the JEA signatories. The JEA has been updated and no longer relies on landings as the basis for funding; it is now based on multiple factors such as the number of ports, vessels, and airports. This new methodology is more precise and is satisfactory for DFG staff. No further action is suggested by DFG at this time, unless additional specific needs are identified.⁵

Recommendation 7

DFG 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.

Status of Recommendation 7

⁵ Personal communication with Tony Warrington, Assistant Chief of Enforcement Marine Special Operations Unit, and Captain Brian Naslund, Enforcement Division/Marine Region, California Department of Fish and Game on March 26, 2009.

The reauthorization of the Magnuson-Stevens Fisheries Conservation and Management Act in 2006 required information sharing of vessel monitoring data between NOAA Fisheries and DFG. DFG enforcement staff is currently working with NOAA Fisheries to implement the necessary systems and technology to receive this data. NOAA Fisheries has proposed only three DFG computers be configured to access this data statewide and DFG is currently negotiating to obtain more access points. No further action is suggested by DFG at this time, unless additional specific needs are identified.⁶

Recommendation 8

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

Status of Recommendation 8

This recommendation is not something that is currently under consideration by DFG enforcement. If a specific need for this type of agreement is identified, DFG is open to the idea of discussing it with NPS rangers and designing an agreement. No further action is suggested by DFG at this time, unless additional specific needs are identified.⁷

Recommendation 9

DFG 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.

Status of Recommendation 9

DFG enforcement staff has indicated that CDPR rangers are already authorized to enforce the California Fish and Game Code and Title 14 anywhere in the state; however, CDPR does not routinely provide this type of enforcement, most probably due to cost. DFG anticipates that creating a cooperative enforcement agreement with DPR would involve discussion of costs and could include reimbursement to CDPR from DFG for enforcement activity beyond the boundaries of CDPR lands. Since the cost of this type of agreement could be prohibitive, DFG is not currently considering this type of agreement. However, DFG remains open to the idea if a need and source of funding is identified. No further action is suggested by DFG at this time, unless additional specific needs are identified.⁸

Water Quality Programs

⁶ Id.
⁷ Id.
⁸ Id.

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 DFG to monitor ambient water quality, primarily through SWAMP, State Mussel Watch and the Bay Protection and Toxic Cleanup programs (see p. 7).

Recommendation 10

DFG or another monitoring entity should coordinate water quality monitoring efforts with SWRCB and the regional water quality control boards.

Status of Recommendation 10

Implementation of this recommendation has recently begun. The MPA Monitoring Enterprise, in collaboration with DFG, is in the early stages of identifying monitoring needs and has recognized the need to coordinate with the State Water Resources Control Board regarding water quality data. Initial discussions have taken place to identify conceptual areas of overlap and potential opportunities to improve efficiency. No further action is suggested at this time.⁹

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 (see p. 7; 47-49).

Recommendation 11

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

Status of Recommendation 11

Staff at the Gulf of the Farallones National Marine Sanctuary (GFNMS), Monterey Bay National Marine Sanctuary (MBNMS), and Channel Islands National Marine Sanctuary (CINMS) indicate that this recommendation has not been implemented. The GFNMS currently has an oyster aquaculture facility within sanctuary boundaries and the MBNMS is currently reviewing an application for an algae aquaculture facility within its boundaries. Staff from both

⁹ Personal communication with Liz Whiteman, Lead Scientist, California MPA Monitoring Enterprise on April 7, 2009.

sanctuaries indicate that the proposed joint permitting agreement is an excellent idea and are very keen on pursuing discussion of this topic.¹⁰ The CINMS does not have any permitted or pending aquaculture facilities.

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, NOAA Fisheries, 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 (see p. 7-8).

Recommendation 12

DFG 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.

Status of Recommendation 12

In May 2007, the California Ocean Protection Council granted \$2 million to the California Ocean Science Trust (OST) to develop and implement the statewide marine protected area (MPA) monitoring program through the creation of an institute similar to that recommended in a report adopted by the BRTF in November 2006. Accordingly, the OST has established the Marine Protected Areas (MPA) Monitoring Enterprise.

While Recommendation 12 has not yet been implemented, the executive director of the MPA Monitoring Enterprise concurs with it in general as the broad goals of the MLPA are likely to require innovative approaches to MPA monitoring and evaluation. The MPA Monitoring Enterprise, in collaboration with DFG, could take the lead in the development of relationships with the above federal partners in the context of meeting the monitoring requirements of the MLPA.¹¹

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.

¹⁰ Personal communication with Irina Kogan, Resource Protection Specialist, Gulf of the Farallones National Marine Sanctuary, and Michael Ang, Monterey Bay National Marine Sanctuary.

¹¹ Personal communication with Cheri Recchia, Executive Director, California Monitoring Enterprise on April 6, 2009.

Status of Recommendation 13

While this recommendation has not yet been implemented, the director of the MPA Monitoring Enterprise concurs and suggests a consultative role for the state and federal monitoring program representatives.¹²

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.

Status of Recommendation 14

While this recommendation has not yet been implemented, the director of the MPA Monitoring Enterprise concurs with it in general and further stipulates that all funding to conduct MPA monitoring, whether from the MPA Monitoring Enterprise or from the State of California, comply with the enterprise's protocols.¹³

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. DFG, 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 (see p. 8).

Recommendation 15

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

Status of Recommendation 15

~~It has not yet been ascertained whether or not this recommendation has been implemented. The status of this recommendation should be clear in the near future.~~

While this recommendation has not yet been implemented, DFG staff recommends an initial discussion take place between the DFG Marine Region, OSPR, and USCG to discuss how to best include information regarding MPAs in the area contingency plans. Area contingency

¹² Id.

¹³ Id.

plans provide comprehensive guidance for oil spill response, including natural resource protection, in the marine environment.¹⁴

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 (see p. 8; 54).

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.

Status of Recommendation 16

This is the first of any updates to the original report and, in the absence of the Federal OPC Working Group, is being provided to the West Coast Governor's Agreement representatives from the states of Washington and Oregon, as well as to the following state and federal agencies:

California Coastal Commission
California Department of Fish and Game

- DFG Office of Spill Prevention and Response

California Department of Parks and Recreation
California Natural Resources Agency
California Ocean Protection Council
California State Lands Commission
California State Water Resources Control Board

National Marine Fisheries Service
National Marine Protected Areas Center
National Marine Sanctuary Program

- Cordell Bank National Marine Sanctuary
- Gulf of the Farallones National Marine Sanctuary
- Monterey Bay National Marine Sanctuary
- Channel Islands National Marine Sanctuary

National Oceanic and Atmospheric Administration

¹⁴ Personal communication with Julie Yamamoto, Scientific Branch Chief, Office of Spill Prevention and Response, California Department of Fish and Game on May 22, 2009.

National Park Service

- Golden Gate National Recreation Area
- Channel Islands National Park
- Cabrillo National Monument

United States Coast Guard

United States Fish and Wildlife Service