

Memorandum

Date: July 2, 2007

To: Marine Life Protection Act Blue Ribbon Task Force and North Central Coast Regional Stakeholder Group

From: **John Ugoretz**
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Subject: **Existing fishing regulations and statutes related to the development of alternative marine protected area proposals for the Marine Life Protection Act**

Background

While the Marine Life Protection Act (MLPA) is not primarily a fisheries management statute, the MLPA states “MPAs and sound fishery management are complementary components of a comprehensive effort to sustain marine habitats and fisheries [Fish and Game Code (FGC), Section 2851(d)].” FGC Section 2855(c) also states that relevant information shall be taken into account concerning “areas where fishing is currently prohibited”.

Marine and estuarine recreational and commercial fishing is highly regulated in California’s state waters as well as the adjacent federal waters. Statutes and regulations, in particular the latter, are regularly revised to reflect the changing status of fished populations. Laws and regulations traditionally focused on single species or groups of species, and only recently, with the passage of the Marine Life Management Act (MLMA, Statutes 1999 Chapter 483), that focus has begun to shift towards an ecosystem-based approach.

Some fishing regulations have remained constant over many decades, such as the minimum size limit for recreationally-caught red abalone and commercially-caught Dungeness crab. Others, such as the seasonal and depth restrictions on recreational fishing for rockfish, have been revised annually or more frequently in recent years.

A distinction must be made between spatial and temporal laws and regulations. The former, if in place year round, are most equivalent to the type and degree of ecosystem protection provided by marine protected areas (MPAs) for habitats and the species living in those habitats. On the other hand, temporal laws and regulations generally prohibit harvest in particular areas at certain times of the year, while allowing harvest in those same areas at other times. While temporal laws and regulations tend to reduce overall fishing effort and thus afford some protection to individual fished species, they do not allow the establishment of natural size and age structure of unfished populations or provide year-round habitat protection and thus cannot be considered to provide ecosystem protection.

Jurisdictional Authority

In the United States, individual states are responsible for managing fisheries within state waters, generally defined as within three miles from shore. In addition, State laws must be consistent with federal laws. States may also manage fisheries outside state waters if there is no federal management plan in place and for any vessel landing fish in the state or permitted by the state. Traditionally, commercial fisheries management in California was under the purview of the **State Legislature** while recreational fisheries management was conducted by the California **Fish and Game Commission**. The MLMA delegated greater management authority from the State Legislature to the commission.

The Pacific Fishery Management Council (PFMC) is one of eight regional advisory councils to the **National Oceanic and Atmospheric Administration Fisheries Service** (NOAA Fisheries) and is responsible for some fisheries management in California, Oregon, Washington, and Idaho. The PFMC advises NOAA Fisheries on fisheries for which a federal management plan has been adopted. Current federal management plans include groundfish, highly migratory species, salmon, and coastal pelagic species. Although the PFMC is legally only an advisory body, NOAA Fisheries adopts most recommendations submitted to it from the PFMC.

Applicable Laws and Regulations

The following is a summary of the major commercial and recreational fishery spatial laws and regulations effective in 2007 which provide some form of protection to marine species and habitats in waters off the central California coast. It is appropriate and necessary to consider them when developing proposals for MPAs. However, they do not substitute for the long-term protection provided by MPAs, in particular that provided by no-take state marine reserves. While fishery regulations may appear to be equivalent to protection afforded by a limited-take state marine conservation area, this protection may change within a year or during the course of several years as the status of the stocks is re-assessed.

Commercial Rockfish Conservation Areas

Coastwide commercial rockfish conservation areas (RCA) were established in January 2003 to protect and assist in the rebuilding of stocks of lingcod and seven species of rockfishes, all of which were formally declared overfished¹ by NOAA Fisheries². The RCAs were established by NOAA Fisheries following recommendations of the PFMC. RCAs within the MLPA North Central Coast Study Region are specified for four gear types: federal limited entry trawl, open access trawl, federal limited entry fixed gear, and open access non-trawl. The latter two will be called “non-trawl”.

¹ Overfished is defined in the federal groundfish fishery management plan to describe “a stock whose abundance is below its overfished/rebuilding threshold...The value of this threshold is 25% of the estimated unfished biomass level.”

² Lingcod was determined to be rebuilt in 2005.

The trawl and non-trawl RCAs vary annually, seasonally, and regionally. Effective protection equivalent to that of an MPA occurs where the RCA is closed year-round to particular gear types or target species. In 2007, the trawl RCA prohibited the use of trawl gear **year-round** in the 100-150 fathom depth range, extending this prohibition to 200 fathoms in winter months (Figure 1). The non-trawl RCA prohibited all bottom fishing for and retention of federally-managed groundfish species in the 30-150 fathom depth range **year-round** (Figure 1) in the north central coast study region. There is one exception for the non-trawl RCA: when fishing for "other flatfish," (butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder) vessels using specified hook-and-line gear using number 2 hooks with no more than 12 hooks per line are not subject to the RCA. Within the RCA, commercial invertebrate trap fisheries such as spot prawn, Dungeness crab, and rock crab, are allowed.

Recreational RCA

Within the north central coast study region, the recreational RCA prohibited all bottom fishing for federally-managed groundfish species (except "other flatfish" using number 2 hooks) in depths greater than 30 fathoms **year-round** (Figure 2), except that between December 1 and May 31, the RCA prohibited all recreational bottom fishing at any depth.

When considering both the commercial and recreational RCAs, certain areas, especially soft bottom habitats outside of the 100-150 fm depth range, are provided relatively little protection by the RCA designation, primarily due to the allowance of take of "other flatfishes". The areas with the most protection afforded by the RCA designation in 2007 are between 100 and 150 fathoms in general, and rocky habitat between 30 and 150 fathoms.

While some people equate the RCAs to MPAs, in particular to a state marine conservation area in which certain fisheries are permitted while others are restricted, there are important distinctions between the two:

1. RCAs and MPAs have different goals. RCAs are established to rebuild specific fished populations. MPAs are established to achieve various ecosystem goals of the MLPA (i.e., goals 1-6);
2. The boundaries of the RCA are subject to change within and among years based upon stock assessments of single species and annual and in-season catch rates;
3. When stocks of the seven rockfish species are rebuilt, the RCA will likely be removed - i.e. when the RCA has achieved its goal, it will no longer be needed. In contrast, an MPA requires some degree of permanence to achieve its broader ecosystem goals; and
4. RCAs and MPAs established pursuant to the MLPA are subject to different jurisdictional controls. The establishment and removal of RCAs within state and federal waters is managed through the PFMC and NOAA Fisheries, while the California Fish and Game Commission controls the establishment, modification and removal of MPAs within state waters.

Essential Fish Habitat (EFH) No-trawl Zone

The PFMC amended its Pacific Coast Groundfish Fishery Management Plan, pursuant to the Magnuson-Stevens Act, to (1) describe and identify EFH for the groundfish fishery; (2) minimize to the extent practicable the adverse effects of fishing on EFH; and (3) identify other actions to encourage the conservation and enhancement of EFH. One of these measures includes the establishment of a no-trawl zone. After a lengthy series of negotiations with the fishing industry, conservation groups and other interested parties, a proposed no-trawl zone was developed which generally consists of areas not routinely trawled historically, with some exceptions.

Within the MLPA North Central Coast Study Region, the EFH no-trawl zone consists of a variety of areas outside state waters (Figure 3). Since the EFH no-trawl zones are largely in areas in which trawling did not occur historically, there was little additional protection afforded by this designation in this study region.

Other Trawl Regulations

Trawling is prohibited within all state waters in the study region, except trawling for pink shrimp is allowed outside of two nautical miles from shore in some areas. In 2008, all bottom trawling may be prohibited including pink shrimp within the north central coast study region unless "...the commission finds that...the use of trawl gear minimizes bycatch, will not damage seafloor habitat, will not adversely affect ecosystem health, and will not impede reasonable restoration of kelp, coral, or other biogenic habitats." (Fish and Game Code, Section 8842, see Figure 3).

Gill Net Regulations

Gill net fishing only occurs in commercial fisheries and is restricted by depth as well as latitude. Within the study region, the use of gill nets is generally prohibited. North of a line extending 245 degrees magnetic from Point Reyes no gill nets are allowed. South of that Point Reyes, gill nets are prohibited in shallower than 60 fathoms and within 3 nautical miles of the Farallon Islands and the Noonday Rock buoy. As the only waters within the study region shallower than 60 fathoms are around the Farallones, gill nets are essentially prohibited. The only exception is the use of drift gill nets with 14 inch or greater mesh used to take shark and swordfish south of Point Reyes; this type of fishing, and the species targeted by this gear type, are generally not found in the study region.

Recommended Approach to MPA Development

The recommended course of action in developing MPA proposals within the MLPA North Central Coast Study Region is to incorporate portions of areas such as the RCA into specific proposed MPAs as appropriate. This serves two primary purposes:

1. Achieves a long-term/permanent degree of protection to those portions of the RCA within proposed MPAs.
2. Achieves the proposed MLPA Regional Objective 1 under Regional Goal 5: "Minimize negative socio-economic impacts and optimize positive socio-

economic impacts for all users, to the extent possible, and if consistent with the Marine Life Protection Act and its goals and guidelines.”

It is clear that not all areas affected by fishery regulations will be incorporated by the proposed MPAs. In fact, all state waters are affected by multiple fishery regulations, whether spatial, temporal, or other. Some of the more significant regulations, such as the RCA and the adopted EFH no-trawl zone, were developed after the enactment of the MLPA. Thus, the regulatory environment for fisheries is much different now than when the authors of the MLPA legislation were developing its concepts. However, the MLPA is not directed primarily at fishery management in its goals and objectives.

Alternative MPA proposals developed by the regional stakeholder group may address the existing major fishery management regulations summarized above to different degrees. However, there is a common thread. Since fishing for groundfish is already prohibited within the RCA, the implementation of an MPA which incorporates a portion of this fishery management tool and includes comparable regulations causes no additional negative socioeconomic impact to fishermen already excluded from fishing within the RCA.