

STATE OF CALIFORNIA  
FISH AND GAME COMMISSION  
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION  
(Pre-publication of Notice Statement)

Amend Section 632  
Title 14, California Code of Regulations  
Re: Marine Protected Areas

- I. Date of Initial Statement of Reasons: April 21, 2010
- II. Dates and Locations of Scheduled Hearings:
  - (a) Notice Hearing: Date: April 7, 2010  
Location: Monterey, CA
  - (b) Discussion Hearing: Date: October 20-21, 2010  
Location: San Diego, CA
  - (c) Adoption Hearing: Date: December 15-16, 2010  
Location: Santa Barbara, CA
- III. Description of Regulatory Action:
  - (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

- (1) Background and history of the Marine Life Protection Act

The proposed regulation change is intended to meet the goals described in the Marine Life Protection Act (MLPA, Stats. 1999, ch. 1015) within a portion of California's State waters. The area covered in this proposal is the south coast region, defined as State waters from Point Conception in Santa Barbara County to the California-Mexico border. The MLPA goals address an overall concept of ecosystem-based management and the intent to improve upon California's existing array of marine protected areas (MPAs). The MLPA specifically requires that the Department of Fish and Game (Department) prepare a master plan and that the Fish and Game Commission (Commission) adopt regulations based on the plan to achieve the MLPA goals.

The MLPA requires that the Commission adopt a Marine Life Protection Program that, in part, contains an improved Marine Life

Reserve (now defined as state marine reserve) component [Fish and Game Code subsection 2853(c)(1)] and protects the natural diversity of marine life and the structure, function, and integrity of marine ecosystems [Fish and Game Code subsection 2853(b)(1)]. This protection may help provide sustainable resources as well as enhance functioning ecosystems that provide benefits to both consumptive and non-consumptive user groups. The program may include areas with various levels of protection (LOP), through marine protected areas (MPAs) that allow for specified commercial and recreational activities. These activities include but are not limited to fishing for certain species but not others, fishing with certain practices but not others, and kelp harvesting, provided that these activities are consistent with the objectives of the area and the goals and guidelines of the MLPA.

(2) Regional implementation of the Marine Life Protection Act

Important in developing the proposed regulation was the consideration for the south coast MPAs to form a component of a statewide biological network. The concept of designing a statewide network is outlined in the Commission's draft master plan for marine protected areas (draft master plan), consistent with the guidance provided in the MLPA [Fish and Game Code subsection 2853(b)(6)]. Rather than attempting to design a single network for the entire state at one time, the draft master plan envisions the assembly of a statewide network from a series of regional processes across four coastal study regions and the San Francisco Bay region. The central and north central coast regional regulations were adopted in April 2007 and August 2009, respectively. Further background on the concept of biological connectivity, ecosystem protection, MPA classifications, as well as the legislative history and context, are included in the rulemaking files for the central coast (OAL File ID # 07-0711-01S) and north central coast (OAL File ID #2010-0413-02SR). The south coast is the third of five study regions to be implemented through the MLPA.

The proposed regulation establishes a network component of MPAs for the south coast designed to include all representative south coast habitats and major oceanic conditions. Unique and critical habitats were considered separately to guarantee both representation and protection. From an ecological perspective, the proposed regulation creates a network component of MPAs in the south coast consistent with the goals of the MLPA. From an economic and social perspective, the proposed regulation attempts to minimize potential negative socio-economic impacts and

optimize potential positive socio-economic impacts for all users, to the extent possible.

(3) Implementation of the Marine Life Protection Act in the south coast region

The planning process to implement the MLPA in the south coast was conducted pursuant to the processes defined in the Commission's draft master plan. A list of meetings held during the planning process is provided in Section III(e) of this document. The MLPA South Coast Regional Stakeholder Group (SCRSG) began meeting in October 2008 to develop alternative MPA proposals for the south coast region. The SCRSG met during eight one-to two-day meetings and five work sessions between October 2008 and September 2009, before forwarding three proposals to the Blue Ribbon Task Force (BRTF) in October 2009. The BRTF was appointed by the Secretary of the California Natural Resources Agency to provide policy guidance and oversight to the process.

Based on the six goals of the MLPA, the SCRSG developed regional objectives to meet those goals in the south coast region. They also identified design and implementation considerations based on the regional goals and objectives (Attachment 1). These goals and objectives were critical guidelines used by the SCRSG and others to propose MPAs for the south coast. For each proposal, the SCRSG developed objectives for individual MPAs and linked them to the regional goals and objectives.

The Department contributed to the planning process by providing input to the SCRSG and BRTF throughout proposal development in the form of feasibility and design guidelines, and formal evaluations of MPA proposals based on those guidelines. The Department did not develop its own preferred alternative or recommend any particular alternative as a whole. The Department generated criteria to evaluate the feasibility of proposed MPA designs to ease public understanding, increase enforceability, and facilitate management. A memo outlining these guidelines was provided to the SCRSG following the first RSG meeting, in November 2008 (Attachment 2) and reiterated throughout the process. In addition to feasibility and design guidance, the Department provided guidance to the SCRSG regarding selection of appropriate MPA goals and objectives based on the design of each MPA. The Department also evaluated SCRSG-identified goals and objectives for individual MPAs to ensure they were appropriate and attainable,

and evaluated the prospects of individual areas to help achieve the MLPA goals.

The MLPA Master Plan Science Advisory Team (SAT) for the South Coast Study Region was appointed by the Department Director to provide scientific advice and guidelines to the BRTF and SCRSG for development of MPA proposals based on the best readily available science and the draft master plan. The SAT provided scientific evaluation of MPA proposals relative to the science guidelines and goals of the MLPA. In order to analyze the differences between no-take reserves and limited take conservation areas and recommended parks, the SAT developed a ranking for LOP provided by an MPA based on the impact of allowed uses on ecological and ecosystem structure. LOPs are described in the draft master plan, and are reconsidered for each study region for evaluation purposes (Attachment 3).

The BRTF received the SCRSG proposals at a three day BRTF meeting occurring on October 20-22, 2009. The BRTF noted that all three SCRSG proposals achieved the requirements of the MLPA in different ways: they generally met the science guidelines of the draft master plan, generally met Department feasibility criteria, and to the extent possible minimized socioeconomic impacts. Thus, the BRTF members unanimously voted to forward all three SCRSG proposals to the Commission for its review and consideration. At the same meeting, the BRTF began developing a preferred alternative, but due to time constraints, the meeting recessed until November 10, 2009. On that date, they completed the development of an Integrated Preferred Alternative (IPA) by integrating, and in some cases modifying, MPAs from each of the three SCRSG proposals (Attachments 4 and 5). The BRTF created the IPA with the intent to meet scientific guidelines and achieve the MLPA goals, while also bridging some of the remaining areas of divergence among the SCRSG proposals and minimizing socioeconomic impacts to the extent possible. Additionally, the BRTF resolved several outstanding feasibility issues that the Department had identified in the three SCRSG proposals when crafting the IPA. The BRTF voted to recommend that the Commission select the IPA as the regulatory preferred alternative for the south coast region (Attachment 5).

The Commission received the BRTF recommendations at a joint meeting on December 9, 2009 and directed the Department to prepare this regulatory package using the IPA as the Commission's preferred alternative and the SCRSG proposals as regulatory alternatives. The SCRSG alternatives are described as Alternative

1 (SCRSG Proposal 1R), Alternative 2 (SCRSG Proposal 2R), and Alternative 3 (SCRSG Proposal 3R) (See attachments 6 - 8), and are described in Section IV(a) of this document.

(4) The proposed regulation:

Summary

The proposed regulation, also known as the IPA, includes a total of 35 MPAs for the south coast region (Figure 1, Table 1, and Attachment 4). Sub-options have been included in the proposed regulation that may increase the number of MPAs to a total of 39. It should be noted that MPAs in the northern Channel Islands and Santa Barbara Island were designed and adopted prior to the implementation of the south coast regional MLPA planning process. These 13 MPAs and two special closures, adopted in 2004, were re-evaluated at the onset of the south coast regional planning process relative to the goals of the MLPA by applying the SAT guidelines. These MPAs were found to meet the goals of the MLPA, and were incorporated into the south coast regional proposals without modification, at the direction of the Commission (see Attachment 9). They are reflected in Figure 1, but are not included in Table 1.

Additionally, two federal Safety Zones (military closures enacted by the United States Coast Guard and managed by the United States Navy) off of San Clemente Island were recognized in the MPA proposals as contributing to the ecological goals of the south coast MPA network. These federal Safety Zones were designated in federal regulations concurrent with the south coast MPA planning process. Although these areas are not proposed for formal designation as MPAs, they prohibit public access and act as no-fishing zones. These zones cover approximately 37 square miles and were identified by the MLPA Science Advisory Team to encompass several unique and rare marine life habitats (Attachment 10-a). Due to the significant biological value of these non-fishing areas, the BRTF made a motion to include federal Safety Zones in MPA proposals and to consider their contributions to the ecological goals of the MPA network in the south coast study region without a formal MPA designation (see Attachment 10-b). Thus, while the federal Safety Zones, as well as the northern Channel Islands MPAs, are part of the overall design of the MPA network, they are not under consideration for regulatory action. The Department will develop monitoring and management agreements with the Department of Defense pursuant to an MOU subsequent to

this rulemaking and will be addressed formally in an update to the draft master plan.

Although changes to the northern Channel Islands MPAs are not under consideration, an error was identified in the existing regulations for the San Miguel Island Special Closure. A typographical error in the original rulemaking resulted in an incorrect longitudinal coordinate for Judith Rock, which is the eastern boundary of the special closure. Thus, in subsection 632(b)(80), Title 14, California Code of Regulations (CCR) of the proposed regulation, 120° 23.30' W. longitude is corrected to 120° 25.30' W. longitude as intended in the original rulemaking.

The three classifications of MPAs used in California to reflect differing allowed uses are: state marine reserve (SMR), state marine conservation area (SMCA), and state marine park (SMP). Public Resources Code Section 36710 lists the restrictions applied in these classifications. The Commission has the statutory authority to designate SMRs and SMCAs; however the third MPA classification, SMP, may only be created, modified, or deleted under the authority of the State Park and Recreation Commission [Public Resources Code 36725(b)].

#### Recommendation for SMP designation

One MPA (Kashtayit) was recommended for designation as an SMP by stakeholders and the BRTF, with restrictions consistent with this designation. Pursuant to Commission authority [Public Resources Code 36725(a)], it would be adopted as an SMCA, although it could subsequently be designated as an SMP at the discretion of the State Park and Recreation Commission. If adopted, the draft master plan will be amended to reflect that it is intended to be a park, but will require action by the State Park and Recreation Commission.

#### Ongoing activities regulated by other agencies

Pre-existing activities and artificial structures including but not limited to wastewater outfalls, piers and jetties, maintenance dredging, and beach nourishment occur throughout the heavily urbanized south coast study region. These are activities that may result in incidental take. However, these activities are regulated by other federal, state, and local agencies, whose jurisdiction cannot be pre-empted through designation of MPAs under MLPA. Out of the 35 MPAs in the proposed regulation, 23 have been identified as having various existing activities regulated by other agencies (refer to Table 1). These activities are specified within the proposed MPA

regulations to make explicit that these regulated activities are allowed to continue under current permits. The Department provided details regarding these activities, and other unresolved issues requiring the Commission's input, at the Commission's March 4, 2010 meeting (Attachment 11).<sup>a</sup>

The Commission has previously incorporated descriptions of permitted activities into regulations for specific MPAs. There are examples of how ongoing activities are authorized within existing Title 14, CCR. Most recently, in 2008 the Commission adopted language for the Morro Bay State Marine Recreational Management Area that specifies activities permitted by other entities [subsections 632(b)(69)(C)(4) and 632(b)(69)(C)(5), Title 14, CCR]. In addition, permitted activities are also authorized in Ecological Reserves (Section 630, Title 14, CCR, and repeated for MPAs inside the Ecological Reserves in Section 632, Title 14, CCR). In line with this precedence, the proposed regulation incorporates allowances for specific ongoing activities in 23 MPAs (see Table 1, Attachment 11). It should be noted, however, that in cases where a State Marine Reserve (SMR) is proposed over the area of activity, designation as a State Marine Conservation Area (SMCA) is more appropriate than an SMR due to the incidental take associated with those activities, which conflicts with an SMR designation. Ten of the 23 MPAs with identified activities were proposed as SMRs by stakeholders. Therefore, the designation is changed from SMR to SMCA that only allows take associated with those activities identified. For purposes of this discussion, these are referred to as "no-take SMCAs" and reflected as a different color in Figure 1.

The proposed regulation for MPAs within Ecological Reserves adds a reference to activities authorized pursuant to Section 630. Therefore, text that duplicates text in Section 630, Title 14, CCR, is deleted and a cross reference to Section 630 is provided.

#### Mandated water quality monitoring

Mandated water quality monitoring activities required under the federal Clean Water Act and California Water Code have been identified as occurring throughout the southern California region, and include monitoring stations within the majority of MPAs

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<sup>a</sup> Activities related to an existing artificial structure were identified in the report (Attachment 11) as occurring within Campus Point SMR, with a recommendation to change the designation to an SMCA and specify that the permitted activities could continue. Information received subsequent to the report indicates that the artificial structure is outside the boundaries of the proposed SMR. Therefore, the regulation retains the SMR designation as proposed.

proposed in this regulation. Monitoring includes sampling of water, sediments, and marine organisms using a variety of methods. The MLPA specifically states that monitoring and research are permissible in all MPA designations. Therefore, under existing regulations, water quality monitoring may be authorized in any MPA pursuant to a scientific collecting permit issued by the Department, and therefore an allowance does not need to be specified within individual MPA regulations. However, to make explicit that the provision for monitoring in MPAs applies to water quality monitoring, the proposed regulation adds a general provision to Section 632(a), Title 14, CCR, to clarify that this activity is authorized in all MPAs pursuant to a scientific collecting permit.

#### Wastewater Discharge

For purposes of the MLPA, wastewater discharge permitted by the state water quality control board is not considered to involve "take" within MPAs. A clarification will be added to the draft master plan that, for purposes of MPA management, the relation of wastewater discharge to allowable take is at the discretion and jurisdiction of the state and regional water quality control boards.

#### Military activities within MPAs

Military activities have been identified in three of the proposed MPAs, at Point Conception SMR, Begg Rock SMR, and South La Jolla SMCA. Existing regulations in the preamble to Section 632, Title 14, CCR, state that "Nothing in this section expressly or implicitly precludes, restricts or requires modification of current or future uses of the waters identified as marine protected areas, special closures, or the lands or waters adjacent to these designated areas by the Department of Defense, its allies or agents." Therefore, military operations are already exempt within all MPAs under existing law.

#### Research Agreements in Existing Regulation

The proposed regulation retains the existing San Diego-Scripps Coastal SMCA. This MPA provides for the specified scientific institution to manage and conduct research, education, and scientific collecting activities for its faculty, students, and affiliates without a scientific collecting permit. The proposed regulation adds a requirement that scientific research may only be conducted pursuant to a scientific collecting permit issued by the Department, which is consistent with regulatory requirements at the existing Dana Point SMR and Catalina Island Marine Institute SMR (renamed Blue Caverns SMCA in the proposed regulation).

### Naming of Bolsa Chica MPAs

The IPA forwarded to the Commission by the BRTF includes Bolsa Chica SMCA and Bolsa Chica SMR. Due to ongoing activities that are incompatible with a SMR designation, Bolsa Chica SMR must be re-designated as an SMCA. Because this change results in two proposed MPAs with the same name, in order to avoid confusion, the proposed regulation includes modified names for each MPA, based on the geographic reference for each portion of the bay. Therefore, Bolsa Chica SMCA and Bolsa Chica SMR are re-named as "Bolsa Bay SMCA" and "Bolsa Chica Basin SMCA" respectively, to avoid confusion.

### Regulatory sub-options

At the Commission's March 4, 2010 meeting, the Commission directed the Department to develop regulatory sub-options for eleven of the proposed MPAs within the Commission's preferred alternative, to provide alternatives to either boundaries or take regulations in the IPA that address Department feasibility concerns, or requested by the California Department of Parks and Recreation (State Parks) (Attachment 11). The Commission also added sub-options for two existing MPAs not included in the IPA at the request of State Parks, for a total of thirteen MPAs with sub-options. These sub-options included the following choices:

#### **Arrow Point to Lion Head Point (Catalina Island) SMCA boundaries-**

The proposed MPA utilizes the seaward boundary of a long-standing special closure, which is represented by an undulating line based on a specific distance from the coastline. Note that existing coordinates are updated in the proposed regulation to reflect more precise GIS coordinates using modern technology. However, the seaward boundary does not meet Department feasibility guidelines.

**Option 1:** Retain coordinates as proposed in IPA (Figure 2a).

**Option 2:** Use straight lines between coordinates to approximate the distance offshore (Figure 2b). Straight line coordinates are recommended to facilitate enforcement and public understanding.

The proposed straight lines intentionally avoid inclusion of Eagle Reef, a popular destination for recreational lobster diving.

#### **Casino Point and Lover's Cove (Catalina Island) SMCAs proposed permitted activities-**

Feeding fish in the area offshore from the City of Avalon is a long-standing practice associated with local tourism. Food is provided to

fish in order to attract the local species to enhance marine life viewing. In the general rules and provisions governing MPAs in subsection 632(a), Title 14, CCR, feeding fish is prohibited except in relation to fishing allowances within SMCA and state marine recreational management areas. As such, designation of an MPA at Casino Point and Lover's Cove would prevent the practice from continuing. This was not considered during the SCRSG planning process, so the proposed regulation provides an option to allow or disallow this practice to continue within specific MPAs as follows:

**Option 1:** Do not allow the feeding of fish.

**Option 2:** Allow for the feeding of fish the purpose of marine life viewing.

Proposed option 2 requires an addition to the regulations in the general rules and provisions (subsection 632(a), Title 14, CCR) that allows for feeding of fish for marine life viewing purposes to be specified within regulations for individual MPAs.

#### **Laguna Beach SMR boundaries and designation-**

A wastewater outfall pipe crosses the southern boundary of the proposed SMR. Although the discharge end of the outfall pipe falls outside the boundaries of the proposed MPA, operation and maintenance activities associated with the portion of the outfall pipe that is within the proposed MPA are incompatible with the SMR designation. However, the only area within the proposed Laguna Beach SMR that would be affected by these operations lies within approximately the southernmost mile of the MPA. Therefore, options are provided to allow for the continued operation of the outfall pipe by either: a) revising the entire designation to an SMCA (option 1); b) dividing the geography into two no-fishing MPAs with an SMR designation along the majority of the area, with an SMCA designated along approximately the southernmost mile of the area which would increase the number of MPAs by one (option 2); c) or modifying the south-eastern boundary of the SMR to exclude the pipeline area (option 3). In addition, options are incorporated to address feasibility concerns raised in public comment and by Department enforcement and local enforcement partners. The proposed SMR boundaries adhere to Department feasibility guidelines; however, feedback received from the public and local MPA management partners indicates that the angle of the coastline in this geography does not work well with strict north/south – east/west boundaries. This is particularly true for user groups accessing the area from shore, who generally fish without the aid of Global Positioning System units to identify coordinate-based boundaries. Therefore, options are provided to address feasibility of boundaries by modifying the northern and southern boundaries

to be oriented perpendicular to the shore, in two different configurations (Options 4 and 5). A summary of Options 1-5 are provided below:

**Option 1:** Retain coordinates as proposed and change designation to a non-fishing SMCA that allows for wastewater outfall operation and maintenance (Figure 3a).

**Option 2:** Divide Option 1 geography into two MPAs, with an SMR north of the wastewater outfall pipe and create a non-fishing SMCA band at the southern portion of the proposal boundary, including the wastewater outfall pipe, which allows for operation and maintenance of the outfall (Figure 3b). This option would increase the number of MPAs by one.

**Option 3:** Modify the southern boundary to exclude the pipe, by moving the southeast corner of the SMR northward to the nearest prominent rocks, which results in a nearshore line perpendicular to shore (Figure 3c).

**Option 4:** Use the southern boundary in Option 3, and also modify the northern boundary in the nearshore area to be perpendicular to shore. Seaward, the boundaries adhere largely to the size and shape of the IPA (Option 1). This shape excludes the wastewater outfall pipe (Figure 3d).

**Option 5:** This is a variation of Option 4 in which the northern and southern boundaries extend perpendicular from shore out to the state waters boundary (Figure 3e).

#### **Robert E. Badham SMCA name option-**

This existing MPA is subsumed into Crystal Cove SMCA in the IPA. However, the history of the naming of this existing MPA is relevant for consideration of whether or not to retain the historic name.

This MPA, originally designated as the Newport Beach Marine Life Refuge, was renamed as Robert E. Badham Marine Life Refuge (reclassified as an SMCA per the MLPA) in response to Senate Resolution No. 17, adopted by the California Senate in 1999 (Attachment 15). In light of this history, two options are provided:

**Option 1:** As proposed in the IPA, removes existing MPA name and subsumes area into Crystal Cove SMCA (Figures 3a-3c; links to Crystal Cove Boundary Options 1 and 2).

**Option 2:** Retains existing MPA name. Divides the proposed Crystal Cove SMCA area into two distinct MPAs to retain the historic name Robert E. Badham for the area north of the Crystal Cove State Park land boundary (See Figures 3f-3g; Links to Crystal Cove Boundary Options 3 and 4).

#### **Crystal Cove SMCA boundaries-**

Since this MPA shares a boundary with the Laguna Beach SMR, some of the Laguna options will result in a change to the southern boundary of this MPA (Boundary Options 1 and 2 below). Options for Robert E. Badham will also affect the northern boundary of this MPA (in Boundary Options 3 and 4 below).

**Boundary Option 1:** Retains coordinates as proposed in the IPA (Figures 3a-3c; links to Laguna Options 1, 2, and 3, and Robert E. Badham Option 1).

**Boundary Option 2:** Modifies the southern boundary (Figures 3d-3e; links to Laguna Options 4 and 5, and Robert E. Badham Option 1).

**Boundary Option 3:** Divides the Option 1 geography into two MPAs, with the northern boundary of Crystal Cove SMCA terminating at the State Park boundary. The remaining area within the geography north of the boundary would retain the original name of Robert E. Badham SMCA (Figure 3f; links to Laguna Options 1, 2, and 3, and Robert E. Badham Option 2). This option would increase the number of MPAs by one.

**Boundary Option 4:** Divides the Option 2 geography into two MPAs, with the northern boundary of Crystal Cove SMCA terminating at the State Park boundary, and the remaining area within the geography north of the boundary would retain the original name of Robert E. Badham SMCA (Figure 3g; links to Laguna Options 4 and 5, and Robert E. Badham Option 2). This option would increase the number of MPAs by one.

#### **Crystal Cove SMCA take regulations-**

Crystal Cove SMCA as proposed in the IPA prohibits fishing except for recreational take of finfish by hook and line or by spearfishing, lobster, and sea urchin; and commercial take of coastal pelagic species by round haul net, spiny lobster by trap, and sea urchin. However, State Parks has requested that the Commission consider prohibiting all commercial fishing based on the rationale that commercial take conflicts with the adjacent Crystal Cove State Park General Plan for enhancing recreational activities and potential future designation as a State Marine Park. Therefore, take options are provided for Crystal Cove as follows:

**Take Option A:** Allows commercial and recreational take as proposed in the IPA.

**Take Option B:** Prohibits commercial take.

#### **Dana Point SMCA boundaries-**

Since this MPA shares a boundary with the Laguna Beach SMR, some of the Laguna options will result in a change to the northern boundary of this MPA (Boundary Options 1 and 2).

**Boundary Option 1:** Retain coordinates as proposed (Figures 3a-3b; links to Laguna Options 1 and 2).

**Boundary Option 2:** Modifies the northern boundary (Figures 3c-3e; links to Laguna Options 3, 4 and 5).

**Dana Point SMCA other access and collecting restrictions-**

The existing Dana Point SMCA contains language derived from legislation passed in 1993 to increase protection in the originally-established Dana Point Marine Life Refuge (reclassified as an SMCA per the MLPA) (Attachment 16). The legislation prohibited entry into the intertidal zone for purposes of taking or possessing any species of fish, plant, or invertebrate, except under a scientific collecting permit issued by the Department, and an additional approval obtained from the director of the Dana Point SMCA to collect within the SMCA. The existing SMCA covers the geographic area around the Dana Point Headlands. However, the proposed regulation expands the coastal coverage of the Dana Point SMCA northward by over three linear miles, and adds an allowance for recreational take from the shore. This proposed allowance would be in conflict with the existing restrictions on entering the intertidal area to fish. Therefore, the proposed regulation includes two options.

**Access Option A:** Remove existing restrictions to entry into the intertidal zone, and scientific collecting oversight by the director of the Dana Point SMCA.

**Access Option B:** Retain existing restrictions to entry into the intertidal zone and scientific collecting oversight by the director of the Dana Point SMCA. This restriction would be limited to a defined area that corresponds to the area around the Dana Point Headlands which is southward of a line at latitude 33° 27.74' N.

**Swami's SMCA boundaries-**

The proposed northern and southern boundaries for this MPA fall in the middle of beaches without visible and permanent landmarks. Because these beaches have very high visitation rates of more than three million people annually, many of whom fish from the beach, Department enforcement have raised concerns that the public may find it difficult to locate the boundaries unless aligned with landmarks. To facilitate public understanding, the Department recommended moving the northern boundary northward to align with Cottonwood Creek (Option 2), and State Parks recommended moving the southern boundary southward to the edge of State Parks land (end of state beach) (Option 3 and 4). It should be noted that a movement of the southern boundary in Options 3 and

4 would encompass the discharge end of the San Elijo wastewater discharge pipe.

**Boundary Option 1:** Retain coordinates as proposed in IPA (Figure 4a).

**Boundary Option 2:** Move northern boundary northward to Cottonwood Creek (Figure 4b).

**Boundary Option 3:** Move southern boundary south to align with State Parks Beach boundary (Figure 4c).

**Boundary Option 4:** Move northern boundary per Option 2 and southern boundary per Option 3 (Figure 4d).

#### **Swami's SMCA take regulations-**

Additionally, State Parks has requested the consideration of sub-options for this proposed MPA due to conflicts with current State Parks unit management. State Parks states that the proposed modification of the existing MPA conflicts with State Beach classification and general plans. The proposed MPA will affect both Cardiff and San Elijo State Beaches. More than three million people visit these beaches annually. San Elijo State Beach provides 172 campsites. The classification of a State Park System unit forms the foundation on which all management and development policies are based. State Beaches are a class of State Recreational Areas that are operated to provide outdoor recreation opportunities. State Beaches provide swimming, boating, fishing, and other beach-oriented recreational activities. An SMCA that prohibits shore fishing would conflict with one of the primary purposes of these park units. Therefore, State Parks recommends allowing shore-based fishing. The proposed regulation provides sub-options that add shore-based fishing with hook and line gear as an allowed recreational take method in the SMCA (see sub-options for allowed take in Options 3, and 4). These options meet Department feasibility guidelines but reduce the SAT LOP from high to moderate-low.

**Take Option A:** Recreational fishing regulations as proposed in IPA.

**Take Option B:** Adds shore-base fishing with hook and line gear as an allowed recreational take method in the SMCA.

#### **San Diego Scripps Coastal SMCA and Matlahuayl SMR Boundaries-**

In the IPA proposal, the Scripps Pier cuts diagonally across the boundary between these two proposed MPAs. Although the pier is not a fishing pier, it is common for recreational anglers fishing from boats to target fish for bait underneath the pier structure, which would be allowed to continue in the San Diego Scripps Coastal

SMCA under the proposed regulation. As part of the pier is inside the proposed SMCA and part in the proposed SMR boundaries, this presents confusion for the public, resulting in enforcement difficulties. In addition, the boundary as proposed will require re-designation of Matlahuayl from a SMR to a SMCA to allow for operation and maintenance of the pier structure. Therefore, the proposed regulation adds an option to address both issues, to move the shared boundary between the two MPAs southward to below the pier, as follows:

**San Diego-Scripps Coastal SMCA Option 1:** Retain coordinates as proposed in the IPA (Figure 5a; linked to Matlahuayl Option 1).

**San Diego-Scripps Coastal SMCA Option 2:** Move the southern boundary south to below the base of Scripps Pier (Figure 5b; linked to Matlahuayl Option 2).

**Matlahuayl SMCA Option 1:** Change designation from SMR to SMCA; retain coordinates as proposed in IPA (Figure 5a; linked to San Diego-Scripps Coastal SMCA Option 2).

**Matlahuayl SMR Option 2:** Retain SMR designation, move northern boundary south below base of pier (Figure 5b; linked to San Diego-Scripps Coastal SMCA Option 2).

#### **South La Jolla SMR/SMCA-**

This inshore/offshore MPA complex has a shared northern and southern boundary. As proposed in the IPA, the northern boundary bisects an intertidal reef that is popular for recreational harvest of invertebrates at low tide. Additionally, the southern boundary falls in the middle of a public beach without a permanent and visible landmark. Both of these boundaries may lead to enforcement and public understanding challenges. Therefore, boundary options are provided to address feasibility concerns for the northern and southern boundaries (Figure 6):

**Option 1:** Retain coordinates as proposed in IPA.

**Option 2:** Move northern boundary to north of the intertidal reef to align with Palomar Avenue.

**Option 3:** Move southern boundary one block south to align with Missouri Street.

**Option 4:** Move both northern and southern boundaries per Options 2 and 3.

#### **State Parks request to retain two existing MPAs**

Two existing MPAs (Refugio SMCA and Doheny Beach SMCA) are not retained in the original IPA of 35 MPAs submitted by the BRTF to the Commission for the proposed regulation. However, State Parks requests that these MPAs be retained, and has provided the following rationale:

### **Refugio SMCA-**

Proposed removal of this existing MPA would decrease protection and open up the area to potential increased commercial extraction. The area includes significant natural values as well as sensitive archeological sites. The shallow relief reefs and interspersed sand substrate environments of this site contribute to high biological diversity. Culturally diverse as well, the area was once a popular trading ship anchorage, and prehistoric Chumash stone bowls have been found within this site. Refugio State Beach receives over 100,000 visitors each year and is popular for SCUBA diving, swimming, recreational fishing and sea kayaking. Existing interpretive programs include kayak and tidepool tours. The existing Refugio State Beach is impacted by commercial lobster trapping. Parks staff must regularly remove lobster traps that drift too close inshore and abandoned traps that lay within the park lease. Therefore, the following options are included in the proposed regulation:

**Option 1:** Remove the existing Refugio SMCA from the proposed regulation, as per the IPA.

**Option 2:** Retain the existing regulations for Refugio SMCA within the proposed regulation (Figure 7). This option would increase the number of MPAs by one.

### **Doheny Beach SMCA-**

Proposed removal of this existing MPA would decrease existing protection and decrease educational opportunity. Doheny State Beach includes an existing underwater recreation area and the Doheny Beach Marine Life Refuge, which was designated in 1969 by the Legislature specifically to protect tidepool invertebrates. The existing protections are moderate and do not affect commercial activities. Although relatively small, over 1.6 million people visited Doheny State Beach in 2008. Therefore, the following options are included in the proposed regulation:

**Option 1:** Remove the existing Doheny Beach SMCA from the proposed regulation, as per the IPA.

**Option 2:** Retain the existing regulations for Doheny Beach SMCA within the proposed regulation (Figure 8). This option would increase the number of MPAs by one.

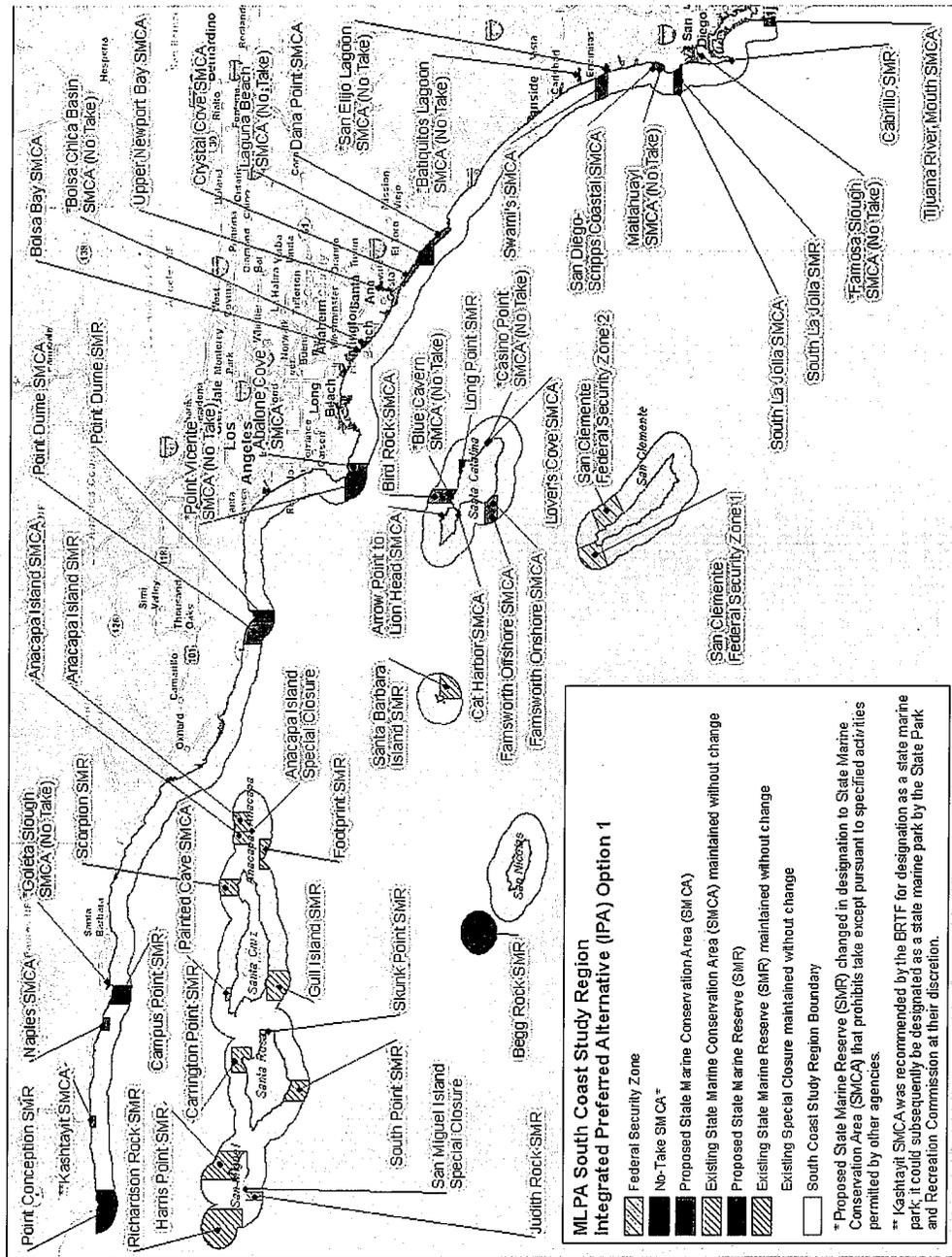


Figure 1. Marine protected areas in proposed regulation known as IPA. The IPA as displayed includes 35 proposed new MPAs (alternatives within the proposed regulation provide options to add three MPAs not displayed here, and boundary options for 9 MPAs in 5 geographies); the figure also shows 2 existing special closures and 13 existing MPAs in the northern Channel Islands and Santa Barbara Island, which are not under re-consideration in this proposal, and two federal Safety Zones at San Clemente Island that are considered to contribute to the network but do not have an MPA designation.

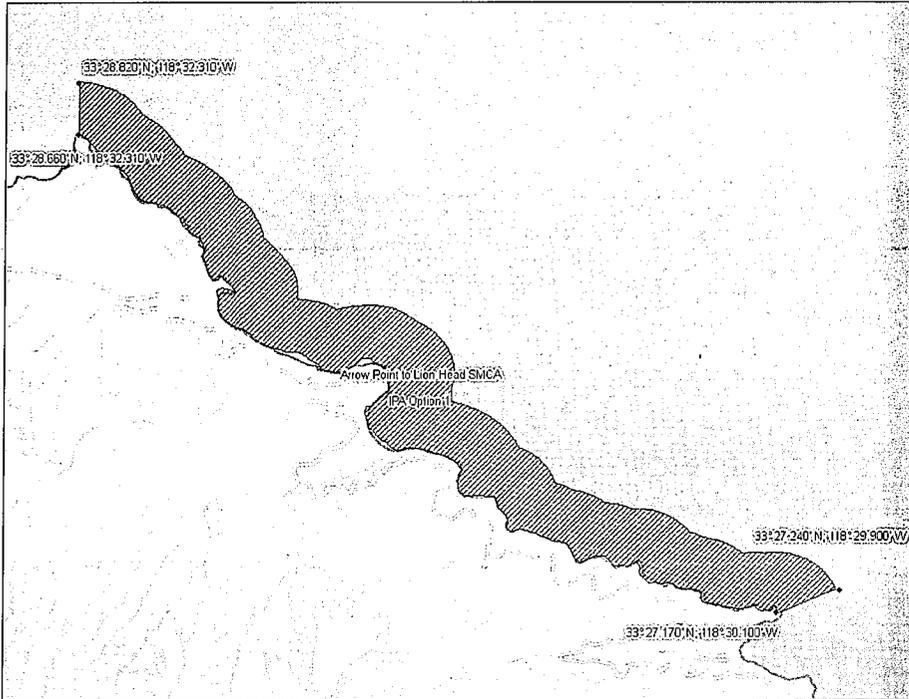


Figure 2a – Arrow Point to Lion Head SMCA Boundary Option 1.

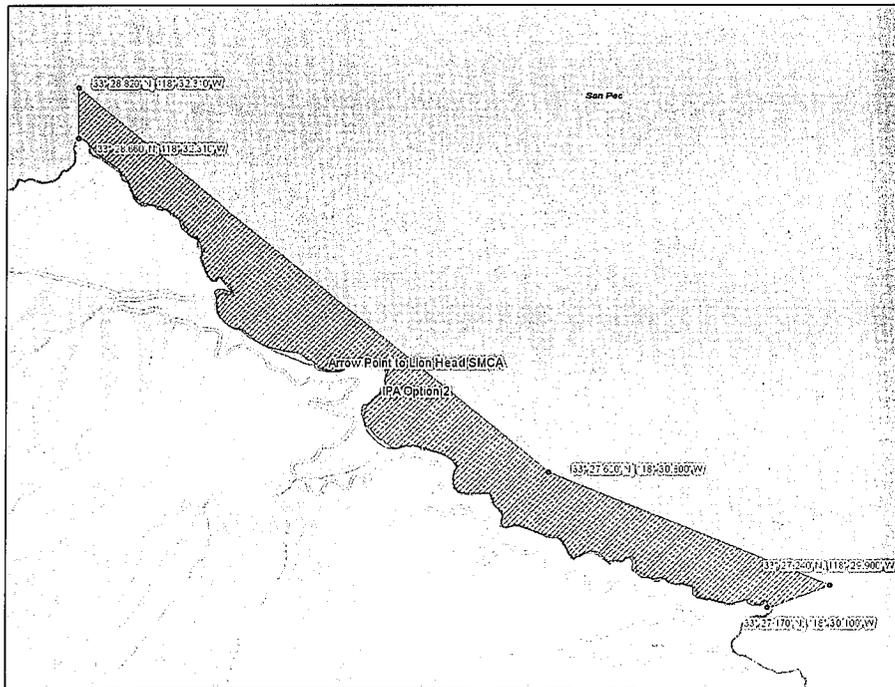


Figure 2b – Arrow Point to Lion Head SMCA Boundary Option 2.

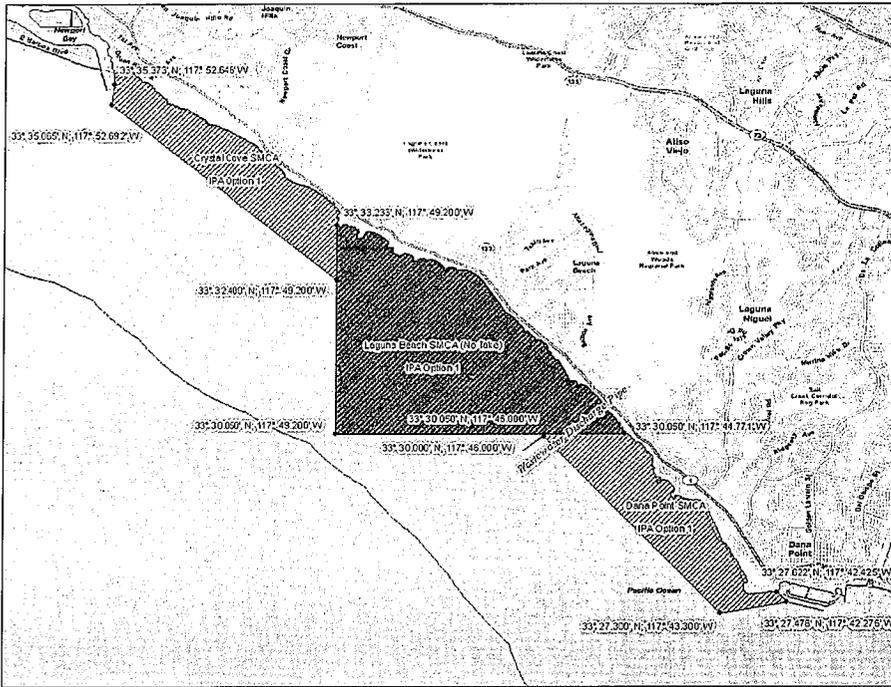


Figure 3a –Laguna Beach Boundary Option 1.

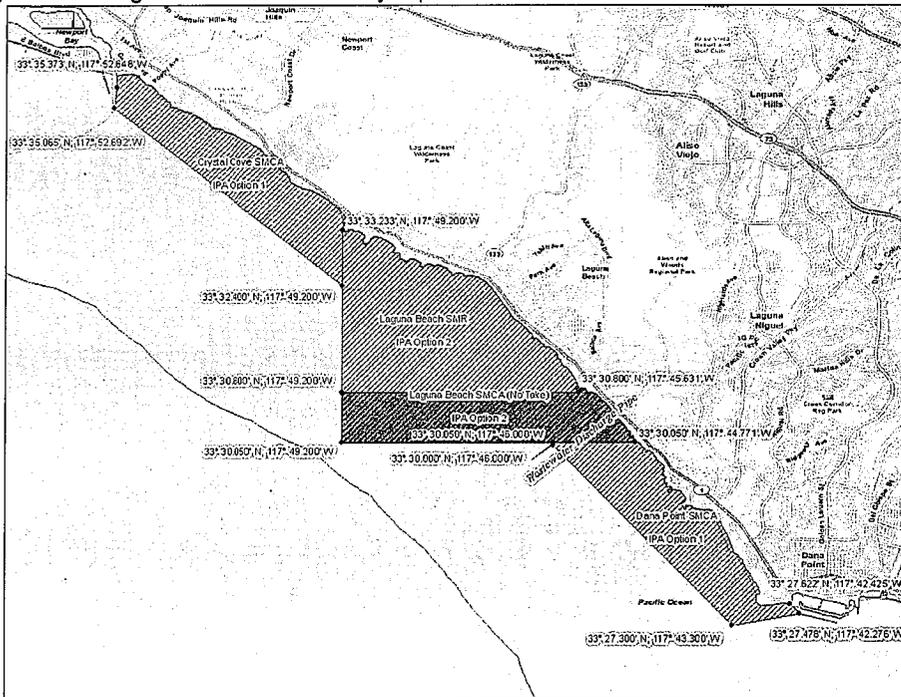


Figure 3b – Laguna Beach Boundary Option 2.

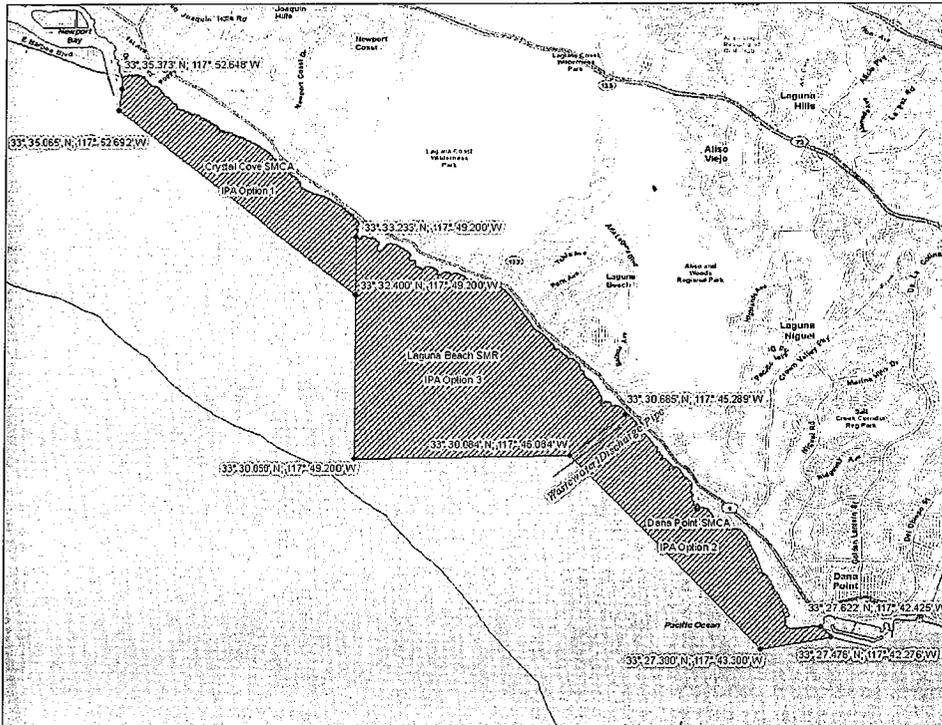


Figure 3c – Laguna Beach Boundary Option 3.

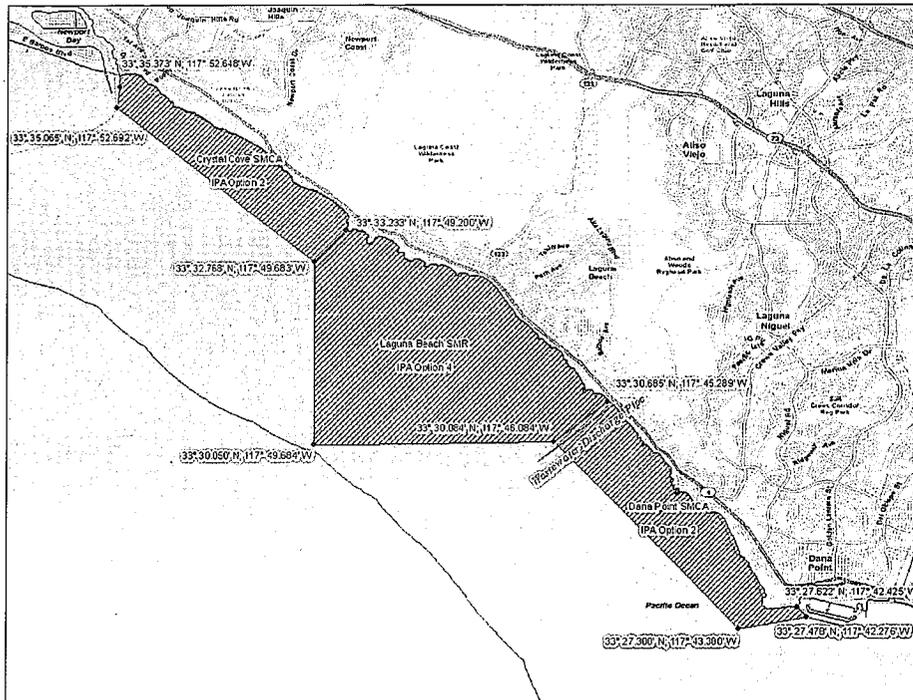


Figure 3d – Laguna Beach Boundary Option 4.

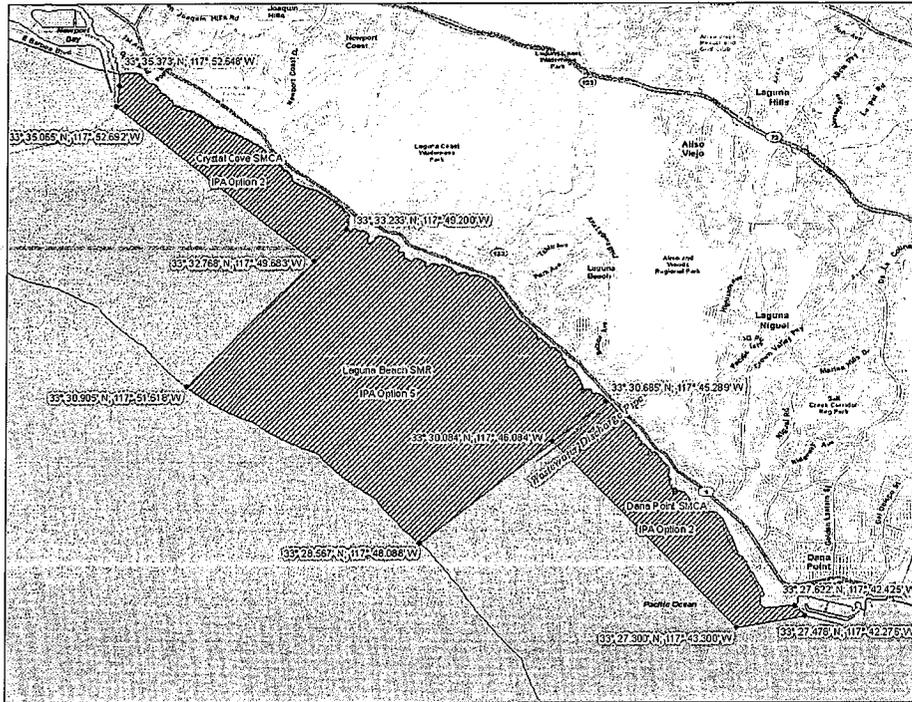


Figure 3e – Laguna Beach Boundary Option 5.

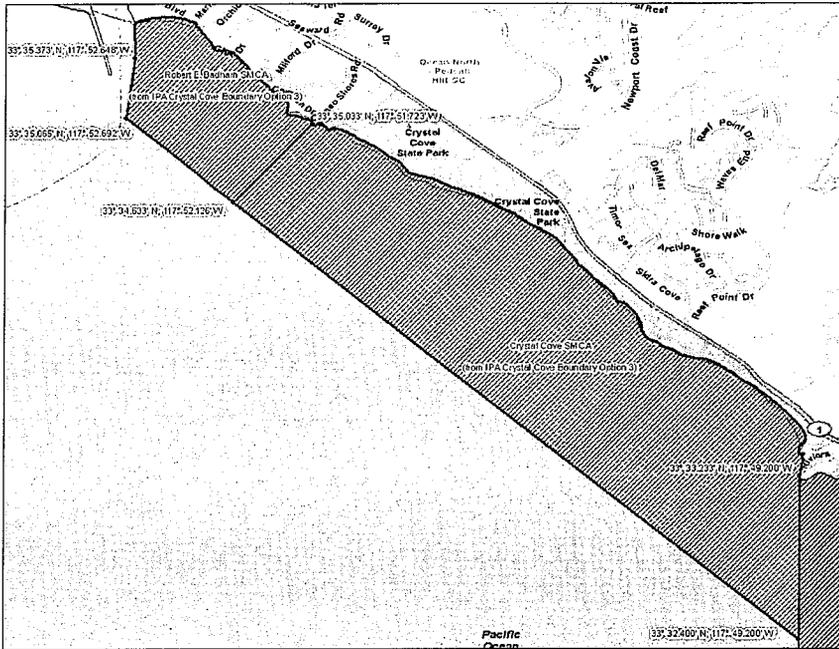


Figure 3f – Robert E. Badham Option 2 and Crystal Cove SMCA Boundary Option 3.

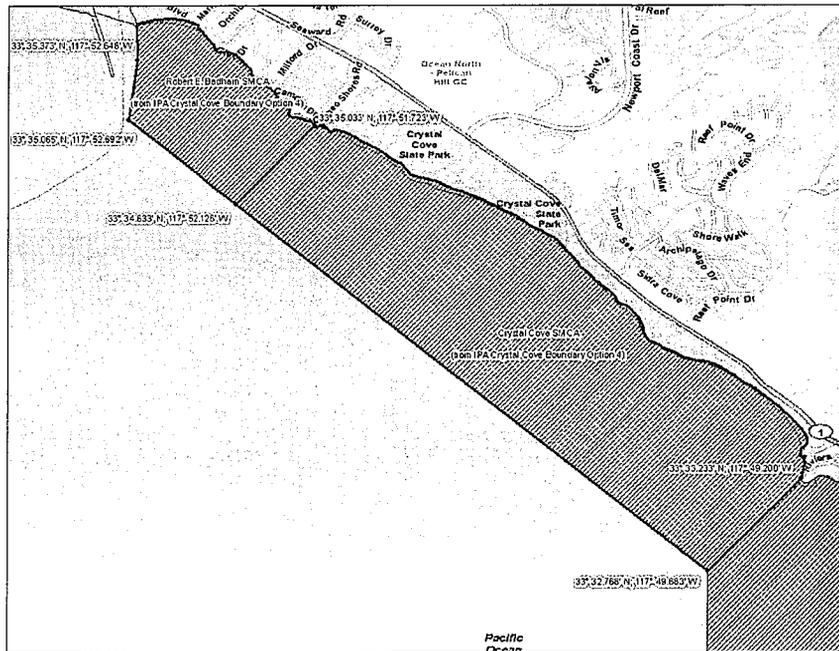


Figure 3g – Robert E. Badham Option 2 and Crystal Cove SMCA Boundary Option 4.