California Marine Life Protection Act Initiative

California Natural Resources Agency 1416 Ninth Street, Suite 1311 Sacramento, CA 95814 916.654.1885

To: MLPA Blue Ribbon Task Force

From: MLPA I-Team

Subject: Informal advice from the Office of the Attorney General regarding marine protected areas and the Marine Managed Areas Improvement Act

Date: October 1, 2009

Cc: California Natural Resources Agency Assistant Secretary Brian Baird
California Fish and Game Commission members
MLPA Statewide Interest Group members
MLPA South Coast Regional Stakeholder Group members
MLPA Master Plan Science Advisory Team members

This memorandum transmits informal advice from the California Attorney General's (AG's) office related to the establishment, use and enforcement of marine managed areas and, more specifically, marine protected areas (a subset of marine managed areas) (Attachment 1). This document also identifies how the AG's informal advice will be applied to implementation of the Marine Life Protection Act (MLPA).

Background

The Marine Managed Areas Improvement Act (MMAIA; Public Resources Code, sections 36600-36900) defines three types of marine protected areas (MPAs) in California:

1. State marine reserve (SMR)
2. State marine park (SMP)
3. State marine conservation area (SMCA)

The MLPA requires California to reevaluate and redesign its system of MPAs, and the MPA classification system defined in the MMAIA (Attachment 2) is being used in its regional MPA planning process, the MLPA Initiative.

In the early stages of the MPA planning process in the south coast study region, the MLPA Initiative consulted with the California Natural Resources Agency (CNRA), California Department of Fish and Game (DFG), California Department of Parks and Recreation (State Parks), and California State Lands Commission to clarify questions regarding the definition of, and allowed activities/uses within, an SMR. Ultimately the CNRA requested advice from the State Attorney General's office in May 2009 regarding several issues relating to the MMAIA; a letter of informal advice was provided to the CNRA on September 25, 2009.

Application of the Informal Advice to the MLPA South Coast Study Region

Since early 2009 when MLPA staff became aware that certain activities may not be consistent with an SMR, staff has asked MLPA South Coast Regional Stakeholder Group (SCRSG) work groups to identify in their MPA descriptions what uses or activities they want to allow. This

request was made to help ensure that regardless of when legal advice was received, staff would have an understanding of stakeholder intent to assist in making any necessary adjustments to MPA classifications when developing draft regulations.

Consistent with previous direction provided to the SCRSG, the informal advice received from the AG's office is that certain activities/uses may not be compatible with an SMR because in an SMR activities that injure, damage, take or possess living, geological, or cultural marine resources are unlawful with the exception of permitted research, restoration and monitoring activities. While the managing agency or designating entity[1] ultimately determines which specific activities may injure, harm, take or possess marine resources, and are therefore inconsistent with an SMR, activities that generally would not be allowed in an SMR include, but are not limited to, dredging, the construction and maintenance of jetties or other structures, intake pipes, sand borrowing, and beach nourishment[2]. Non-extractive activities that would generally be allowed within all types of MPAs are things such as swimming, wading, boating, diving, surfing and anchoring.

Note that the designation of an MPA cannot restrict non-fishing uses and activities that have already received approved regulatory permits or leases. There are several options for how these already-permitted activities may be accounted for in an SMR, including:

1. proposing an SMR that excludes a specified area of permitted use or activity from the SMR and then designating that portion as an SMCA with regulations that prohibits all activities/uses except the permitted activity/use;
2. changing the designation of the entire area from an SMR to an SMCA that allows the permitted use or activity to continue; or
3. adjusting the boundary of a proposed SMR that excludes a specified area of permitted use or activity from the SMR.

In the first case, where an SMCA is created within an SMR (i.e., a "doughnut hole" design, or "box within a box" design), DFG and State Parks have agreed that this would not violate feasibility guidelines, so long as fishing is not allowed in the SMCA to reduce enforcement difficulties.

Where a future use was not accommodated for in the original designation process, proponents may approach the designating entities for modifications to the classification, boundaries or allowed uses/activities within an MPA.

The I-Team will work with the agencies of jurisdiction to determine what steps will be taken and what process will be used to make any necessary technical adjustments to proposed

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[1] For MPAs, Section 36602 of the MMAIA defines designating entities as the California Fish and Game Commission and the State Park and Recreation Commission, while managing agencies are defined as the California Department of Fish and Game or the California Department of Parks and Recreation.

[2] Section 36710, subdivision (a) of the MMAIA provides an exemption for permitted or authorized "research, restoration, and monitoring purposes."

regulations or classifications in MPA proposals for the south coast. To the extent possible, adjustments will strive to maintain the intent of the stakeholder group. I-Team staff will hold a briefing with the SCRSG in advance of the BRTF meeting, and anticipate identifying any necessary changes to MPA regulations or classifications for your consideration on October 21, 2009.

At this time it is staff's recommendation that the various evaluations being conducted on the MPA proposals developed by the SCRSG work groups not be modified based on the advice letter. Using any of the three options described above, both DFG and State Parks have indicated that their evaluations will not change and the levels of protection (LOP) currently assigned to SMRs by the SAT will continue to be "very high" since proposed fishing activities will not change.

Applicability of the Informal Advice to Human Access in MPAs

The MLPA relies upon the MMAIA to define the types of MPAs and uses that are allowed within those MPAs. The MMAIA indicates that, to the extent possible, MPAs should be open to the public for managed enjoyment and study. In addition, goal 3 of the MLPA is focused on improving recreational, educational and study opportunities afforded by MPAs subject to minimal human disturbance. As was indicated at its July 2009 meeting, staff understands that it is <u>not</u> the intent of the MLPA Initiative Blue Ribbon Task Force to prevent human use of, or access to, MPAs for non-extractive activities, such as swimming, wading, diving and boating. This intent of the BRTF, and subsequent guidance to the SCRSG, is consistent with the informal advice provided by the AG's office.

Application of the Informal Advice to Previous MLPA Study Regions

MLPA staff recognizes that a review of MPAs adopted in previous study regions is necessary regarding how the AG informal advice may affect those MPAs. MLPA staff will gather information from the California State Lands Commission, municipalities and others, about existing activities within SMRs in the MLPA Central Coast Study Region, MLPA North Central Coast Study Region, and the northern Channel Islands within the MLPA South Coast Study Region regarding activities/uses that may be inconsistent with an MPA's existing classification or regulations. MLPA staff will work with the managing agencies and designating entities to identify options for addressing inconsistent uses and share those options with other agencies and the public before forwarding recommendations for the necessary technical changes to the appropriate designating entity (i.e., California Fish and Game Commission or State Park and Recreation Commission).

Attachment 1: September 25, 2009 letter from Deputy Attorney General Hayley Petersen to Assistant Secretary for Ocean and Coastal Policy Brian Baird
Attachment 2: Marine Managed Areas Improvement Act of 2000

ATTACHMENT 1

EDMUND G. BROWN JR.
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September 25, 2009

Brian Baird
Asst. Secretary for Ocean and Coastal Policy
Natural Resources Agency
Office of the Secretary
1416 9th Street, Room 1311
Sacramento, CA 95814 A-38

RE: Establishment, Use and Enforcement of Marine Managed Areas

Dear Mr. Baird:

The Natural Resources Agency has requested our informal advice regarding several issues relating to the Marine Managed Areas Improvement Act of 2000 (the MMAIA). The issues relate to the effect of a state marine reserve designation and the scope of activities the Department of Fish and Game (DFG) and the Department of Parks and Recreation (DPR) may allow within marine reserves; whether the designating or managing agency must identify the uses that are prohibited or the uses that are allowed within marine conservation areas; the scope of authority of the Fish and Game Commission and the State Park and Recreation Commission to designate marine reserves and other marine managed areas; and the ability of DFG and DPR to use their existing law enforcement authority to enforce the MMAIA.

The following analysis of these issues is by necessity general and preliminary in nature. Our advice is subject to modification based on the specifics of a particular project or area as well as input from other agencies that may raise issues we have not foreseen. We will supplement or amend our advice as necessary to address these situations.

Issues Presented

1. Clarify the effect of a state marine reserve designation and the scope of activities DFG and DPR may, or may not, allow within an area so designated.

2. Clarify whether the designating or managing agency must identify allowable or prohibited activities within marine conservation areas.

3. Clarify the authority of the Fish and Game Commission and the State Park and Recreation Commission to designate and manage marine reserves, marine parks, and marine conservation areas.

4. Clarify the ability of DFG and DPR to enforce the prohibitions of Public Resources Code section 36710 using their existing law enforcement authority.

Short Answers

1. DFG and DPR may not allow activities that will injure, damage, take, or possess any living, geologic, or cultural resource in a state marine reserve. Notwithstanding the above, DFG and DPR may permit or authorize research, restoration, or monitoring activities within a reserve. The Fish and Game Commission and the State Park and Recreation Commission must exclude the area occupied by an existing incompatible use from a designation or choose a less stringent designation that can accommodate the use. DFG and DPR may accommodate future incompatible uses within a reserve by excluding the area the use will occupy from the initial designation or by amending a designation to exclude the area the use will occupy.

2. The designating or managing agency has discretion to identify either the uses that are prohibited because they would compromise protection of the species of interest, natural community, habitat, or geological features or identify the allowable uses within marine conservation areas.

3. The Fish and Game Commission may designate marine recreational management areas for hunting purposes, marine reserves, and marine conservation areas, but not marine parks. The State Park and Recreation Commission may designate marine reserves, marine parks, marine conservation areas, marine cultural preservation areas, and marine recreational management areas. The State Park and Recreation Commission must obtain the concurrence of the Fish and Game Commission on any proposed restrictions upon, or change in, the use of living marine resources when designating marine reserves, marine parks, or marine conservation areas.

4. DFG may enforce the MMAIA's prohibitions. DFG has adopted regulations incorporating the prohibitions in marine areas, and violation of the DFG regulations constitutes a misdemeanor. Although DPR appears to have the authority to enforce the MMAIA's prohibitions, we recommend DPR clarify its authority by promulgating regulations incorporating the MMAIA's restrictions similar to the regulations DFG has adopted.

Discussion

The Legislature enacted the MMAIA in 2000 (Pub. Resources Code, §§ 36600-36900.[1]) In adopting the MMAIA, the Legislature intended to eliminate existing marine classifications

[1] Hereafter statutory citations are to the Public Resources Code unless otherwise indicated.

with the exception of state estuaries and establish a new classification system with "a mission, statement of objectives, clearly defined designation guidelines, specific classification goals, and a more scientifically-based process for designating sites and determining their effectiveness." (§ 36601, subd. (b).)

The MMAIA creates six managed area classifications in the marine and estuarine environments: state marine reserves, state marine parks, state marine conservation areas, state marine cultural preservation areas, state marine recreational management areas, and state water quality protection areas. (§ 36700.) The MMAIA describes the permissible (§ 36700) and prohibited (§ 36710) activities in each area.

Marine protected areas consistent with the Marine Life Protection Act (MLPA; Fish & G. Code, §§ 2850-2863) are a subset of marine managed areas and include state marine reserves, state marine parks, and state marine conservation areas. (§ 36602, subd. (e).) These classifications are primarily intended to protect or conserve marine life and habitat. (*Ibid.*)

A stated goal of the MLPA is "[t]o improve recreational, educational, and study opportunities provided by marine ecosystems that are subject to *minimal human disturbance*, and to manage these uses in a manner consistent with protecting biodiversity." (Fish & G. Code, § 2853, subd. (b)(3) [emphasis added].) This and the other goals of the Act (see Fish & G. Code, § 2853, subd. (b)(1), (2), and (4)) are qualified by the more specific statutory language setting out the prohibited and authorized uses for marine reserves, marine parks, and marine conservation areas. For example, in marine conservation areas, the designating entity or managing entity "may permit research, education, and recreational activities, and certain commercial and recreational harvest of marine resources." Such activities may result in human disturbance of the area.

1. DFG and DPR may not allow activities that injure, damage, take or possess marine resources in marine reserves.

Section 36710, subdivision (a), of the MMAIA states:

> In a state marine reserve, it is unlawful to injure, damage, take or possess any living[,][2] geological, or cultural marine resource, except under a permit or specific authorization from the managing agency for research, restoration, or monitoring purposes. While, to the extent feasible, the area shall be open to the public for managed enjoyment and study, the area shall be maintained to the extent practicable in an undisturbed and unpolluted state. Access and use for activities including, but not limited to walking, swimming,

[2] This comma is not in the original legislation. The omission appears inadvertent as "living geological" does not have meaning. In addition, section 36710, subsection (c), which contains the same clause, includes the comma.

> boating, and diving may be restricted to protect marine resources. Research, restoration, and monitoring may be permitted by the managing agency.

The MLPA also addresses marine reserves. It provides:

> Notwithstanding any other provision of this code, the taking of a marine species in a marine life reserve is prohibited for any purpose, including recreational and commercial fishing, except that the [Fish & Game Commission] may authorize the taking of a marine species for scientific purposes, consistent with the purposes of this chapter, under a scientific collecting permit [Cal. Code of Regs., tit. 14, § 650] issued by [DFG].[3]

Neither the MLPA nor the MMAIA defines injure, damage, take, or possess. Section 86 of the Fish & Game Code defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill. (See also, Cal. Code of Regs., tit. 14, § 1.80.) We recommend DFG and DPR define injure and damage by regulation. The federal Endangered Species Act (16 U.S.C. §§ 1531-1543) may provide guidance in defining these terms. It defines harm, a term synonymous with injure and damage, as "an act which actually kills or injures wildlife." It further provides that such act may "include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering." (*Ibid.*) In the context of marine plants, DFG has a regulation that prohibits cutting or harvesting of marine aquatic plants in state reserves. (Cal. Code of Regs., tit. 14, § 30.00, subd. (b).) DFG should consider whether this regulation goes far enough to prevent injury and damage to aquatic plants or whether additional protections are needed.

Activities that injure, damage, take or possess marine resources within a marine reserve are unlawful with the exception of permitted research, restoration, and monitoring activities. DFG and DPR may permit or authorize research, restoration, and monitoring activities within a reserve even if such activities may injure, damage, take or possess marine resources.[4] The

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[3] The MLPA defines "marine life reserve" as a marine protected area in which "*all* extractive activities, including the taking of marine species . . . are prohibited." (Fish & G. Code, § 2852, subd. (d) [emphasis added].) The specific language in section 2860, subdivision (b), which allows limited takings for scientific purposes, controls over this general prohibition.

[4] The statute refers to research, restoration, or monitoring activities "under a permit or specific authorization" from the managing agency. We interpret this language to allow the managing agency flexibility in determining what type of approval process to follow and to not necessarily require an additional permit. DFG or DPR must provide some type of authorization for research, restoration and monitoring activities, but, if another agency reviews and permits a particular activity and that agency incorporates review of the MMAIA into its process, DFG and DPR may be able to rely on the other agency's review in authorizing the project. We do note, however,

phrase "to the extent feasible" does not modify the first sentence prohibiting injury, damage, taking or possessing of any living, geological or cultural marine resource with very limited exceptions. The phrase modifies the second sentence only and, rather than authorizing the designating entities to permit greater uses within a marine reserve, it provides discretion to prohibit uses ordinarily allowed within a reserve including walking, swimming, boating and diving. By authorizing the designating entities to prohibit essentially all activities within marine reserves if necessary, the Legislature did not intend to authorize the entities to permit more intensive activities that would have greater impacts.

Provisions of the MLPA (Fish & G. Code, §§ 2850-2863) provide additional support for this view. In adopting the MLPA, the Legislature declared: "Despite the demonstrated value of marine life reserves, only 14 of the 220,000 square miles of combined state and federal ocean water off California, or six-thousandths of 1 percent, are set aside as *genuine no take areas*." (Fish & G. Code, § 2851, subd. (g) [emphasis added].) This suggests that the Legislature intended marine reserves to be "genuine no take areas."

Laws providing for the conservation of natural resources are of great remedial and public importance and thus should be construed liberally, so as to promote the general object sought to be accomplished. (*Coastside Fishing Club v. California Resources Agency* (2008) 158 Cal.App.4th 1183.)

The prohibitions for marine reserves are the strictest of all marine managed areas. (Compare § 36710, subd. (a) with § 36710, subds. (b)-(f).) Other designations provide protection for marine resources but allow for greater impacts. For example, in a state marine park, "it is unlawful to injure, damage, take, or possess any living or nonliving marine resource *for commercial exploitation*." (§ 36710, subd. (b) [emphasis added].) Thus, if the designating entity anticipates a future use that is inconsistent with the marine reserve's allowable uses, it should choose a more lenient designation.

A designating entity also may designate a marine reserve subject to an existing or future use. Because marine protected areas are "named, discrete geographic" areas, the excepted use must be described geographically. In many cases, the State Lands Commission will have a lease for the use. The designating entity likely will be able to use the Lands Commission's description of the leased premises to describe the area excepted from the reserve.

Designations must take into consideration existing leasehold interests. To avoid interfering with existing rights, the designating entity must either exempt the area subject to an incompatible use from the designation or choose a more lenient designation that is consistent with the use.

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that DFG has a process for issuing scientific collecting permits (Cal. Code of Regs., tit. 14, § 650), which it could use in this context.

The above advice is by necessity general in nature. We would be happy to provide more specific advice regarding a particular designation or use as the circumstances arise.

2. The designating or managing entity may identify prohibited recreational and commercial activities that would compromise protection of species of interest, natural community, habitat or geological features or it may identify allowable uses within marine conservation areas.

Section 36710, subdivision (c) provides:

> In a state marine conservation area, it is unlawful to injure, damage, take, or possess any living, geological, or cultural marine resource for commercial or recreational purposes, or a combination of commercial and recreational purposes, that the designating entity or managing agency determines would compromise protection of the species of interest, natural community, habitat, or geological features. The designating entity or managing entity may permit research, education, and recreational activities, and certain commercial and recreational harvest of marine resources.

This section does not specify whether the designating or managing agency must identify the prohibited uses or identify the allowable uses within marine conservation areas. The first sentence suggests that the agency should identify prohibited uses because it requires the agency to determine what uses would compromise protection of the species of interest etc. But the second sentence suggests that the agency should identify allowable uses as it provides the agency "may permit" research, education, and recreational activities etc. Given this inconsistency, we believe the agency has discretion either to identify prohibited uses or to identify allowable uses.

The best practice may be to list prohibited uses. This is because the sections regulating other marine managed areas specify that the designating or managing agency should identify prohibited uses. For example, section 36710, subdivision (b) provides that in state marine parks, the designating or managing agency may restrict any human use that would compromise protection of the species of interest, natural community or habitat, or geological, cultural, or recreational features. "All other uses are allowed . . . ." Because the designating or managing agency presumably will identify the prohibited activities in other marine managed areas, identifying prohibited uses and activities in state marine conservation areas would result in consistency among the regulations. However, if the agency determines that listing allowable uses would be more efficient than listing prohibited uses, it has discretion to do so. DFG's existing regulations (e.g. Cal. Code of Regs., tit. 14, § 632, subd. (b)), which list the exceptions to the general rule that take of all living marine resources is prohibited, are acceptable.

3. The Fish and Game Commission and the State Park and Recreation Commission have the authority to designate certain marine managed areas, but not others.

The Fish and Game Commission, the State Park and Recreation Commission, and the State Water Resources Control Board (referred to as "designating entities" by the MMAIA) may designate specified state marine managed areas. (§ 36602, subd. (b).) A geographic area may be designated under more than one classification. (§ 36700.)

The Fish and Game Commission may designate state marine recreational management areas for hunting purposes, state marine reserves, and state marine conservation areas. (§ 36725, subd. (a); Fish & G., § 1590.) It may not designate state marine parks, state marine cultural preservation areas or state water quality protection areas. (See § 36725, subd. (a).) It may modify or delete state marine reserves that the State Park and Recreation Commission designates only after consulting with, and securing concurrence from, the State Park and Recreation Commission. (§ 36725, subd. (a).) The Fish and Game Commission is prohibited from deleting or modifying state marine recreational management areas that the State Park and Recreation Commission designates. (§ 36725, subd. (a).)

The State Park and Recreation Commission may designate state marine reserves, state marine parks, state marine conservation areas, state marine cultural preservation areas, and state marine recreational management areas. (§§ 538, 36725, subd. (b).) It must obtain the concurrence of the Fish and Game Commission on any proposed restrictions upon, or change in, the use of living marine resources before it designates, deletes, or modifies a state marine reserve, state marine park, or state marine conservation area. (§ 36725, subd. (b).) The MMAIA requires the Fish and Game Commission to concur when the State Park and Recreation Commission proposes to designate, delete, or modify the above areas; it does not require that the Fish and Game Commission also designate the area or otherwise promulgate regulations that mirror the action of the State Park and Recreation Commission.

Neither the Fish and Game Commission nor the State Park and Recreation Commission may designate state water quality protection areas; only the State Water Resources Control Board may designate, delete, or modify state water quality protection areas. (§ 36725, subd. (d).)

If an unresolved conflict exists between the Fish and Game Commission and the State Park and Recreation Commission regarding a state marine reserve, state marine park, or state marine conservation area, the MMAIA authorizes the Secretary of the Natural Resources Agency to reconcile the conflict. (§ 36725, subd. (c).) For example, the Fish and Game Commission must obtain the Park and Recreation Commission's concurrence prior to modifying or deleting marine reserves and marine conservation areas designated by the Park and Recreation Commission. If the Park and Recreation Commission will not concur, the Secretary must determine whether to override the Park and Recreation Commission's decision. If he does so, then the Fish and Game Commission may modify or delete the reserve or conservation area. If he does not do so, then the Fish and Game Commission may not modify or delete the reserve or conservation area. Because the Fish and Game Commission, the Park and Recreation

Commission, and the Secretary for the Resources Agency are all part of the executive portion of the government, and because the Governor appoints the members of each of those entities, we do not believe this provision raises any separation of powers issues

Another issue that has arisen is whether the MMAIA authorizes DFG and DPR to enforce violations of water quality regulations. The MMAIA authorizes DFG and DPR to enforce water quality regulations within water quality protection areas if the State Water Quality Control Board requests them to do so, but it does not create authority for them independently to enforce water quality regulations.

The marine reserve designation does not authorize DFG and DPR to enforce water quality regulations. Section 36710, subdivision (a) provides: "While, to the extent feasible, the [marine reserve] shall be open to the public for managed enjoyment and study, the area shall be maintained to the extent practicable in an undisturbed and unpolluted state." The reference to "unpolluted state" does not grant DFG and DPR new powers to enforce water quality regulations within marine reserves. Rather this provision is intended to preserve the public's access to marine reserves to the extent feasible, while at the same time requiring DFG and DPR to maintain reserves in an unpolluted state to the extent practicable by limiting activities within them.

The Legislature created the "state water quality protection area" designation to address water quality issues. "A 'state water quality protection area' is a nonterrestrial marine or estuarine area designated to protect marine species or biological communities from an undesirable alteration in natural water quality, including, but not limited to, areas of special biological significance that have been designated by the State Water Resources Control Board through it water quality control planning process." (§ 36710, subd. (f).) Waste discharges are prohibited in these areas or limited by the imposition of special conditions in accordance with the Porter-Cologne Water Quality Control Act. DFG and DPR may manage state water quality protection areas if the State Water Resources Control Board so requests. "The State Water Resources Control Board may request [DFG] and [DPR] to take appropriate management activities." (§ 36710, subd. (f)(3).)

Another provision of the Fish and Game Code requires cooperation with the State Water Resources Control Board when pollution causes the destruction of fish and wildlife. Fish and Game Code section 2014 provides that the state may recover damages against any person or local agency which unlawfully or negligently takes or destroys any bird, mammal, fish, reptile, or amphibian protected by the laws of the state. "The State Water Resources Control Board shall be notified of, and may join in, any action brought under this section when the activities alleged to have caused the destruction of any bird, mammal, fish, reptile, or amphibian may involve either the unlawful discharge of pollutants into the waters of the state or other violation of Division 7 (commencing with Section 13000) of the Water Code."

The State Water Resources Control Board maintains primary jurisdiction over water quality and pollution discharges. DFG and DPR may enforce water quality provisions if the State Water Resources Control Board requests that they do so.

4. DFG and DPR may enforce the prohibitions of Public Resources Code section 36710.

The MMAIA designates DFG and DPR as "managing agencies" and authorizes each to manage specified marine managed areas. (§ 36602, subd. (c).) DPR may manage state marine reserves, state marine parks, state marine conservation areas, state marine cultural preservation areas, state marine recreational management areas and, if the State Water Resources Control Board requests, state water quality protection areas. (§ 36725, subd. (f)(2), § 5001.4) DFG may manage state marine reserves, state marine conservation areas, state marine recreational management areas established for hunting purposes and, if the State Water Resources Control Board requests, state water quality protection areas. (§ 36725, subd. (f)(1).) DFG enforces hunting and fishing laws and regulations in marine managed areas where fishing is permitted as it does elsewhere in the state. (§ 5003.1.)

Public Resources Code section 36710 lists the prohibited activities in marine reserves and other marine managed areas. With respect to marine reserves, it provides in part:

> (a) In a state marine reserve, it is unlawful to injure, damage, take, or possess any living[,] geological, or cultural marine resource, except under a permit or specific authorization from the managing agency for research, restoration, or monitoring purposes:

The MMAIA does not specify a penalty for violation of its provisions. However, the Legislative History states: "The bill would make certain conduct within [marine managed areas] unlawful, thereby imposing a state-mandated local program by creating new crimes." (Legislative Counsel's Digest, AB 2800.) As discussed below, other provisions of the Public Resources Code and Fish and Game Code provide that violation of the prohibitions is a misdemeanor and authorize designated wardens and rangers to enforce such violations.

<u>Fish and Game Wardens</u>:

The DFG director may appoint deputies to enforce the Fish and Game Code. The deputies are peace officers and have all the powers and authorities conferred by law upon peace officers listed in Penal Code section 830.6 "to make arrests for violations of this code." (Fish & G. Code, § 851; Pen. Code, § 830.2, subd. (e).) The deputies' authority extends to any place in the state, but their primary duty is the enforcement of the law as set forth in Fish and Game Code section 856. (Pen. Code, § 8302, subd. (e).)

A violation of the Fish and Game Code, or of any rule, regulation, or order adopted under the code, generally constitutes a misdemeanor. (Fish & G. Code, § 12000.) The Fish and Game

Code incorporates the MMAIA by reference. (Fish & G. Code, § 1591, subd. (a).) Violation of the MMAIA therefore is a violation of the Fish and Game Code and a misdemeanor.

In addition, the Fish and Game Commission and DFG have adopted regulations governing marine protected areas and marine managed areas. (Cal. Code of Regs., tit. 14, § 632.) The regulations prohibit the same activities in marine reserves as the MMAIA:

> In a state marine reserve, it is unlawful to injure, damage, take, or possess any living, geological, or cultural marine resource, except under a scientific collecting permit issued pursuant to Section 650 or specific authorization from the commission for research, restoration, or monitoring purposes.

(Cal. Code of Regs., tit. 14, § 632, subd. (a)(1)(A); compare to § 36710, subd. (a).) Other regulations contain restrictions similar to those of the MMAIA for state marine parks, state marine conservation areas, and state marine recreational management areas. (Cal. Code of Regs., tit. 14, § 532, subd. (a)(1)(B)-(D).)

DFG must also "enforce hunting and fishing laws and regulations as it does elsewhere in the state" whenever hunting or fishing is permitted in a state recreational area or state marine recreational management area, and whenever fishing is permitted in a state park, state marine park, state marine cultural preservation area, or state marine conservation area. (§ 5003.1.)

Park Rangers:

DPR has the power and duty to administer, protect, develop, and interpret the property under its jurisdiction for the use and enjoyment of the public. (§ 5003.) DPR must "protect the state park system . . . from damage and preserve the peace therein." (§ 5008, subd. (a).) "[T]he department may establish rules and regulations not inconsistent with law for the government and administration of the property under its jurisdiction." (§ 5003.) Such rules and regulations apply on any granted or ungranted tidelands or submerged lands abutting the property of the department and used for recreational purposes by members of the general public. (§ 5003.05.)

Violation of DPR's rules and regulations is a misdemeanor. (§§ 5003, 5008, subd. (d), 5560.) The director may designate any officer or employee as a peace officer. (§ 5008, subd. (b).) The authority of designated peace officers extends to any place in the state, provided that their primary duty is enforcement of the law as set forth in section 5008. (Pen. Code, § 830.2, subd. (f).) Under section 5008, DPR peace officers enforce Division 5 Parks and Monuments and DPR's rules and regulations and may arrest persons for committing public offenses within DPR's jurisdiction. "Department authority over units within the state park system shall extend to units of the state MMAs system that are managed by the department." (§ 5001.4)

The Public Resources Code does not specifically state that violation of the MMAIA is a misdemeanor. Arguably, however, legislative enactments should not be given lesser authority

than an agency's and rules and regulations, violation of which is a misdemeanor. In addition, because DPR peace officers' authority extends to any place in the state (Pen. Code, § 830.2, subd. (f)), they have the authority to enforce Fish and Game's regulations which incorporate the statutory prohibitions. Nonetheless, we recommend that DPR adopt rules and regulations that incorporate the MMAIA's prohibitions on marine reserves and other managed areas, similar to those that Fish and Game has adopted. This would ensure that commission of the prohibited acts constituted a misdemeanor enforceable by the rangers.

Please do not hesitate to contact me if you have any questions regarding the above informal advice.

Sincerely,

Hayley Peterson

HAYLEY PETERSON
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

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ATTACHMENT 2

CALIFORNIA PUBLIC RESOURCES CODE
SECTIONS 36600-36620
January 2006

[Please note that text in brackets is added for readability purposes only and is not part of the statute]

36600. **[Marine Managed Areas Improvement Act]**
This chapter shall be known, and may be cited, as the Marine Managed Areas Improvement Act.

36601. [Legislative Findings and Declarations]
(a) The Legislature finds and declares all of the following:
(1) California's extraordinary ocean and coastal resources provide a vital asset to the state and nation. These resources are important to public health and well-being, ecological health, and ocean-dependent industries.
(2) The ocean ecosystem is inextricably connected to the land, with coastal development, water pollution, and other human activities threatening the health of marine habitat and the biological diversity found in California's ocean waters. New technologies and demands have encouraged the expansion of fishing and other activities to formerly inaccessible marine areas that once recharged nearby fisheries. As a result, ecosystems throughout the state's ocean waters are being altered, often at a rapid rate.
(3) California's marine managed areas (MMAs), such as refuges, reserves, and state reserves, are one of many tools for resource managers to use for protecting, conserving, and managing the state's valuable marine resources. MMAs can offer many benefits, including protecting habitats, species, cultural resources, and water quality; enhancing recreational opportunities; and contributing to the economy through such things as increased tourism and property values. MMAs may also benefit fisheries management by protecting representative habitats and reducing extractive uses.
(4) The array of state MMAs in California is the result of over 50 years of designations through legislative, administrative, and statewide ballot initiative actions, which has led to 18 classifications and subclassifications of these areas.
(5) A State Interagency Marine Managed Areas Workgroup was convened by the Resources Agency to address this issue, bringing together for the first time all of the state agencies with jurisdiction over these areas. This group's report indicates that California's state MMAs have evolved on a case-by-case basis, without conforming to any plan for establishing MMAs in the most effective way or in a manner which ensures that the most representative or unique areas of the ocean and coastal environment are included.
(6) The report further states that California's MMAs do not comprise an organized system, as the individual sites are not designated, classified, or managed in a systematic manner. Many of these areas lack clearly defined purposes, effective management measures, and enforcement.
(7) To some, this array of MMAs creates the illusion of a comprehensive system of management, while in reality, it falls short of its potential to protect, conserve, and manage natural, cultural, and recreational resources along the California coast. Without a properly designed and coordinated system of MMAs, it is difficult for agencies to meet management objectives, such as maintaining biodiversity, providing education and outreach, and protecting marine resources.
(8) Agency personnel and the public are often confused about the laws, rules, and regulations that apply to MMAs, especially those adjacent to a terrestrial area set aside for management purposes. Lack of clarity about the manner in which the set of laws, rules, and regulations for the array of MMAs interface and complement each other limits public and resource managers' ability to understand and apply the regulatory structure.
(9) Designation of sites and subsequent adoption of regulations often occur without adequate consideration being given to overall classification goals and objectives. This has contributed to fragmented management, poor compliance with regulations, and a lack of effective enforcement.
(10) Education and outreach related to state MMAs is limited and responsibility for these activities is distributed across many state agencies. These factors hamper the distribution of information to the

public regarding the benefits of MMAs and the role they can play in protecting ocean and coastal resources.

(11) There are few coordinated efforts to identify opportunities for public/private partnerships or public stewardship of MMAs or to provide access to general information and data about ocean and coastal resources within California's MMAs.

(12) Ocean and coastal scientists and managers generally know far less about the natural systems they work with than their terrestrial counterparts. Understanding natural and human-induced factors that affect ocean ecosystem health, including MMAs, is fundamental to the process of developing sound management policies.

(13) Research in California's MMAs can provide managers with a wealth of knowledge regarding habitat functions and values, species diversity, and complex physical, biological, chemical, and socioeconomic processes that affect the health of marine ecosystems. That information can be useful in determining the effectiveness of particular sites or classifications in achieving stated goals.

(b) With the single exception of state estuaries, it is the intent of the Legislature that the classifications currently available for use in the marine and estuarine environments of the state shall cease to be used and that a new classification system shall be established, with a mission, statement of objectives, clearly defined designation guidelines, specific classification goals, and a more scientifically-based process for designating sites and determining their effectiveness. The existing classifications may continue to be used for the terrestrial and freshwater environments of the state.

(c) Due to the interrelationship between land and sea, benefits can be gained from siting a portion of the state's marine managed areas adjacent to, or in close proximity to, terrestrial protected areas. To maximize the benefits that can be gained from having connected protected areas, whenever an MMA is adjacent to a terrestrial protected area, the managing agencies shall coordinate their activities to the greatest extent possible to achieve the objectives of both areas.

36602. [Definitions]

The following definitions govern the construction of this chapter:

(a) "Committee" is the State Interagency Coordinating Committee established pursuant to Section 36800.

(b) "Designating entity" is the Fish and Game Commission, State Park and Recreation Commission, or State Water Resources Control Board, each of which has the authority to designate specified state marine managed areas.

(c) "Managing agency" is the Department of Fish and Game or the Department of Parks and Recreation, each of which has the authority to manage specified state marine managed areas.

(d) "Marine managed area" (MMA) is a named, discrete geographic marine or estuarine area along the California coast designated by law or administrative action, and intended to protect, conserve, or otherwise manage a variety of resources and their uses. The resources and uses may include, but are not limited to, living marine resources and their habitats, scenic views, water quality, recreational values, and cultural or geological resources. General areas that are administratively established for recreational or commercial fishing restrictions, such as seasonal or geographic closures or size limits, are not included in this definition. MMAs include the following classifications:

(1) State marine reserve, as defined in subdivision (a) of Section 36700.

(2) State marine park, as defined in subdivision (b) of Section 36700.

(3) State marine conservation area, as defined in subdivision (c) of Section 36700.

(4) State marine cultural preservation area, as defined in subdivision (d) of Section 36700.

(5) State marine recreational management area, as defined in subdivision (e) of Section 36700.

(6) State water quality protection areas, as defined in subdivision (f) of Section 36700.

(e) "Marine protected area" (MPA), consistent with the Marine Life Protection Act (Chapter 10.5 (commencing with Section 2850) of Division 3 of the Fish and Game Code) is a named, discrete geographic marine or estuarine area seaward of the mean high tide line or the mouth of a coastal river, including any area of intertidal or subtidal terrain, together with its overlying water and associated flora and fauna that has been designated by law or administrative action to protect or conserve marine life and habitat. MPAs are primarily intended to protect or conserve marine life and habitat, and are therefore a subset of marine managed areas (MMAs). MPAs include the following classifications:

(1) State marine reserve, as defined in subdivision (a) of Section 36700.

(2) State marine park, as defined in subdivision (b) of Section 36700.
(3) State marine conservation area, as defined in subdivision (c) of Section 36700.

36620. [Mission and Objectives]

The mission of the state MMA system is to ensure the long-term ecological viability and biological productivity of marine and estuarine ecosystems and to preserve cultural resources in the coastal sea, in recognition of their intrinsic value and for the benefit of current and future generations. In support of this mission, the Legislature finds and declares that there is a need to reexamine and redesign California's array of MMAs, to establish and manage a system using science and clear public policy directives to achieve all of the following objectives:

(a) Conserve representative or outstanding examples of marine and estuarine habitats, biodiversity, ecosystems, and significant natural and cultural features or sites.
(b) Support and promote marine and estuarine research, education, and science-based management.
(c) Help ensure sustainable uses of marine and estuarine resources.
(d) Provide and enhance opportunities for public enjoyment of natural and cultural marine and estuarine resources.

36700. [Six Classifications and Goals of Each]

Six classifications for designating managed areas in the marine and estuarine environments are hereby established as described in this section, to become effective January 1, 2002. Where the term "marine" is used, it refers to both marine and estuarine areas. A geographic area may be designated under more than one classification.

(a) A "state marine reserve" is a nonterrestrial marine or estuarine area that is designated so the managing agency may achieve one or more of the following:
(1) Protect or restore rare, threatened, or endangered native plants, animals, or habitats in marine areas.
(2) Protect or restore outstanding, representative, or imperiled marine species, communities, habitats, and ecosystems.
(3) Protect or restore diverse marine gene pools.
(4) Contribute to the understanding and management of marine resources and ecosystems by providing the opportunity for scientific research in outstanding, representative, or imperiled marine habitats or ecosystems.

(b) A "state marine park" is a nonterrestrial marine or estuarine area that is designated so the managing agency may provide opportunities for spiritual, scientific, educational, and recreational opportunities, as well as one or more of the following:
(1) Protect or restore outstanding, representative, or imperiled marine species, communities, habitats, and ecosystems.
(2) Contribute to the understanding and management of marine resources and ecosystems by providing the opportunity for scientific research in outstanding representative or imperiled marine habitats or ecosystems.
(3) Preserve cultural objects of historical, archaeological, and scientific interest in marine areas.
(4) Preserve outstanding or unique geological features.

(c) A "state marine conservation area" is a nonterrestrial marine or estuarine area that is designated so the managing agency may achieve one or more of the following:
(1) Protect or restore rare, threatened, or endangered native plants, animals, or habitats in marine areas.
(2) Protect or restore outstanding, representative, or imperiled marine species, communities, habitats, and ecosystems.
(3) Protect or restore diverse marine gene pools.
(4) Contribute to the understanding and management of marine resources and ecosystems by providing the opportunity for scientific research in outstanding, representative, or imperiled marine habitats or ecosystems.
(5) Preserve outstanding or unique geological features.
(6) Provide for sustainable living marine resource harvest.

(d) A "state marine cultural preservation area" is a nonterrestrial marine or estuarine area designated so the managing agency may preserve cultural objects or sites of historical, archaeological, or scientific interest in marine areas.

(e) A "state marine recreational management area" is a nonterrestrial marine or estuarine area designated so the managing agency may provide, limit, or restrict recreational opportunities to meet other than exclusively local needs while preserving basic resource values for present and future generations.

(f) A "state water quality protection area" is a nonterrestrial marine or estuarine area designated to protect marine species or biological communities from an undesirable alteration in natural water quality, including, but not limited to, areas of special biological significance that have been designated by the State Water Resources Control Board through its water quality control planning process. "Areas of special biological significance" are a subset of state water quality protection areas, and require special protection as determined by the State Water Resources Control Board pursuant to the California Ocean Plan adopted and reviewed pursuant to Article 4 (commencing with Section 13160) of Chapter 3 of Division 7 of the Water Code and pursuant to the Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries of California (California Thermal Plan) adopted by the state board.

36710. [Allowable/Disallowable Uses]

(a) In a state marine reserve, it is unlawful to injure, damage, take, or possess any living geological, or cultural marine resource, except under a permit or specific authorization from the managing agency for research, restoration, or monitoring purposes. While, to the extent feasible, the area shall be open to the public for managed enjoyment and study, the area shall be maintained to the extent practicable in an undisturbed and unpolluted state. Access and use for activities including, but not limited to, walking, swimming, boating, and diving may be restricted to protect marine resources. Research, restoration, and monitoring may be permitted by the managing agency. Educational activities and other forms of nonconsumptive human use may be permitted by the designating entity or managing agency in a manner consistent with the protection of all marine resources.

(b) In a state marine park, it is unlawful to injure, damage, take, or possess any living or nonliving marine resource for commercial exploitation purposes. Any human use that would compromise protection of the species of interest, natural community or habitat, or geological, cultural, or recreational features may be restricted by the designating entity or managing agency. All other uses are allowed, including scientific collection with a permit, research, monitoring, and public recreation, including recreational harvest, unless otherwise restricted. Public use, enjoyment, and education are encouraged, in a manner consistent with protecting resource values.

(c) In a state marine conservation area, it is unlawful to injure, damage, take, or possess any living, geological, or cultural marine resource for commercial or recreational purposes, or a combination of commercial and recreational purposes, that the designating entity or managing agency determines would compromise protection of the species of interest, natural community, habitat, or geological features. The designating entity or managing agency may permit research, education, and recreational activities, and certain commercial and recreational harvest of marine resources.

(d) In a state marine cultural preservation area, it is unlawful to damage, take, or possess any cultural marine resource. Complete integrity of the cultural resources shall be sought, and no structure or improvements that conflict with that integrity shall be permitted. No other use is restricted.

(e) In a state marine recreational management area, it is unlawful to perform any activity that, as determined by the designating entity or managing agency, would compromise the recreational values for which the area may be designated. Recreational opportunities may be protected, enhanced, or restricted, while preserving basic resource values of the area. No other use is restricted.

(f) In a state water quality protection area, waste discharges shall be prohibited or limited by the imposition of special conditions in accordance with the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) and implementing regulations, including, but not limited to, the California Ocean Plan adopted and reviewed pursuant to Article 4 (commencing with Section 13160) of Chapter 3 of Division 7 of the Water Code and the Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries of California (California Thermal Plan) adopted by the state board. No other use is restricted.

36711. [Military Activities]

The classifications contained in Section 36710 may not be inconsistent with United States military activities deemed mission critical by the United States military.

36725. [Entities Authorized to Designate or Manage MMAs]

(a) The Fish and Game Commission may designate, delete, or modify state marine recreational management areas established by the commission for hunting purposes, state marine reserves, and state marine conservation areas. The Fish and Game Commission shall consult with, and secure concurrence from, the State Parks and Recreation Commission prior to modifying or deleting state marine reserves and state marine conservation areas designated by the State Parks and Recreation Commission. The Fish and Game Commission shall not delete or modify state marine recreational management areas designated by the State Parks and Recreation Commission.

(b) The State Parks and Recreation Commission may designate, delete, or modify state marine reserves, state marine parks, state marine conservation areas, state marine cultural preservation areas, and state marine recreational management areas. The State Parks and Recreation Commission may not designate, delete, or modify a state marine reserve, state marine park, or state marine conservation area without the concurrence of the Fish and Game Commission on any proposed restrictions upon, or change in, the use of living marine resources.

(c) If an unresolved conflict exists between the Fish and Game Commission and the State Parks and Recreation Commission regarding a state marine reserve, state marine park, or state marine conservation area, the Secretary of the Resources Agency may reconcile the conflict.

(d) The State Water Resources Control Board may designate, delete, or modify state water quality protection areas.

(e) The Fish and Game Commission, State Parks and Recreation Commission, and State Water Resources Control Board each may restrict or prohibit recreational uses and other human activities in the MMAs for the benefit of the resources therein, except in the case of restrictions on the use of living marine resources. Pursuant to this section, and consistent with Section 2860 of the Fish and Game Code, the Fish and Game Commission may regulate commercial and recreational fishing and any other taking of marine species in MMAs.

(f) (1) The Department of Fish and Game may manage state marine reserves, state marine conservation areas, state marine recreational management areas established for hunting purposes and, if requested by the State Water Resources Control Board, state water quality protection areas.

(2) The Department of Parks and Recreation may manage state marine reserves, state marine parks, state marine conservation areas, state marine cultural preservation areas, and state marine recreational management areas. Department authority over units within the state park system shall extend to units of the state MMAs system that are managed by the department.

(3) The State Water Resources Control Board and the California regional water quality control boards may take appropriate actions to protect state water quality protection areas. The State Water Resources Control Board may request the Department of Fish and Game or the Department of Parks and Recreation to take appropriate management action.

36750. [Reclassifying MMAs in Existence on January 1, 2002]

Any MMA in existence on January 1, 2002, that has not been reclassified in accordance with the Marine Life Protection Act (Chapter 10.5 (commencing with Section 2850) of Division 3 of the Fish and Game Code), shall be reclassified under the classification system described in Section 36700 by January 1, 2003, based upon the management purpose and level of resource protection at each site on January 1, 2002. Upon the reclassification of existing sites, but no later than January 1, 2003, the use of all other classifications shall cease for the marine and estuarine environments of the state, though the classifications may continue to be used for the terrestrial and freshwater environments where applicable. The reclassification process shall be the responsibility of the State Interagency Coordinating Committee established pursuant to Section 36800, and shall occur to the extent feasible in conjunction and consistent with the MMA master planning process created pursuant to the Marine Life Protection Act (Chapter 10.5 (commencing with Section 2850) of Division 3 of the Fish and Game Code).

36800. [State Interagency Coordinating Committee for MMAs]

The Secretary of the Resources Agency shall establish and chair the State Interagency Coordinating Committee, whose members are representatives from those state agencies, departments, boards, commissions, and conservancies with jurisdiction or management interests over marine managed areas, including, but not limited to, the Department of Fish and Game, Department of Parks and Recreation, California Coastal Commission, State Water Resources Control Board, and State Lands Commission. The Secretary of the Resources Agency shall designate additional members of the committee. The committee shall review proposals for new or amended MMAs to ensure that the minimum required information is included in the proposal, to determine those state agencies that should review the proposal, and to ensure consistency with other such designations in the state. The committee shall also serve to ensure the proper and timely routing of site proposals, review any proposed site-specific regulations for consistency with the state system as a whole, and conduct periodic reviews of the statewide system to evaluate whether it is meeting the mission and statement of objectives.

36850. [Developing Designation Guidelines]

Designation guidelines based on the classification goals adopted for the state system of MMAs shall be developed jointly by the appropriate managing agencies in cooperation with the committee on or before January 1, 2002. These guidelines shall be used to provide a general sense of requirements for designating a site in any particular classification, and may include characteristics such as uniqueness of the area or resource, biological productivity, special habitats, cultural or recreational values, and human impacts to the area. These designation guidelines shall be provided on a standard set of instructions for each classification.

36870. [Minimum Requirements for Submitting MMA Site or Network Proposals]

On or before January 1, 2002, the committee shall establish a standard set of instructions for each classification to guide organizations and individuals in submitting proposals for designating specific sites or networks of sites. On or before January 1, 2003, the relevant site proposal guidelines shall be adopted by each designating entity.

(a) At a minimum, each proposal shall include the following elements for consideration for designation as an MMA:

(1) Name of individual or organization proposing the designation.

(2) Contact information for the individual or organization, including contact person.

(3) Proposed classification.

(4) Proposed site name.

(5) Site location.

(6) Need, purpose, and goals for the site.

(7) Justification for the manner in which the proposed site meets the designation criteria for the proposed classification.

(8) A general description of the proposed site's pertinent biological, geological, and cultural resources.

(9) A general description of the proposed site's existing recreational uses, including fishing, diving, boating, and waterfowl hunting.

(b) The following elements, if not included in the original proposal, shall be added by the proposed managing agency in cooperation with the individual or organization making the proposal, prior to a final decision regarding designation:

(1) A legal description of the site boundaries and a boundary map.

(2) A more detailed description of the proposed site's pertinent biological, geological, cultural, and recreational resources.

(3) Estimated funding needs and proposed source of funds.

(4) A plan for meeting enforcement needs, including on-site staffing and equipment.

(5) A plan for evaluating the effectiveness of the site in achieving stated goals.

(6) Intended educational and research programs.

(7) Estimated economic impacts of the site, both positive and negative.

(8) Proposed mechanisms for coordinating existing regulatory and management authority, if any exists, within the area.

(9) An evaluation of the opportunities for cooperative state, federal, and local management, where the opportunities may exist.

36900. [Process for Submitting MMA Proposals]

Individuals or organizations may submit a proposal to designate an MMA directly through the committee or an appropriate designating entity. Proposals submitted to a designating entity shall be forwarded to the committee to initiate the review process. Proposals for designating, deleting, or modifying MMAs may be submitted to the committee or a designating entity at any time. The committee and scientific review panel established pursuant to subdivision (b) shall annually consider and promptly act upon proposals until an MPA master plan is adopted pursuant to subdivision (b) of Section 2859 of the Fish and Game Code, and thereafter, no less than once every three years. Upon adoption of a statewide MPA plan, subsequent site proposals determined by the committee to be consistent with that plan shall be eligible for a simplified and cursory review of not more than 45 days.

(a) The committee shall review proposals to ensure that the minimum required information is included in the proposal, to determine those state agencies that should review the proposal, and to ensure consistency with other designations of that type in the state. After initial review by the coordinating committee and appropriate agencies, the proposal shall be forwarded to a scientific review panel established pursuant to subdivision (b).

(b) The Secretary of the Resources Agency shall establish a scientific review panel, with statewide representation and direction from the committee, to evaluate proposals for technical and scientific validity, including consideration of such things as site design criteria, location, and size. This panel, to the extent practical, shall be the same as the master plan team used in the process set forth in the Marine Life Protection Act (Chapter 10.5 (commencing with Section 2850) of Division 3 of the Fish and Game Code). Members shall maintain familiarity with the types and effectiveness of MMAs used in other parts of the world for potential application to California. Members shall be reimbursed reasonable costs to participate in the activities of the panel. Where feasible, advice shall be sought from the appropriate federal agencies and existing regional or statewide marine research panels and advisory groups. After review by the scientific review panel, the committee shall forward the proposal and any recommendations to the appropriate designating entity for a public review process.

(c) Designating entities shall establish a process that provides for public review and comment in writing and through workshops or hearings, consistent with the legal mandates applicable to designating entities. All input provided by the committee and scientific review panel shall be made available to the public during this process. Outreach shall be made to the broadest ocean and coastal constituency possible, and shall include commercial and sport fishing groups, conservation organizations, waterfowl groups and other recreational interests, academia, the general public, and all levels of government.

(d) This process does not replace the need to obtain the appropriate permits or reviews of other government agencies with jurisdiction or permitting authority.

(e) Nothing in this section shall be construed as altering or impeding the process identified under the Marine Life Protection Act (Chapter 10.5 (commencing with Section 2850) of Division 3 of the Fish and Game Code) or the actions of the master plan team described in that act.