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**Memorandum on the Relationship Between
the MLPA and Fisheries Management
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Research Question

To what extent, if any, should the interpretation and implementation of the Marine Life Protection Act, Fish & Game Code §§ 2850-2863 (“MLPA”), be influenced or limited by the interpretation and implementation of the Marine Life Management Act, Fish & Game Code §§ 7050-7090 (“MLMA”) (Cal. Stats. 1998, ch. 1052 (AB 1241)) and other fisheries management statutes, regulations and programs?

Research Memorandum

Basic Rules of Statutory Interpretation When Statutes Overlap

The basic rules of statutory interpretation that are applicable here are well settled. When there are two statutes that deal with the same basic subject matter, “[t]here is a presumption against repeal by implication, that to overcome the presumption the two acts must be irreconcilable, clearly repugnant, and so inconsistent as to prevent their concurrent operation, and that the courts are bound to maintain the integrity of both statutes if they may stand together.” *Warne v. Harkness*, 60 Cal. 2d 579, 587, 387 P.2d 377 (1963). Repeals by implication are not favored, and are recognized only when there is no rational basis for harmonizing two potentially conflicting laws. *Fuentes v. Workers’ Compensation Appeals Board*, 16 Cal. 3d 1, 6, 547 P.2d 449 (1976); *In re White*, 1 Cal. 3d 207, 212, 460 P.2d 980 (1969). Generally, California courts will not presume the existence of an intention to repeal in the absence of an express declaration. *Id.* Furthermore, we must assume that when passing a statute the Legislature is aware of existing related laws and intends to maintain a consistent body of rules. *Id.* See also *Estate of Simpson*, 43 Cal. 2d 594, 600, 275 P.2d 467 (1954).

If a conflict is found, other rules of construction come into play. In particular, California courts have held consistently that “[i]f conflicting statutes cannot be reconciled, later enactments supersede earlier ones, and more specific provisions take precedence over more general ones.” *Santa Clara Valley Transp. Authority v. Public Utilities Com. State of California*, 124 Cal.App.4th 346, 360 (2004).

Fuentes v. Workers Compensation Appeals Board is a good example of these rules in action. In *Fuentes*, the petitioner claimed that two sections of the Labor Code were in conflict and that the later enacted section should supercede the earlier enacted section. The California Supreme Court held that the later enacted section of the Labor Code was a general provision establishing the amount of compensation benefits for a permanent disability, and that the earlier enacted section was a specific rule limiting the benefits available in only those cases where the employee has a preexisting permanent disability and thereafter sustains a further permanent injury. *Id.* at 7. The court went on to say: “When so construed the statutes in question are complementary, not contradictory, and function together quite harmoniously, thus, serving the twin goals of providing proportionately greater benefits for more serious injuries while at the same time protecting employers from bearing a disproportionate share of a financial burden resulting from cumulative injuries.” *Id.* at 7-8. *Fuentes* stated further that “[e]ven assuming, however, that a conflict exists, an equally familiar rule of statutory construction requires the more specific section 4750 to prevail over section 4658, the more general law applicable to the same subject.” *Id.*

The MLPA and Fisheries Management Programs, Including the MLMA, Are “Complementary” – Conflicts, If Any, Should Be Resolved in Favor of the MLPA Which More Comprehensively Regulates the Subject Matter

The MLPA was enacted one year after the MLMA, and its provisions expressly affirm that the MLPA and MLMA are to be interpreted as “complementary” enactments. In particular, Section 2851(d) of the Fish & Game Code provides that “[f]ish and other sea life are a sustainable resource, and fishing is an important community asset. MPAs and sound fishery management are complementary components of a comprehensive effort to sustain marine habitats and fisheries.” In other words, the MLPA recognizes that *both* MPAs and fishery management have a role to play in sustaining marine habitats and fisheries.

To effectuate this express legislative policy, MPAs should be designed against a backdrop of any existing, applicable fishery management rules and regulations. (Similarly, new fishery management programs should, in the future, be designed against a backdrop of any existing, applicable MPAs.) To the extent that conflicts between MPAs and fishery management rules can be avoided without undermining the full implementation of the MLPA, good faith efforts to avoid such conflicts should be undertaken. Avoiding conflicts is the best way of fulfilling the legislative directive that the MLPA and MLMA co-exist as “complementary” regulatory programs.

However, situations may arise where the provisions of an MPA are squarely in conflict with otherwise applicable fishery management rules and are not reconcilable without undermining the MLPA’s goals. In these circumstances, where a conflict cannot reasonably be avoided, the implementation of the MLPA should take priority over the fisheries management programs authorized by the MLMA. The MLPA takes precedence because:

- (1) the MLPA was enacted after the MLMA, and the accepted judicial rule is that “later enactments supersede earlier ones” (*Santa Clara Valley Transport. Authority, supra*);
- (2) the provisions of the MLPA are, on balance, more specific and detailed than the provisions

of the MLMA (and, at the very least, are of equal specificity), and the accepted judicial rule is that “more specific provisions take precedence over more general ones” (*Id.*); and

- (3) the interests sought to be advanced by the MLPA are broader than, and expressly encompass, the interests of the MLMA (i.e., the MLPA addresses broader ecosystem-based objectives including, but not limited to, fishery management (*see* Fish & Game Code § 2851), while the MLMA is focused only on fishery management (*see* Fish & Game Code § 7056)), and in such circumstances, the more comprehensive enactment should control.

All of these factors point in the direction of the MLPA taking precedence, when conflicts are unavoidable, over the MLMA. Given the order of the enactments, the MLPA’s level of specificity and detail, and the MLPA’s more comprehensive approach to ecosystem management, it is unlikely that the Legislature intended the more narrowly-targeted rules adopted as part of the fisheries management program to frustrate the broader marine management program authorized by the MLPA.

The same reasoning applies to any other fisheries management statutes that were enacted prior to the MLPA, and even to statutes enacted subsequent to the MLPA so long as such statutes are not directly in conflict with the MLPA. As noted above, Section 2851(d) of the MLPA provides that “MPAs and sound fishery management are complementary components of a comprehensive effort to sustain marine habitats and fisheries.” Thus, the MLPA’s rule of complementarity is *not* limited to the MLMA or even to statutes enacted prior to the MLPA. The MLPA does *not* expressly refer only to the MLMA or to statutes enacted prior to the MLPA. Instead, it provides that MPAs are to be complementary to “fishery management” in general. Indeed, the MLMA itself articulates broad, ecosystem-based management policies applicable to all prospective fisheries management actions (*see* Section 7050). Accordingly, the MLPA’s provisions, which are comprehensive in scope, and implementation through MPAs should, when conflicts are unavoidable, take precedence over *any* type of “fishery management” activities undertaken pursuant to any other statutory authorizations except when such statutory authorizations are in direct and irreconcilable conflict with the MLPA.