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: **Staff recommendations for applying the advice from the Office of the Attorney General about marine protected areas and the Marine Managed Areas Improvement Act**

Date: **October 19, 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 staff recommendations on how to apply advice from the California Attorney General's (AG's) office related to the establishment, use and enforcement of marine protected areas in the implementation of the Marine Life Protection Act (MLPA) in the south coast study region.

Background

In the early stages of the marine protected area (MPA) planning process in the MLPA 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, a state marine reserve (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, and that informal advice transmitted to the Blue Ribbon Task Force on October 1, 2009.

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.

MLPA Initiative staff committed to:

(1) 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 regulations or classifications in MPA proposals for the south coast,

(2) conduct a briefing with the SCRSG in advance of your October 20-22, 2009 meeting, and

(3) identify any necessary changes to MPA regulations or classifications for your consideration on October 21, 2009.

Efforts to Develop Recommendations for Applying the Advice to the South Coast

Staff conducted a briefing for SCRSG members and the interested public on October 14, 2009 to briefly describe the advice letter and how MLPA Initiative staff is incorporating the advice into the MLPA planning process for the south coast.

Shortly after the advice letter was received, MLPA staff began gathering information from south coast GIS data layers, the California State Lands Commission, DFG, State Parks and others, about state tideland grants and leases and existing activities/uses within SMRs that may be inconsistent with the SMR classification; staff also incorporated SCRSG MPA proposal information with regard to specific activities and stakeholder intent within individual MPAs. In the next few days, additional information is anticipated from the California State Lands Commission about state tideland grants and leases in the Malibu area and at Santa Catalina Island.

Even with these efforts, MLPA Initiative staff believes there is additional, relevant information and data that needs to be gathered in order to make specific recommendations regarding necessary changes to MPA regulations or classifications for proposed MPAs in the south coast.

Moving Forward to Develop Recommendations for the South Coast

Recognizing that the effort required to complete the task of developing specific recommendations is more substantial than originally estimated and beyond the capacity of existing staff, MLPA Initiative staff make several recommendations for moving forward:

1. Engage a consultant experienced in state tideland grants and leases to conduct a more thorough review of the various sources of relevant information and to work with the agencies of jurisdiction in developing an interim report with draft recommendations for how to apply the advice to the south coast. To the extent possible, draft recommendations should strive to maintain the intent of the SCRSG and BRTF.
2. Distribute the interim report to stakeholders and the general public, seeking their input.
3. Using feedback from stakeholders and the public, work with the consultant to develop a final report for the agencies of jurisdiction on how to apply the advice to specific MPAs in the south coast, again ensuring that, to the extent possible, any technical adjustments maintain the intent of the SCRSG and BRTF.

MLPA Initiative staff is committed to assisting the agencies of jurisdiction with this task and will be better able to provide such assistance with a knowledgeable consultant taking the lead.

Most important to note is that these suggestions for moving forward do not require a delay in the work of the BRTF to make recommendations to the State of California for a preferred MPA proposal for the south coast; staff suggests that the BRTF complete its charge from Secretary Chrisman in a similar fashion to how the SCRSG completed it's task, by being explicit about intent and those activities the BRTF recommends be allowed in any proposed SMRs, or those activities that should be prohibited in proposed state marine conservation areas and state marine parks. Armed with specific information about proposed uses, the agencies of jurisdiction are better able to develop regulations that are consistent with your intent.