2.6. Letter D, from Marine Conservation Biology Institute, California Coastkeeper Alliance, Heal the Bay, Audubon California, The Otter Project, Russian Riverkeeper, National Parks Conservation Association, Golden Gate Audubon Society, Earth Care, San Diego Coastkeeper

Letter D

Delivered by electronic mail to: mlpacomments@dfg.ca.gov

May 4, 2009

MLPA North Central Coast CEQA
California Department of Fish & Game
20 Lower Ragsdale Drive, Suite 100
Monterey, CA 93940

Re: Comments on Draft Environmental Impact Report for NCC MPAs

Dear Department of Fish and Game:

Please accept the following comments on behalf of the undersigned organizations. We are writing today to comment on the Draft Environmental Impact Report (DEIR) for the proposed North Central Coast (NCC) marine protected area (MPA) network alternatives.

The CEQA analysis concludes that Alternative 3 provides the greatest environmental benefits of all the proposals, that Alternative 2 consistently protects less habitat with less coverage than other MPA proposals,[1] and that the No-Project Alternative (failure to move ahead with implementing the MLPA) is likely to have a significant adverse environmental impact.[2] D-1

We concur with these conclusions, support the Proposed Project, and find that the DEIR provides a legally sufficient and fundamentally sound foundation for the state's decision and fulfills the purposes of CEQA. However, we have suggestions for improving the accuracy, completeness, and logical consistency of some portions of the document.

[1] DEIR 9-7.

[2] DEIR 9-4.

We support the DEIR comments submitted to the Department of Fish and Game by Ocean Conservancy, Natural Resources Defense Council and Defenders of Wildlife on May 1st, 2009 and would like to additionally highlight the issues below:

- While it's true that the Proposed Project and all three alternatives would "increase conservation benefits" when compared to the No-Project Alternative and all "generally meet the science guidelines,"[3] the differences and degree to which they do so are worth noting and should not be overly generalized in the DEIR. D-2
- Chapter Four goes well beyond the socioeconomic information required under CEQA, which does not require the consideration of direct economic or social factors in its impact analyses. We therefore suggest DFG integrate much of this discussion into Chapter Two as background information, or include it as a separate appendix. D-3
- Despite the finding on page 6-41 that adverse impacts due to displacement under all alternatives will be "less than significant," despite the fact that no other worldwide studies have found reduced habitat quality or a corresponding decrease in abundance or diversity of marine species, and despite the acknowledgement on the same page that that "no published data on existing MPAs have shown negative environmental impacts," Chapter Four and subsequent chapters spend a considerable amount of time operating under the assumption that adverse impacts resulting from displacement of effort will occur. To improve clarity in the EIR, we suggest that all discussion and analyses of potential biological effects (including those related to fishery displacement and congestion) be confined to Chapter Six. D-4
- Tables 4-4 and 4-5 present the Ecotrust data for "fishing grounds within the north central coast study region" and this data is later the basis for estimating displacement effects in the DEIR. It is inappropriate to use Tables 4-4 and 4-5 in this manner, because those percentages do not account for fishermen moving to state waters outside the NCC study region or to federal waters. Tables showing percentage area of *total commercial and recreational fishing grounds* affected by each proposal should be presented in the Final EIR to get a view of the stated importance of MPA areas to the survey respondents. D-5
- Throughout Chapter Four, the DEIR does not consider the medium and long-term socioeconomic benefits of the NCC MPA project to non-consumptive and consumptive users, local businesses and the tourism industry. If an extensive discussion of socioeconomics is to be undertaken, Chapter Four of the Final EIR must discuss the potential positive socioeconomic effects of adoption of a NCC MPA alternative. D-6
- A more thorough discussion of the benefits of MPAs should be covered on page 6-42 under the section entitled *Beneficial Impacts to Biological Resources*. D-7
- We strongly disagree with the determination of the DEIR on page 6-45 that "[b]enefits to biological resources resulting from Alternative 2 would be somewhat greater than those of the Proposed Project, as there would be slightly more habitat preserved." Chart 6-2 shows that for nearly every habitat except "soft bottom (0-30m)," the Proposed Project has a higher percentage protected than Alternative 2. We urge DFG to rectify this factual error and correctly state that Alternative 2 would provide *slightly less* biological benefit than the Proposed Project. D-8
- As stated in Section 9.4, we agree that Alternative 3 is the "environmentally-superior alternative," that its benefits will outweigh any potential short-term adverse impacts and that it will contribute to the rebuilding of overfished species. D-9

We appreciate this opportunity to comment on the DEIR. We support the Proposed Project and look forward to a final EIR with improved accuracy and clarification.

---

[3] DEIR ES-16.

2

Sincerely,

Don McEnhill
Program Director
Russian Riverkeeper

Angela Haren
Program Director
California Coastkeeper Alliance

Anna Weinstein
Seabird Conservation Coordinator
Audubon California

Lance Morgan, PhD
Vice President for Science
Marine Conservation Biology Institute

Sarah Abramson Sikich
Coastal Resources Director
Heal the Bay

Steve Shimek
Executive Director
The Otter Project
Monterey Coastkeeper

Kate Hanley
Director of Marine Conservation
& Director of Operations
San Diego Coastkeeper

Neal Desai
Senior Program Manager, Pacific Region
National Parks Conservation Association

Francesca Koe
North Central Coast RSG Member
Dive Instructor

Mike Lynes
Conservation Director
Golden Gate Audubon Society

Christopher Chin
Executive Director
The Center for Oceanic Awareness, Research, and Education

3

2.6.1. Responses to Letter D

Response to Comment D-1: Comment noted.

No changes to the DEIR are required.

Response to Comment D-2: See response to comment C-2.

No changes to the DEIR are required.

Response to Comment D-3: See Response to Comment C-8.

No changes to the DEIR are required.

Response to Comment D-4: See Response to Comment C-10 and C-11.

No changes to the DEIR are required.

Response to Comment D-5: See Response to comment C-16.

No changes to the DEIR are required.

Response to Comment D-6: See Response to Comment C-23.

No changes to the DEIR are required.

Response to Comment D-7: See Response to Comment C-33.

No changes to the DEIR are required.

Response to Comment D-8: See Response to Comment C-40.

No changes to the DEIR are required.

Response to Comment D-9: Comment noted.

No changes to the DEIR are required.

2.7. Letter E, from Curt Billings

Letter E

California Fish and Game Commission
1416 Ninth Street P.O. Box 944209
Sacramento, CA 94244-2090

May 4, 2009

RE: NORTH CENTRAL COAST MPA

Dear California Fish and Game Commission:

Because the California Fish and Game Commission is nearing an August vote on the proposal that will establish marine protected areas in the **North Central Coast**, I am writing to express my **opposition to Alternative 3 (aka 4).**

Alternative 3 creates and MPA's/SMRMA's that restrict shore based take of abalone, finfish, and urchin to California Residents but allows the commercial take of these urchins for export out of state. This defies the spirit of conservation and is an insult to the citizens of this State. Reference Saunders Reef SMCA Alternative 3 E-1

I support Alternative 2 (aka 2-XA) as the best proposal to come before the Commission. It places marine protected areas in locations with a high level of conservation, minimizes unwarranted closures to recreational fishing and also places them in locations that will minimize the economic impacts on the local communities.

Alternative 1 is also better proposal than 3 because it sustains local consumption by allowing the shore based take of abalone and finfish which should be managed with take limits before absolute closures are implemented.

I urge the Fish and Game Commission to **reject Alternative 3** and **adopt Alternative 2 (2-XA)** or Alternative 1

Thank you for your consideration.

Sincerely,

Curt Billings
909 938-2847

1539 Howard Access Rd
Upland, Ca 91786

References: http://www.dfg.ca.gov/mlpa/pdfs/impact_ncc/chapter2.pdf

2.7.1. Response to Letter E

Response to Comment E-1: Comment noted. The Commission will consider all alternatives in its decision making.

No changes to the DEIR are required.

2.8. Letter F, from Chris Cervellone

Chris Cervellone

19672 Drybrook Lane Huntington Beach, CA 92646 714/968-9814

Letter F

TO: Fish and Game

FROM: Chris Cervellone

DATE: May 4. 2009

SUBJECT: North Central Coast MPA - letter of opposition to Alternative 3

The following are my commets to the draft environmental impact report regarding marine protected areas in California's north central coast study region pursuant to the Marine Life Protection Act.

F-1

I urge the Fish and Game Commission to **reject Alternative 3** and **adopt Alternative 2 (2-XA)** or Alternative 1

Feel free to contact me to hear details of my recommendations.

Thank you.

Chris Cervellone

2.8.1. Response to Letter F

Response to Comment F-1: Comment noted. The Commission will consider all alternatives in its decision making.

No changes to the DEIR are required.

2.9. Letter G, from the California State Lands Commission

Letter G

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

CALIFORNIA STATE LANDS COMMISSION
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

PAUL D. THAYER, *Executive Officer*
(916) 574-1800 FAX (916) 574-1810
California Relay Service from TDD Phone **1-800-735-2929**
from Voice Phone **1-800-735-2922**

Contact Phone: **(916) 574-1940**
Contact FAX: **(916) 574-1945**

May 4, 2009

File Ref: SCH 2008062028

Mr. Matt Erickson
California Department of Fish and Game
1416 Ninth Street, Room 1341-B
Sacramento, CA 95814

Dear Mr. Erickson:

SUBJECT: Draft Environmental Impact Report (DEIR) for the Marine Life Protected Areas in North Central California Coast Region, SCH 2008062028

Staff of the California State Lands Commission (CSLC) has reviewed the subject DEIR, and has previously provided comments on the Notice of Preparation by letter dated July 9, 2008 (copy enclosed). Building from that background, the CSLC has issued a number of leases for a variety of uses of tide and submerged lands within the areas potentially affected by the proposed designations as marine life protected areas (MLPA). In addition, the State administered Public Trust easement may exist over some portions of the MLPA's.

Use of lands underlying the State's easement may not be inconsistent with the Public Trust needs of the area. Public Trust purposes include waterborne commerce, navigation, fisheries, open space, and recreation, among other defined Public Trust purposes. While under current practice the CSLC does not require a lease or permit for the use of this easement, the CSLC may wish to determine if the proposed designations are consistent with the Trust. If, however, the designations or any of its components involve the construction over, or restriction of the use by the public of sovereign lands of the State of California under the jurisdiction of the CSLC, the activity will require a lease or be subject to permitting requirements from the CSLC. G-1

The DEIR is unclear under what authority the types of use restrictions in the MLPA's are proposed. The EIR should be revised to include a clearer definition. G-2

The CSLC staff requests that as the MLPA's are defined, that the Department of Fish and Game (DFG or Department) provide the boundaries of the areas to the CSLC G-3

Mr. Matt Erickson
May 4, 2009

staff so that staff can identify existing Lessees and grantees, including federal agencies, within the boundaries and who may be affected. Ownership and jurisdiction in the coastal areas is complex and requires the special expertise of the CLSC staff to conduct in-depth research of historic records and analyze the State's interests. It is unclear at this point if the CDFG is circulating this document broadly enough to ensure that all potentially affected parties will receive an opportunity to review and comment on this proposal. G-3 cont'd

Other questions CSLC staffs have include: what is the discretional authority and public review process by which MLPA's are amended or recategorized? G-4

Some of the MLPA categories provide a great deal of discretion to DFG in determining when a type of use may be restricted. CSLC staff would like an opportunity to work with the DFG to understand the purpose of the area designations and to ensure that the existing public trust uses are not compromised. In this regard, we request a briefing and discussion between the staff of our agencies to work through these issues before further action is taken on this subject matter. G-5

Attached are some brochures to assist in your understanding of the California State Lands Commission and the Public Trust. We look forward to working with DFG staff to obtain a clearer understanding of the proposals in this region and other MLPA Regions of the State.

Please contact Judy Brown at (916) 574-1868 to set up a meeting with CSLC staff.

Sincerely,

Barbara Dugal, Chief
Land Management Division

Enclosures

Page **2** of **2**

07/09/2008 13:21 9165741885 DEPM PAGE 02/04

Attachment to Letter G

STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, *Governor*

CALIFORNIA STATE LANDS COMMISSION
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

PAUL D. THAYER, *Executive Officer*
(916) 574-1800 FAX (916) 574-1810
California Relay Service From TDD Phone 1-800-735-2922
from Voice Phone 1-800-735-2929

Contact Phone: (916) 574-1814
Contact FAX: (916) 574-1885

July 9, 2008

File Ref: SCH 2008062028

MLPA North Central Coast CEQA
Scoping Comments
c/o John Ugoretz
California Department of Fish and Game
1416 Ninth Street
Sacramento, CA 95814

Dear Mr. Ugoretz:

Subject: Notice of Preparation (NOP) of the Draft Environmental Impact Report (DEIR) for the Marine Protected Areas in North Central California Coast Region, SCH 2008062028

Staff of the California State Lands Commission (CLSC) has reviewed the subject NOP. Under the California Environmental Quality Act (CEQA), the Fish and Game Commission is the Lead Agency and the CSLC is a Responsible and/or Trustee agency for any and all projects that could directly or indirectly affect sovereign lands, their accompanying Public Trust resources or uses, and the public easement in navigable waters.

As general background, the CSLC has jurisdiction and authority over all ungranted tidelands, submerged lands, and the beds of navigable rivers, sloughs, lakes, etc. The CSLC has an oversight responsibility for tide and submerged lands legislatively granted in trust to local jurisdictions (Public Resources Code Section 6301). All tide and submerged lands, granted or ungranted, as well as navigable rivers, sloughs, etc., are subject to the Public Trust.

The Public Trust is a sovereign public property right held by the State or its delegated trustee for the benefit of all the people. This right limits the uses of these lands to waterborne commerce, navigation, fisheries, open space, recreation, or other recognized Public Trust purposes. A lease from the CSLC is required for any portion of a project extending onto state-owned sovereign lands, which are under its exclusive jurisdiction.

07/09/2008 13:21 9165741885 DEPM PAGE 03/04

John Ugoretz Page 2 July 9, 2008

The NOP indicates that the Fish and Game Commission intends to prepare a DEIR to review the north central California coast component of a statewide network of marine protected areas (MPAs), as required by the Marine Life Protect Act (MPLA), and other marine managed areas and Special Closures determined appropriate to help fulfill the MPLA. Specifically, this review area includes State waters between Alder Creek, near Point Arena in Mendocino County, and Pigeon Point in San Mateo County.

The CSLC has issued a number of General Leases – Public Agency Use to the Department of Fish and Game for artificial reefs, ecological reserves and protected wildlife areas along the California coast. If the Fish and Game Commission anticipates the need for additional projects extending onto state-owned sovereign lands, a lease from the CSLC will be required.

Based on a review of the NOP, the CSLC has the following comments regarding the preparation of the DEIR:

1. The DEIR should take into account any impacts on marine navigation and transportation.

2. The DEIR should consider the potential for the new MPAs to exacerbate or accelerate the introduction or spreading of existing nonindigenous species within the MPAs. Pathways for such an unintended consequence would include increased recreational traffic to these protected areas (e.g., for purposes of diving), and changes in community dynamics that would favor nonindigenous species (such as through restricting take of certain species).

3. The DEIR should consider the effects of reduced take or no take areas on biodiversity and the ability of the potentially more diverse communities to better guard against invasion by nonindigenous species (See Stachowicz et al. 2002. Ecology 83(9): 2575-2590 and Stachowicz & Byrnes 2006. Marine Ecology Progress Series 311: 251-262).

4. The DEIR should consider the potential for the new MPAs to concentrate impacts from fishing and from the spreading of nonindigenous species on areas adjacent to MPAs. For example, should the north side of Point Arena become protected as a MPA, then fishing vessels may visit the south side of Point Arena more frequently than prior to the establishment of MPAs, and this increased impact may not only impact the fisheries, but may also increase the frequency of nonindigenous species introductions, establishment, populations increase.

John Ugoretz Page 3 July 9, 2008

Thank you for the opportunity to review and make comments on the above-mentioned document. If you have any questions regarding sovereign lands subject to the CSLC's jurisdiction, please contact Susan Young, Public Land Management Specialist at (916) 574-1879 or by e-mail at youngs@slc.ca.gov. If you have any question regarding the environmental review comments, please contact Gary Gregory at (916) 574-6312 or by e-mail at gregorg@slc.ca.gov.

Sincerely,

Gail Newton, Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
State Clearinghouse

Susan Young, CSLC
Gary Gregory, CSLC

2.9.1. Responses to Letter G

Response to Comment G-1: Comment noted.

No changes to the DEIR are required.

Response to Comment G-2: MPA use restrictions are proposed under the authority of the Marine Life Protection Act (Stats. 1999, Chapter 1015) as amended by Statutes of 2000, Chapter 385. The MLPA can be found in Chapter 10.5 of the California Fish and Game Code, Sections 2850 to 2863. See also Master Response 1.0.

No changes to the DEIR are required.

Response to Comment G-3: Comment noted. The DEIR complies with the CEQA public notification requirements in Public Resources Code Section 21092.

No changes to the DEIR are required.

Response to Comment G-4: The commenter is referred to Section 2861 of the Fish and Game Code which states:

> **2861. Review of Petitions to Add, Delete or Modify MPAs**
>
> (a) The commission shall, annually until the master plan is adopted and thereafter at least every three years, receive, consider, and promptly act upon petitions from any interested party, to add, delete, or modify MPAs, favoring those petitions that are compatible with the goals and guidelines of this chapter.
>
> (b) Prior to the adoption of a new MPA or the modification of an existing MPA that would make inoperative a statute, the commission shall provide a copy of the proposed MPA to the Legislature for review by the Joint Committee on Fisheries and Aquaculture or, if there is no such committee, to the appropriate policy committee in each house of the Legislature.
>
> (c) Nothing in this chapter restricts any existing authority of the department or the commission to make changes to improve the management or design of existing MPAs or designate new MPAs prior to the completion of the master plan. The commission may abbreviate the master plan process to account for equivalent activities that have taken place before enactment of this chapter, providing that those activities are consistent with this chapter.

No changes to the DEIR are required.

Response to Comment G-5: The Department will contact the CSLC to discuss the Proposed Project and to ensure that the existing public trust uses are not comprised.

No changes to the DEIR are required.

2.10. Letter H, from Environmental Action Committee

Letter H

eac

Environmental Action Committee - Protecting West Marin since 1971.
Box 609, Point Reyes Station, CA 94956 tel: 415-663-9312 www.eacmarin.org

Delivered by electronic mail to: mlpacomments@dfg.ca.gov

May 4, 2009

MLPA North Central Coast CEQA
California Department of Fish & Game
20 Lower Ragsdale Drive, Suite 100
Monterey, CA 93940

Re: Comments on Draft Environmental Impact Report for NCC MPAs

Dear Department of Fish and Game:

Please accept the following comments on behalf of the Environmental Action Committee of West Marin. We are writing today to comment on the Draft Environmental Impact Report (DEIR) for the proposed North Central Coast (NCC) marine protected area (MPA) network alternatives.

The CEQA analysis concludes that Alternative 3 provides the greatest environmental benefits of all the proposals, that Alternative 2 consistently protects less habitat with less coverage than other MPA proposals,[1] and that the No-Project Alternative (failure to move ahead with implementing the MLPA) is likely to have a significant adverse environmental impact.[2] H-1

We concur with these conclusions, support the Proposed Project, and find that the DEIR provides a legally sufficient and fundamentally sound foundation for the state's decision and fulfills the purposes of CEQA. However, we have suggestions for improving the accuracy, completeness, and logical consistency of some portions of the document.

We support the DEIR comments submitted to the Department of Fish and Game by Ocean Conservancy, Natural Resources Defense Council and Defenders of Wildlife on May 1st, 2009 and would like to additionally highlight the issues below:

- While it's true that the Proposed Project and all three alternatives would "increase conservation benefits" when compared to the No-Project Alternative and all "generally meet the science guidelines,"[3] the differences and degree to which they do so are worth H-2

[1] DEIR 9-7.

[2] DEIR 9-4.

[3] DEIR ES-16.

noting and should not be overly generalized in the DEIR. H-2 cont'd

- Chapter Four goes well beyond the socioeconomic information required under CEQA, which does not require the consideration of direct economic or social factors in its impact analyses. We therefore suggest DFG integrate much of this discussion into Chapter Two as background information, or include it as a separate appendix. H-3
- Despite the finding on page 6-41 that adverse impacts due to displacement under all alternatives will be "less than significant," despite the fact that no other worldwide studies have found reduced habitat quality or a corresponding decrease in abundance or diversity of marine species, and despite the acknowledgement on the same page that that "no published data on existing MPAs have shown negative environmental impacts," Chapter Four and subsequent chapters spend a considerable amount of time operating under the assumption that adverse impacts resulting from displacement of effort will occur. To improve clarity in the EIR, we suggest that all discussion and analyses of potential biological effects (including those related to fishery displacement and congestion) be confined to Chapter Six. H-4
- Tables 4-4 and 4-5 present the Ecotrust data for "fishing grounds within the north central coast study region" and this data is later the basis for estimating displacement effects in the DEIR. It is inappropriate to use Tables 4-4 and 4-5 in this manner, because those percentages do not account for fishermen moving to state waters outside the NCC study region or to federal waters. Tables showing percentage area of *total commercial and recreational fishing grounds* affected by each proposal should be presented in the Final EIR to get a view of the stated importance of MPA areas to the survey respondents. H-5
- Throughout Chapter Four, the DEIR does not consider the medium and long-term socioeconomic benefits of the NCC MPA project to non-consumptive and consumptive users, local businesses and the tourism industry. If an extensive discussion of socioeconomics is to be undertaken, Chapter Four of the Final EIR must discuss the potential positive socioeconomic effects of adoption of a NCC MPA alternative. H-6
- A more thorough discussion of the benefits of MPAs should be covered on page 6-42 under the section entitled *Beneficial Impacts to Biological Resources*. H-7
- We strongly disagree with the determination of the DEIR on page 6-45 that "[b]enefits to biological resources resulting from Alternative 2 would be somewhat greater than those of the Proposed Project, as there would be slightly more habitat preserved." Chart 6-2 shows that for nearly every habitat except "soft bottom (0-30m)," the Proposed Project has a higher percentage protected than Alternative 2. We urge DFG to rectify this factual error and correctly state that Alternative 2 would provide *slightly less* biological benefit than the Proposed Project. H-8
- As stated in Section 9.4, we agree that Alternative 3 is the "environmentally-superior alternative," that its benefits will outweigh any potential short-term adverse impacts and that it will contribute to the rebuilding of over-fished species. H-9

We appreciate this opportunity to comment on the DEIR. We support the Proposed Project and look forward to a final EIR with improved accuracy and clarification.

Sincerely,

Frederick Smith
Executive Director

Environmental Action Committee of West Marin

2.10.1. Responses to Letter H

Response to Comment H-1: Comment noted.

No changes to the DEIR are required.

Response to Comment H-2: See Response to Comment C-2.

No changes to the DEIR are required.

Response to Comment H-3: See Response to Comments C-8.

No changes to the DEIR are required.

Response to Comment H-4: See Response to Comment C-10 and C-11.

No changes to the DEIR are required.

Response to Comment H-5: See Response to Comment C-16.

No changes to the DEIR are required.

Response to Comment H-6: See Response to Comment C-23.

No changes to the DEIR are required.

Response to Comment H-7: See Response to Comment C-33.

No changes to the DEIR are required.

Response to Comment H-8: See Response to Comment C-40.

No changes to the DEIR are required.

Response to Comment H-9: See Response to Comment C-50.

No changes to the DEIR are required.

2.11. Letter I, from Chris Grossman

Letter I

California Fish and Game Commission
1416 Ninth Street P.O. Box 944209
Sacramento, CA 94244-2090

May 4, 2009

RE: NORTH CENTRAL COAST MPA

Dear California Fish and Game Commission:

Because the California Fish and Game Commission is nearing an August vote on the proposal that will establish marine protected areas in the **North Central Coast**, I am writing to express my **opposition to Alternative 3 (aka 4).**

Alternative 3 creates and MPA's/SMRMA's that restrict shore based take of abalone, finfish, and urchin to California Residents but allows the commercial take of these urchins for export out of state. This defies the spirit of conservation and is an insult to the citizens of this State. Reference Saunders Reef SMCA Alternative 3 I-1

I support Alternative 2 (aka 2-XA) as the best proposal to come before the Commission. It places marine protected areas in locations with a high level of conservation, minimizes unwarranted closures to recreational fishing and also places them in locations that will minimize the economic impacts on the local communities.

I urge the Fish and Game Commission to **reject Alternative 3** and **adopt Alternative 2 (2-XA)** or Alternative 1

Thank you for your consideration.

Sincerely,

Chris Grossman

Chris Grossman
310-545-8479

4330 Globe Ave.
Culver City, CA 90230

2.11.1. Response to Letter I

Response to Comment I-1: Comment noted. The Commission will consider all alternatives in its decision making.

No changes to the DEIR are required.

2.12. Letter J, from Paul, Hastings, Janofsky & Walker LLP

Letter J

PaulHastings

Paul, Hastings, Janofsky & Walker LLP
55 Second Street
Twenty-Fourth Floor
San Francisco, CA 94105
telephone 415-856-7000 • facsimile 415-856-7100 • www.paulhastings.com

Atlanta
Beijing
Brussels
Chicago
Frankfurt
Hong Kong
London
Los Angeles
Milan
New York
Orange County
Palo Alto
Paris
San Diego
San Francisco
Shanghai
Tokyo
Washington, DC

(415) 856-7076
zacharywalton@paulhastings.com

May 4, 2009 74599.00002

VIA E-MAIL AND U.S. MAIL

MLPA Initiative
c/o California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

RE: MLPA CEQA Comments – North Central Coast

To whom it may concern:

On behalf of the Coast Seafoods Company ("Coast"), please accept these comments on the draft Environmental Impact Report ("DEIR") for the North Central Coast Marine Protected Areas Project of the California Marine Life Protection Act Initiative that was prepared pursuant to the California Environmental Quality Act ("CEQA"). Coast cultivates oysters and clams in Humboldt Bay, California. While Coast does not have operations in the North Central Coast area, Coast has been actively monitoring the MLPA process in that area in an effort to avoid the establishment of negative precedents that could negatively impact Coast when the MLPA process moves to the North Coast area.

We do not object to the Proposed Project selected in the DEIR. However, we are extremely troubled that the DEIR compounds the mistakes the Fish and Game Commission ("Commission") and Blue Ribbon Task Force ("Task Force") made when the Proposed Project was first developed by failing to evaluate the socioeconomic and environmental impacts that will be caused by marine preserve area ("MPA") designations that restrict existing mariculture activities. This defect can be cured by striking Alternative 3 to the Proposed Project from the DEIR, which would eliminate mariculture activities in Drakes Estero without any proper evaluation of potential impacts. Furthermore, these mistakes must not be repeated during the evaluation of potential MPAs in the North Coast. J-1

1. The MLPA mandates consideration of socioeconomic impacts and water quality benefits; the failure to consider these renders the "project" in the DEIR deficient

As we outlined in our letter dated August 5, 2008, to the Commission and Task Force, which was submitted on behalf of the Pacific Coast Shellfish Growers Association and is incorporated into these comments by reference, the requirement to consider J-2

Paul*Hastings*

MLPA Initiative
c/o California Natural Resources Agency
May 4, 2009
Page 2

socioeconomic impacts during the development of MPAs is unambiguous. Both the Marine Life Protection Act ("MLPA") and the Master Plan implementing the MLPA mandate the consideration of socioeconomic impacts. See Fish & Game Code ("FGC") § 2855(c)(2) (the Department and the team responsible for preparing the Master Plan to implement the MLPA shall solicit advice on issues including "socioeconomic and environmental impacts of various alternatives"); see also FGC § 2857 (mandates the Department and team implementing the MLPA to develop a preferred siting alternative that incorporates information and views provided by people who live in the area and other interested parties, "including economic information."); see also Master Plan § 1.4, p. 12 ("Choosing a location for a marine reserve or protected area requires an understanding of probable socioeconomic impacts as well as the environmental criteria for siting.") (emphasis added). J-2 cont'd

Likewise, the MLPA and the Master Plan mandate the consideration of water quality in the evaluation and selection of alternative MPA networks. A primary goal of the MLPA is "[t]o protect the natural diversity and abundance of marine life, and the structure, function, and integrity of marine ecosystems." FGC § 2853(b)(1). Good water quality is critical to maintaining the integrity of marine ecosystems. In recognition of this, the Department of Fish and Game ("Department") and "team" assembled to prepare the Master Plan "shall have expertise … with water quality and related issues." FGC § 2855(b)(2). The Department and team "shall solicit comments and advice for the master plan from interested parties on issues including … Practical information on the marine environment and the relevant history of fishing and other resources use … and water pollution in the state's coastal waters." FGC § 2855(c)(1) (emphasis added). J-3

These legislative requirements cannot be ignored. The DEIR, however, does ignore them as they relate to the shellfish industry, because the DEIR does not consider any potential environmental impacts caused by designating a MPA that prohibits mariculture activities. The DEIR's inadequacies are somewhat mitigated by the fact that the Proposed Project would not impose additional restrictions on mariculture activities within the North Central Coast. However, Alternative 3 would prohibit mariculture in Drakes Estero. By failing to accurately describe the impacts associated with this alternative, the public is deprived of important information substantiating why it must be rejected. See McQueen v. Board of Directors (1988) 202 CA3d 1136, 144; see also County of Inyo v. City of Los Angeles (1977) 71 CA3d 185. These deficiencies render the entire CEQA process suspect. J-4

2. The DEIR's evaluation of socioeconomic impacts excludes all consideration of the shellfish industry

J-5

CEQA requires an evaluation of socioeconomic impacts that may cause significant adverse effects to the environment. See 14 CCR § 15382. The DEIR purports to perform this evaluation by evaluating the potential displacement of commercial and

PaulHastings

MLPA Initiative
c/o California Natural Resources Agency
May 4, 2009
Page 3

recreational fisheries from areas with MPA designations. However, this evaluation is exclusively based on the analysis performed by Ecotrust that the Commission and Task Force relied on to develop the original MPA alternatives for consideration before the CEQA process was initiated. See DEIR, page 4-21 (citing Summary of Potential Impacts of the Integrated Preferred Alternative and the North Central coast Regional Stakeholder Group MPA Proposals on Commercial and Recreational Fisheries in the MLPA North Central Coast Study Area (Scholz et al. 2008).). This means that the DEIR perpetuates the same problem as before because it does not evaluate any impacts to the shellfish industry. J-5 cont'd

Environmental effects relating to the displacement of commercial and recreational fisheries include impacts on air quality, biological resources, cultural resources, population and employment, vessel traffic, water quality, public services and utilities, and recreational non-consumptive uses. See DEIR, pages 4-21 to 4-27. Impacts relating to the shellfish industry could be more severe because aquaculture operations cannot simply relocate to other areas. The DEIR fails to consider this possibility in its discussion of Alternative 3, rendering the DEIR's analysis of Alternative 3 fundamentally inadequate.

3. The DEIR fails to consider the negative water quality impacts associated MPA designations on existing mariculture activities

The DEIR evaluates water quality effects from caused by MPA restrictions on commercial and recreational fisheries. It does not consider the water quality effects relating to mariculture activities. However, the scientific literature has documented that mariculture can improve water quality because oysters and other mollusks filter water. It stands to reason, therefore, that a MPA designation that prohibits mariculture activities could have a negative impact on water quality. The DEIR, however, fails to evaluate this possibility in its discussion of Alternative 3. J-6

4. The Department was put on notice that these issues need to considered; the DEIR's failure to do so is inexcusable

These issues were raised during the public scoping process for the preparation of the DEIR and yet they were ignored. Indeed, the public was given assurances that the DEIR would consider the impacts of MPA designations on the shellfish industry, as indicated in the transcripts for the public scoping meetings:

> UNIDENTIFIED SPEAKER 2: And with regards to Drakes Estero, would it be appropriate to include that – one of the ways the IPA [Integrated Preferred Alternative] is written right now is in Drakes Estero if it ever becomes feasible, they want mariculture to cease, and the whole

J-7

PaulHastings

MLPA Initiative
c/o California Natural Resources Agency
May 4, 2009
Page 4

structure of the SMR – so you will be looking at what will happen if they take out mariculture in Drakes Estero and what the effects are, if you can look down this list and see whether it will have a lot of different impacts on water quality, agricultural resources, cultural resources, recreation, public services? All those things will be impacted with the removal of –

JEFF THOMAS: Will those be beneficial effects, do you believe, or negative?

UNIDENTIFIED SPEAKER 2: Negative, if it gets removed.

JEFF THOMAS: If they remove them?

ED TAVASIETT: We're talking about something that's been established for at least – 120 years?

UNIDENTIFIED SPEAKER 2: Over 100 years.

JEFF THOMAS: Then we would need to consider that in our document. If there's the potential for the removal of that and it could have adverse effect, then we need to address it.

J-7 cont'd

Transcript, Public Scoping Meeting, Wednesday, June 18, 2008, at pages 50 – 51.

But the DEIR does not consider this at all. The transcript of the next public scoping meeting indicates why, because the preparers of the DEIR explained that they relied exclusively on the EcoTrust economic impact analysis, which failed to consider any potential impacts to the shellfish industry:

PHILIP JACOBS: Just another quick question. In the CEQA document, there's no socioeconomics addressed.

JEFF THOMAS: No. This is – actually, I'm surprised this has not come up sooner. ¶ Again, if this were a federal process or a NEBA [sic] process, they would consider socioeconomics, social justice. And the CEQA process doesn't. ¶ What we did do and will do for this one – we

J-8

PaulHastings

MLPA Initiative
c/o California Natural Resources Agency
May 4, 2009
Page 5

> did it on the Central Coast – is we added a chapter to the CEQA document because it was a very strong issue for everybody. There is an economic impact. ¶ But we didn't do any new analysis. What we wound up doing was summarizing the results of the EcoTrust work and looking at those economic impacts and identifying, are there potential secondary physical environmental effects. ¶ So for instance, when we had that one slide – go back to this. One area might be with population and housing. The potential for, you know, an economic decline or decay of a community, as well as the potential for a shift in an industry that might lead to an economic boom and a demand for housing and infrastructure and things like that.

J-8 cont'd

Transcript, Public Scoping Meeting, Thursday, June 19, 2008, at pages 25 – 26 (emphasis added).

In addition, the Alliance for Local Sustainable Agriculture ("ALSA") submitted comments during the scoping session demanding that the potential environmental effects to biological resources, cultural resources, water quality, population and housing, public services and recreation be considered in the DEIR if there was any consideration of eliminating mariculture activities. E-mail correspondence from Donna Yamagata, ALSA to Lynn Takata DFG, July 8, 2008 ("We want to go on the record that should this change be contemplated the impacts above must be studied before removal of mariculture can be considered."). And yet, as the transcript shows, the preparers of the DEIR "didn't do any new analysis" of socioeconomic impacts. As a result, the CEQA process was flawed from the moment it began.

J-9

5. Conclusion

The DEIR's failures raise two basic questions: (1) what should be done to cure the DEIR's mistakes?; and (2) what should be done to make sure the same mistakes are not repeated again, particularly when the North Coast is under review? As to the first question, the solution is simple: strike Alternative 3 from the DEIR. As to the second question, the Commission and Task Force must recognize that the impacts of MPA designations on the shellfish industry require careful consideration. This must be reflected

J-10

PaulHastings

MLPA Initiative
c/o California Natural Resources Agency
May 4, 2009
Page 6

in the evaluation of potential MPA designations for the North Coast, and this careful analysis must carry forward into the subsequent CEQA review. J-10 cont'd

Sincerely,

Zachary R. Walton
of PAUL, HASTINGS, JANOFSKY & WALKER LLP

cc: Samuel W. "Billy" Plauché, Buck Gordon LLP
Greg Dale, Coast Seafoods
Robin Downey, Pacific Coast Shellfish Growers Association
Peter Weiner, Paul Hastings Janofsky & Walker

LEGAL_US_W # 61671065.1

Attachment to Letter J

Paul Hastings

Paul, Hastings, Janofsky & Walker LLP
55 Second Street • Twenty-Fourth Floor • San Francisco, CA 94105-3441
telephone 415 856 7000 • facsimile 415 856 7100 • www.paulhastings.com

Atlanta
Beijing
Brussels
Chicago
Frankfurt
Hong Kong
London
Los Angeles
Milan
New York
Orange County
Palo Alto
Paris
San Diego
San Francisco
Shanghai
Tokyo
Washington, DC

(415) 856-7076
zacharywalton@paulhastings.com

August 5, 2008 74599.00002

Richard B. Rogers
Susan Golding
California Fish and Game Commission
1416 Ninth Street
P.O. Box 944209
Sacramento, CA 94244-2090

Re: North Central Coast Marine Protection Area

Dear President Rogers and Chair Golding:

On behalf of the Pacific Coast Shellfish Growers Association, we are writing this letter as a follow-up to the June 11, 2008, joint meeting of the Fish and Game Commission ("Commission") and the Marine Life Protection Act Blue Ribbon Task Force ("BRTF"), during which the integrated preferred alternative ("IPA") for the North Central Coast marine protection area ("MPA") was considered. We support the IPA for the North Central Coast; however, we are concerned that those responsible for preparing and evaluating MPAs are doing so in a manner that ignores statutory requirements and discriminates against the shellfish industry.

The Commission and BRTF apparently believe they are not required to consider the socioeconomic impacts of their proposals on the shellfish industry or the water quality benefits attributable to shellfish mariculture. For example, during the hearing, the BRTF presented a socioeconomic impact analysis of the IPA on all affected industries except the shellfish industry. And in evaluating the relative merits of the MPA proposals, the BRTF considered only potential negative impacts caused by shellfish mariculture despite the well-documented positive effects shellfish mariculture has on water quality.

During the hearing, President Rogers declared that those who believe socioeconomic impacts must be considered are "clearly erroneous". Chair Golding explained that water quality issues are important but the BRTF could not consider them because they fall under the jurisdiction of the State Water Resources Control Board, not the Department of Fish and Game ("Department"). Both of these conclusions are incorrect, in violation of the Marine Life Protection Act ("MLPA"). As the Commission and BRTF move forward with the MLPA process, it is critical that these issues are evaluated properly. The failure to do so renders the entire process legally suspect.

PaulHastings

President Rogers and Chair Golding
August 5, 2008
Page 2

1. The MLPA and the Master Plan mandate consideration of socioeconomic impacts.

Section 2855(c)(2) of the California Fish and Game Code specifically states that the Department and the team responsible for preparing the Master Plan to implement the MLPA "shall" solicit advice on issues including "socioeconomic and environmental impacts of various alternatives." This advice is not limited to the preparation of the Master Plan; advice may only be provided on the various alternatives when the competing MPA proposals are being developed. This conclusion is buttressed by Fish and Game Code Section 2857, which mandates the Department and team implementing the MLPA to develop a preferred siting alternative that incorporates information and views provided by people who live in the area and other interested parties, "including economic information."

In any event, the Master Plan could not be clearer on the requirement to consider socioeconomic impacts: "Choosing a location for a marine reserve or protected area requires an understanding of probable socioeconomic impacts as well as the environmental criteria for siting." (Emphasis added). Master Plan §1.4, p. 12. Indeed, the Master Plan is replete with references to the importance of evaluating socioeconomic impacts early on and throughout the entire MLPA process. For example,

- "Understanding the distribution, magnitude, and spatial extent of economic activities and values is important in the design of MPAs. . . . The regional MPA process should make every effort to assemble socioeconomic information early and to apply it in the design and evaluation of MPAs." Master Plan §3.11, "Information Supporting the Design of MPAs" p. 59.

- Assembling alternative MPA proposals "includes an initial evaluation of the proposals, including socioeconomic effects, and a feasibility study to determine whether proposals can be implemented." (Emphasis added). Master Plan §2.3, "The Blue Ribbon Task Force MPA Design Process" p. 21.

- One of the objectives of the Blue Ribbon Task Force MPA proposal evaluation process is "to conduct environmental and socioeconomic analysis as required by law." (Emphasis added). Master Plan §2.4, "Detailed Process for MPA Planning" p. 28.

- The science advisory team and Department are mandated to "prepare a preliminary socioeconomic analysis of potential impacts of each alternative proposal including the maximum potential impact of each proposal to existing fishing in terms of area set aside versus frequency of use." Id. at. 29.

PaulHastings

President Rogers and Chair Golding
August 5, 2008
Page 3

- "[P]roposals [should] consider, in their design, areas of intensive human use and the cost and benefit of establishing MPAs in these areas." Master Plan §3.3, "Human Activity Patterns" p. 41.

The Master Plan goes so far as to identify specific questions about socioeconomic impacts to consider when evaluating each proposal, not just the IPA:

- What are the socio-economic impacts of the proposal?
  - Current uses:
    - What are the current uses of sites within the proposal that are likely to be affected?
    - What are the likely impacts of MPAs upon these uses?
  - Future uses:
    - How are current uses expected to change in response to the sites within the proposal?
    - What are the socio-economic impacts of these changes?
  - Costs and benefits:
    - What uses are likely to benefit from sites within the proposal, and how?
    - What uses are likely to suffer from MPA, and how?

Outline of Information Required for MPA Proposals, p. F-4. In fact, Attachment A to Appendix F lists specific questions about potential socioeconomic impacts for each proposed site within a larger proposal, i.e., for each proposed marine managed area (MMA).

The requirement to consider socioeconomic impacts is unambiguous. And it is clear that socioeconomic impacts must be considered before the integrated preferred alternative is prepared. Certainly there is no justification for excluding one (and only one) industry from the analysis. To do so is a violation not just of the MLPA, but also of the numerous statutory pronouncements proclaiming the importance of the shellfish industry to California. See, e.g., Public Resources Code, Section 826, ("The Legislature finds and declares that it is in the interest of the people of the state that the practice of aquaculture be encouraged in order to augment food supplies, expand employment, promote economic activity, increase native fish stocks, enhance commercial and recreational fishing, and protect and better use the land and water resources of the state").

2. The MLPA and Master Plan mandate consideration of water quality

The refusal to consider water quality is inexplicable. A primary goal of the MLPA is "To protect the natural diversity and abundance of marine life, and the structure, function, and integrity of marine ecosystems." FGC § 2853(b)(1). Good water quality is critical to maintaining the integrity of marine ecosystems. In recognition of this, the Department

PaulHastings

President Rogers and Chair Golding
August 5, 2008
Page 4

and "team" assembled to prepare the Master Plan "shall have expertise ... with water quality and related issues." FGC § 2855(b)(2). Additionally, the team shall include staff from the State Water Resources Control Board. FGC § 2855(b)(3)(A). The Department and team "shall solicit comments and advice for the master plan from interested parties on issues including . . . (1) Practical information on the marine environment and the relevant history of fishing and other resources use . . . and water pollution in the state's coastal waters." FGC § 2855(c)(1) (Emphasis added). Information must also be solicited on the "environmental impacts of various alternatives." FGC § 2855(c)(2). Finally, the MLPA commands that the Master Plan be "based on the best readily available science." FGC § 2855(a). On a basic level, the best available science necessarily includes available information on water quality[1].

Some have suggested that the BRTF need not consider water quality in recommending management actions under the MLPA because the regulation of water quality does not fall under the Department's primary management authority. That may be the case but it is beside the point. Water quality is relevant in determining whether an area warrants protection under the MLPA and, if so, to what degree. This issue is particularly relevant to the shellfish industry because shellfish mariculture requires excellent water quality. Indeed, the scientific literature has documented that shellfish mariculture can improve water quality because oysters and other mollusks filter water. Certainly the water quality benefits of shellfish mariculture are relevant to evaluating whether an area that warrants protection under the MLPA should be managed as a State Marine Reserve or State Marine Park where mariculture is prohibited or a State Marine Conservation Area where mariculture may continue.

It is important to emphasize that not only do shellfish filter water, thereby improving water quality, but that shellfish farmers spend a great deal of time, effort and money improving and maintaining water quality through testing, identifying, evaluating and working to solve problems impacting water quality. On some occasions shellfish farmers are the lone advocates for water quality, ensuring that projects under consideration that could impact sensitive waters are properly evaluated. Indeed, the presence of shellfish farmers in estuaries creates a strong economic interest and protecting and improving water quality.

It is not sufficient that the Department will consider water quality when it prepares the CEQA documentation for the North Central Coast IPA. Water quality must be considered during the initial stages of the MLPA process, when the proposals are first taking shape.

---

[1] The Master Plan provides that water quality is one of the important biophysical indicators of the success of marine management actions to implement the MLPA. Master Plan at 6.2.1 (socioeconomic impacts is a non-biophysical indicator, see Master Plan at 6.2.2.).

PaulHastings

President Rogers and Chair Golding
August 5, 2008
Page 5

In sum, both the MLPA and the Master Plan require the evaluation of socioeconomic and water quality impacts. These are legal mandates that must be satisfied before the Commission can approve any marine protection areas.

We appreciate the opportunity to submit these comments. We welcome the opportunity to meet with you and your staff to discuss these matters further.

Sincerely,

Zachary R. Walton
of PAUL, HASTINGS, JANOFSKY & WALKER LLP

cc: John Carlson, Fish and Game Executive Director
Samuel W. "Billy" Plauché, Buck Gordon LLP
Greg Dale, Coast Seafoods
Robin Downey, Pacific Coast Shellfish Growers Association
Peter Weiner, Paul Hastings Janofsky & Walker
Kevin Lunny, Drakes Bay Oyster Company

LEGAL_US_W # 59649274.1

2.12.1. Responses to Letter J

Response to Comment J-1: See Master Response 3.0. The designation of MPAs does preclude the continued operation of existing aquaculture/mariculture activities. The Drakes Estero SMCA encompasses the oyster farm and allows continued mariculture operation until such time as the National Park Service makes a final decision regarding the continued operation of the facility.

No changes to the DEIR are required.

Response to Comment J-2: The commenter is directed to the Ecotrust *Summary of Potential Impacts of the Integrated Preferred Alternative and the North Central Coast Regional Stakeholder Group MPA Proposals on Commercial and Recreational Fisheries in the MLPA North Central Coast Study Area.* CEQA does not require an evaluation of socio-economics per se, but does extend to the secondary effects of socio-economic influences, where they would have a measurable effect on the physical environment. The DEIR provides a detailed evaluation of impacts related to socio-economic considerations (see Chapter 4 of the DEIR and related impact analysis). Furthermore, siting alternatives were based on considerations addressed by the BRTF with input from the NCCRSG, the SAT, and local communities. See also Master Response 3.0.

No changes to the DEIR are required.

Response to Comment J-3: The commenter is directed to Sections 4.3 to 4.5 of the *Regional Profile for the North Central Coast Study Region* for information regarding water quality information for the study region.

No changes to the DEIR are required.

Response to Comment J-4: See Response to Comment J-1.

No changes to the DEIR are required.

Response to Comment J-5: See Response to Comments J-1 and J-2.

No changes to the DEIR are required.

Response to Comment J-6: See Response to Comment J-1.

No changes to the DEIR are required.

Response to Comment J-7: See Response to Comment J-1.

No changes to the DEIR are required.

Response to Comment J-8: See Response to Comment J-1.

No changes to the DEIR are required.

Response to Comment J-9: See Response to Comment J-1.

No changes to the DEIR are required.

Response to Comment J-10: See Response to Comment J-1.

No changes to the DEIR are required.

2.13. Letter K, from Ralph Kanz

Letter K

Ralph Kanz
4808 Congress Ave.
Oakland, CA 94601
(510) 535-9868
rkanz@sonic.net

May 4, 2009

MLPA North Central Coast CEQA
California Department of Fish and Game
20 Lower Ragsdale Drive, Suite 100
Monterey, California 93940

RE: Draft EIR North Central Coast MLPA Project

To Whom It May Concern:

After reviewing the Draft Environmental Impact Report (EIR) for the North Central Coast MLPA Project, I find the document to be grossly inadequate. The California Environmental Quality Act (CEQA) has established standards and this document fails on almost every count. The document is based on theory and speculation, without sound, solid science to support the conclusions. As stated in CEQA Guidelines Section 15003 (j): "CEQA requires that decisions be informed and balanced. It must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement." K-1

References were not made readily available to the public by putting them on the website, as has been done through the process previous to this. No one should be required to travel such distances to review the documents, effectively making analysis of the EIR impossible. While not required, a public hearing is commonly a part of the review for a draft EIR, and there should be a hearing held in this case. This is a project with significant impacts to individuals, and they should be given ample opportunity to provide comment addressing those impacts K-2 K-3

Proper analysis of this document would have required days of work, something that cannot be expected of the people most impacted by this project. As a part-time commercial fisherman, the result of past failures of fishery management by the State and federal agencies, I should not have to spend days analyzing and reviewing a document that was designed to support a proposal that lacks a sound scientific basis. K-4

How does allowing fishing in a location impact the ecosystem of an area? This document is based on the assumption that where a fish is captured is more important than the amount and size of particular fish species. The document should include analysis of fishery management practices, and how they need to be modified to provide for successful fisheries. The EIR makes no distinction between different fishing methods, and the significant difference in the impacts caused by each method. The EIR glosses over, and fails to explain how the current federal closures to fishing will interact with the proposed project, and how and when the harvest of sport and commercial fishery resources will be restored. How will the proposed project improve fisheries management in the State? We have a broken fishery management model. The proposed project is implying that it will do something to correct the failures of the current fishery management system, but never explains precisely how that will occur. How has fisheries K-5 K-6 K-7 K-8

management failed and why? Simple changes to the fishery management system could benefit the resources and not cause the unavoidable impacts of the proposed project. K-8 cont'd

The EIR does not properly explain how the proposed MPA's in the North Central area relate to those already in place to the south, and how they would relate to any MPA's to the north. What has been done to "ensure that the state's MPAs are designed and managed, to the extent possible, as a network?" MLPA Section 2853(b)(5). The project calls for a statewide system of reserves that form a cohesive unit, but that decision should be made on the full statewide project. This implies piecemealing, and that CEQA analysis should more properly occur after a system of MPA's is proposed for the entire State. Not including San Francisco Bay in the management of the current proposal is a clear example of the failure to manage an ecosystem. The proposed project calls for limiting fishing for salmon in the ocean, but does nothing about ensuring that the freshwater system that produces the fish is a functioning part of the entire ecosystem utilized by salmon. K-9 K-10

The EIR does not analyze the ecosystem when it was managed by indigenous peoples. For example how did grizzly bears and other predators impact the populations of pinnipeds? K-11

Individual fish species not analyzed. How do specific fishing activities, (trawling, gillnetting, hook and line, etc.) impact the ecosystem of MPA's? How will each individual species of fish benefit from the proposed project? How will each species of plant and wildlife benefit? What are the negative impacts on the ecosystem resulting from trolling for salmon through an MPA? K-12

> **Regional Objective 2.4:** Protect selected species and the habitats on which they depend while allowing the commercial and/or recreational harvest of migratory, highly mobile, or other species where appropriate through the use of state marine conservation areas and state marine parks.

The goal is to allow recreational and commercial harvest, yet we had areas taken away with no reasonable explanation other than some people wanted them closed. For me, the closure around the North Farallon Islands closes much of the area I have fished for years. Combined with the federal RCA's, there is basically no place left to fish. I will now be forced to travel farther, and the ecosystem will only suffer due the greater impacts of burning more fuel. Early in the process I met with EcoTrust, and there was a commitment that these types of closures would not be implemented. K-13

> **Regional Objective 5.1:** Minimize negative socioeconomic impacts and optimize positive socioeconomic impacts for all users, to the extent possible, and if consistent with the MLPA and its goals and guidelines.

If you can show a negative impact to the ecosystem around the North Farallon Islands caused by my fishing activities, I would gladly go somewhere else. The proposal only increases my impacts to the environment, and does nothing to mitigate for the impacts. K-14

> **Goal 6:** To ensure that the north central coast's MPAs are designed and managed, to the extent possible, as a component of a statewide network.

As explained earlier, this goal can only be achieved by completing CEQA analysis after the entire Statewide system is designed. K-15

The Biological Resources Section does not properly analyze individual fish species, particularly the species that have caused the federal regulations implementing the RCA's. If the MLPA had been drafted after the RCA's were implemented, the legislation would likely have taken it into account. K-16

> "The relative time for the Proposed Project or alternatives to achieve the goals of the MLPA must also be considered in the impact analysis." Page 6-39

How will the project benefit commercial harvest of these species short or long term? On what science is the conclusion based? There appear to be no studies of MPA's in habitats comparable to the one being analyzed here. Is it possible to transfer the science from a tropical habitat to the one being analyzed here? How did you decide that the conclusions could be extended to this location? K-17

The project will increase the production of greenhouse gases, and the EIR fails to analyze if this could be prevented and still maintain the goals of the project. K-18

> **8.4.2.4. Restrictions on Rockfish Harvest**
> The coastwide commercial RCA was established in January 2002 by NOAA Fisheries to protect and assist in rebuilding stocks of lingcod and seven species of rockfishes. Trawl and non-trawl RCAs vary seasonally and regionally. Effective protection equivalent to that of an MPA occurs where the RCA is closed year-round to particular gear types. Because the restrictions change from year to year, particularly in regard to depth range, the analysis of cumulative impacts is considered from the standpoint of the general effects of such restrictions, rather then their specific locations.

This statement is not true. The closures have been consistent for the past few years, with very minor changes in the depth restrictions, and at present there is no indication that they will be changed in any significant way. The EIR should analyze the specifics of the current closures, and explain how they interact with the proposed project. This also ignores the very restrictive catch quotas in the federal management system and how those quotas impact management of the ecosystem. K-19

> **8.4.5.4. Ecosystems and Habitat**
> The Proposed Project would have beneficial effects on ecosystems and habitats to varying degrees, depending on the ecosystem and habitat in question and the degree to which they are protected by the MPA designations. Specifically, the Proposed Project may assist in the rebuilding and/or maintenance of some portions of stocks of the seven groundfish species initially considered to be overfished. Because project impacts and designation of other MPAs are considered beneficial, the Proposed Project would not contribute to adverse cumulative impacts related to ecosystems and habitat in designated areas.
> Although displaced fishing pressure could have locally adverse effects on habitat in nondesignated areas, the benefits to marine ecosystems and habitats within designated areas and to the marine ecosystem as a whole are anticipated to be greater than and to offset any degradation resulting from displaced fishing pressure. Therefore, although the project could result in localized short-term adverse effects, in the long run, it would not contribute considerably to cumulative impacts related to exploitation of marine ecosystems and habitat. K-20

Again the document speculates that the project "may assist in the rebuilding and/or maintenance" of fish stocks. The EIR needs to specifically identify how the proposed project would assist. What are the "adverse effects on habitat in nondesignated areas" caused by fishing pressure? K-20 cont'd

8.4.5.5. Species of Interest
The Proposed Project variably restricts or limits take of certain species within the proposed MPAs and would have a beneficial impact on their habitat and individual survival. Similar effects are anticipated related to other nontarget species that may also be affected by harvest. The impact analysis has concluded that such benefits would be greater than and would offset any declines in species resulting from displaced fishing pressure. Similarly, other restrictions on commercial fisheries along the coast would have a beneficial impact on habitat and individual survival. Therefore, although the Proposed Project could result in localized adverse effects, it would not make a considerable contribution overall to cumulative impacts related to species of interest. K-21

How would the propose project "have a beneficial impact on their habitat and individual survival?" "The impact analysis has concluded" again indicating speculation. How will restrictions on commercial fishing have a beneficial impact on the environment? Does the type of gear used make any difference?

Further Consideration in this EIR
The following alternatives were dismissed from more detailed impact analysis in this EIR because they were considered infeasible, would not meet MLPA goals, would have unacceptably high potential impacts on fisheries, or were substantially similar to the project alternatives under consideration. Each dismissed alternative is described below, along with the reason it was dismissed from further analysis.

Alternative fishery management techniques: Additional species quotas, seasonal restrictions, or gear restrictions would not meet the primary MLPA objective of improving the State's existing array of MPAs and ensuring they are based in sound science and function, to the extent possible, as a network.

Alternative and fewer MPA locations that have lower potential to displace existing fishing effort: Such an alternative would provide little of the habitat and species protections identified in the MLPA objectives, would not meet scientific design guidelines, and could lead to continued declines in certain populations and a less resilient ecosystem; likely to the point of creating a significant biological impact comparable to the No Project Alternative. K-22
The State CEQA Guidelines also suggest that an EIR examine any reasonable offsite alternatives to a project. Offsite alternatives to the Proposed Project are precluded by its geographic scope, which limits areas on the California coast from Point Arena to Pigeon Point. Therefore, offsite alternatives are not possible. It is the CDFG's intent to establish MPAs along the remainder of the California coast and some offshore islands at a later date, but the Proposed Project deals only with the north central coast.

The alternatives analysis fails to include a broad enough range of alternatives. Feasible reasonable alternatives exist for most of the MPA's that would allow for the continued harvest of fish, and not have negative impacts to the ecosystem. The current restrictions at the North Farallon Islands prevent impacts to seabirds and marine mammals, and allow for the harvest of fish. The EIR has identified no specific negative impact caused by the present activities at that location. A reasonable feasible alternative that would reduce impacts at that location to allow harvest of fish would eliminate the impacts caused by vessels traveling farther to harvest fish. K-22 cont'd

Recently the concept of producing food as close to where you live as possible has been promoted. This project will make this harder to accomplish. More fish products will need to be imported to compensate for the loss of fishery resources, also increasing the greenhouse gas impacts of the project. K-23

9.3.1. No Project Alternative

The No Project Alternative is described in Chapter 2, Section 2.5.4. Under the No Project Alternative, there would not be potential for added impacts resulting from the displacement of fishing activity, such as increased air pollutant emissions and redirected fishing–related impacts on biological resources. However, there is insufficient habitat within existing MPAs to meet the goals of the MLPA and satisfy the recommended scientific guidelines for establishing MPAs in the master plan. The MLPA was passed specifically noting the lack in real ecosystem benefit or protection provided by existing MPAs. The No Project Alternative could lead to continued declines in certain populations and a less resilient ecosystem, as noted in the MLPA. This would be considered a potentially significant biological resources impact. K-24

What species would continue to decline? How would the ecosystem be less resilient?

How does the project propose to mitigate for increased fuel costs and the resultant increases in greenhouse gases caused by displacement of fisherman? K-25

While the general principles are simple, measuring the magnitude and persistence of these benefits are not. First, existing MPAs were not designed as experiments to test for these factors, which means that disentangling the protected area effect and the effect due to heterogeneous habitats is empirically difficult (Garcia-Charton & Perez-Ruzafa 1999). Second, the marine environment is an extremely difficult arena in which to do empirical work; in part, because research to determine abundance and species diversity often relies on sampling techniques with high degrees of imprecision, such as visual sampling (Polunin and Roberts 1993). Finally, there exists uncertainty about the extent to which different areas in the marine system are connected by larval dispersal processes, adult and juvenile dispersal patterns, and/or seasonal migrations. This concern is raised not to diminish these benefits, but to point out that the magnitudes of these effects are uncertain and pose a major challenge in quantifying the benefits and costs of MPAs. Nevertheless, for our purposes, we operate under the premise that the ecological benefits within the protected area are realized and that there exists some spillover into the remaining fishable waters (Scientific Consensus, 2001).[1] K-26

[1] Sanchirico, J., K. Cochran, and P. Emerson. 2002. *Marine Protected Areas: Economic and Social Implications*. (Discussion Paper 02-26.) Washington, DC: Resources for the Future. Available: <http://www.rff.org/Documents/RFF-DP-02-26.pdf>.

A reference for this EIR admits there is not sufficient science to support what is being proposed. There is insufficient science to support the belief that this project will achieve its stated goals. Without a leap of faith, there is no way to conclude that the proposed project will magically cure the ocean's problems. K-26 cont'd

How can the Department of Fish and Game be associated with a document so full of speculation and conclusion, and thereby contrary to its mission? Outside independent peer review of this document should be undertaken by someone with no potential connections to the funders of this project. K-27

Sincerely yours,

Ralph Kanz

2.13.1. Responses to Letter K

Response to Comment K-1: The Department disagrees. The DEIR is neither inaccurate nor fatally flawed, and meets the legal requirements of CEQA in presenting information for the Commission. The commenter does not provide evidence to support their claims regarding the inadequacy of the DEIR. See also Master Response 2.0.

No changes to the DEIR are required.

Response to Comment K-2: Several of the references in the DEIR can be obtained from the MLPA website at http://www.dfg.ca.gov/mlpa/impact_ncc.asp. References may also be obtained from public libraries or through online web searches. If a reference in the DEIR does not appear to be readily available, it can be requested from the Department. A 45-day public review and comment period was provided. In addition, public comment on the DEIR was taken during the Commission meeting during the public review period.

No changes to the DEIR are required.

Response to Comment K-3: As the commenter notes, a public hearing is not required during the public review period of the DEIR. Circulation of the DEIR and notice of availability to public agencies and libraries provides interested members of the public with the opportunity to comment on the project. Additionally, public comments on the CEQA document can and have been provided at the regularly scheduled Fish and Game Commission meetings.

No changes to the DEIR are required.

Response to Comment K-4: A 45-day public review period was provided consistent with the requirements of CEQA. The level of effort one puts into reading and reviewing the DEIR is a personal choice, and not of the Department's making. The Department disagrees with the assertions made by the commenter regarding the purpose of the DEIR and scientific basis of the Proposed Project. Again, the commenter does not substantiate their statements. See also Response to Comment K-1.

No changes to the DEIR are required.

Response to Comment K-5: The Proposed Project focuses solely on the designation of an MPA network component for the north central coast; therefore, the focus of the DEIR analysis is on the alternative MPA network components presented in Chapter 2.0 Project Description. Fisheries management practices are not part of the Proposed Project. See also Master Responses 1.0 and 5.0.

No changes to the DEIR are required.

Response to Comment K-6: See Response to Comment K-5.

No changes to the DEIR are required.

Response to Comment K-7: See Response to Comment K-5.

No changes to the DEIR are required.

Response to Comment K-8: The commenter is directed to page 2-1 of the DEIR which identifies the Proposed Project goals and objectives. A key goal of the Proposed Project is the protection and conservation of marine life and habitats such that economically valuable species populations are able to rebuild (e.g., maintain sustainable numbers). Proposed MPA network components compliment existing fisheries management practices. The DEIR considers the existing fishery management system in the No Project alternative, which includes existing regulations and only existing MPAs. The DEIR concludes that this alternative would not be as effective as the Proposed Project at meeting the goals of the MLPA, nor would it meet the most basic requirement of the MLPA, that is, the improvement of the existing array of MPAs and development of a scientifically based network. See also Master Response 5.0.

No changes to the DEIR are required.

Response to Comment K-9: The Department disagrees. The comment indicates that the Proposed Project is being improperly segmented. There is no requirement in CEQA or the MLPA that prohibits the Commission from implementing the MLPA in a regional manner. Impacts of the project in combination with other existing and future MPA designations were explicitly addressed in Section 8.4 of the DEIR (Cumulative Impacts, beginning on page 8-2). Further, the MLPA expressly addresses the concepts of “regions” and “networks” [FGC Sections 2852(b), 2853(b)(6)], expressly authorizes regional networks [FGC Section 2856(a)(2)(D)], contemplates multiple networks [FGC Section 2857(c)], and the phasing in of MPAs, which is consistent with a regional approach [FGC Section 2857(e)]. The Marine Managed Area Improvement Act also contemplates “networks of sites” (Public Resources Code Section 36870).

No changes to the DEIR are required.

Response to Comment K-10: The California Marine Life Protection Act (MLPA) excludes freshwater systems. The MLPA concerns addresses ecosystem management within biogeographical regions, which are defined as the oceanic and nearshore areas seaward of the mean high tide line or the mouth of coastal rivers (Section 2852(b)). Salmon is a federally-managed species pursuant to the Pacific Coast Salmon Plan.

No changes to the DEIR are required.

Response to Comment K-11: Historic ecosystem management by indigenous peoples and related predator effects are not relevant to the current environmental

setting under which the Project is proposed, and the commenter does not explain how such information is germane to the impact analysis.

No changes to the DEIR are required.

Response to Comment K-12: Individual fish species likely to benefit from the MPAs in the north central coast study region are provided in Appendix E of the DEIR. The table in Appendix E identifies the habitat preferences of each species and includes notes regarding potential impacts of human activities where appropriate. The information in this table contributed to the identification of habitat areas that would support achieving MLPA goals and the design of the Proposed Project and Alternatives 1, 2, and 3. Consistent with the MLPA, the Proposed Project considers management on an ecosystem level, not a species level. See Master Response 5.0.

Fishing activities can impact the marine ecosystem thru overfishing or depletion of specific species, alteration to the natural species community including predator/prey ratio, and thru habitat modifications resulting from specific fishing techniques such as bottom trawling.

No changes to the DEIR are required.

Response to Comment K-13: Comment noted. The commenter has expressed opinions regarding the north central coast study region design process, and not commented directly on the content of the DEIR.

No changes to the DEIR are required.

Response to Comment K-14: Potential physical environmental impacts associated with displacement of fishing effort are described throughout the DEIR including Chapters 4, 5, 6 and 7. All potential impacts were found to be less than significant; therefore, no mitigation was required.

No changes to the DEIR are required.

Response to Comment K-15: See Response to Comment K-9.

No changes to the DEIR are required.

Response to Comment K-16: See Response to Comment K-12 and Master Response 5.0.

No changes to the DEIR are required.

Response to Comment K-17: See Master Response 2.0.

No changes to the DEIR are required.

Response to Comment K-18: Greenhouse gas emissions resulting from the Proposed Project and Alternatives 1, 2, and 3 were conservatively estimated and determined to be less than significant relative to their cumulative contribution to State-wide emissions. No mitigation is required for such emissions, and there is no requirement for the DEIR to consider prevention of greenhouse gas emissions. The analysis of project-related greenhouse gas emissions and rationale supporting the assessment can be found in Section 8.4.5.2. of the DEIR.

No changes to the DEIR are required.

Response to Comment K-19: Trawl and non-trawl RCA closures may have been consistent in recent years; however, they are subject to seasonal and regional changes. The boundaries of RCAs are subject to change within and among years based upon stock assessments and in-season catch levels of overfished federally-managed groundfish species. Boundaries can be eliminated or modified as rockfish populations rebuild or decline. In contrast, MPA boundaries are maintained over long periods of time and thus provide some degree of permanence to achieve broader ecosystem goals. See also Master Response 5.0.

No changes to the DEIR are required.

Response to Comment K-20: The Commenter is directed to the DEIR discussion under Impact BIO-1 on page 6-40 which addresses potential adverse impacts on marine populations and habitats outside MPAs from displacement and congestion of fishing effort outside MPAs. The potential for rebuilding and maintaining fish stocks described in the DEIR is not speculation. The discussion of a fourfold increase in productivity under Impact BIO-1 is based on published empirical data regarding reserves worldwide. The DEIR does not make any specific conclusions regarding the productivity of the MPAs that would be designated under the project. As discussed in the DEIR, existing empirical data suggest that enhanced production within reserves can more than compensate for the effects of displaced fishing effort even with up to 50 percent of the fishing area closed. Finally, the DEIR makes the conservative assumption that fishing effort is unchanged to allow consideration of worst-case impacts. Potential adverse effects include depletion of individual fish species and habitat degradation.

No changes to the DEIR are required.

Response to Comment K-21: See Response to Comment K-20.

No changes to the DEIR are required.

Response to Comment K-22: The DEIR provides a complete and legally adequate analysis of alternatives consistent with the requirements of CEQA. The DEIR is the result of extensive stakeholder participation and describes a range of reasonable alternatives to the proposed project.

No changes to the DEIR are required.

Response to Comment K-23: The comment is speculative and no evidence is provided to support the commenter's assertion of increased greenhouse gas impacts associated with the Proposed Project.

No changes to the DEIR are required.

Response to Comment K-24: Individual fish species likely to benefit from the MPAs in the north central coast study region are provided in Appendix E of the DEIR. Resiliency of an ecosystem is defined by the ability of the system to recover from an outside influence which could include fishing pressure or other influences.

No changes to the DEIR are required.

Response to Comment K-25: Potential individual increased operational costs that may result following implementation of the Proposed Project are not potential environmental effects for consideration under CEQA. See Response to K-18 regarding the Proposed Project's greenhouse gas contribution.

No changes to the DEIR are required.

Response to Comment K-26: See Master Response 2.0.

No changes to the DEIR are required.

Response to Comment K-27: See Response to Comment K-1.

No changes to the DEIR are required.