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FISHERIES
COALITION**

Alliance of Communities for
Sustainable Fisheries

American Albacore Fishing
Association

Bodega Bay Fishermen's Association

California Abalone Growers

California Lobster & Trap Association

California Fisheries & Seafood
Institute

California Sea Urchin Commission

California Wetfish Producers
Association

Central Coast Fisheries Conservation
Coalition

Commercial Fishermen of Santa
Barbara

Crab Boat Owners Association

Federation of Independent Seafood
Harvesters

Fishermen's Alliance of California

Fishermen's Association of Moss
Landing

Golden Gate Fishermen's Association

Humboldt Fishermen's Marketing
Association

I.S.P. Alginates Kelp Harvesters

Kingfisher Trading Inc.

Monterey Commercial Fishermen's
Association

Morro Bay Commercial Fisherman's
Organization

Port San Luis Commercial
Fishermen's Association

Recreational Fishing Alliance

Sonoma County Abalone Network

South Central Nearshore Trap
Organization

Southern CA Trawlers Association

Ventura County Commercial
Fishermen's Association

August 3, 2010

MLPA SCSR DEIR

Department of Fish & Game, South Coast MLPA Office

4665 Lampson Ave., Suite C

Los Alamitos, California 90720

ATTN: Thomas Napoli, Staff Environmental Scientist

To Whom It May Concern:

The California Fisheries Coalition, 27 member organizations representing over 14,000 family-owned fishing businesses, recreational fishermen and seafood producers, is pleased to submit these comments regarding the scope of the Environmental Impact Report, required by the California Environmental Quality Act (CEQA), for the southern region of the Marine Life Protection Act (MLPA) implementation.

The purpose of the Marine Life Protection Act is clear: "to... increase coherence and effectiveness in protecting the state's marine life and habitats, marine ecosystems, and marine natural heritage, as well as to improve recreational, educational and study opportunities provided by marine ecosystems subject to minimal human disturbance." (MLPA website). In this, the actual implementation of the MLPA in the South Coast is quite nearly an utter failure.

The South Coast MPA's do not address coherence in protecting habitats or ecosystems, but instead rely on arbitrary lines effectively delineating no-fishing zones, instantly severing coherent management of habitats and species that do not recognize these lines, and ignoring the far greater threats to marine life from coastal development, air and water pollution, scientific take and research, or global warming. Their potential effectiveness in protecting marine life is completely unknown, as no quantitative analysis has been undertaken to either provide a baseline or to extrapolate potential positive and negative impacts from the creation of no-fishing zones, and no recognition has been given to the human disturbances caused by pollution, development, and global warming.

In addition, the MLPA process has sought to override or ignore California's landmark environmental laws, including CEQA and the Coastal Act, and numerous requirements regarding climate change. It has ignored the potential environmental harm from its socioeconomic impacts. And it ignores the potential harm to federally listed species, such as white and black abalone.

Last, the process has ignored its mandates under Bagley-Keene and other acts which require transparency in public policy development and implementation. This lack of transparency has already resulted in delays in implementation, as

agencies, and even sovereign tribes have learned of negative impacts very late in the process, and justifiably halted implementation until their legal claims had been met. Further, this lack of openness will inevitably lead to additional negative impacts from MLPA implementation not being identified until after they occur.

1. The Draft EIR must address the MLPA's purpose, & proposed MPA's do not.

A broken series of no-fishing zones, rather than the more broadly managed methods employed by California up to now (which have made it the most successfully managed marine ecosystem in the world, [Hillborn, et. al., Science, 2009]) cannot adequately protect California's coast and ocean.

Section 2853(b)(6) of the MLPA states, "To insure that the state's MPS's are designed and managed, to the extent possible, as a network." The creation of myriad separate zones, with few regulations beyond merely outlawing fishing, specifically disregards this mandate of the MLPA.

Many species won't necessarily see net gain in their populations under the proposed MPA's, because densities outside MPA's will be adversely impacted, quite possibly contributing to "predator pits" and damaging the vitality of habitat corridors and settlement patterns. In addition, the arbitrary political lines of the proposed MPA's will create an unnatural genetic selection, as many species that currently actively move into and out of MPA areas will be subjected to impacts not determined by ecological functions, but by political delineation.

Conversely, the dramatic shift in management inside MPA's will have many significant impacts on the affected habitats. Just as land-based protected areas must account for habitat impacts by managing particular species, so Marine Protected Areas must account for the impacts to unbalanced ecosystems, and manage particular species in an effective manner. For example: when left unchecked, red sea urchins significantly and negatively impact species diversity and contribute to habitat degradation by wiping out kelp forest habitat. In the South Coast, this impact threatens federally listed species, such as white and black abalone, in two ways: 1) the loss of abalone habitat (a "taking" under federal law); and/or 2) the incursion of large, effective sea urchin predators, such as sheephead, that prey on abalone and may create "predator pits" within MPA's, maintaining abalone densities at levels below those needed for their survival.

A number of studies have documented the amount of impact unchecked red sea urchin populations have on kelp forest habitat, including the impacts to abalone populations. Fish & Game studies, for example, have shown a 100% increase in abalone populations since an active red sea urchin fishery began in the 1980's in Northern California. Four out of five transect studies comparing pre- and post-red sea urchin fishing showed substantial increases in abalone densities in new fishing grounds. At the same time, the potential for sea urchin predators to grow to sizes and densities large enough to control sea urchin populations in the absence of a fishery also make them effective predators of abalone - an untenable outcome for federally protected species.

As abalone populations in Southern California remain seriously threatened, the active red sea urchin fishery is the only viable, selective and effective management of sea urchins' impacts to abalone habitat that does not also select for abalone as prey. Removing this fishery significantly impacts California's abalone recovery efforts.

The NOP, Attachment A, refers multiple times to the potential for kelp forest regeneration within MPA's. However, without an effective check on red sea urchin populations by the only means of selecting for sea

urchin, MPA's will either contribute to the loss of kelp forest habitat, or contribute to larger predator species that tend to maintain abalone species at unsustainable levels (predator pits).

The red sea urchin fishery is but one example. By merely delineating no-fishing zones, currently proposed MPA's ignore the decades of fishery management that have made California's the best-managed ocean habitats on Earth, and threaten the recovery of endangered species that have benefited from the selective, adaptive management provided by fisheries.

Nor do proposed boundaries take into account settlement behaviors. Some species' larval stages last much longer than others, and drift and settlement patterns will not adhere to the political boundaries proposed.

In fact, protecting habitat corridors through a consistent, coast-wide adaptive management approach (California's successful fisheries management, thus far) is not merely important to a healthy coastal ecosystem, it is absolutely vital, given the changes that will occur due to global warming. As ecosystem changes occur rapidly and unpredictably, the ability for species to move, settle, and adapt in new niches will be necessary to a strong ecosystem. New current patterns, upwellings, and other major climatic phenomena will take place, and the static nature of proposed boundaries will not be able to adapt to the new needs of species.

The danger of harm to federally listed species, coupled with the use of federal funds in managing MPA's, requires adherence to the National Environmental Policy Act through the responsible federal agents, the USFWS, NOAA, & NMFS, through the drafting of appropriate Environmental Impact Statements documenting current habitat conditions for listed species, as well as potential impacts to listed species by the creation of MPA's that focus only on closing fishing while ignoring other impacts to the habitat and species, and creating conditions that significantly and adversely impact white and black abalone populations.

The unifying language of the MLPA, its requirement that projects be designed as a network, the ecological need for habitat corridors and adaptive management in light of climate change and the impacts to adjacent habitats, all require a programmatic EIR of the entire MLPA implementation.

2. The Draft EIR must analyze pollution impacts.

The proposed method for implementing the MLPA in the South Coast region actually actively decreases the coherence and effectiveness of protecting California's marine ecosystem in *at least* two ways: 1) by creating a geographically broken series of no-fishing zones, proposed MPA's create an arbitrary distinction in protections amidst an unbroken and geographically fluid marine ecosystem; 2) by ignoring pollution impacts to the South Coast region, the process *de facto* concludes that pollution is not adversely impacting our marine ecosystem.

However, The Legislature was very aware that narrow, piecemeal implementation of coastal management actions would result only in the illusion of a comprehensive system, and instead adopted policy and program directives to avoid such a result. To this end the Legislature, among other provisions, adopted new prohibitions on unlawful activities within MPAs, e.g., "In a state marine reserve, it is unlawful to injure, damage, take or possess any... living marine resource." (Pub.Res.C. s.36710) These prohibitions are not limited to fishing. In fact, the clear language of this code, referred to multiple times in an advisory by the Attorney General, requires either a broader reading of the enforcement capability of the Department of Fish & Game (suggested by the AG), or it requires another entity with such enforcement powers to implement

the MLPA, perhaps in conjunction with DFG (Ca. Dept. of Justice Advice Letter to California Natural Resources Agency on Establishment, Use and Enforcement of Marine Managed Areas, Dep. A.G. Peterson, Sept. 25, 2009).

If MPA's are designed merely to avoid legal confrontation with polluters, then proposed MPA's are not adhering to the requirements of its implementing language. In addition, proposed MPA's ignore the importance of high quality habitat corridors for proper larval drift and settlement, and they *de facto* approve of pollution meant to be addressed by the MLPA.

Potential impacts from water pollution between MPA's, per the MLPA, must be analyzed and addressed, as must the impact from water pollution on the effectiveness of MPA's as appropriate habitats for downstream larval settlement.

The Draft EIR must also include analysis of the authority of the Fish & Game Commission, or other entities to implement the legal mandates of the MLPA, as the current claim that the Commission cannot fully enforce the legal mandate from Public Resource Code section 36710 in implementing MPA's results in significant environmental impact (i.e., the ability for polluters to legally injure or damage living marine resources).

3. The Draft EIR must analyze scientific take impacts.

Scientific take is one of the largest commercial fisheries in the State, yet the impacts from scientific take have not been addressed by the MLPA. MPA's must include quantitative analyses of current and projected landings from scientific research and take, and should consider a complete ban on scientific take, per the Public Resource Code referenced in #2, above.

In fact, the Department of Fish & Game has raised this concern in previous MLPA regions, noting the large amount of landings from scientific take, and is just now seeking a protocol for determining take restrictions. The Draft EIR must analyze the potential impacts from scientific take.

4. The Draft EIR must analyze the impacts to and from climate change.

California leads the nation in addressing impacts to and from climate change. From AB 32 to the California Climate Adaptation Strategy, the State is attempting to curb our greenhouse gas emissions and to prepare for and mitigate impacts that will occur from the warming now taking place. Yet, the MLPA process has completely ignored its role as a state project of significance in either addressing the potential to GHG emissions or to the hazards that will take place within the MPA's.

As MPA's are implemented, commercial and recreational fishing impacts will be felt. Most likely, fishermen will have to travel greater distances to and from effective fishing grounds, leading to greater carbon emissions. Greenhouse gasses are pollutants, as determined by the Supreme Court (*Massachusetts v. EPA*, 2007), and as determined by the State of California – ergo, impacts to GHG emissions must be addressed by any project of significance. The California Air Resources Board requires that all agencies must estimate their GHG emissions from operations and activities. In addition, any net gain in GHG emissions must be considered, due to its cumulative impacts, as an impact requiring analysis under CEQA and NEPA.

We are encouraged that the Draft EIR will analyze and estimate the potential impact to GHG emissions from the proposed MPA's, and note that the NOP, Attachment A, refers to the "reestablishment of... kelp beds" – and so must also analyze the GHG impacts of unchecked red sea urchins on kelp habitats, creating sea urchin barrens, within MPA's.

5. Proposed MPA's ignore the California Coastal Act & MLPA language specifically referring to adaptive management

The California Coastal Act is remarkably clear in its purpose. Specifically, section 30234.5 states that, "the economic, commercial, and recreational importance of fishing activities shall be recognized and protected."

Although the MLPA language clearly addresses this issue (e.g., sec. 2851(d) FGC: "*Fish 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*"), the actual implementation of MPA's completely ignores both its authorizing language and the language of the Coastal Act.

Proposed MPA's must adhere to the language of existing California state law, including the California Coastal Act and the authorizing MLPA language. The Draft EIR should analyze how the proposed project meets its objectives while adhering to all applicable statutory mandates.

6. The Draft EIR must analyze the impacts of agricultural discharge

The NOP specifically declares that the proposed IPA and alternatives will not impact agricultural resources. However, the placement of MPA's, and the subsequent drift from agricultural discharge will have a significant impact on the management of MPA's, as it will directly impact water quality and habitat within the boundaries of proposed MPA's, as well as larval settlement among MPA's. If habitat corridors remain unprotected from pollutants, then the concept of MPA's as providing protections for settlement patterns is impacted, and the legal mandates of the MLPA are not met. Therefore, the Draft EIR must include an analysis of the impacts of agricultural discharge on MPA's and on the drift and settlement patterns of larvae along habitat corridors between proposed MPA's.

Likewise, the Draft EIR must analyze the potential impact enforcement of MPA prohibitions (i.e., it is unlawful to injure, damage, take or possess any... living marine resource) could have on local agricultural operations in the South Coast region.

7. Proposed MPA's do not adhere to CEQA or NEPA

Proposed MPA's must address impacts, per CEQA:

***CEQA Guideline, sec.15065. Mandatory Findings of Significance:** (a) A lead agency shall find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where there is substantial evidence, in light of the whole record, that any of the following conditions may occur: (1) The project has the potential to: substantially degrade the quality of the environment; substantially reduce the habitat of a fish or wildlife species; cause a fish or wildlife population to drop below self-sustaining levels,; threaten to eliminate a plant or animal community; substantially reduce the number or restrict the range of*

an endangered, rare or threatened species; or eliminate important examples of the major periods of California history or prehistory.

An analysis of proposed MPA's must begin with a sufficient baseline data set for species to be affected by new management, and project expected impacts to these species. Proposed MPA's must address the impacts to species settlement, populations, or habitats in adjacent waters, especially the potential for these populations to drop below self-sustaining levels. Proposed MPA's must address the substantial reduction in habitat of fish and wildlife species upon the closure of commercial red sea urchin fishing in habitat where no other red sea urchin predators exist, especially in that the only effective predator to select exclusively for red sea urchin while ignoring endangered abalone species is a commercial fishery. Proposed MPA's must address the likelihood of MPA's substantially restricting the range of endangered abalone species.

Proposed MPA's also must address the impacts of shifting commercial fishing operations to areas outside of their boundaries. Significant displaced fishing effort into small areas causes a significant impact to those areas with concentrated fishing, requiring CEQA analysis.

(Laurel Heights Improvement Ass. v Regents of University of Cal. 1988 47 Cal 3d 376.)

For the purposes of the CEQA analysis, there must be a description of the existing environment, and in the case of new marine protected areas there must be comprehensive baseline data on fish stocks if any future evaluation is to be meaningful. *(Antioch v Pittsburg (1986) 187 Cal. App 3d 1325.)* Defining this baseline and monitoring protocols after project adoption is unacceptable.

Proposed MPA's, as they will use federal funds, must also adhere to NEPA. In particular, the two lead agencies to be affected by proposed MPA's, the US Fish & Wildlife Service and the National Marine Fisheries Service, must prepare an Environmental Impact Statement.

Proposed MPA's impacts cannot merely be analyzed individually. Due to the cumulative nature of impacts from tens of MPA's along an interconnected ecosystem, and due to its unifying language, implementation of the MLPA must include an analysis of the potential cumulative impacts, with either a well-documented reason for declaring that no net cumulative impact reaches the level of significance, or a programmatic EIR to determine the environmentally preferable method for implementing the MLPA. (CEQA Guideline, section 15064(h)(1)).

7. The Draft EIR must address impacts from the need for additional enforcement coupled with underfunding of current enforcement.

The Department of Fish & Game is currently underfunded. California currently maintains the lowest per capita fish and wildlife enforcement level of any state in the Nation. Proposed MPA's must address the impact of shifting enforcement time and money to additional boundaries totaling hundreds of miles – a shift with potentially significant environmental impacts. In addition, proposed MPA's must address the impacts of effectively doubling the need for marine enforcement, as fishing operations move to less-suitable fishing grounds, while prime fishing grounds within MPA's attract illegal activities.

Under the law, the agency involved needs to be able to reasonably control the project. *(Citizens of Goleta vs Board of Supervisors. 1990 52 Cal 3d 553.)* The Department admits to not having enough staff and admits to the difficulty enforcing MPA's. Even with the short-term addition of new staff, there will be a shift in

Department resources from other important enforcement challenges. An EIR must address the environmental impacts of MPA's from increasing and redirecting enforcement costs to the detriment of environmental resources within and outside of the MPAs.

8. Proposed MPA's ignore environmental and environmental justice impacts related to socioeconomic constraints

Proposed MPA's do not take into account the disproportionate impacts they will have upon poor communities that rely upon subsistence fishing and gathering as well as communities that rely upon fishing as an important economic engine.

Many people rely upon fishing and gathering for their subsistence. The same reasons and conditions that often force people to rely upon fishing for the dinner-table for themselves and their families are the same conditions that keep them from fishing in larger, newer, safer boats, or at times from boats, at all. As MPA's are enacted, these groups are going to have to travel farther distances on land to get ocean access and farther distances on water under more extreme conditions, increasing the costs to their subsistence and the dangers associated with boating in bigger waters.

Many communities now rely upon the fishing industry as an important part of their economic and social infrastructure. But, with the enactment of MPA's, these communities stand to lose a large percentage of their employment and fishing activity – an amount that may, in fact, end the existence of vital community infrastructure. Associated with the loss of fishing grounds will be the loss of infrastructure that supports communities and other ocean-based activities. Fuel docks, for example, need the varied clientele of commercial and recreational fishermen, as well as sightseeing boats. With a loss of one or two industries, particular docks will go out of business – leaving a blighted community, and contributing to increased GHG's, as people who still use the ocean must now travel farther distances to acquire needed services and products.

CEQA requires that projects may be deemed significant if socioeconomic impacts resulting from their application lead to environmental impacts, i.e., blighted areas:

Economic or social changes may be used... to determine that a physical change shall be regarded as a significant effect on the environment. Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project. Alternatively, economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment. If the physical change causes adverse economic or social effects on people, those adverse effects may be used as a factor in determining whether the physical change is significant. For example, if a project would cause overcrowding of a public facility and the overcrowding causes an adverse effect on people, the overcrowding would be regarded as a significant effect. (CEQA Guideline, sec. 15064.3(e), amended 2009)

Per CEQA, then, proposed MPA's must determine the significance of impacts resulting from: 1) shifting fisheries to smaller fishing grounds, where the increased traffic may result in overcrowding, net impacts on habitats and species; 2) lengthening travel distances for fishing, resulting in increased GHG emissions and the possibility of accidents that may cause increased pollution; 3) shifting land-based facilities that support fishing, such as fuel docks and icehouses, whose loss will contribute to blight along coastlines.

In addition, CEQA requires that a finding of significance may occur if a project eliminates, “important examples of the major periods of California history...” (CEQA Guidelines, sec. 15065(a)(1)). Thus, the Draft EIR must analyze the impacts of MPA’s to California ports, lighthouses, historical fishing harbors, and other historical monuments and buildings along the coast. With the loss of historical fishing grounds, the impacts to coastal communities are as yet unknown. The purpose of CEQA is to determine these impacts, and where it is found those impacts are significant, to mitigate them.

We are pleased that the Draft EIR will contain an analysis of the impacts of proposed MPA’s on economically-disadvantaged communities. We look forward to an honest and comprehensive analysis that predominantly includes actual reports and voices from these communities, and not a paternalistic overview of what the authors believe to be impacts.

The Notice of Preparation also states that recreation analyses will be conducted, but unduly limits this analysis to, “whether the proposed project IPA and alternatives would directly or indirectly cause an increase in use of existing recreational facilities.” The Draft EIR must include an analysis of the environmental impacts of the proposed IPA and alternatives from a decrease in use of existing facilities, as well, in order to both adhere to the California Coastal Act and to determine the significant environmental impacts from blight, misuse, and abandonment of recreational facilities. The Draft EIR must also include an analysis of the aesthetic impacts from a decrease in use of these facilities. As the NOP notes that an environmental justice analysis will also be conducted, it would be valuable to include the shift in aesthetic importance to activities that will be more costly for individuals (e.g., sea voyages for sightseeing in place of near-shore fishing opportunities that provide nutritional as well as aesthetic value).

Conclusions

It is not the role of public comments to provide the answers for every concern – but it is the role of lead agencies to do so. CEQA requires that each concern above be addressed by the lead agency, and we look forward to reviewing the analyses specified in our comments as to the impacts of MPA’s as the tool for implementing the Marine Life Protection Act and providing broad based marine protections.

It is inconceivable that a series of projects created to implement one Act, and doing so by creating thousands of miles of boundaries and a hierarchy of protections where pollution, climate change, scientific take, socioeconomic and environmental justice impacts are ignored, would not require a programmatic Environmental Impact Report. By ignoring our federal and state environmental regulations, indeed by ignoring the language of the Marine Life Protection Act, the process proposing to create MPA’s has made a mockery of California’s tradition of protecting our environment. We hope a Draft EIR will be a step in the direction of correcting this critical oversight.

Sincerely,
Trustees of the California Fisheries Coalition

Steve Scheiblaue
Steve Scheiblaue

Diane Pleschner
Diane Pleschner

Jim Martin
Jim Martin