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California State Senate

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BOB DUTTON

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BUDGET & FISCAL REVIEW,
SUBCOMMITTEE NO.5

June 21, 2010

Mr. John McCamman, Director
California Department of Fish and Game
1416 Ninth Street, 12th Floor
Sacramento, CA 95814

Dear Director McCamman:

Thank you for your response to my letter of May 19, 2010. I am disappointed, however, that you did not respond to my questions in a more factual manner.

Your fundamental premise, that "nothing in the MLPA [Marine Life Protection Act] requires that management, monitoring, enforcement and funding issues" be addressed as part of the MLPA designation process is incorrect. The MLPA expressly embraces a comprehensive adaptive management approach so that areas designated as marine protected areas are not established forever but are subject to periodic scientific review. In fact, the Legislature directed that the Marine Life Protection Program "shall ... have clearly defined objectives, effective management measures, and adequate enforcement." F&G Code, § 2853(b)(5).

A plan that does not address all of the statute's requirements is contrary to both legislative intent and law. The Legislature did not delegate to the Department, let alone a privately funded initiative with its own agenda, the prerogative to re-write the statute or to selectively implement certain provisions and to ignore others any more than we would have officers of the California Highway Patrol selectively enforce our traffic laws.

The LAO reasonably takes the position – as he should – that the MLPA will be implemented as drafted by the Legislature, comprehensively and with all of the necessary resources to enforce regulations and to manage and monitor the MPAs [Marine Protected Areas]. In the absence of resources, the MLPA cannot be implemented as required by law. Indeed, the MLPA itself

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prohibits the adoption of regulations and implementation of the program except "to the extent funds are available." F&G Code, § 2859(b).

You incorrectly represent that "[s]pecific implementation will be scaled to the funding provided both through the Department's budget and that of its outside partners." In fact, full complements of regulations have been adopted in the Central and North Central Coast study regions notwithstanding the abject absence of funding for enforcement, management or research. And the same process is underway in the South Coast study region with a full (and highly controversial) complement of MPAs, again without any genuine consideration of the MLPA's command that implementation be limited to the extent funds are available for enforcement, management and research.

The LAO correctly echoes the intent of the statute when it questions the appropriateness of continued funding. Based on the scale of the programs defined in the Central and North Central Coast study regions alone, your Department has estimated that more than \$40 million would be required annually for enforcement, management and monitoring activities. The state self-evidently lacks these resources.

Stripped of the adaptive management features mandated by statute, the MPAs are simply permanent fishing closures. For you to pretend otherwise is disingenuous. In fact, the Blue Ribbon Task Force, when questioned about pollution and water quality issues, has stated on numerous occasions that those issues are beyond its purview. Further, the regional stakeholders were instructed by MLPAI [Marine Life Protection Act Initiative] staff to avoid placing MPAs over sewage outfalls, storm water discharges or other polluted areas, leaving only areas where the fish are abundant as suitable for protection. The MLPA expressly contemplates the deletion or modification of MPAs. See F&G Code § 2861(a). However, this provision is meaningless without the adaptive management required under Section 2853(c)(3).

Since the MLPA has been reduced, for all practical purposes, to fishing closures, I again ask why the expense of the MLPA is justified? And if the MLPA cannot be fully implemented for lack of funding, on what basis does the Department justify the selective implementation of portions of the MLPA?

As you know, the MLPA Initiative has excused itself from compliance with California's fundamental open government statutes: the Bagley-Keene Open Meeting Act and the Public Records Act. The Initiative Team and the Blue Ribbon Task Force claim that they are *exempt from statutes* intended to guarantee transparency. Therefore, your claim of "unprecedented transparency and stakeholder involvement" is not exactly true and based on the many complaints I have received about the tone and candor of your process could be considered an insult to the government process.

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I ask you to revisit your previous letter and specifically address the very serious issues I place before you here. May I please have your additional response as soon as possible? Thank you very much.

Sincerely,



BOB DUTTON
31st Senatorial District

cc:

The Honorable Denise Ducheny, Chair
Senate Budget and Fiscal review Committee

Mr. John Carlson, Executive Director
California Fish and Game Commission

Mr. John Moffatt
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