Date: May 27, 2009

About the MLMA Lessons Learned project:

The Harty Conflict Consulting & Mediation [HCCM] project team was selected to conduct a lessons learned study of the Marine Life Management Act [MLMA] as described in the RFP issued by the Ocean Protection Council on October 27, 2008. In the words of the Request for Proposals "Both DFG and the Commission have agreed that summarizing lessons learned from the previous FMP-approval processes could help to streamline efforts in the future. Additionally, because each past FMP creation process involved vastly different protocols, standards, costs, and time investments, a study evaluating comparative lessons learned could function as a useful reference for future efforts. The study will evaluate the successes and challenges of the implementation of the MLMA and provide recommendations to direct future MLMA efforts by DFG and the Commission."

About this document: Summary of Comments on Draft Issues List

This document summarizes comments received on the draft Issues List previously posted for comment on the OPC's MLMA project web site by the HCCM team. Comments varied from recommendations about the best approach to analyzing the MLMA to specific recommendations for reform of the MLMA. All contributions will be reviewed by the HCCM team as they prepare future reports.

One set of comments used the term "outline" in describing the draft Issues List and appeared to assume that the list represented the intended structure for future reports. This is not the case: the list is fundamentally intended to inform development of report outlines and structures, and HCCM acknowledges potential confusion about this distinction.

Summary of Public Comments on Draft MLMA Issues List

For purposes of this summary the comments are organized into four categories:

1. Suggested a preferred approach to the project (relates to the RFP and project contract or how the project team organizes its work),

2. Offered specific information (relates to Task 1, description),

3. Advanced a perspective on how to judge implementation of the MLMA or related policies (relates to Task 2, assessment), or

4. Made recommendations for change in the implementation of MLMA or related policies (relates to Task 3, recommendations).

Unless otherwise indicated, each summary note reflects a single comment.

Category 1, Suggested a preferred approach to the project:

- Looking at what other countries have done and why appears to be secondary to the core report and MLMA.
- When looking at fisheries management prior to the MLMA (1) look at where authority lay within the Department, Commission and Legislature, (2) statutes should also be included when looking at management issues such as regulations and plans.
- When addressing what the MLMA is as enacted, include a straightforward summary of the MLMA. As suggested, the summary would be the overall structure of MLMA, including the central goal of ecological sustainability. Another set of comments similarly suggested an overall summary of management before MLMA, while it was being implemented, and now for the sake of comparison.
- The policy statements in the statute are part of the foundation and need to be addressed.
- Looking at MLMA implementation in terms of State/Federal/Council/PSMFC may not be a fruitful direction for the report to take.
- It would be more fruitful to review each individual FMP and evaluate who was and was not involved or consulted.
- The approach laid out in the issues list may not make it possible to identify the areas of inefficiency and ineffectiveness in the implementation and preparation of the FMPs.
- Avoid a checklist approach, which could cause the study to miss the intent of the law in regard to sustainability, long term vs. short term concerns, and the involvement of outside perspectives, experience and experts in management.
- There should be less reliance on secondary literature such as the "Guide to California's Marine Live Management Act."

- It may be ambitious to expand the focus from MLMA specifically to California fisheries management more generally. In addition, another set of comments suggested that such comparisons would only be useful if the systems are comparable and similar goals and objectives exist among them.
- The study should be inclusive of all data collection and management approaches, such as collaboration and co-management.
- Will FMPs be evaluated based on "presence-absence" or on an evaluation of how MLMA tools have or have not been used to achieve the goals of the policy?
- MLMA applies to all fisheries, not only the FMP fisheries, and the report must therefore not take an approach that equates MLMA with FMPs.
- The issues list appears to present the MLMA as its individual parts without looking at it in its entirety and the mission that the law was created to meet.
- The research team should learn more of the background of the MLMA before interviews take place.
- The issues list should include more questions about the goals of the MLMA drafters, what they were trying to change, what tools they believed would work in which ways, and how they would define success.
- Discuss where the information will come from when conducting a systematic assessment of dimensions of successful policies.
- Will the question "Is California achieving an effective mix of policy tools for fishery management and ecosystem conservation– restricted access programs like ITQs & LAPs, community/port-based management, traditional regulatory limits on effort and gear, and MPAs?" elicit any response except "no" and how it would be useful to address this question?
- There is a lack of focus on forage species in MLMA, as only Market Squid currently has an FMP.

Category 2, Offered specific information:

Note: There are no comments in this category. It is not clear whether commenters believed the draft issues list adequately encompassed relevant descriptive information about implementation of the MLMA, or whether they had already developed judgments on its implementation that they wished to advance [Category 3].

Category 3, Advanced a perspective on how to judge implementation:

- When looking at fisheries management prior to MLMA, the analysis should be structured around key areas of how the MLMA is written: goals of management; sustainability, including ecosystem; standards for science; adoption of management measures; stakeholder involvement.
- Specifically address which fisheries are and are not currently covered by MLMA.

- The Master Plan for FMPs as a requirement of MLMA is important, therefore look at how the FMPs that were adopted reflect the Master Plan.
- Two sets of comments questioned whether the squid FMP reflects the ecosystem approach of the MLMA.
- In addition to looking at MLMA implementation in terms of Department/Commission and Commission/Stakeholders, look at Department/Stakeholders as well.
- The analysis should not be limited to FMPs, but should also include other fisheries, as MLMA applies to the decision making surrounding other fisheries. This comment asked whether DFG has relied on MLMA in management of non-FMP fisheries.
- Within one set of comments there were two instances in which the placement of particular issues was questioned, with suggestions for better placement:
    - How the four categories of specific policies identified in the "Guide to California's Marine Live Management Act" been satisfied should be included earlier in the section of the issues list with the description of the MLMA
    - Whether FMPs as developed and implemented adequately incorporate adaptive management should be in the FMP evaluation section.
- It may not be worth pursuing how California's experience with the MLMA compares with other resource management experiences in California and worldwide unless the analysis of MLMA implementation is "tightened up."
- Other areas of emphasis that should be included in the section about capacity-focused issues:
    - Capacity to learn from CA experience and from others
    - Capacity to adapt as a result of learning
    - Capacity of the Department to form partnerships, seek assistance, etc.
- Look at other restricted access tools rather than focusing solely on IFQs.
- The culture of the Department and Commission may be a barrier to partnerships. Partnership formation is generally underemphasized within the issues document.
- Focus on the basic premise of the MLMA about ecological sustainability over the long-term rather than simply trying to prevent overfishing of specific species.
- Focus on the basic premise of the MLMA that the top-down model of management needs to be changed and not fixed.
- In the context of how the MLMA has been implemented: "What unintended or unclear expectations were created for the public and managers that are creating the 'problem'?"
- Address challenges created by the loss of experienced staff throughout all functions of the Department.
- What is considered "implementation:" is it a continuum or does it mean 100% implemented?
- In regard to whether integration of MLMA and MLPA is currently effective and appropriate, ask what it should be rather than simply asking whether it is enough.
- In the section discussing the inability to use MLMA or other policies where plausibly appropriate, such as sea urchins, discuss why the MLMA policy cannot be used elsewhere.

- When examining the potential of IFQs and similar tools for California fisheries, be sure to look at PFMC trawl rationalization and the NEPA document.
- Address the lack of adequate fiscal resources, as well as a lack of focus on balancing public desire and agency capability.
- One set of comments consisted of the following list of issues/questions:
    - What is the design process needed for MLMA to be sustainable as a system?
    - What type of community planning is needed for MLMA to integrate with MLPA?
    - What kind education program is needed for a fishery manager that uses FMPs in practice?
    - What data systems are needed to inform assessment of stocks?
    - What are the key reforms of MLMA that will create the biggest benefit to fishing innovation?
    - What types of incentives can drive the optimization of the harvest?
    - What are the alternatives for MLMA reform?

Category 4, Made recommendations for change:

- In regard to the entire Recommendations section of the issues list, rather than establishing more processes, templates, guidelines, policies, advisory bodies, etc., it may be useful to ask questions such as:
    - How do we simplify the management?
    - How do we manage the expectations?
    - How do we pay for all the desires?
    - How do we integrate everything?
    - How do we anticipate what is coming?
    - How do we allow the MLMA to work?"
- Setting priorities and the approach of using a continuum when evaluating how to improve the implementation of the MLMA is important.