

CALIFORNIA OCEAN PROTECTION COUNCIL

Staff Recommendation
September 10 - 11, 2008

**MARINE LIFE MANAGEMENT ACT
LESSONS LEARNED STUDY**

File No. 08-094
Project Manager: Cina Loarie

RECOMMENDED ACTION: Authorization to disburse up to \$250,000 to conduct the Marine Life Management Act (MLMA) Lessons Learned study that will evaluate the performance of the MLMA to date and provide recommendations to improve future MLMA efforts.

LOCATION: Statewide

AGENCY OR ENTITY RECOMMENDING PROJECT: Ocean Protection Council and the Fish and Game Commission, in cooperation with the Department of Fish and Game

EXHIBITS

Exhibit 1: [Marine Life Management Act Master Plan Executive Summary](#)

Exhibit 2: [Example Report: Lessons Learned from the MLPA Initiative](#)

RESOLUTION

Staff recommends that the Ocean Protection Council adopt the following resolution pursuant to Sections 35500 *et seq.* of the Public Resources Code:

“The Ocean Protection Council hereby approves the disbursement of an amount not to exceed \$250,000 to conduct the Marine Life Management Act (MLMA) Lessons Learned study that will evaluate the performance of the MLMA to date and provide recommendations to improve future MLMA efforts.

Staff further recommends that the council adopt the following findings:

“Based on the accompanying staff study and attached exhibits, the council hereby finds that:

1. The proposed project is consistent with the purposes of Division 26.5 of the Public Resources Code, the Ocean Protection Act.
2. The proposed is consistent with the Ocean Protection Council's project funding guidelines.”

PROJECT DESCRIPTION

Project Overview

Staff is recommending that the Ocean Protection Council (OPC) authorize disbursement of up to \$250,000 to conduct a study evaluating successes and challenges of the implementation of the Marine Life Management Act (MLMA). The evaluation will summarize lessons learned and provide recommendations to assist and direct future MLMA efforts by the California Department of Fish and Game (DFG) and Fish and Game Commission (Commission).

The evaluation will consist of three essential components: 1) a survey of MLMA actions to date including the processes used to craft existing fisheries management plans (FMPs), 2) a "lessons learned" section that distills, evaluates, and compares the outcomes of MLMA actions, and 3) a section identifying management areas in need of improvement and recommendations for future approaches, including legislative, policy and regulatory recommendations and amendments.

Funding will be used to hire a contractor to complete predetermined requirements of the project (see the Project Details section below for potential conditions). This will be a joint project of the OPC and the Commission. The OPC and Commission will work in close coordination with DFG to ensure that this document provides the most useful guidance for each agency involved. The analysis contained in the study will provide tools and direction to more effectively implement the MLMA and efficiently complete and adopt future FMPs (see Exhibit 1 for information on the MLMA Master Plan).

The model for this study is a highly successful, similar evaluation of the Marine Life Protect Act (MLPA) Initiative's Central Coast Study Region, which has been instrumental in improving the MLPA process in subsequent regions (Exhibit 2). That study has provided useful in current efforts to implement the MLPA Initiative.

Marine Life Management Act Background

The Marine Life Management Act (MLMA) (AB 1241, Keeley) became law on January 1, 1999.¹ The MLMA opened a new era in the management and conservation of California's marine living resources by redefining the goals of fisheries management in the state. The goal of the MLMA is to "conserve the health and diversity of marine ecosystems and marine living resources," and to "allow and encourage only those activities and uses of marine living resources that are sustainable" (Fish & Game Code § 7050). The MLMA mandated ecosystem-based management of ocean fisheries, for both fish and shellfish taken by commercial and recreational fishermen, and established a process for such management.

The act includes a number of innovative features. First, the MLMA aims to secure sustainability not only of exploited species but of the ecosystems of which they are a part. Second, while the Legislature retained its control of some of the state's commercial fisheries, it gave the Commission new and greater authority for implementing the standards and procedures of the MLMA.

¹ For more information on the MLMA, see the Online Guide California's MLMA at <http://www.fgc.ca.gov/mlma/home.html>

The MLMA is a complex law, reflecting the many dimensions of managing marine life, including fisheries, for sustainability. The act directs the Commission to manage each fishery to ensure long-term health of the resources by maintaining, restoring, and/or enhancing the health of a marine fishery; limiting bycatch; facilitating community involvement and collaboration; and ensuring that the fishery management process is open, transparent, and adaptive. The act currently applies to four groups of fisheries; 1) fisheries currently managed by the Commission, including sport and commercial fisheries, 2) the nearshore, finfish, and white seabass fisheries, 3) emerging fisheries not currently subject to fishery management, and 4) commercial fisheries for which there is no statutory delegation of authority to the Commission or DFG, requiring further delegation of authority to the Commission from the Legislature. The primary tool for managing each of these groups is a FMP.

Fisheries Management Plans

The MLMA requires that FMPs be developed by the DFG and implemented through regulations adopted by the Commission. A FMP is a planning document based on the best available scientific knowledge, community-based resources and other relevant information. The MLMA called for FMPs to contain a comprehensive environmental and economic analysis of the fishery along with clear objectives and measures to ensure sustainability of that fishery.

Each FMP serves as the primary instrument for managing one of California's recreational and commercial marine fisheries. Rather than ad hoc and piecemeal decisions on individual fisheries, the aim is to base decisions on comprehensive reviews of fisheries. Several requirements of an FMP are as follows:

- A summary of the marine fishery's existing and historical fishing effort, population dynamics of the target species, a characterization of the habitat and ecosystem role, economic and social factors related to the fishery, and any past or ongoing management efforts that might influence the fishery.
- A fishery research protocol identifying essential fishery information and steps DFG should take to adequately monitor the fishery.
- Necessary measures for the conservation and management of the fishery, including a means to incorporate existing management strategies and to identify when a fishery is overfished
- Measures to minimize bycatch and the adverse effects of fishing on habitat.

In addition to adhering to the above requirements, DFG must use an open and collaborative process with frequent consultations with fishery participants or their representatives, fishery scientists, and other interested parties. Public involvement is integral to the entire FMP process, from preparation and adoption to implementation.

FMPs have varied in the amount of money and time needed for preparation and implementation, based on several factors: whether the FMP contains a single species or a group of species in a fishery, the size of the geographical area the fishery covers, the potential jurisdictions shared by the fishery, the quantity and quality of information that exists, the availability of knowledgeable staff, the degree of urgency, and the number of staff needed to enforce regulations adopted with the FMP.

Current Status

The extensive requirements of the FMP process are complex, time-consuming, and expensive. Each FMP requires considerable research and discussion before adoption. As a result, the development of FMPs has become significantly delayed due to a lack of fiscal and staffing resources and the comprehensive scope of the information required to complete these plans.

A number of amendments were adopted prior to the final passage of the MLMA in 1999. One significant amendment narrowed the scope from the 40 FMPs required for immediate development in the original scope of the MLMA to two FMPs. This helped to both ensure that DFG could meet the requirements of the bill and also allowed the Legislature to not cede its authority to the Commission over several key fisheries. Currently, there are only a handful of existing FMPs, including nearshore finfish, white seabass, squid, and red abalone.

The complex FMP creation process has presented DFG with great difficulty to complete FMPs for priority fisheries in a timely manner. Clearly managing fisheries in a modern, comprehensive fashion is a complex undertaking. Individuals inside and outside the Commission and DFG suggest that there is a need to assess how FMPs are developed. This will require an assessment of the potential for more efficient processes and the personnel requirements necessary to carry them out.

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.

Project Details

The OPC and the Commission will work with DFG to hire a consultant to conduct the MLMA assessment and lessons learned study. The study will be organized to provide a description and background of the MLMA, DFG and the Commission's efforts to develop and implement the MLMA, an evaluation of the MLMA based on different sets of questions and criteria, and recommendations for future improvements and implementation strategies. Depending on cost and time constraints, the core evaluation questions might include:

- Does the MLMA provide a reasonable foundation for decisions by the Commission?
- How does the MLMA interact with other state policies (e.g. the Commission's policy on restricted access)?
- How have individual FMPs advanced or not advanced the goals and objectives of the MLMA (e.g. compare and contrast individual FMPs, i.e. the harvest control rule for the nearshore finfish fishery and the market squid quota)?
- What resources and expertise are needed to effectively prepare and implement a FMP?

Other questions the study might address include:

- What has been the experience with peer review, and how might it be improved?
- Are fisheries prioritized in a transparent and practical manner?
- Do FMPs adequately allow for adaptive management?

- Is the FMP creation process efficient and effective?
- Are there areas that can be streamlined for faster implementation?

Potential Study Components

This study will rely on information gathered from a variety of sources, including:

- Confidential interviews with individuals involved in the MLMA (e.g., agency decision makers and staff, scientists, and stakeholders)
- Review of documents made accessible by DFG and the Commission and those available on the MLMA Web site (including FMPs and supporting documents, public comments, past Commission meetings, and other key documents such as the Master Plan for FMPs)
- An analysis of those fisheries not covered under FMPs but supposed to be managed with the MLMA's objectives in mind
- Review of documents recommended or provided by stakeholders, such as peer reviews and critiques
- The experience and professional judgment of the authors
- Solicitation of written public input

These interviews will be essential to analyzing the effectiveness of the MLMA process. Personal perspectives could be conducted either individually or in group format.

At the outset of the study, the contractor will be required to submit a group of questions, in outline form, that will be explored. Early on in the study, the contractor should submit for review a revised set of questions based on a first round of interviews. The OPC and Commission staffs will collaborate closely to supervise this study, and will work with DFG in an iterative manner to ensure that reliable and usable information and recommendations are produced.

Anticipated Outcomes

The study will provide a wide range of recommendations about how to improve future MLMA implementation. These recommendations may encompass:

- Evaluation of the degree to which implementation of the MLMA has delivered conservation, in terms of interpretation of legislation, process, etc.
- Defining the scope of future FMPs (number of fisheries, geographical area)
- Revising the stakeholder process
- Improving DFG staffing levels and expertise
- Legislative and policy changes or amendments needed to improve the performance of the MLMA
- Changing certain authorities between the Commission and the Legislature

PROJECT FINANCING:

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|---------------------------|------------------|
| Ocean Protection Council | \$250,000 |
| Total Project Cost | \$250,000 |

Staff anticipates using the OPC's tidelands oil funds, appropriated to the Secretary of Resources in the FY 04/05 budget for projects authorized pursuant to the Ocean Protection Act. The Resources Agency has entered into an interagency agreement with the Coastal Conservancy to administer these funds on behalf of the council and recommend projects for funding.

CONSISTENCY WITH THE CALIFORNIA OCEAN PROTECTION ACT:

The project is consistent with the following provisions of the provisions of the Ocean Protection Act (Division 26.5 of the Public Resources Code):

Section 35615(a)(6) of the Public Resources Code provides: [The council shall i]dentify and recommend to the Legislature changes in law needed to achieve the goals of this section.

The overall purpose of the MLMA Lessons Learned study is to advance the objectives of the MLMA through clearly identifying areas of the MLMA that have worked well, where there is need for improvement and how improvement would best be achieved. The goal of the study is to make recommendations through the analysis of past efforts to make future MLMA implementation more streamlined, standardized, and effective. While additional legislation may be warranted in some cases, the challenge may have more to do with agency implementation and interpretation. Public Resources Code Section 35650(b)(1) authorizes the expenditure of Ocean Protection Trust Fund monies for activities authorized by the council consistent with, inter alia, section 35615.

CONSISTENCY WITH THE OPC STRATEGIC PLAN:

The project is consistent with the 2005 OPC strategic plan in the following respects:

A. Governance

Objective 1: Maximize the effectiveness of funds spent to protect and conserve coastal resources. The proposed comprehensive study has the potential to greatly assist, inform, and expedite future MLMA efforts, which should thereby result in more productive funding expenditures.

Objective 2: Maximize the effectiveness of state agency efforts to protect and conserve ocean and coastal resources. The proposed study is being designed to improve the effectiveness of future FMP efforts by the Commission and DFG in implementing the MLMA. Areas in need of improvement will be identified through the direct analysis of past efforts that could assist future efforts in being more streamlined and standardized.

E. Ocean and Coastal Ecosystems

Objective 2: Help to establish the ecologically and economically sustainable fisheries criteria of the MLMA. The Commission and DFG could rely on the data generated from this study to inform future management decisions. In addition, the study may help to promote new, more effective management and sustainability approaches.

CONSISTENCY WITH THE OPC'S PROJECT SELECTION CRITERIA & GUIDELINES:

The proposed project is consistent with the OPC's Project Funding Guidelines adopted June 14, 2007, in the following respects:

Required Criteria

1. **Directly relates to the ocean and coast:** The focus of this study will be on California's marine fisheries.
2. **Support of the Public:** The project is supported by the following members of the public: See Exhibit 4
3. **Greater-than-local interest:** The study's scope is state-wide and the findings will have state-wide implications for management.

Additional Criteria

4. **Resolution of more than one issue:** There are many issue areas associated with the MLMA in need of improvement. This study could help identify and resolve issues that include timeliness, FMP creation protocol standardization, amendments, agency coordination, etc. Both DFG and the Commission stand to benefit from such a study.
5. **Timeliness or urgency:** Many groups and fisheries are interested in pursuing management reform and FMP creation for different fisheries. In addition, the OPC and others are pursuing different market approaches to improve fisheries in California. Therefore, it is important that a study like this be completed in a timely fashion to help prioritize actions and set the stage for potential actions taken as part of the MLMA.
6. **Coordination:** This project involves collaborative partnership between the OPC, DFG and the Commission as well as the involvement of a wide array of participating stakeholders.

CONSISTENCY WITH THE OPC'S 2007/2008 FUNDING PRIORITIES

The topic of FMPs was identified in the 2007/2008 Funding Priorities document as being one of the highest priority ocean and coastal ecosystem needs for the year. The MLMA Lessons Learned study will directly inform management and should lead to better long-term protection and sustainability of California's marine fisheries.

COMPLIANCE WITH CEQA

The proposed project is categorically exempt from review under the California Environmental Quality Act (CEQA) pursuant to 14 Cal. Code of Regulations Section 15306 because the project involves only data collection, research, and resource evaluation activities that will not result in a serious or major disturbance to an environmental resource. Staff will file a Notice of Exemption upon approval by the council.