

CALIFORNIA OCEAN PROTECTION COUNCIL

Staff Recommendation

*September 17, 2009*

**Marine Life Protection Act Planning and Implementation**

File No.: 09-022-01

Project Manager: Samuel Schuchat

**RECOMMENDED ACTION:** Delegate to the Council Secretary the authority to approve and disburse up to \$4,400,000 to the California Department of Fish and Game to help plan and implement the Marine Life Protection Act.

**LOCATION:** Statewide

**STRATEGIC PLAN OBJECTIVE:** Ocean and Coastal Ecosystems and Research and Monitoring

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**EXHIBITS**

Exhibit 1: [MLPA Master Plan for Marine Protected Areas](#)

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**RESOLUTION AND FINDINGS:**

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 delegates to the Council Secretary the authority to approve and disburse up to \$4,400,000 (four million four hundred thousand dollars) to the California Department of Fish and Game (DFG) to help plan and implement the Marine Life Protection Act. Prior to the disbursement of funds, DFG shall submit for the review and approval of the Secretary to the council:

1. A work plan, including schedule and budget.
2. Evidence that all permits and approvals necessary to implement the project have been obtained.
3. Names and qualifications of any contractors that DFG intends to employ to carry out the project.”

Staff further recommends that the council adopt the following findings:

“Based on the accompanying staff report 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 project is consistent with the Ocean Protection Council's grant program funding guidelines.”

## **PROJECT SUMMARY:**

The Department of Fish and Game (DFG) is the lead department for implementing the Marine Life Protection Act (MLPA). For each MLPA region of the state (central coast, the north central coast, south coast, north coast, and San Francisco Bay regions), DFG participates in both planning activities prior to the adoption of the marine protected areas and implementation activities, such as monitoring and public engagement, after adoption to support adaptive management. These activities require extensive technical and scientific expertise and effort that can only be provided by DFG. This project will support DFG in the full range of activities required to plan and implement the MLPA during fiscal year 09/10.

## **PROJECT DESCRIPTION:**

### **Project Background**

The Marine Life Protection Act (Chapter 10.5 of the California Fish and Game Code, Sections 2850-2863) was enacted by the California Legislature in 1999 and requires DFG to develop a plan for establishing a network of marine protected areas (MPAs) in California waters to protect habitats and preserve ecosystem integrity, among other things.

DFG's work related to the Act is guided by the MLPA Master Plan, adopted in January 2008, which details at length the activities required for successful implementation. These include the regulatory and environmental review process, specific expectations for adequate enforcement, public education regarding designations, signage, and adaptive management.

Following an extensive public process for the first region, the central coast, the Fish and Game Commission approved the central coast network on April 13, 2007 and its regulations went into effect on September 21, 2007. This approved network includes 29 MPAs, representing approximately 204 square miles (or approximately 18 percent) of state waters in the Central Coast Study Region. The north central coast network was adopted on August 5, 2009; the regulations for this region are expected to take effect in early 2010. This approved network includes 24 MPAs, spanning approximately 153 square miles (or approximately 20 percent) of the North Central Coast Study Region. Implementation of the north and south coast networks is expected in the next year; planning for the San Francisco Bay region will follow soon after.

### **Project Details and Scope of Work**

DFG's approach to this project is split into two phases for each region: planning and implementation. Planning has already been concluded for the central coast and almost complete for the north central coast. With respect to the current authorization, DFG's activities for these regions will focus primarily on implementation activities. For the south coast and north coast regions, the majority of DFG's efforts will support planning activities.

***Planning:***

For this project, DFG staff will participate in the regional MPA planning process for the South Coast Study Region (commenced in fall of 2008), and the North Coast Study Region (commenced in summer of 2009). This participation encompasses many responsibilities (requiring specific expertise) and is conducted in coordination with the Blue Ribbon Task Force and Marine Life Protection Act Initiative. The public process for planning alternative MPA networks is extensive and consists of:

*The MLPA Blue Ribbon Task Force (BRTF)* – composed of seven public leaders selected by the Secretary of the California Natural Resources Agency for their knowledge, vision, public policy experience, and diversity of professional expertise. The BRTF is responsible for overseeing the regional process to develop alternative MPA proposals to present to the California Fish and Game Commission.

*Regional Stakeholder Group (RSG)* – composed of numerous representatives from a range of interests (such as fishing, recreation, business, and conservation) and appointed by the director of DFG to provide local knowledge of the study region; evaluate existing MPAs; conduct outreach to constituent groups; and develop alternative proposals for packages of MPAs. The RSG conducts the majority of the work in crafting and assessing tradeoffs between proposals and provides these analyses to the BRTF.

*A Science Advisory Team (SAT)* – appointed by the director of DFG to help advise the MLPA process. The approximately 20-member SAT provides scientific information and technical judgment on proposed MPA sites. The SAT reviews and comments on scientific papers relevant to the implementation of the MLPA, reviews alternative MPA proposals, and responds to scientific questions raised by the BRTF and stakeholders related to specific proposals. Members of the SAT are technical experts in a range of fields including marine ecology, fisheries, the design of marine protected areas, economics, and social sciences.

DFG staff participation in these efforts is essential – providing insight to the BRTF and RSG on the legal and practical considerations related to different proposals. These groups also rely heavily on DFG analysts and lawyers to provide current and historical information about affected fisheries, protected species, and other natural resources. DFG enforcement personnel are also present at RSG and BRTF meetings to advise whether specific proposals are achievable in terms of enforcement procedures.

A DFG staff person serves as a member of the SAT in each region. In addition, DFG provides logistical support (such as meeting planning) for the SAT and provides data and information for analysis by the SAT. For example, DFG staff spend significant time compiling confidential fishery data into datasets that can be released publicly and creating GIS datasets to analyze habitat, species, fisheries, and socioeconomic data visually.

The outcome from the public process in each region is a suite of proposed networks of MPAs that are submitted to the Fish and Game Commission. DFG staff support the decision-making process of the Commission by providing analysis of the proposals and by addressing questions of the Commission related to benefits and impacts of each proposal. In addition, once the Commission acts, DFG scientists, analysts, and lawyers work with outside contractors to review documents required under the California Environmental Quality Act (CEQA), and staff also prepare the needed regulatory documents that are submitted to the Office of Administrative Law.

By June 2010, it is anticipated that the planning process for the North Central Coast Study Region will be completed (including the CEQA and regulatory documents), the South Coast Study Region will be close to complete (including drafts of the CEQA and regulatory documents) and that the stakeholder process for the North Coast Study Region will be close to complete (i.e., proposals submitted to the Fish and Game Commission).

***Implementation:***

The MLPA requires monitoring and adaptive management to ensure that the system of MPAs meets its stated goals (Fish & Game Code section 2853(c)(3)). As the MPA network is implemented, it will be necessary to monitor MPA effectiveness by collecting information on ecology, habitat, and other natural processes, and on socioeconomic indicators. This information is necessary to determine over time if the selected MPA networks are fulfilling the goals envisioned in the MLPA. The MLPA Master Plan calls for comprehensive analysis of monitoring results approximately every five years after MPAs are established.

DFG staff participate in a range of activities to collect the needed information for these upcoming reviews, such as SCUBA and Remotely Operated Vehicle (ROV) surveys to determine ecosystem characteristics trends inside and outside of MPAs (i.e., how are populations or communities inside MPAs changing over time relative to those outside MPAs?). This monitoring is conducted in coordination with the baseline data collection funded by the OPC and according to the monitoring protocols established by the MPA Monitoring Enterprise. DFG staff coordinate closely with the MPA Monitoring Enterprise as each regional monitoring plan is crafted.

Another key component of successful implementation is continued public outreach regarding the regulations associated with each new MPA. Without sufficient outreach about the boundaries and specific regulations about each area, there is a high probability that fishermen and other visitors to the ocean and coast could unintentionally participate in illegal activities. DFG staff will work throughout the regions to inform people of regulated behaviors and coordinate with other organizations to create signs and other tools (e.g., GPS software) to raise awareness of the MPAs as they are implemented.

While these activities will need to continue into the future, for the duration of this project, DFG will focus primarily on monitoring and outreach in the central coast and north central coast regions. DFG staff, in cooperation with the MPA Monitoring Enterprise, will help select north central coast baseline monitoring projects, finalize the North Central Coast Monitoring Plan, and begin developing the South Coast Monitoring Plan. Within the project timeline, SCUBA and ROV data will be collected in the north central coast as part of the baseline data collection and ongoing monitoring (resulting in trend data) will be conducted in previously established MPAs (such as the central coast and Channel Islands).

This project will also result in coordinated outreach materials and messages, including brochures and other products, kiosks, signs, and interactive navigational/GPS software. The products developed in the central coast will serve as a template for the next regions. Finally, DFG updates the MLPA Master Plan after the adoption of MPAs for each region to include the specific MPAs and associated management goals and objectives. For this project, DFG will have a new draft Master Plan for the Fish and Game Commission to ratify for the North Central Coast Study Region.

### **NEED FOR SECRETARY DELEGATION AND NEW PROJECT EXEMPTION:**

The staff is recommending the council take this action in response to a provision in the revised California 2009-2010 Budget Act (Stats. of 2009, 4th Extraordinary Session, Chapter 1, Section 221, Item 3760-301-6076, Provision 3) which appropriates monies to the OPC with the express condition that “of the funds provided in this item for the Ocean Protection Council, \$4,400,000 shall be allocated to the Department of Fish and Game for state operations through an interagency agreement for the purpose of Marine Life Protection Act implementation.”

However, on December 18, 2008, the Department of Finance issued Budget Letter 08-33, which among other things, directed state agencies to “cease authorizing any new grants or obligations for bond projects, including new phases for existing projects.” Since this project would, in part, create a new obligation on a bond funding source, OPC staff is currently requesting an exemption from the Department of Finance so that we can fulfill the direction of the Budget Act.

Until this exemption has been approved, the council cannot directly authorize the expenditure of these bond funds. Yet, this project is urgent due to the timing of the MLPA process and the need for DFG involvement: the agreement needs to be approved as soon as possible. Therefore, the staff is requesting that the council delegate to the Council Secretary the ability to disburse the stated amount funds for this specific project, if and when the Department of Finance has granted the exemption.

Some funding for this project is expected to come from Tidelands Oil Funds, not subject to the constraints on bond funds. Thus, soon after the council’s action, the Council Secretary will authorize this portion of the total to cover pending expenses while the bond-funding exemption is being sought. If no exemption is approved, then only the available Tidelands Oil Funds will be provided for this project. (See the Project Financing section below.)

### **SITE DESCRIPTION:**

This project will take place in four regions of the MLPA process:

- South coast – Point Conception to the Mexican border
- Central coast – Point Conception to Pigeon Point
- North central coast – Alder Creek, near Point Arena to Pigeon Point
- North coast – Alder Creek, near Point Arena to the Oregon border

### **PROJECT HISTORY:**

To date, the OPC has committed over \$16 million to the MLPA process in support of baseline data collection following MPA implementation – approximately \$4 million per region (central coast, the north central coast, south coast, and north coast regions). OPC funds have assisted DFG to collect baseline information on a variety of ecological variables associated with the new MPAs, including the distribution, composition, relative abundance, and size frequencies of key fishes and invertebrates identified as conservation priorities during the MPA planning process. The key biological habitats that are being monitored include rocky intertidal habitats, kelp forests, deep rocky reefs, and rocky-reef fish assemblages.

In addition, the OPC has provided over \$15 million in funds to complete statewide habitat maps that serve as the baseline data for planning within the SATs and RSGs. Also, in 2007, the OPC approved a grant of \$2 million to the California Ocean Science Trust to create the MPA Monitoring Enterprise. The purpose of the MPA Monitoring Enterprise is to ensure that MPA monitoring information is strategically and cost-effectively collected, managed, analyzed, and disseminated. One of the major tasks of the MPA Monitoring Enterprise is to develop region-specific monitoring plans, as well as an overarching statewide monitoring plan, in conjunction with DFG.

**PROJECT FINANCING:**

<b>Ocean Protection Council</b>	<b>\$4,400,000</b>
<b>Total Project Costs</b>	<b>\$4,400,000</b>

Staff anticipates using both Ocean Protection Council's Tidelands Oil Funds and Proposition 84 funds for this project. Tidelands Oil Funds were appropriated to the Secretary for Natural Resources in the FY 04/05 budget for projects authorized pursuant to the California 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. Staff anticipates allocating approximately \$1,100,000 to \$1,600,000 of these funds for this project.

The remainder of the funds will come from the Ocean Protection Council's revised fiscal year 2009-10 appropriation from the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84). Proposition 84 authorizes the use of funds for purposes consistent with Section 35650 of the Public Resources Code, establishing the California Ocean Protection Trust Fund (Pub. Res. Code § 75060(g)). Under Section 35650(b), Ocean Protection Trust Fund monies may be expended for projects authorized by the OPC that are identified as appropriate Trust Fund purposes, as specified. The project is consistent with the Trust Fund purposes as discussed in the following section.

This project is also appropriate for prioritization under the selection criteria set forth in Section 75060(g). Section 75060(g) provides that priority projects include those which develop scientific data needed to adaptively manage the state's marine resources and reserves.

This project, if approved and authorized, will cover expenses incurred by DFG since the beginning of the fiscal year (July 1, 2009) and throughout the rest of the year (until June 30, 2010) and will encompass the range of needed expertise, including scientists, managers, enforcement wardens, and lawyers.

**CONSISTENCY WITH CALIFORNIA OCEAN PROTECTION ACT:**

This project is consistent the California Ocean Protection Act (COPA), Division 26.5 of the Public Resources Code (PRC), Sections 35500 *et seq.*, in the following respects:

Under COPA, the OPC is charged with coordination of activities of state agencies related to the protection and conservation of coastal waters and ocean ecosystems, to improve the effectiveness

of state efforts to protect ocean resources within existing fiscal limitations. Section 35615(a)(1). This project is consistent with the finding in Section 35510(b)(3), which states that it is the state's policy to incorporate ecosystem perspectives into the management of coastal and ocean resources, using sound science, with a priority of protecting, conserving, and restoring coastal and ocean ecosystems; and 35510(b)(4), which provides that a goal of all state actions shall be to improve monitoring and data gathering, and advance scientific understanding, to continually improve efforts to protect restore, and management coastal waters and ocean ecosystems. The MLPA implements an ecosystem approach to management in our coastal waters, protecting whole ecosystems from a variety of impacts. The project will further the implementation the Act and conduct the monitoring and data collection necessary for adaptive management.

In addition, COPA authorizes the OPC to undertake projects, as described at Section 35650(b)(2), that:

- (A) Eliminate or reduce threats to coastal and ocean ecosystems*
- (F) Improve management, conservation, and protection of coastal waters and ocean ecosystems*
- (G) Provide monitoring and scientific data to improve state efforts to protect and conserve ocean resources*

The proposed project will satisfy these objectives. Areas designated as MPAs will have specific regulations that reduce or eliminate threats to species and the ecosystems as a whole. This ecosystem-base approach is an improvement over single-species and single-impact regulations which currently exist. In addition, the project will provide data about changes in ocean resources as a result of the implementation of MPAs, and these data will be use to inform future actions by DFG and the Fish and Game Commission regarding the appropriate management of the MPAs so as to meet the objectives of the MLPA. The information developed under the project concerning key species and habitats will also prove useful to other state agencies charged with coastal management, including the California Coastal Commission and the State Lands Commission.

#### **CONSISTENCY WITH THE OPC'S STRATEGIC PLAN:**

**Goal B (Research and Monitoring) Objective 2g:** This project will further the OPC's proposed action of "support[ing] the establishment of a comprehensive monitoring program focused on MPAs established under MLPA..." Funds will augment monitoring efforts in established MPAs and will allow DFG's continued participation in the MLPA Monitoring Enterprise's process for designing cost-effective monitoring plans for the regions.

**Goal E (Ocean and Coastal Ecosystems):** This project also directly addressed the OPC **objectives (1a)** support DFG and the Fish and Game Commission in implementation of the MLPA..." and **(1b)** "make resources available to design and implement a comprehensive MPA monitoring program that can be implemented statewide and that will measure changes in these ecosystems and inform future management decisions."

#### **CONSISTENCY WITH THE OPC'S GRANT PROGRAM FUNDING GUIDELINES:**

The proposed project is consistent with the OPC's Grant Program Funding Guidelines adopted November 20, 2008, in the following respects:

### **Required Criteria**

1. **Directly relate to the ocean, coast, associated estuaries, or coastal-draining watersheds:** The MPAs established under the MLPA are within state waters and coastal estuaries, designations of these areas will have direct impacts on the species found there.
2. **Support of the public:** The proposed action is in response to a provision of the Budget Act, adopted by the California Legislature and signed by the Governor. Staff expects that this item will have both support and opposition.
3. **Greater-than-local interest:** Each component of the MLPA will affect an entire region, and the project includes activities throughout the state in all regions. The citizens of California will benefit from these projects through more informed, sustainable management of coastal and marine resources and the more complete implementation of the MLPA.

### **Additional Criteria**

4. **Improvements to management approaches or techniques:** For years, people have recognized the need to apply a more ecosystem-based approach to management and phase out single-species focused decisions. The MLPA is the first law in California that promotes an ecosystem approach – funding for this project will ensure its continued implementation.
5. **Resolution of more than one issue:** Data generated through MPA monitoring will likely be used to support further implementation of the Marine Life Management Act and creation of fishery management plans.
6. **Timeliness or Urgency:** DFG is currently participating the planning and implementation activities outline in the project. Funds are needed immediately to ensure continued, uninterrupted participation by DFG staff.
7. **Coordination:** The MLPA process is a highly collaborative one; include scientists, fishermen, other industry representatives, managers from numerous state agencies (e.g., State Park, State Lands Commission, etc.), the MPA Monitoring Enterprise, the OPC, and the public. The project will ensure DFG continued participation and will promote further coordination and data sharing between DFG and all interested parties.

## **CONSISTENCY WITH OPC’S PROGRAM PRIORITIES FOR 2009 THROUGH 2010:**

### **Agency Coordination and Ocean Management Activities**

One of the OPC’s primary mandates is to help coordinate the ocean and coastal resource protection activities spread among numerous state and federal agencies. As mentioned previously, the implementation of the MLPA requires participation of and coordination among numerous stakeholder and state federal agencies. DFG participation in this project is vital to providing the information and analysis needed for the rest of these organizations to design MPA network proposals.

### **MPA Baseline Characterization and Information Management**

The data collection, processing, and sharing needed associated with both baseline and long-term monitoring of the network is massive. This project will allow DFG to monitor critical aspects of the MPAs, conduct the complex process of synthesizing these data and incorporate findings into

adaptive management protocols, and disseminate results to decision makers and the public. A key aspect to this work will be continued coordination with the MPA Monitoring Enterprise, which is currently developing monitoring plans for each region as well as the overall, statewide plan.

## **COMPLIANCE WITH CEQA:**

The proposed project is exempt from review under the California Environmental Quality Act (“CEQA”) under the CEQA Guidelines, 14 Cal. Code of Regulations Section 15000 et seq.

### **Planning**

Section 15262 provides a statutory exemption for a project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved. (This section does not apply to the adoption of a plan that will have a legally binding effect on later activities.) All planning work conducted by DFG in designing the MPA proposals for adoption by the Fish and Game commission falls within this exemption.

### **Implementation**

Section 15306 provides a categorical exemption for basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. These may be strictly for information gathering purposes, or as part of a study leading to an action which a public agency has not yet approved, adopted, or funded. All MPA monitoring and data collection and analysis fall within this exemption, since they will not result in a major disturbance to any environmental resource, and since this work is being conducted in service of an adaptive management strategy that will be considered by the Fish and Game Commission in the future.

Section 15311 provides a categorical exemption for accessory structures. This includes construction or placement of minor structures accessory to (appurtenant to) existing commercial, industrial, or institutional facilities, including on-premise signs. Any sign construction and placement associated with informing the public about the MPA location and regulations would fall within this exemption since they will be minor alteration to existing commercial, industrial, or institutional facilities (signs may be placed within existing harbors and marinas or on public lands.)

Staff will file a CEQA Notice of Exemption upon approval by the council and authorization by the Council Secretary.