



# PARTNERSHIP FOR SUSTAINABLE OCEANS

Recreational Fishermen Protecting California's Ocean Resources

July 13, 2012

The Honorable Christine Kehoe, Chair  
Senate Committee on Appropriations  
Room 2206, State Capitol  
Sacramento, CA 95814

The Honorable Felipe Fuentes, Chair  
Assembly Committee on Appropriations  
Room 2114, State Capitol  
Sacramento, CA 95814

**SUBJECT:** AB 2402 (Huffman) (Department of Fish and Game and Fish and Game Commission)  
SB 1148 (Pavley) (Fish and Game Commission: Department of Fish and Game)  
**POSITION:** OPPOSE

Dear Chairs Kehoe and Fuentes:

The Partnership for Sustainable Oceans (PSO) represents recreational anglers and boaters in California and advocates for conservation of ocean resources while maintaining reasonable public access. In addition to contributing nearly \$5 billion in economic activity annually, California's 1.7 million anglers provide over \$80 million directly to fisheries management and conservation in the state each year through fishing license purchases and the federal excise tax on fishing equipment and motorboat fuel.

The PSO writes to express its strong opposition to SB 1148 (Pavley) and AB 2402 (Huffman). The Natural Resources Agency just completed an intense review of the Department of Fish and Game and the Fish and Game Commission as part of the Fish and Wildlife Strategic Vision process. Recreational fishing representatives regularly attended and testified at the meetings of the Stakeholder Advisory Group, the Blue Ribbon Citizens Commission and the Executive Committee and invested many hours and recommendations towards developing a comprehensive Strategic Vision. SB 1148 (Pavley) and AB 2402 were supposed to be bills to implement recommendations from this process. Instead, these bills misconstrue and misrepresent the outcome of the Fish and Wildlife Strategic Vision process. The bills introduce provisions adverse to recreational anglers that are plainly intended to curry political favor with special interests.

*Partnership for Sustainable Oceans Governing Group: American Sportfishing Association, Coastside Fishing Club, Southern California Marine Association, Sportfishing Association of California and United Anglers of Southern California*  
*Members: Contributing Members of the Avalon Tuna Club, International Game Fish Association, Kayak Fishing Association of California, National Marine Manufacturers Association, Nor-Cal Kayak Anglers and the Watermen's Alliance*

On April 9, 2012, the Strategic Vision Executive Committee issued its “Recommendations for Enhancing The State’s Fish and Wildlife Management Agencies,” available at <http://www.vision.ca.gov>. Appendix A of this document contains a section titled “Statutes and Regulations Recommendations.” There is virtually no resemblance between these recommendations and the provisions of SB 1148 and AB 2402. While there is no imperative that these bills advance the interests of the Fish and Wildlife Strategic Vision process, it is dishonest to use the Vision process as cover for the fundamental changes contained in these bills.

Please note that the PSO’s objections arise largely from the June amendments to these bills, which grossly changed their character. The bills now contain a number of new provisions, foreign to the Vision process, that profoundly change the State’s management of fish and wildlife resources. In particular, AB 2402 authorizes “nonprofit partnerships” with funding entities. While such a proposal may seem beneficial in these difficult economic times, not all stakeholders are similarly situated to promote their agendas. If a stakeholder must “pay to play,” so to speak, then the department’s agenda will be strongly directed by outside groups endowed by rich foundations or by wealthy corporations. Important traditional stakeholders, such as recreational anglers, will be shut out notwithstanding their direct contributions of \$80 million to fisheries management and conservation within the state.

These partnerships, which effectively embed environmental NGOs into the Department, become a greater threat to recreational anglers when combined with provisions in SB 1148:

- The Fish and Game Commission presently enacts regulations under Title 14, including those related to the Marine Life Protection Act (MLPA), Fish & Game Code §§ 2850 *et seq.* The Commission is the constitutional body, empowered since California’s formation, with the responsibility for fish and wildlife regulations. SB 1148 would take the Commission’s regulatory power over marine protected areas away from this independent public body and put it in the hands of a heretofore non-regulatory executive department. While the PSO has not been pleased with the Commission’s stewardship of the of the Marine Life Protection Act, the PSO has grave concerns about handing the process to a “nonprofit partnership” that has paid for the privilege of further limiting recreational access to public waters.
- Under SB 1148, outside persons and organizations, purported “trustees for fish and wildlife,” are authorized to bring a civil action for any alleged unlawful or negligent taking of any fish or wildlife. The State will cede any discretion in bringing suit to outside interests with the resources to initiate litigation, who will also seek to recover attorney’s fees under *Serrano* and Cal. Code. Civ. Proc. § 1021.5. Recreational anglers and supporting businesses reasonably fear becoming targets of overzealous environmental NGOs as self-styled trustees. If a lack of resources is a genuine issue in pursuing civil remedies against violators, then aspiring trustees ought to donate to a litigation fund, which the State may draw on in pursuing litigation, selected at the sole discretion of the State.

- The Fish and Game Code and Title 14 regulations prohibit or mandate a broad range of actions with regard to the State's fish and wildlife resources. The vast majority of offenses are classified as misdemeanors. Presently, none are classified as strict liability offenses, but SB 1148 would expressly change this. While such a change might be justified on a per regulation basis, an uncritical, blanket reclassification is poor lawmaking in the criminal sphere. Moreover, the line between lawful and criminal conduct is not always brightly drawn, such as anglers' experience with unmarked marine protected areas. Courts should have the discretion to take into account harmless, *bona fide* - if imperfect - efforts at compliance.
- Under present law, the Fish and Game Commission maintains lists of endangered and threatened species under the California Endangered Species Act. The Department sets standards and recommendations, but the Commission makes the final decision. Under AB 2402, this regulatory responsibility is removed from the Commission and is shifted to the Department. While the public Commission process and deliberation may be inconvenient for proponents of listing additional species, the process works. Taken together with this bill's authorization of outside interests to undertake Department responsibilities, we will find the same environmental NGOs proposing, analyzing and approving the listing of species. Those sponsoring this change would feel differently under another political party's stewardship, with industry ramming through the delisting of species.

SB 1148 and AB 2402 were strategically designed as companion bills to deny California's recreational anglers a voice in fisheries management and conservation. These bills remove an important part of the checks and balances that are integral to the policymaking process, and grant unaccountable department employees unrestricted powers currently reserved for the California Fish and Game Commission. The Commission is a body represented by members of the public appointed by the Governor and confirmed by the California State Senate. Through monthly meetings and extensive public review processes, the Commission operates in a transparent manner and its members are accountable to the public.

Should this power grab occur, recreational anglers and boaters will no longer have a public forum at which to petition their government on controversial issues such as Marine Protected Areas, fish stocking regulations, endangered species and other issues that have a profound impact on sportfishing. These two bills combined make significant changes to the mission and scope of the DFG, and reduces the transparency and openness of the Department.

On behalf of the 1.7 million recreational anglers in California, the PSO urges your NO vote on SB 1148 and AB 2402.

Thank you for considering our views.

Sincerely,

Ken Franke, President  
Sportfishing Association of California

John Riordan, Treasurer  
United Anglers of Southern California

Mike Leonard, Ocean Resource Policy  
Director  
American Sportfishing Association

Dan Wolford, Science Director  
Coastside Fishing Club

Terry Maas,  
Watermen's Alliance

cc: Members, Senate and Assembly Committees on Appropriations  
The Honorable Fran Pavley  
The Honorable Jared Huffman