September 22, 2010

MLPA SCSR DEIR Department of Fish and Game
South Coast MLPA Office
4665 Lampson, Suite C
Los Alamitos, CA 92679
Attn: Mr. Tom Napoli, Staff Environmental Scientist

Re: Draft Environmental Impact Report
MLPA South Coast Study Region
Comments on the DEIR

Dear Mr. Napoli:

The Watermen's Alliance (WA) representing the interests of the Los Angeles Fathomiers, the Long Beach Neptunes, the San Diego Freedivers, the Orange County Spearos, and the Santa Barbara Freedivers offers the following comments regarding the Draft Environmental Impact Report ("DEIR") on the Integrated Preferred Alternative ("IPA") and other alternatives for Marine Protected Areas ("MPAs") under the Marine Life Protection Act ("MLPA") within the South Coast Study Region.

Consensus Statement

The CEQA process is required to give a reasonable ruling on the allowed take restrictions placed inside of state marine reserves (SMR's) by the SAT. We specifically request a ruling on the activity of pelagic gamefish take by means of breath hold spearfishing. It is our opinion that this activity should be designated as having a very high level of protection rather than a high level of protection and should be an allowed activity inside of a "no take" SMR or SMCA.

Introduction

Consumptive breath hold spearfisherman have been deeply engaged in the implementation of the south coast marine life protection act (MLPA) throughout its history. We are writing today to submit formal background information as well as a series of questions that require attention during the scoping process and must be incorporated into the draft environmental impact report (DEIR) for the proposed South Coast marine protected area (MPA) network alternatives.

The purpose of CEQA is stated to "prevent the elimination of fish or wildlife species due to man's activities (and) ensure that fish and wildlife populations do not drop below self-perpetuating levels" (***public resources code 21001(c***) as well as to "inform governmental decision makers and the public about potential, significant environmental effects of proposed activities" ***CEQA Guidelines 15002(a).*** Our organizations have identified multiple problems

during the MLPA initiative that are inconsistent with CEQA which will be presented in this document. Central to these discrepancies is the unfair bias that the initiative operated under which disenfranchised ocean user groups that have been key stewards of the states underwater marine resource and act as its frontline guardians.

Background

Underwater hunters are a unique group in that we develop an intimate relationship with the majesty and beauty of raw marine nature. As a result, many underwater hunters have noticed the dramatic changes in the local marine ecosystem for well over seven decades. In the past, underwater hunters have been activity involved in research and legislation, which resulted in the protection of Garibaldi (mid 1950's) and the giant Black Sea Bass (early 1980's) as well as size and limit changes of other popular catch species. Underwater hunters have a long history of assisting law enforcement (DFG) by reporting suspected violations, such as illegal commercial and sport fishing (gillnetting, purse seine, Lobster and fish trapping, over limit, out of season etc.). The underwater hunter is perhaps the most selective and environmentally friendly harvester of all user groups. Underwater hunters have the ability to not only select the species but the size of the target catch, which is unique to this method of take. These facts make us perhaps the most environmentally friendly and responsible of all user groups of our local marine habitat.

Modern breath hold spearfishing (also known as freediving) is a unique marine fishing activity that has become increasingly popular in the United States. To date there are over 10,000 active participants and over 150 clubs nationwide. The origins of the sport have its roots here in Southern California where many of the modern breakthroughs in equipment and techniques were developed. There are many third and fourth generation families that live and practice this most highly selective extractive technique within the Southern California bight. Within the spearfishing community of Southern California exists an intricate web of communities and clubs that promote stewardship, coastal responsibility and DGF enforcement. Among these communities are: The Los Angeles Fathomiers. Founded in 1952, it is the second oldest active spearfishing club in the United States with 85 members. The LA Fathomiers have a very long history of coastal stewardship in Palos Verdes and Malibu and have been instrumental in developing and maintaining safe coastal access trails, the club has conservation officer which is an elected board position. The conservation officer attends public state ecology/fish and game meetings and maintains continuity with these departments and club members in matters pertaining to the sport of freediving and marine conservation. The San Diego Freedivers (SDF) club founded in 1994 has supported the interests of spear fishing enthusiasts. Providing a welcoming and educational atmosphere, meetings are held monthly with professional presentations by members, associates and community leaders. Topics include the continuity and preservation of our spear fishing history, fishery and resources stewardship, and strong promotion of the SDF conservation ethic. Shore based issues are also addressed by the SDF with coastal clean-ups, support of access to public beaches, and free opportunities for the public to join ocean based activities such as safe swimming and snorkeling programs. Giving back to the general community, as well as, the spear fishing community is paramount in the San Diego Freedivers ethos. With a history of some 360 members, they have a significant impact on the

education of freedivers, SCUBA divers, swimmers, and people seeking to enjoy a day at the beach. Fundraisers and sponsorship by SDF includes diverse groups such as; Hubbs-Sea World, Waterman's Alliance, Ocean Aquatic for youth, and close associations with the many diving clubs located in California. This fellowship enables the SDF to have contacts across a broad base of constituency, with like minded supporters of a clean, safe and sustainable environment. The Santa Barbara Freedivers was founded 2008 by Iaon Pohlit in an effort to unify, and educate spearfishermen on ocean stewardship and safe diving practices. Now the Santa Barbara Freedivers have over 50 members and play an active role in organizing local coastal clean ups, and community events. Members work with Santa Barbara Sea at the White Sea Bass grow out facility in Santa Barbara helping maintain and care for fish stock that will be released into the wild. The Santa Barbara Freedivers also devotes itself to the education of sustainable fishing practices and preserving the heritage of Freediving and spearfishing. The Orange County Spearos (OC Spearos) was just founded in April 2010 and already has 40 active members and continues to grow. The OC Spearos mission is to educate the public on the ecologically friendly sport of spear fishing. They are committed to preserving the marine environment through public outreach and club events. In its short history, the OC Spearos have already successfully completed a beach and underwater reef cleanup – removing bags full of trash which contained knives, numerous plastic bottles, and even syringes.

The Watermen's Alliance was formed to unite all of the organized spearfishing clubs of California. Board members include the presidents of the foremost spearfishing clubs mentioned. The mission of the Watermen's Alliance is to provide stewardship of the ocean's resources. As freedivers are among the ocean's foremost protectors and conservationists, the Watermen's Alliance acts at all levels to protect divers' access to ocean resources and continue to promote the conservation ethics among all ocean users.

Designation of Pelagic Game fish and the MLPA

During the south coast MLPA initiative the Science Advisory Team (SAT) included certain finfish species Yellowtail, White Seabass, and members of the tuna family (bonito, yellow fin and blue fin tuna) which will be referred in this document as pelagic game fish (PG) . (Pelagic finfish are defined in subsection 632(a)(3) as tunas (family Scombridae), and yellowtail (Seriola lalandi)), under the protection of no take within a State Marine Reserve (SMR).

The South Coast SAT also ruled that PG are finfish species that are unlikely to benefit whatsoever from marine protection under the MLPA . Pelagic gamefish (PG) are a resource unique to the south coast MLPA bioregion. PG have a wide foraging range and are only found transiently and with great inconsistency within any specific coastal reach. It is also quite impossible to study the relative biomass or change in biomass of PG inside an MPA because these animals are rarely seen on conventional SCUBA equipment. Based on the fact that PG will not benefit from MPA protection and it is impossible to monitor their numbers inside an MPA, the only rational that prevents extractive activity under the stated purpose of CEQA is

thus to prevent the remote possibility of accidental take (by-catch) of a species likely to benefit from SMR protection.

Pelagic Game fish, the breath hold freediver, and the MLPA

The technique of PG extraction by means of breath hold spearfishing is associated with a zero percentage of by catch as these finfish species are uniquely set apart in their size, coloration and location in the underwater environment. The spearfishing community that actively peruses PG makes up a very small percentage of the total spearfishing user group because of the very high fishing effort to take ratio. Although it is the aspiration of every entry level spearfisherman to land a PG, the attainment of this goal takes persistent dedication, a financial investment in proper equipment and mentorship that often comes from dive club affiliation. Along the Southern California bight there are a limited number of locations that allow the spearfisherman the opportunity to take a PG.

Freedivers in pursuit of PG access the marine environment in ways that are different from other diving related activities. Coastal access is a crucial part of the questions that the MLPA brings up. Many locations in southern California have terrain that is difficult to access. There are very few areas along the coast that can offer a shore based diver the opportunity to spearfish a pelagic game fish such as yellow tail. Many of these locations (Pt Dume, Pt Vicente, and La Jolla) will become SMR's. This disenfranchises a very small user group which has absolutely no impact on the fishery, the resource, or the success of an MPA. Therefore this needs to be addressed under environmental justice and loss of cultural resource. A major DFG feasibility issue has to do with transit through an SMR with a PG to exit the beach. Many coastal divers cover large areas of the ocean and swim out into swift currents. As the population in southern California increases the number of boaters does as well. Every year there are fatal accidents related to negligent boating techniques. Many boaters do not adhere by safe practice of staying greater than 100 yards from a dive flag and many boaters negligently motor directly through kelp beds at high speeds completely oblivious to the freediver. It is now feared that overcrowding of the coastal resource by SMR closures will lead to greater boat vs diver accidents.

Species Likely to Benefit under the MLPA

The California Marine Life Protection Act Master Plan for Marine Protected Areas (DFG 2008) includes a broad list of species likely to benefit from protection within MPAs. A list of species likely to benefit for the MLPA South Coast Study Region (Point Conception in Santa Barbara County to the California/Mexico border in San Diego County) has been compiled and approved by the SAT. and was submitted by the initiative http://www.dfg.ca.gov/mlpa/pdfs/binders_sc/b2g.pdf PG with the exception of white seabass do not even appear on this list. CEQA must take into consideration the potential for indirect physical environmental effects that may result from economic or social effects.

a. In select areas of Southern California, breath hold spear fisherman are among the few that access the rugged coastal terrain and as such are among the few coastal stewards who care for the near shore environment. The individuals that are represented by the Watermen's Alliance and freediving clubs teach responsible

ethics and stewardship to the membership. Shore based freedivers pick up coastal trash, haul out underwater marine debris including ghost traps which restores the natural habitat and benefits the environment.

b. Spearfisherman along the coast actively patrol the areas they dive and offer a service to the state by helping to enforce DFG rules.
c. Safety concerns- with growing number of people in Southern California that are fishing divers in the water will become much more likely to get unintentionally injured in boat vs diver accident these accidents always lead to severe injury and many times are fatal this qualifies as an adverse environmental and social outcome under CEQA
d. Divers access fishing from a limited number of coastal locations many access points will be within the bounds of an SMR
e. DFG feasibility and enforcement- divers swimming through an SMR to access a safe exit route on shore create confusion to F&G when carrying pelagic game fish lawfully taken outside the SMR boundary

Questions that require specific attention during CEQA

Methods Used to Evaluate Marine Protected Area Proposals in the MLPA South Coast Study Region states, “Pelagic finfish are highly mobile species that are unlikely to benefit directly from MPAs constrained within state waters, thus the abundance of these species is unlikely to be

altered in an area that allows take relative to an SMR.”

While the SAT is correct in stating that, “Fishing for pelagic finfish with spear gear requires visual contact with the target, thus the incidental catch in this fishery is likely to be minimal,”

spearfishing is afforded the same level of protection as pelagic seine netting according to the SAT analysis it has been pointed out that there is no by catch associated with spearfishing PG and there is a minimal but significant amount of by catch associated with any form of seine. Please explain how these two activities can be afforded the same level of protection and evaluate the environmental impact differences between the different levels of protection?

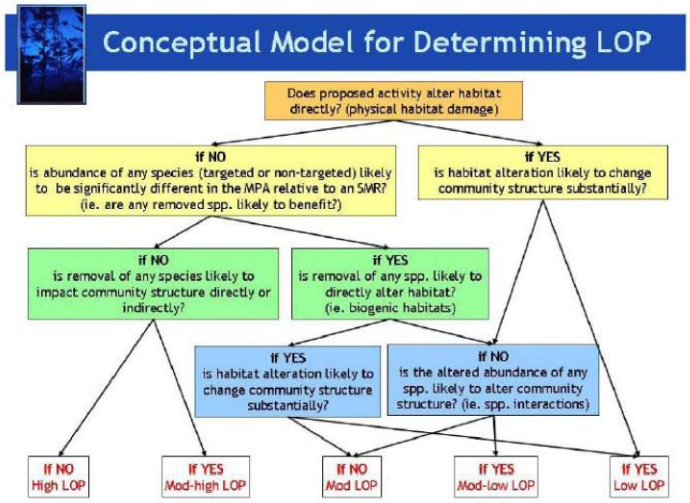
Level of Protection

http://www.dfg.ca.gov/mlpa/pdfs/binders_sc/b1h.pdf

The SAT assigns an LOP to a particular MPA based on the allowed uses that are proposed within that MPA. In order to do this, the SAT must first consider each of the proposed allowed uses within that MPA individually and then determine an appropriate LOP. The SAT then identifies the proposed allowed use that has the lowest LOP and assigns that LOP to the entire MPA.

The SAT uses a rigorous methodology to determine the appropriate LOP for any given activity. In essence, the SAT gathers readily available information regarding potential direct and indirect impacts of an activity to marine ecosystems. Direct impacts might include impacts of a particular method of fishing to marine habitats (for example, removal of kelp habitat) while indirect impacts might include alterations in community structure as a result of removal of a species (for example, removal of a high level predator). Using this information, the SAT uses a set of predefined questions to determine the appropriate LOP (Figure 2).

Figure 2: Conceptual Model for Determining LOPs



As pointed out during the process the algorithm for assigning levels of protection is flawed by not considering an activity to have a very high level of protection. For instance the activity of setting and removing a boat anchor was not assessed when this activity would most likely be designated as being a moderate level of protection activity and thus would not be allowed within an SMR.

This question was posed to the SAT and appears in the documents but was not answered. Please address the issue of anchoring in an SMR and explain how the discrepancy between consumptive and non-consumptive activities will be addressed in the draft EIR.

Recreational SCUBA Diving influence on the environment

Recently the activity of feeding fish inside an SMR has been restricted due to the change in fish behavior this activity elicits. Skilled breath hold spearfisherman have witnessed firsthand how SCUBA diving alters fish behavior. SCUBA equipment produces a significant amount of unnatural underwater noise pollution. Sound travels four times faster and forty times further underwater than in the atmosphere. PG, large calico bass and sheephead behavior is adversely affected by this activity. These fish will leave an area once SCUBA divers enter the water! White seabass are exquisitely sensitive to under water noise and vibration due to the complex array of vibration sensors along their lateral line. During the breeding season this activity (SCUBA) inhibits fish aggregation and rutting behavior which ultimately interferes with successful spawning in the wild. These concerns were raised during the MLPA initiative but were left unanswered and requires attention in the draft EIR
http://www.dfg.ca.gov/mlpa/pdfs/binders_sc/b2g.pdf

Please evaluate

The impacts that occur to underwater habitat from non-consumptive SCUBA diving activities and associated actions including:

Anchoring

Underwater noise production and its influence on each and every individual species likely to benefit from placement of an MPA.

Underwater noise and its influence on species not likely to benefit from MPA placement but whose behavior is otherwise significantly affected to the point of reduced spawning activity (specifically the PG white seabass).

What level of protection would be assigned to MPAs in which SCUBA diving takes place?

Pelagic Finfish Direct impacts

Take of pelagic finfish by hook and line is unlikely to alter habitat directly as gear rarely touches the seafloor. Pelagic Finfish are highly mobile species that are unlikely to benefit directly from MPAs constrained within state waters, thus the abundance of these species is unlikely to be altered in an area that allows take relative to a state marine reserve (SMR)

Fishing for pelagic finfish with spear gear requires visual contact with the target, thus the incidental catch in this fishery is likely to be minimal.

http://www.dfg.ca.gov/mlpa/pdfs/binders_sc/b2b.pdf

Please explain these discrepancies in the draft EIR and consider correcting the scheme for level of protection to include a very high level of protection in the analysis which would qualify certain activities within an SMR

Direct Environmental Impacts to Non SMR Ecosystems

Prior research in the Central California region clearly indicates the tendency of commercial and recreational fishermen to adapt to closure of historic grounds by fishing in close proximity to the margins of the new reserves and/or in other suitable ocean area “hot spots” This has led to highly concentrated fishing activity in certain areas and, in some cases, crowding and conflict (Impact Assessment 2010). Although the biological effects of MPA-induced displacement and re-concentration of fishing effort are generally not well understood or well-communicated in the MPA literature, it is obvious that displaced and re-concentrated fishing effort bear implications for the status of the marine ecosystems of which the reserves and adjacent ocean areas are component parts. In actuality, assessment of the interface between physical and human effects

of a government action such as those occurring via the MLPA process is an important element of a sufficient environmental review process. This is elucidated in the 2009 Amendments to the California Environmental Quality Act (CEQA) Guidelines,2 which state that:

> Where a physical change [in this case, a putative shift in fishing pressure on marine ecosystems along the North Coast] is caused by economic or social effects of a project [in this case, the project is establishment of new reserves under the MLPA and the social effects involve forced displacement of fishing activity], the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project. Alternatively, economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment. If the physical change causes adverse economic or social effects on people, those adverse effects may be used as a factor in determining whether the physical change is significant. For example, if a project would cause overcrowding of a public facility and the overcrowding causes an adverse effect on people, the overcrowding would be regarded as a significant effect [a reasonable analogy being MPA-induced displacement of fishing effort and resultant crowding along the margins of a reserve or in adjacent areas with favorable habitat].

However, it must be noted that the CEQA- related Environmental Impact Review (EIR) process undertaken in association with the MLPA Initiative has thus far incorporated only very limited social or economic assessment of the new MPAs prior to their designation and implementation. Such assessment has been limited to modeled ex-vessel value losses potentially resulting from closed fishing grounds. It is significant in the context of CEQA and in the lives of the region's fishery participants that such models have not sufficiently addressed:

(a) The economic costs or environmental implications of displacement to adjacent or other unregulated areas within the region's larger marine ecosystems;

(b) The social or economic challenges or environmental implications of increased crowding, competition, or conflict resulting from MPA-induced re-concentration of fishing effort; or

(c) The economic or social costs of lost or displaced fishing opportunities as these may affect fishery support sectors and coastal communities, particularly in the context of ongoing environmental, regulatory, and other challenges in the region's marine fisheries, including the current regional and national economic recession.

As directed by SB97, the California Natural Resources Agency adopted Amendments to CEQA Guidelines on December 30, 2009. On February 16, 2010, the Amendments were approved by the Office of Administrative Law and filed with the Secretary of State to be included in the California Code of Regulations. The Amendments became effective on March 18, 2010.

In the context of the above statements please address the following issues that pertain specifically to breath hold spearfishing in pursuit of PG

Given that the overcrowding effect will lead to increased activities (such as anchoring and chemical discharge from boats) that will directly damage the marine environment in these areas outside of MPA's please evaluate the environmental impact allowing take of PG by breath hold spearfishing within an SMR will reduce the ecosystem destruction in non MPA areas by reducing the overcrowding pressure on this area while having no significant impact on the ecosystem inside the SMR.

The overcrowding effect significantly endangers the life of the breath hold diver and thus the economic viability of an individual to the state. Allowing PG take by breath hold spearfishing inside an SMR will improve public safety while having no effect on the ecosystem within the SMR. This addresses the CEQA statement "economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment"

Loss of Gathering data on White Seabass

Hubbs- SeaWorld Research Institute has been breeding, releasing and collecting WSB data since 1986. The primary way they generate movement and growth data is via the involvement, cooperation and stewardship of anglers and spearfishermen. If an MLPA closes a traditional hunting area by establishment of a no take SMR, the MLPA effectively terminates the data run for that area. This effectively terminates years of research. Hubbs has a necessary relationship with those whom pursue WSB and a direct need to ensure access for anglers and divers alike. (From Hubs)

http://www.hswri.org/media/White_Seabass_Handout_2b.pdf

> *Some of the information obtained from tagged individuals includes their movement, diet, growth, and most importantly, survival rate. To date, we have received limited information, especially from legal-sized (≥28") individuals. This is where we need your help – we need white seabass heads!*

Figure 2. demonstrates the mobility of WSB. Data which would not exist without the direct participation of anglers and spear fishermen.

Facts from the DFG website:
There are indications that the white seabass population off California is recovering from low levels seen in the 1970s, 1980s, and most of the 1990s. Recent landings by sport and commercial fishermen have increased substantially and are approaching levels seen in the late 1940s and early 1950s; total landings for 2000 and 2001 each approached 1,000,000 pounds. In addition, recruitment of white seabass has increased significantly in the Southern California Bight in recent years. Young fish

surveys conducted in southern California, as part of the Ocean Resources Enhancement and Hatchery Program (OREHP), showed a dramatic increase in the number of fish taken in research gillnet sets. During research work in 1997, over 600 juvenile fish were captured; in 1998 approximately 700 fish were taken, and in 1999 slightly over 1,300 juveniles were captured (Leet et al. 2001). The final OREHP sampling report for 2000-2001 showed 1,845 juvenile fish were captured during calendar year 2000, continuing the dramatic increase in juvenile white seabass. ***Anecdotal evidence from commercial and sport fishers also confirms this dramatic increase in juvenile white seabass.***

Nothing is known about the home range of white seabass. Information obtained from OREHP tagged and released juvenile fish shows that the fish are capable of moving at least 70 miles along the coast in a year. Releases of fish at Catalina Island and subsequent recoveries along the coast show they will move between the islands and the coast. The recent recovery at Catalina Island of a wild fish tagged along the coast shows movement is also possible offshore. Based on tag recoveries, it is apparent white seabass move considerable distances and this is probably the norm.

The effort that Spearfishermen provide is partially influenced by the ability to access areas where we can view WSB in the wild. Hunting at Naples, Dume, PV and all Southern California kelp beds is critical to our “motivation” and to Hubbs SeaWorld, as it maps the effectiveness of this restoration effort.

1. Please evaluate the adverse environmental impact and how our stewardship efforts towards the monitoring and management of the WSB resource will be remediated?

2. Please evaluate/define/quantify the adverse environmental impact that the losses of this activity against the possible environmental gain that an SMR obtains from the restriction of breath hold spearfishing PG?

3. Please evaluate the adverse environmental impact of the loss of WSB collection data within an SMR by the highly selective means of breath hold spearfishing which is in direct violation of Goal 3 (to improve recreational, educational and study opportunities provided by marine ecosystems that are subject to minimal human disturbance, and to manage these uses in a manner consistent with protecting biodiversity)

Statement to how PG influence the MLMA and the MLPA

The Marine Life Management Act (MLMA) links the maintenance, restoration, and enhancement of marine habitat to the primary fishery management goal of sustainability. In that respect, the Legislature also emphasizes that even fishery management decisions—which include the prevention of overfishing, the rebuilding of depressed stocks, the facilitation of conservation and long-term protection, and the restoration of marine fishery habitats—must not sacrifice long-term goals for short-term benefits. (Sections 7055(a), 7055(b), 7056(a), 7056(i)).

Please explain how the above statement pertains to Pelagic gamefish? Specifically how can the technique of PG extraction by breath hold spearfishing within an SMR in anyway interfere with sections 7055-7056

Monitoring PG inside of an SMR

However, the MLPA process is expressly based "on sound scientific guidelines" and "the best readily available science." (Sections 2853(b)(5), 2855(a)). The MLPA use of best readily available science is an important qualification that emphasizes timeliness over certainty or perfection The MLPA emphasis of timeliness over certainty or perfection of information is further underscored by the concept of adaptive management, which recognizes that this process proceeds in the face of "scientific uncertainty" and prospectively contemplates that "monitoring and evaluation shall be emphasized so that the interaction of different elements within marine systems may be better understood." (Section 2852.) The objective of adaptive management under the MLPA is not to reduce uncertainty through increased scientific rigor, but rather to produce practical information that guides management decisions.

> Please explain how the above statement pertains to PG? Specifically how PG within an SMR can be effectively monitored and/or evaluated?

Mandated water quality monitoring activities

Monitoring includes sampling of water, sediments, and marine organisms using a variety of methods. Since monitoring and research is permissible in all MPA

designations, the proposed regulation adds that a general provision to Section 632(a), Title 14, CCR, to clarify that this activity is authorized in all MPAs pursuant to a scientific collecting permit Please Identify the approximate number of organisms which will be extracted per species per year by these permitted activities within each MPA?

Evaluate the all potential adverse environmental impacts to the resource that these permitted activities will forcibly cause within the reserve and how they may influence the the interconnectivity of the MPA network as a whole?

The state of California is legally bound to protect all living biological resources inside an SMR. Extraction by means of trawl net is considered an activity with the lowest level of protection.

Please clarify how the DFG's designation (color purple) of these MPA's as no take SMCA is a valid nomenclature?

As a background the LA county sanitation district conducted 64 trawls per year collecting over 100 species of invertebrates amounting to over 74,000 individuals in 2007 (JWPCP pg 113) 86 different species of fish for a total of 19,979 fish taken in 2006 and 22,312 in 2007 no pelagic gamefish were collected in these trawls.

Research Agreements in Existing Regulation

Specified scientific institutions to manage and conduct research education, and scientific collecting activities for their faculty, students, and affiliates. Existing MPAs with these regulatory allowances are the Catalina Island Marine Institute SMR (renamed

Blue Caverns SMCA in the proposed regulation), Dana Point SMR, and San Diego-Scripps SMCA

During the initiative the SAT was formally asked "How much scientific collection happens within the study region and what are the effects on marine ecosystems?

> Staff Response: Information on scientific collection will be available in the regional profile. However, California Department of Fish and Game data on scientific collecting activity is available at the statewide level only, and information on the permits issued specifically for the study region is not available. http://www.dfg.ca.gov/mlpa/pdfs/binders_sc/b2hi.pdf

Please

Identify the approximate number of organisms which will be extracted per species per year by these permitted activities.

Evaluate the all potential adverse environmental impacts to the resource that these permitted activities will forcibly cause within the reserve and how they may influence the the interconnectivity of the MPA network as a whole?

The state of California is legally bound to protect all living biological resources inside an SMR. Extraction by means of trawl net is considered an activity with the lowest level of protection. Please clarify how the DFG's designation (color purple or green) of these MPA's as no take SMCA is a valid nomenclature?

External Peer review

The MLPA mandates that an external peer review process be established, and allows use of the process identified in Section 7062 of the Marine Life Management Act "to the extent practicable." (Section 2858.) Section 7062(a) allows for submission to peer review of documents "that include, but are not limited to [marine living resources management documents]." However, such submissions are discretionary.

Also, it is important to understand that the charge of the peer review entity is not to authenticate the data presented to them, but to evaluate the scientific methodology employed and the factual plausibility of the conclusions that can be drawn there from. More importantly, the peer review entity is not expected to approve, disapprove, or comment on the wisdom of those conclusions. This must be so, because reasonable people can in good faith arrive at different conclusions using the same data and methodology. In that regard, the Department undertook such a peer review during prior iterations of the CEQA EIR .

We formally request that such a review occur again to specifically address the question whether the extractive activity "breath hold spearfishing for PG" (white seabass, yellowtail and pelagic fin fish in the tuna family) should carry the designation as an activity with a very high level of

protection instead of a high level of protection and thus be an activity consistent with other allowable activities within an SMR

Sustainability and PG

http://www.dfg.ca.gov/mlpa/pdfs/impact_ncc/feir_chapter2a.pdf pg 6
The MLPA expressly states that MPAs and fisheries management are complementary. (Section 2851(d)). Similarly, the Marine Life Management Act declares that conservation and management programs "prevent overfishing, rebuild depressed stocks, ensure conservation, facilitate long term protection and, where feasible, restore marine fishery habitats." (Section 7055(b); see also Section 7056(b), (c)). Although MPAs and fisheries management are complementary, they are not equivalent. The purpose of habitat protection in the MLMA is to advance the "primary fishery management goal" of sustainability (Section 7056). Moreover, that which is being managed is a specific fishery—which may be based on geographical, scientific, Technical, recreational and economic characteristics (Section 94)—and so may only provide limited protection of a particular habitat.

Please evaluate the environmental impact of protecting a PG inside of an SMR which cannot benefit from the primary fishery goal of sustainability when so managed?

Valuation of a recreational activity and establishing baselines

Although the MLPA considers fishery habitat (Section 2851(c), (d)), it also encompasses broader, ecosystem-based objectives that are not limited to only fishery management. If only existing fishery conservation and management measures were considered in designing the MLPA networks, then arguably only some of the ecosystem goals and objectives might be met. Other goals and elements would be undervalued (e.g., improving "recreational, educational and study opportunities provided by marine ecosystems" and protecting "marine natural heritage...for their intrinsic value." (Section 2853(b)). The MLPA also states that one of the purposes of the marine reserve component is to generate baseline data that allows the quantification of the efficacy of fishery management practices outside the reserve (Section 2851(e), (f)). This would be difficult to implement if the MPA design itself must consider those very same existing conservation and management measures.

Given the fact that closing PG breath hold spearfishing inside of SMR's serves to undervalue the recreational opportunity of a specific user group that spends countless hours enjoying and interacting with the marine environment. Please describe how protecting PG from the activity of take by breath hold spearfishing would influence the establishment of a baseline data for quantization of the efficacy of fishery management practice. Given the transient unpredictable nature of these fish within the marine environment, how can one control for the standard error inherent in establishing a baseline when the data would be fatally flawed by the unpredictability of PG migration behavior?

Environmental Justice and loss of a Cultural Resource

In accordance with the requirements of the CEQA guidelines for determining impacts to archeological and historic resources (Title 14 CCR §15064.5). The DEIR will determine if the proposed project IPA or alternatives either directly or indirectly result in substantial adverse changes in the significance of archeological or historic resources. Environmental Justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies It will be achieved when everyone enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn, and work

"Environmental Injustice: An environmental injustice exists when members of disadvantaged, ethnic, minority or other groups suffer disproportionately at the local, regional (sub-national), or national levels from environmental risks or hazards, and/or denied access to environmental investments, benefits, and/or natural resources, and/or participation in decision making; and/or access to justice in environment-related matters."

As described in this document Breath hold spearfishing for PG in Southern California is a unique and the most highly selective form of recreational fishing. It is a practice that originated here in Southern California over 50 years ago. This activity has a rich cultural heritage entwined with the history of some of the oldest spearfishing clubs in the USA. The activity can be accomplished without the means of a boat. Direct coastal access to the raw marine environment is all that is required

Please examine the impact closing PG to breath hold spearfishing will have on

1. Alteration in the long term Southern California Spearfishing culture
2. How to remediate the loss of safe costal access to economically disadvantaged spear fisherman who do not have access to the ocean by other means.
3. Examine how loss of this recreational resource in specific areas identified in the ECO-Trust database as the most valued areas for PG take by spear is a disenfranchisement of a select user group and can be considered a environmental injustice and directly denies an ocean user group access to a valuable cultural resource?

Other Specific questions that the CEQA process must address in the Draft EIR when considering denial of pelagic game fish exclusion include:

1. Can the loss of PG from inside an SMR be measured against the loss of adequately patrolled and restored marine environment that results from coastal stewardship?
2. Can the loss of PG from inside an SMR be measured against the loss of financial revenues generated to local parks and communities as a result of closure?
3. Can the denial of a PG exclusion be measured against the loss of DFG field officer Cal-tips?

4. Can the denial of PG exclusion be measured against the potential for loss of life and limb?

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