September 22, 2010

California Fish and Game Commission
1416 Ninth Street
Box 944209
Sacramento, CA 94244-2090

RE: 15 day notice of amendments to south coast MLPA (Section 632, Title 14)

Dear commissioners

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 15 day notice of amendments to the South Coast MLPA (Section 632, Title 14) per the Administrative Procedure Act

The following Comments are Specifically in reference to: Revised regulatory language document http://www.fgc.ca.gov/regulations/new/2010/632sc15dayregs.pdf

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632(b) (9) Water Quality Monitoring. Sampling of water, sediment and marine life, for water quality monitoring or pollution research, or as required in a Monitoring and Reporting Program of a National Pollutant Discharge Elimination System (NPDES) Permit and Waste Discharge Requirements issued by the State or Regional Water Boards pursuant to the United States Clean Water Act and the California Water Code, is allowed within state marine reserves, state marine conservation areas, state marine parks, and state marine recreational management areas pursuant to a valid scientific collecting permit issued by the department.

There appears to be an inconsistency with regards to 632b (9) which as written will allow the lawful take of marine organisms within a state marine reserve under an NPDES permit. The document entitled Updated Informative Digest/Policy Statement Overview Specifically addresses this issue on pg 3 in the 4th paragraph http://www.fgc.ca.gov/regulations/new/2010/632sc15dayinfodigest.pdf

"In line with this precedent, the proposed regulation incorporates allowances for specific ongoing activities in 23MPAs (see Table 1). It should be noted, however, that in cases where a State Marine Reserve(SMR) is proposed over the area of activity, designation as a State Marine Conservation Area(SMCA) is more appropriate than an SMR due to the incidental take associated with those activities, which conflicts with an SMR designation. Ten of the 23 MPAs with identified activities were proposed as SMRs by stakeholders. Therefore, the designation is changed from SMR to SMCA that only allows take associated with those activities identified."

More consistent with the letter of the law, section 632(b) (9) should omit allowance for any take within any State Marine Reserve. As it is unlawful to take any living marine resource from a State Marine Reserve.

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632(b) (97) Point Vicente State Marine Conservation Area.

(A) This area is bounded by the mean high tide line and straight lines connecting the

following points in the order listed except where noted:

33° 44.80' N. lat. 118° 24.82' W. long.;
33° 44.80' N. lat. 118° 28.93' W. long.; thence southeastward along the three nautical mile offshore boundary to
33° 41.16' N. lat. 118° 23.80' W. long.; and
33° 44.19' N. lat. 118° 23.80' W. long.

(B) Take of all living marine resources is prohibited, except for take pursuant to activities

authorized under subsection 632(b)(97)(C).

(C) Remediation activities associated with the Palos Verdes Shelf Operable Unit of the Montrose Chemical Superfund Site are allowed inside the conservation area pursuant to the Interim Record of Decision issued by the United States Environmental Protection Agency and any subsequent Records of Decision

The Department and Commission no doubt has come to the conclusion that take of benthic and Demersal fish and invertebrates by trawl net within a SMCA is an activity that offers a very low level of protection to the ecosystem. As stated on pg 39 of the Updated Informative Digest/Policy Statement Overview

"With some exceptions, the SMCAs protect benthic fishes and invertebrates most likely to benefit from area protection."

Furthermore both the department and commission must be aware of the fact that:

1) The LA county sanitation district conducts 64 trawls per year on the Palos Verdes Shelf Collecting over 100 species of invertebrates amounting to over 74,000 individuals in 2007 (JWPCP pg 113) 86 different species of fish were collected for a total of: 19,979 fish taken in 2006 and 22,312 in 2007
2) The City of Rancho Palos Verdes has submitted comments to the south coast MLPA Draft nvironmental Impact Report in response to CEQA guidelines 8.3 LAND USE AND RECREATIONAL RESOURCES 8.3.3.2 Criteria for Determining Significance

   Appendix G of the State CEQA Guidelines state that the project would have a significant impact on land use if it:

1. Physically divides an established community

2. Conflicts with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect

3. Conflicts with any applicable habitat conservation plan or natural community conservation plan

The City of Rancho Palos Verdes Letter reads:

> ***"The City's Point Vicente Fishing Access is located within the proposed SMCA. This 10.5 acre park has a long history of recreational fishing which pre-dates the City's incorporation 37 years ago. The Urban Environment Element – Public Activity Areas section of the City's General Plan (adopted in 1975) identifies this use on page 96:***

Point Vicente Fishing Access lies on the ocean side of Palos Verdes Drive South, between Point Vicente Lighthouse and Marineland (note: now Terranea Resort). The fishing access is a fully developed 11 acre site which provides access to the shoreline for fishing and scuba diving purposes).

Further, the City's Coastal Specific Plan (adopted in 1978), which is also the City's certified Local Coastal Plan, states on pages S2-6 and S2-7, as part of the description of Subregion 2 where the subject park is located:

The only real access, within this subregion, to the shoreline is located at the fishing access. The trail down the bluffs (referred to by local users as "Cardiac Hill") services divers, fishermen, picnickers, beachcombers and sightseers. Due to the difficultly negotiating the rocky headland, which is typical of this area, this access point has only localized impact on the shoreline.

To further accommodate and enhance the public recreational opportunities at Point Vicente Fishing Access, the existing parking lot, restrooms, signage and furnishings were recently improved conjunction with the adjacent Terranea Resort, which opened in June 2009. The Palos Verdes Land Conservancy, which manages the City's 1,400 acre Palos Verdes Nature Preserve (which this property is a part), also recently completed improvements to the beach access trail and restoration of the coastal bluff scrub habitat.

Based on the historical use and recent improvements made to the park, the City of Rancho Palos Verdes respectfully requests that recreational shore-based hook and line fishing, as well as recreational spear fishing of Pelagic finfish, continue to be allowed from the Point Vicente Fishing Access for the continued benefit and enjoyment of the public."

3) The Santa Monica Baykeepers have been conducting kelp restoration within the boundaries of the Point Vicente SMCA since 2005. This activity will be prohibited by enactment of 632 (b) (97) as it is presently written.

. http://www.smbaykeeper.org/downloads/2009%20Kelp%20Project%20Annual%20Report%20S.pdf

"To date, the Kelp Project has restored over 3 acres off Long Point, Palos Verdes. At K-Cove, the new restoration area adjacent to Long Point, kelp has established in as little as 6 months in an area that was an extensive urchin barren in April 2009.

Kelp Project restoration work includes relocating urchins, primarily purple urchins (Strongylocentrotus purpuratus), and kelp seeding techniques. Urchin relocation involves hand and net collection of all species of urchins by SCUBA divers (Photo 1). Urchins are then floated to the surface with lift bags (Photo 2), hoisted onto the boat, counted, and dispersed over a large area to avoid damage to other local reefs. Once an area's urchin density is reduced to approximately 1 to 2 urchins per square meter the heavy grazing pressure is released and kelp can naturally recruit and develop. Urchin density is also reduced in areas surrounding each restoration site, creating a buffer to ensure sustainability of the restored kelp forest habitat. Kelp growth is also facilitated by seeding the restoration sites using sporophyll bags, bags collected from productive kelp forests containing reproductive kelp blades, or sporophylls. Sporophyll bags are floated one meter above the reef in order to disperse spores over the recently cleared reef.

Staff divers observed repeated instances where urchins encroached into the restoration site of closest proximity to the control site *(approximately 140 meters distance between the control and easternmost edge of the restoration area). It is likely that urchins moved from the control to the nearest restoration*

site, perhaps attracted by new kelp growth and decreased competition. Further, red urchin (Strongylocentrotus franciscanus) density was similar to reference levels in fall 2005 (Fig. 7). ***As of fall 2009, the restoration site's red urchin density has increased."***

In consideration that the Point Vicente SMCA will allow low level of protection extractive activities by the EPA and the LACSD, please consider adopting regulatory language which will allow shore based angling, spearfishing for pelagic finfish and white sea bass as well as continued kelp forest restoration and monitoring activities by the Santa Monica Baykeepers.

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632 (b) (102).Blue Cavern (Catalina Island) State Marine Conservation Area. (A) This area is bounded by the mean high tide line and straight lines connecting the

following points in the order listed:

33° 25.96' N. lat. 118° 27.00' W. long.;
33° 27.50' N. lat. 118° 27.00' W. long.;
33° 27.50' N. lat. 118° 29.30' W. long.; and
33° 26.64' N. lat. 118° 29.30' W. long.

(C) Except as pursuant to Federal law, emergency caused by hazardous weather, or as provided in this section, it is unlawful to anchor or moor a vessel in Blue Cavern State Marine Conservation Area.

(D) The director of the Blue Cavern State Marine Conservation Area, or any person that the director of the conservation area has authorized may anchor or moor a vessel or take, for scientific purposes, any fish or specimen of marine life under the conditions prescribed in a scientific collecting permit issued by the department.

Dear Commissioners

It has previously been the intention of the Catalina Marine Science Center to prohibit anchoring in the small stretch of coastline around the facility. Establishment of this small marine reserve with no anchoring was advantageous for multiple reasons including ; leaving underwater scientific experiments unharmed, reducing boat traffic inside the area and thus increasing public safety to swimmers and kayakers that accessed the reserve from little fisherman's cove beach at two harbors. Restricting anchoring along the newly expanded area would significantly restrict non-consumptive recreational activities for the following reasons:

1. Blue cavern point is significantly exposed to the weather and has swift currents. Navigating around the point on a kayak to access the area of the newly expanded SMCA creates a public safety hazard for the harbor master. The LA county lifeguard is often dispatched to this location in the summertime to rescue stranded kayakers who are unable to paddle back already.
2. Costal Access to the ocean is prohibited east of Blue Cavern point all the way to Empire Landing effectively closing the area from public enjoyment.
3. The area within the boundary of the Blue Cavern SMCA offers over ten of the best dive locations for wildlife viewing and recreational scuba diving on Catalina island. Including Bird rock , sea fan grotto, Crane point, and the west end rock quarry http://www.shellbackdon.com/divemap.pdf
4. The area just east of blue cavern point to yellowtail point is typically one of the most protected areas from bad weather conditions for recreational diving. Many times this area is the only windward shore west of long point.
5. The practice of tying off a kayak to a kelp stalk is dangerous in this location due to strong currents .

The Watermans alliance supports the notion of reef protection from anchoring however, not at the cost of loss of public access to recreational opportunity. It is our contention that in this newly expanded SMCA
The no anchoring codes apply only to the existing and enforced present boundaries of the science reserve

33° 26.65' N. lat. 118° 29.33' W. long.;
33° 26.83' N. lat. 118° 29.13' W. long.;
33° 26.96' N. lat. 118° 28.56' W. long.;
33° 26.92' N. lat. 118° 28.53' W. long.; and
33° 26.87' N. lat. 118° 28.62' W. long.

Until a time in which the conservancy or the state can establish a series of public mooring buoys at this site.

Thank you for your consideration

Volker Hoehne
Chairman
Watermens Alliance