

Memorandum

To: Mike Chrisman, Secretary for Resources

From: L. Ryan Broddrick, Director
Department of Fish and Game

Date: April 8, 2005

Subject: Review of Possible Amendments to the Channel Islands National Marine
Sanctuary Designation Document

The Department of Fish and Game (Department) appreciates the opportunity to review potential amendments to the terms of designation (Designation Document) for the National Oceanic and Atmospheric Administration's Channel Islands National Marine Sanctuary (Sanctuary). The Department understands that the proposed changes follow a joint state-federal process to consider marine protected areas (MPAs) within the Sanctuary. As you know, the Department was a partner with the Sanctuary in this process and is pleased that the Sanctuary is actively pursuing the federal waters portion of the recommendation coming from this process.

In the Sanctuary's letter they note the proposed action is intended to supplement the ecosystem-based protection provided by the already designated State of California MPAs within the Sanctuary. The letter also notes that the potential changes to the designation document are "...intended to be compatible with the joint state/federal recommendation provided to the California Fish and Game Commission in August 2001, the Department of Fish and Game's California Environmental Quality Act Final Document of October 2002 and the state's adoption of marine protected areas within the Sanctuary implemented in April 2003." The Department agrees that this is an appropriate context for any potential change to the Designation Document.

The proposed change, however, does not adequately limit the new authority of the Sanctuary to regulate fishing within MPAs to areas considered in the above process. The Department does not support broad Sanctuary authority for regulating fishing, as this role is already filled by the Department and the National Marine Fisheries Service with support of the Pacific Fishery Management Council.

At this time, the Department does not support a change in the designation document that allows for promulgation of fishing regulations under the National Marine Sanctuaries Act (Sanctuaries Act). The Department proposes that regulations under the Magnuson-Stevens Act along with any necessary regulations by the Fish and Game Commission or changes to the Fish and Game Code be considered prior to making any changes to the Designation Document.

In the event this approach is not feasible, the Department would consider specific language in the Designation Document that would explicitly limit the Sanctuary's authority to regulate fishing to only within the currently proposed federal MPAs established pursuant to the joint State-Federal process referenced above. If it is determined that Sanctuaries Act regulations are necessary, the Department proposes the following language be incorporated in Article 5, Relation to Other Regulatory Programs, of the designation document (changes highlighted in **bold**):

Section 1. Fishing. The regulation of fishing is not authorized under Article 4, except in portions of the Sanctuary designated as marine reserves, marine parks, or marine conservation areas established pursuant to the goals of the Sanctuaries Act and the joint state/federal recommendation provided to the California Fish and Game Commission in August 2001. However, fishing vessels may be regulated with respect to discharges in accordance with Article 4, Section 1, paragraph (b) and aircraft conducting kelp bed surveys below 1000 feet can be regulated in accordance with Article 4, Section 1, paragraph (e). All regulatory programs pertaining to fishing, including particularly regulations promulgated under the California Fish and Game Code and Fishery Management Plans promulgated under the Fishery and Conservation Act of 1976, 16 USC 1801 et seq., shall remain in effect. All permits, licenses and other authorizations issued pursuant thereto shall be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article 4. Fishing as used in this article and in Article 4 includes kelp harvesting.

You will note that while this change limits the regulation of fishing to within MPAs established pursuant to "the joint state/federal recommendation provided to the California Fish and Game Commission in August 2001" it does not prohibit adaptive management of these areas or the selection of another alternative that follows from the recommendation. This change helps describe the context and limits the authority to completing the joint process we have engaged in. It does not allow for future addition of MPAs without a subsequent change in the document.

The Sanctuary's letter additionally states that "...if marine reserve, marine park or marine conservation areas are designated, minor Sanctuary boundary modifications may be desirable." Though the letter refers to the draft options for potential MPAs as examples of this, it does not provide specific descriptions of how the boundaries might be modified. The Department understands the desirability of straight line MPA boundaries for enforcement purposes, but would like to see specific descriptions of the minor modifications proposed.

The Department appreciates this opportunity to comment on the proposed Designation Document changes as well as the Sanctuary's continued efforts to work collaboratively with the State of California. If the above recommendations can be included, the Department will be able to provide continued support of the Sanctuary's efforts to protect resources, ecosystems, and the environment. If you have questions regarding this matter please contact Mr. John Ugoretz, Nearshore Ecosystem Coordinator for the Department's Marine Region at (831) 649-2893, or by email at jugoretz@dfg.ca.gov.

cc: Sonke Mastrup, Deputy Director, Wildlife and Inland Fisheries Division
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