

Marine Life Protection Act moves forward

by Justin Nobel

A group of five known as the Blue Ribbon Task Force will meet on Tuesday and Wednesday at an Embassy Suites in San Rafael to select the proposal they think most appropriate for implementing a series of Marine Protected Areas (MPAs) along a slice of California coast stretching from Point Arena to Pigeon Point.

The group includes a man who owns marinas, a former San Diego mayor and a Stanford University Law Professor. They will choose from three proposals, composed by three-dozen stakeholders who have spent half a year hashing out just what patches of ocean they think should be protected during public meetings that have featured shouting, reconciliations and at least one deranged soliloquy during which a member of the public was escorted out by Fish and Game officials.

"This is probably the most public process I have ever been involved with," said Karen Garrison, Co-Director of the Natural Resources Defense Council's Ocean Program and a stakeholder. "Ever!"

Others have questioned the process and none more so than fisherman, many of whom have suffered a trying year. Collapsing fisheries is exactly what got fishermen behind the MLPA in the first place, said Zeke Grader, Executive Director of the Pacific Coast Federation of Fisherman's Associations, an organization that represents commercial fishing on the west coast. We have supported the MLPA since the beginning, said Grader. But he now questions the follow through of the process that his group helped set in motion.

"We're moving far faster than we have the information for."

MLPA, run

California became a state in 1850, and in 1870 the Board of Fish Commissioners was established, forerunner of the Department of Fish and Game.

"The challenge with regards to managing fish and game was a challenge of managing abundances," said Fred Keeley, a California State Assemblyman who represented Santa Cruz and Monterey Counties from 1996 to 2002 and co-authored the bill which led to the MLPA. "Management was limited to situations when there was some type of crisis," said Keeley. "Now move to the late 1900s, we've got 35 million people in California and 70 percent of them live within an hour of the coast. Species by species, fishery by fishery, there are rapid declines. The challenge is no longer how to manage abundance, it's how to manage scarcity."

In 1997 Deborah McArdle, a California Sea Grant marine biologist, pointed out the deteriorating state of the oceans in a report entitled "California Marine Protected Areas." McArdle highlighted declining fish stocks and increasing human threats

to marine ecosystems and noted MPAs as an appropriate policy response to handle these issues.

Marine sanctuaries and MPAs had already been in place along the California coast, some for more than 30 years, but these were established for different reasons and were not governed by a uniform legislation. "When you started looking at MPAs sometimes you couldn't even tell why they were put in place," said Susan Ashcraft, a supervisor for the North Central Coast project with the Department of Fish and Game. "For some it was probably just a local group that loved that beach and for others there were special regulations about all sorts of crazy things."

Keeley authored the Marine Life Management Act (MLMA) of 1998, which gave more authority to the state to actively manage fisheries and required California develop a fisheries management plan and address the seas by considering the entire ecosystem and not just specific fisheries.

"The MLMA said that for the first time in approximately 150 years we are going to express what we are managing towards," said Keeley. "In law now, we are managing towards sustainability." The MLMA had strong opposition and was signed into law by Governor Pete Wilson "on the last hour, on the last minute" of his term, according to Keeley. In 1999, with Governor Gray Davis in office, Keeley teamed with Assemblyman Kevin Shelley of San Francisco to write the Marine Life Protection Act, which was modeled after work done before in places like Australia and completed the thoughts set in motion by the MLMA.

One of the most important points of the act, said Shelley, the bill's lead author, was that it had the buy-in of the fishing community. "If it had only been viewed as an environmental protection measure it wouldn't have flown," Shelley added. Even as it was, it took some time to fly well. Getting something into law is phase one, Shelley explained, and "the hard part becomes phase two," actually carrying out the legislation. The MLPA was an ambitious plan, and twice the Department of Fish and Game failed to enact it, once because the public protested and once because the department ran out of money.

Equipped with knowledge that a full-disclosure public process was necessary and boosted by a grant from the Resource Legacy Foundation, in 2007 an MLPA was enacted for California's central coast, and that same year, work began on one for the north central coast. By this time Shelley and Keeley, whose third terms ended in 2002, were out of office, leaving others to carry forth their legislation.

"You design a race car and then someone goes out and races it," said Shelley, "but not the way you designed it."

MLPA redux

One issue that tested that design came

up several weeks ago at a meeting of the SAT in Pacifica, where the MLPA Science Advisory Team (SAT) presented an amended report on mariculture. Shellfish harvesters from Tomales Bay, but also as far away as Humboldt County, made the drive to express their concern that the MLPA was understating the positive effects of their industry, which they say improves water quality and boosts biodiversity.

SAT co-chair Mark Carr presented the group's response to a 14-page letter from the Pacific Coast Shellfish Growers Association which pointed out that the initial report failed to mention positive aspects of mariculture, used inappropriate sources and misrepresented some of the science regarding impacts of mariculture. In response, SAT member Steve Morgan and a graduate student reviewed more than 350 sources and decided that despite some positive effects, the conclusion of the SAT remains the same: "The weight of the evidence demonstrates that bivalve mariculture substantially alters the ecosystem."

During the public comment sessions that followed Carr's presentation, shellfish growers lined up to disagree.

"I consider myself a lifelong environmentalist and have been growing oysters for 25 years," said John Finger, who co-owns Hog Island Oyster Company, one of six shellfish operations in Tomales Bay. "Our activities as they have been practiced and as they ever will be are consistent with the process of the MLPA."

"I think if I were still a fisheries and aquaculture student at Humboldt State and I had submitted this [report] as an assignment," added Todd Van Herpe, a Humboldt County grower, "it would have been returned with a big X."

As the proposals stand, no Tomales growers will be directly affected and Humboldt is outside the area being considered in this leg of the project. Nonetheless the growers are worried that the low level of protection designated to their industry by the SAT and the accompanying report casts negative attention on shellfish harvesting. Advocates point out that to castigate growing oysters just because it modifies natural habitat represents a misanthropic bias inherent in the MLPA that doesn't accurately take into account that some human activities can benefit an ecosystem.

"We think philosophically there's a problem here," said Robin Downey, Executive Director of the Pacific Coast Shellfish Growers Association. "You could come up with any kind of scenarios of negative impacts. A piece of luggage could fall out of a plane, hit you on the head and kill you, that could happen, but you need to look at the statistical probabilities and figure out the chances of that happening and that's what they failed to do."

The MLPA is focusing on protecting the whole ecosystem and one of the main ways

to do that is to protect habitat, explained Melissa Miller-Henson, who is managing the north coast MLPA. "If you are engaging in an activity that has an adverse affect on natural habit then it's not consistent with the goals of the MLPA."

John Largier, a Bodega Marine Lab oceanographer and an SAT member, explained that the MLPA doesn't differentiate between significant habitat alteration and minor alteration. But to perform the studies that would enable you to do this would be extremely time consuming and costly, Largier said.

"Every narrow interest group has argued for a categorical exemption for their particular interest of what is a public trust resource," said Richard Charter, a stakeholder and member of the group Defenders of Wildlife.

Charter was picqued that groups like oyster mariculture, who in his opinion have gotten off "scott free" in the MLPA process, are trying to thin down the legislation.

"The ocean belongs to all of us," said Charter, "not just to people who fish, or who grow oysters or who dive for abalone, but also to the people who aren't even born."

MLPA is rich

Shellfish growers will likely attend the MLPA meetings as will salmon fishermen, abalone divers, tourist operators, and members of a litany of environmental groups. Interest groups can still propose changes at Tuesday's meeting, said Miller-Henson, and again when the proposal goes to the Fish and Game Commission, who have the final say, later this spring.

Keeley pointed out the fact that groups like shellfish operators can bring forth criticism, have it addressed and still show up at future meetings to disagree again if they so desire is proof that "the process is working."

There are issues unresolved by the MLPA, said Keeley, such as water quality degradation from terrestrial activities and salmon spawning failures, which some scientists speculate are linked to the complex dynamics of the California coastal upwelling.

"The problem with the marine environment is that many people are calling it a wilderness," said David Lloyd, who spent ten years as a senior manager with the Great Barrier Reef Marine Park Authority, which stretches 1,400 miles along the east coast of Australia and is considered the world's first comprehensive MLPA-like effort.

"But it's only a wilderness in terms of not having human structure," said Lloyd, who pointed out that human activities lead to increases in turbidity and acidification in the seas as well as input chemicals.

"Humans modify a lot," he said. "We just need to be honest about what the values are we are trying to protect."

For more information go to:
www.dfg.ca.gov/mlpa/meetings.asp#ncc