

DRAFT SUMMARY MINUTES
Ad Hoc Channel Islands Marine Reserves Committee

Pacific Fishery Management Council
The Benson Hotel
309 SW Broadway
Portland, OR 97205

October 5-6, 2004

Call to Order

Chairmen Don Hansen called the meeting to order. The draft agenda and meeting purpose were discussed. Dr. McIsaac provided some opening remarks. He reviewed the history of the Ad Hoc Channel Islands Marine Reserves Committee (CIMRC), notably the rationale for the (voting/advisory) structure of the committee. He discussed the previous review of the state-portion of the Channel Island National Marine Sanctuary (CINMS) action. He also discussed the Pacific Fishery Management Council (Council) request for the CIMRC to consider the appropriate structure for an ad hoc committee to develop policies and procedures for Council consideration of marine protected areas (MPA) and marine reserves.

The CIMRC approved the agenda.

Attendance

Ad Hoc CIMRC (voting)

Mr. Svein Fougner, National Marine Fisheries Service-Southwest Region

Mr. Don Hansen, Council Chair

Mr. Eric Larson, California Department of Fish and Game

Ms. Arlene Merems, Oregon Department of Fish and Wildlife

Ad Hoc CIMRC (advisors)

Ms. Eileen Cooney, NOAA General Counsel

Dr. Michael Dalton, SSC

Mr. Robert Fletcher, HMSAS

Ms. Kathy Fosmark, GAP

Mr. Duncan MacLean, SAS

Dr. Donald McIsaac, Council Executive Director

Ms. Heather Munro Mann, CPSAS

Mr. Michael Osmond, Habitat Committee

CINMS Staff

Mr. Sean Hastings
Mr. Chris Mobley, Sanctuary Manager

Other in Attendance

Mr. Greg Helms, The Ocean Conservancy
Mr. Steve Joner, Makah Tribe
Mr. Rod Moore, Westcoast Seafood Processors Association
Mr. Dan Waldeck, Council Staff
Ms. Tonya Wick, National Marine Fisheries Service-Southwest Region

Meeting Summary

Review of CINMS federal waters

Meeting Overview

Mr. Waldeck provided an overview of the purpose of the CIMRC meeting, meeting materials, presentations, CINMS, etc. He also spoke to the Council's request for the CIMRC to consider the structure for an ad hoc MPA policy and procedures committee.

He also discussed Council staff attendance at a recent meeting of the National MPA Federal Advisory Committee (FAC). It was suggested that the MPA FAC chair be invited to the April 2005 Chairmen's Meeting to brief the Regional Fishery Management Councils (RFMC) on the MPA FAC's initial work and preliminary recommendations.

In response to the meeting overview, CINMS staff emphasized that CINMS intends to move forward with developing a DEIS to analyze a range of proposed marine reserves and marine conservation area alternatives that extend the State of California marine reserves and conservation areas into deeper waters within the CINMS. CINMS is requesting Council input about alternatives and analyses at this initial stage of DEIS development.

Management Authorities

Ms. Cooney spoke to the Magnuson-Stevens Fishery Conservation and Management Act (M-S Act) and National Marine Sanctuary Act (NMSA), and other statutory requirements – National Environmental Policy Act, Administrative Procedures Act, etc. Any regulation must meet the standards and follow the procedures of the statute under which it is promulgated, and meet the standards and follow the procedures of the other applicable laws. The M-S Act and the NMSA each provide different authority and have different standards and procedures.

Under the M-S Act, RFMCs develop Fishery Management Plans (FMP) and recommend fishery management measures for FMP-managed fisheries. FMP and management measures must meet M-S Act standards (National Standards) and specific FMP standards, goals, and objectives. The Secretary of Commerce (Secretary), through National Marine Fisheries Service (NMFS), reviews and, if approved, implements regulations.

Under the NMSA, each sanctuary has a designation document that is part of a comprehensive Sanctuary Management Plan and establishes, among other things, the activities subject to regulation within the sanctuary. The NMSA applies to all resources within the sanctuary boundaries. For a sanctuary to manage fishing activity, the sanctuary designation document must provide the authority.

The current CINMS designation document does not provide authority to regulate fishing. If CINMS takes action to create marine reserves and marine conservation areas, and that action prohibits or limits fishing activities, the designation document would need to be amended. The amendment process requires consultation with other state and federal agencies (including the appropriate RFMC[s]) and Congress. CINMS staff indicated that the intent of such an amendment to the designation document could be to provide authority only to establish marine reserves and conservation areas in discrete areas within the sanctuary.

As mandated by the NMSA, the Pacific Council will be provided an opportunity to draft NMSA fishing regulations for CINMS. Per the NMSA, if the Council declines to draft regulations, or if the Secretary finds that the Council's regulations do not achieve the necessary results, CINMS could develop the regulations. The Secretary reviews the proposed regulations and, if approved, implements them. These regulations must meet NMSA standards and any specific sanctuary goals and objectives. In response to a question about what would occur if a Sanctuary and a RFMC disagreed on management measures or regulations, Mr. Fougner noted that, the Secretary has final decision making authority.

CINMS Presentation

Mr. Hastings reviewed the materials provided to the CIMRC, including the revised timeline, draft alternatives (including the Miller/Hoeflinger proposed alternative), regulatory scenarios for adjoining/abutting proposed federal marine protected areas with existing state marine protected areas, and information and analyses to be included in the DEIS. He emphasized that community buy-in, monitoring, enforcement, and outreach will be critical to the success/effectiveness of proposed action.

Mr. Hastings described the public process that had occurred to date and that community outreach efforts will continue as the DEIS is developed. He detailed the five-year process leading up to this point, including the California state waters action, notably the great amount of community involvement. Going forward, CINMS is awaiting comments from the CINMS Sanctuary Advisory Council, CINMS working groups, the Pacific Council, and general public. Once all of this input is obtained, CINMS will move forward with developing the DEIS.

The CIMRC requested information about the process envisioned for the Council to review the DEIS, including analysis of the proposed alternatives, Council consideration of a preferred

alternative, and development of regulatory language. Mr. Hastings stated that after the November Council meeting, CINMS will begin analysis of the proposed alternatives as part of developing the DEIS. The DEIS will contain the full range of alternatives, analyses, and draft regulatory language. As the DEIS is developed, regulatory language will be developed in cooperation with Council, especially language specific to fishing activities (which the Council has primary opportunity to craft under the NMSA). The CINMS/Pacific Council consultation and regulation development process will be documented in the DEIS.

In response, Dr. McIsaac emphasized that the Council would prefer to settle on a preferred alternative before drafting fishing-related regulations.

Mr. Mobley explained his understanding of the National Marine Sanctuary Program's perspective, which envisions consultation and development of proposed regulations before release of a DEIS. He suggested it might be possible to have draft regulatory language for each alternative prior to the Pacific Council considering a preferred alternative.

Dr. McIsaac explained that the Council, generally, reviews proposed alternatives and analysis of those alternatives prior to selecting a preferred alternative. For example, proposed alternatives for annual groundfish specifications are developed by the Council, analyses of the alternatives are performed, then the Council compares the alternatives and selects a preferred alternative to recommend to the Secretary. Proposed regulations are drafted after preferred alternative selection.

CINMS staff explained that current practice for the National Marine Sanctuary Program is for draft regulations to be developed concurrent to development of the DEIS, rather than after completion of DEIS analyses and selection of a preferred alternative. They explained this was the process used in other areas and seen as the precedent.

However, as pointed out by CIMRC members, the NMSA gives the RFMC lead authority in drafting fishing regulations. Therefore, the CIMRC recommended the current revised timeline developed by CINMS be changed to show the Pacific Council considering a preliminary DEIS, prior to the DEIS release to the public, to afford the Council an opportunity to select a preferred alternative and to prepare regulations for implementation.

Designation Document

The CIMRC also discussed the process for proposing changes to and amending the CINMS designation document. The Council will have the opportunity to comment on proposed changes to the designation document. The NMSA also defines a process for Congress to comment on proposed changes to a sanctuary designation document. It was reported that, congressional action is not required to change the document, but Congress is provided an opportunity to review and comment on proposed changes. CINMS staff indicated they would provide the Council with details about the process for changing the designation document.

The CIMRC also discussed the desire to see information about how federal and state management authorities could be used to meet the goals and objectives of the CINMS proposed

action. There was interest in evaluating if existing authorities could be used without necessitating changes to the sanctuary's designation document.

CINMS intends to initiate the process for amending the designation document in the near future. This will include initiating formal consultation with the Pacific Council. In requesting consultation, CINMS will describe the nature of intended changes and request Council input. CINMS described potential changes to the designation document. Any designation document changes would focus on specific areas, consistent with existing California state and the proposed federal marine reserves and marine conservation areas. A stated need for the proposed federal action (and designation document change) is to complete the network of marine reserves/conservation areas within all waters of CINMS, including all representative habitats.

Into the future, continued regulation of fishing within CINMS will require integrated management with the Pacific Council, including accounting for CINMS marine reserves in the Council management specification processes.

Current Draft Proposed Alternatives

CINMS staff reviewed the current draft alternatives, including status quo (no action). They also included information about an alternative proposed by Mr. Chris Miller and Mr. Chris Hoeflinger (Miller/Hoeflinger). The alternatives proposed by CINMS represent extensions of current state management areas into federal waters of CINMS.

Relative to status quo (no action), which would include all current regulatory regimes (state management areas and federal fishery management regulations), NMFS is working with CINMS to ensure that the full suite of current federal regulations is included in the DEIS. This would include both text and graphics describing current management (displaying areas and extent of management).

CINMS is comprised of approximately 1,251 nm² that includes both State of California and federal waters from mean high tide out 6 nm around the 5 northern Channel Islands. Current marine reserves and conservation areas in state waters comprise approximately 100 nm². CINMS proposed Alternative 1 would add 80 nm², for a total of 180 nm²; proposed Alternative 2 would add 140 nm², for a total of 240 nm²; and proposed Alternative 3 would add 170 nm², for a total of 270 nm².

The CIMRC discussed the concern that CINMS was proposing a very limited number of alternatives, which were all very similar. CINMS described why the alternatives were so limited. Essentially, many aspects of the current proposed action, including the draft alternatives, information base, and analytical approaches flow directly from the joint CINMS and California state process that resulted in a series of marine reserves and conservation areas within California state waters of CINMS. This latter process included consideration of marine protected areas in both state and federal waters of CINMS, and provides the foundation for the current proposed action, which essentially extends existing state water reserves into federal waters. Thus, the alternatives proposed by CINMS represent various extensions of the existing state management areas into federal waters of CINMS.

The CIMRC discussed information that should be included to describe current use patterns and potential changes from status quo. The information could also provide a basis for developing an additional alternative that relies on current state and federal management authorities to accomplish the goals and objectives for the proposed action without adding new management areas. Specific additional information and/or changes requested by the CIMRC:

- More complete description of current federal and state management regimes, which is needed for establishing the baseline and describing status quo.
- Document how the current CINMS proposed alternatives were developed, including description of process for developing and establishing state management areas (MLPA, MRWG, CEQA).
- Provide figures displaying existing fishing activities within CINMS, habitats, economic information about the positive and negative effects of the proposed alternatives.

CINMS staff agreed that changes in these sections were warranted and that they would be worked on as discussed.

CINMS staff described the perspective of the various CINMS advisory groups. The recreational and commercial sector workgroups do not support changes to the designation document and do not support new area closures. The groups also do not support the status quo, no action alternative. Mr. Miller and Mr. Hoeflinger have proposed several marine protected area proposals. CINMS provided the current version to the CIMRC for review. The conservation workgroup supports proposed Alternative 3, but would also like to add more deep water areas to the closed areas.

Regulatory Scenarios for Overlaying or Abutting State and Federal Areas

CINMS staff explained 3 potential regulatory scenarios that include overlaying the existing state marine reserve/conservation areas and extending into deeper waters of the Sanctuary, abutting State areas and extending out or federal water only areas (from 3 nm to 6 nm). The latter option would create gaps between existing state marine reserves and conservation areas and the complementary proposed federal management areas. Extension of CINMS authority into state water areas will require consultation with, and approval of, the State of California. CINMS noted that they are currently working with the State of California to find the optimal regulatory solution.

The CIMRC recommended that all three options for implementing the proposed alternatives in state waters (as described in the CINMS Staff Update provided to the CIMRC) be included in the DEIS.

CIMRC – Council Advisory Committee Reports

SSC

Dr. Dalton reviewed the SSC report. Among other things, he noted the SSC's observation that

the objectives of the proposed action for federal waters of CINMS differed from the state waters action. The state action sought to balance two overarching goals – fishery sustainability and ecosystem protection (biodiversity). Whereas, the proposed federal action pursues the single overarching goal of ecosystem protection.

CINMS staff emphasized that the change in focus was because the federal action is dictated by the NMSA (which focuses on ecosystem protection) rather than the MLPA (which sought to balance fishery and biodiversity benefits).

The SSC report notes that additional clarification is needed to distinguish between restoration and protection objectives in the DEIS, e.g., when to recommend marine reserves versus marine conservation areas. The SSC report also recommends an analytical approach for the DEIS that includes the following:

1. Define objectives and justify need for proposed action.
2. Setting criteria to evaluate progress toward objectives.
3. Propose alternatives for consideration and provide rationale for each.
4. Describe baseline.
5. Analyze effects of each alternative and examine how each performs according to selected criteria.

CINMS staff noted they found this approach useful, and would follow it in the DEIS.

The SSC noted that criteria for evaluating the alternatives were not included in the draft materials, and recommends these criteria be described explicitly in the DEIS. The SSC report also recommends updating economic and ecological baselines for CINMS through 2003 to reflect current conditions, including changes in fishery regulations such as the rockfish conservation areas and closures implemented by the state in CINMS. The SSC suggested that baseline information be prioritized in the following order:

1. Data and literature specific to CINMS (e.g. surveys).
2. Stock assessments.
3. Other literature relevant to CINMS.
4. Anecdotal information.

CINMS staff are using this hierarchy, and have found it useful for prioritizing sources of information in the DEIS.

The CIMRC discussed the need to include information in the analyses about effects on fisheries from the proposed actions. CINMS agreed to include this information to help inform Council decision making. The crux of the issue is that, while CINMS may focus on ecosystem protection, the Council's focus is fishery management. Thus, Council decisions about proposed actions at CINMS should be based on information about how fisheries could be affected by the proposed action.

Dr. Dalton briefly discussed the economic analysis planned for use by CINMS in the DEIS. The SSC noted that the analysis is based on that used for the CEQA documents for the state waters

CINMS action. In their report, the SSC expressed serious concerns about how some parts of the economic analysis were conducted, and the interpretation of some results. Two parts of the analysis generated the greatest level of concern: estimates of consumer surplus for recreational fishing in the CINMS, and estimates of non-consumptive and non-use values for marine reserves and conservation areas in the CINMS. Estimates of non-use values merit particular attention, as the outcome of the benefit-cost analysis rides on these. The SSC understands the potential importance of non-use values. However, the SSC also recognizes the methodological difficulties in estimating non-use values, and considers current estimates for CINMS to be extremely uncertain. In the SSC's judgement, current estimates of non-use values for CINMS do not inform the analysis of alternatives, and the SSC recommends not presenting quantitative estimates of non-use value in the DEIS.

The SSC generally agreed with wording in the main document that indicated the proposed action could produce some benefit or no change (economically) for non-consumptive recreational activities. However in other sections of the analytical package, analysts unequivocally claim that benefits would occur for non-consumptive recreation. While a substantial increase in non-consumptive benefits is possible, the SSC does not consider the current analysis to be conclusive on this point.

The SSC agrees with other advisory committee members in recommending that greater consideration be given to an adaptive management approach for ongoing evaluation and potential modification of reserve boundaries in CINMS.

Habitat Committee

Mr. Osmond presented the views of the Habitat Committee. He stated that the Habitat Committee was generally supportive of the actions, goals, and objectives proposed by CINMS. The Habitat Committee acknowledged their appreciation for the cooperative working relationship.

Coastal Pelagic Species Advisory Subpanel

Ms. Mann reviewed the CPSAS report. In general, the CPSAS believes current management authorities are sufficient and do not support the need for the proposed action.

Groundfish Advisory Subpanel.

Ms. Fosmark conveyed the strong concerns of the GAP. Like the CPSAS, they do not support the proposed action. The GAP also noted serious concerns with the information included and conclusions expressed in the preliminary working draft document. These concerns are detailed in the GAP Report.

Salmon Advisory Subpanel

Mr. MacLean stated that the SAS had concerns similar to the CPSAS and GAP. Notably, the SAS is concerned that the CINMS action could set precedent for future MPA and marine reserve actions.

Highly Migratory Species Advisory Subpanel

Mr. Fletcher noted that majority of the HMSAS echoed the concerns of the other advisory subpanels. Specifically, he voiced concern about the proposed closed areas on the south side of CINMS (i.e., “Footprint” and southside Santa Cruz Island areas) because of the impact on commercial harpoon HMS fisheries. He also noted concern about effects on tuna fisheries, which occasionally occur within CINMS. He asked why CINMS was not considering measures other than closed areas to accomplish their stated goals and objectives.

Enforcement Consultants

Dr. McIsaac relayed some comments from the EC based on their experience with the current state management areas with CINMS. In general, compliance has been good and enforcement has been effective, CDFG is the principal enforcement presence within CINMS. It was reported that the enforcement effort is consuming approximately 20% of CDFG enforcement resources. CINMS noted that they have also worked on public outreach to inform the public. As noted previously, enforcement and monitoring are critical elements. CINMS has been and intends to continue coordinating with CDFG and fishery representatives to provide for effective outreach, monitoring, and enforcement. Similarly, CDFG noted their intent to continue the current enforcement and monitoring program within CINMS.

CIMRC Deliberation and Recommendations

Dr. McIsaac provided some guidance to facilitate committee discussion. He noted that the CIMRC recommendations would be the basis for Council decision making at the November 2004 meeting. The CIMRC should consider if the current range of alternatives is adequate and, if not, what changes to recommend. He also noted the CIMRC could recommend information or analyses to be added to the DEIS. Dr. McIsaac provided a draft suite of recommendations for CIMRC consideration.

The CIMRC discussed the draft recommendations and, after some modification, adopted the following recommendations for Council consideration:

1. Recommend the current revised timeline developed by CINMS be changed to show the Pacific Council considering a preliminary Draft Environmental Impact Statement (DEIS), prior to the DEIS release to the public, to afford the Council an opportunity to select a preferred alternative and to prepare regulations for implementation.
2. Recommend CINMS address in the DEIS the recommendations of the Council advisory bodies about additional analyses and clarifications.
3. Request the Status Quo (No Action) alternative in the CINMS DEIS be updated to reflect fishing regulations (notably, groundfish fishery regulations) expected to be in place for 2005 and 2006.
4. Recommend the CINMS DEIS include clear language as to changes to the CINMS Designation Document associated with each proposed alternative.

5. Recommend the CINMS DEIS analyze the range of alternatives presented to the CIMRC (status quo, alternatives 1-3, and Miller/Hoeflinger alternative). In addition, recommend:
 - (a) Revising the numbering for alternatives 1-3, such that alternatives 1-3 become alternatives 1.a, 1.b, and 1.c and adding new alternatives 2.a, 2.b, and 2.c. Each alternative 2 variation would use the same areas as depicted for each alternative 1, but the areas would be managed as marine conservation areas rather than no-take marine reserves. The marine conservation areas would allow commercial and recreational fishing with surface tending gear used to catch pelagic or highly migratory species (using the federal definitions for pelagic and highly migratory species).
 - (b) Adding a new alternative that analyzes how current (and future) state and federal management authorities could be used to accomplish the goals and objectives described in the DEIS Purpose and Needs section.
6. Recommend the CINMS DEIS include information about potential fishery benefits and/or impacts that could result from the proposed alternatives.
7. Recommend that all three options for “implementing alternatives in state waters” be included in the DEIS.

Relative to the recommendation to include updated information and descriptive displays, CINMS staff indicated their intent was to include the full complement of (relevant) state and federal regulations and management measures. The analysis of regulatory baseline would analyze how the potential effects of the measures, both biological and economic impacts (including fishery impacts and effects on Council-managed overfished stocks). The cumulative analysis in the DEIS would also describe current and future state and federal management actions relative to how they could, potentially, be used to achieve the CINMS goals and objectives.

Mr. Larsen (CDFG) requested CINMS consider how to minimize impacts on fisheries while achieving their goals and objectives.

Specific to the Designation Document, CINMS noted their intention to initiate the process for consideration of amending the Designation Document. Mr. Hastings reiterated that any proposed changes would be limited to the discrete areas covered by the proposed action.

Ad Hoc Committee for MPAs and Marine Reserves

As directed by the Council, the CIMRC also considered the structure of a committee for addressing policy and procedural aspects of marine protected area (MPA) proposals that require Council action.

Chairman Hansen opined that the current composition and structure of the Ad Hoc CIMRC was appropriate for an Ad Hoc MPA Committee, with the addition of an Enforcement Consultants representative. He also suggested that the advisory subpanel representatives may vary depending upon where the proposed MPA or marine reserve would be sited. He recommended that advisory subpanel chairs be the named representative, but they would have the discretion to designate an individual for when the committee was addressing an area- or region-specific

proposal.

Dr. McIsaac described the rationale for the voting and advisory structure of the CIMRC, and asked if the CIMRC recommended continuing that structure for the MPA committee. Some advisory subpanel representatives suggested that advisory representatives should also be voting members of the ad hoc committee. Others, the Habitat Committee, SSC, and SAS, stated their preference for the current (voting/advisory) committee structure. In discussing the rationale for the current structure, it was agreed that it was appropriate to have voting members and advisory members. It was recommended that the rationale for the structure be documented.

One principal reason for advisory committee representatives to be non-voting members of the committee is the potential difficulty in voting for a motion that might not be acceptable to the advisory committee they represent. The main role of the advisory representatives is to provide a balanced, objective perspective from their respective advisory committee.

The CIMRC (both voting members and advisors) concluded the current composition and structure of the CIMRC are sufficient. Thus, the CIMRC recommended:

- (a) the Council modify the name of the Ad Hoc CIMRC to Ad Hoc Marine Protected Areas Committee,
- (b) include the Enforcement Consultants as a non-voting, advisory seat; and
- (c) refer to each advisory body seat as the respective committee chair, with the exception that the respective committee chairs would designate members knowledgeable about the specific MPA issues being addressed by the Ad Hoc MPA Committee.

The CIMRC also recommended that the purpose, function, and structure of the Ad Hoc MPA Committee be documented in a committee charter. Moreover, to clarify the function, purpose, and structure of Council ad hoc committees, the CIMRC suggested the Council consider including a requirement in the Council Operating Procedures that similar charters be developed for each Ad Hoc Committee.

Public Comment

Public Comment

Mr. Rod Moore stated that the documentation provided by CINMS does not provide information on potential fishery impacts, nor evidence of a problem currently occurring. Therefore, there is no basis for judging the merits of the proposed action or if there is a legitimate need.

CINMS responded that, from a stewardship perspective, the proposed action seeks to achieve the goals and objectives of the NMSA.

Mr. Greg Helms noted his appreciation for the work of the CIMRC and the cooperative spirit demonstrated by CINMS and the Pacific Council. He suggested that the Pacific Council might need to be reminded to have realistic expectations, especially given the recommendations of the CIMRC to CINMS will require a substantial amount of work and result in a very large document.

Mr Steve Joner provided some input from the perspective of treaty Indian tribes. He stressed that the tribes were concerned about the impacts marine reserves could have on their usual and accustomed (U and A) fishing grounds. If the Council considers marine reserves in tribal U and A areas, he recommended a tribal representative be added to the Ad Hoc MPA Committee.

Adjournment – The CIMRC adjourned at approximately 12 p.m., Wednesday, October 6, 2004.

PFMC
10/26/04