

ENFORCEMENT CONSULTANTS REPORT ON CHANNEL ISLANDS NATIONAL
MARINE SANCTUARY

The Enforcement Consultants (EC) have reviewed the materials as they relate to the Channel Islands Marine Sanctuaries. A staff proposal and a proposal drafted by Sanctuary personnel as well as draft EFH regulations were reviewed. In order to try and avoid confusion, we will first comment on each individually, and then attempt to blend the proposals into a single option. A full report on the EFH draft regulations will be available for the agenda item.

Supplemental Item I.1.a, Attachment 1

Using Agenda Item I.1.a, Attachment 1, proposed regulations (staff draft):

2.1 No-Take Marine Reserve Closure. It is unlawful to fish¹ or possess fish within the following marine reserve areas (defined by the coordinates below in 2.4 Marine Protected Area Descriptions): Anacapa Island, Carrington Point, Footprint, Gull Island, Harris Point, Judith Rock, Painted Cove, Richardson Rock, Santa Barbara, Scorpion, Skunk Point, and South Point, except for possession as provided below under 2.3 Fish and Fishing Gear in Transit.

This language is clear and simple with the exception of 2.3 reference, which will be discussed further.

2.2 Marine Conservation Area Closure. It is unlawful to fish¹ or possess fish within the Anacapa Island Marine Conservation Area (defined by the coordinates below in 2.4 Marine Protected Area Descriptions), except for (1) fishing and possession of fish caught with (a) recreational fishing with hook and line gear as defined and limited in this regulation or recreational fishing gear for lobster as defined in this regulation and (b) commercial fishing with gear as defined in this regulation and (2) possession as provided below under 2.3 Fish and Fishing Gear in Transit.

2.2.a Recreational hook and line fishing gear definition. Recreational hook and line fishing gear is defined for the purpose of this regulation as the current definition in the State of California Fish and Game, Code of Regulations for recreational hook and line fishing gear, absent any reference to the use of weights; such gear used in this area may not be augmented with any weights such that the total weight of the terminal gear is greater than six ounces, not counting the weight of any natural bait.

¹ *To fish* is defined for the purpose of this regulation as in the *Code of Federal Regulations* (50 CFR part 660 Section 600.10): *Fishing*, or *to fish* means any activity, other than scientific research conducted by a scientific research vessel, that involves: (1) The catching, taking, or harvesting of fish; (2) The attempted catching, taking, or harvesting of fish; (3) Any other activity that can reasonably be expected to result in the catching, taking, or harvesting of fish; or (4) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (1), (2), or (3) of this definition.

2.2.b Recreational lobster fishing gear definition. Recreational lobster fishing gear is defined for the purpose of this regulation as the current gear and methods allowable under the State of California Fish and Game Code of Regulations in the immediately adjacent open area.

2.2.c Commercial fishing gear definition. Commercial fishing gear is defined for the purposes of this regulation as the current definition in the State of California Fish and Game Code of Regulations for allowable lobster gear and methods in the immediately adjacent open area. It is unlawful to retain fish other than lobster when using commercial fishing gear allowable under this regulation.

2.2.d Size and Bag Limits. It is unlawful to possess fish caught under this regulation in the Anacapa Island Marine Conservation Area different than the allowable size limit in place in the immediately adjacent open area, or in an amount greater than the daily retention limit in place in the immediately adjacent open area.

The proposal is acceptable with one exception. The language in 2.2 a, b, and c makes reference to the definitions found in the California Fish and Game Code. We would recommend that rather than relying on access to the Code in order to view this language, which can change on a State level without Council input, the actual language should be provided in the regulation .

2.3 Fish and Fishing Gear in Transit. It is unlawful to possess or transport (1) fish taken legally in open waters and/or (2) fishing gear, through the no-take marine reserve areas described in 2.4 Marine Protected Area Descriptions except while in a vessel in active transit though the area in question with all fishing gear stowed and not in use. It is unlawful to possess or transport (1) fish taken legally in open waters with gear other than allowed under 2.2 above and/or (2) fishing gear not allowable under 2.2 above, through the marine conservation area described in 2.4 Marine Protected Area Descriptions except while in a vessel in active transit though the area in question with all fishing gear stowed and not in use.

The EC recommends that the above section should be structured differently to clearly differentiate between No-take Marine Reserves and Marine Protected Areas by splitting the two sections. Also, the current language indicates that illegally taken fish could be possessed if you remain within the parameters of the Reserve or Protected Area. The following is the suggested language:

2.3 Fish and Fishing Gear in Transit.

No- take Marine Reserve

It is unlawful to possess or transport (1) fish ~~taken legally in open waters~~ and/or (2) fishing gear, through the no-take marine reserve areas described in 2.4 Marine Protected Area Descriptions except while in a vessel in active transit though the area in question with all fishing gear stowed and not in use.

Marine Protected Areas: It is unlawful to possess or transport (1) fish taken ~~legally~~ in open waters with gear other than allowed under 2.2 above and/or (2) fishing gear not allowable under 2.2 above, through the marine conservation area described in 2.4 Marine Protected Area Descriptions except while in a vessel in active transit though the area in question with all fishing gear stowed and not in use.

2.3.a Stowed Gear Definition. For the purposes of this regulation, (1) stowed recreational hook and line fishing gear is defined as hook and line gear with all line reeled to the reel or rod tip and no fishing gear other than a swivel attached to the line, with the rod and reel placed on the vessel in a manner different than when actively fishing; (2) stowed recreational lobster fishing gear is defined as placed on or below a vessel surface and tied to such surface in a manner would not allow immediate deployment; and (3) stowed commercial fishing gear is defined as placed on or below a vessel surface and tied to such surface in a manner that would not allow immediate deployment.

The EC met with the Groundfish Advisory Subpanel (GAP) and representatives from the Sanctuary and discussed the definition of stowed gear. The GAP very concerned about the requirement to stow. They suggested that the term be dropped instead of trying to define it. The EC thinks that this is possible, however, note that this term is used in California State regulations.

Language in Sub-section (2) raised some concern with members of the GAP as it related to the stowing or securing of recreational lobster gear. Some vessels may not have the capability to comply with this regulation due to the lack of space onboard the vessel. In order to address these concerns we recommend language that would require hoop nets to be un-baited and mandate that lines be detached from the gear.

In regards to Sub-section (3), the EC recommends that the same language used in the Federal Regulations concerning the stowage of fixed gear while transiting Rockfish Conservation Areas (RCA's) be used to address this issue in Sanctuaries.

Agenda Item I.1.b, Supplemental CINMS Report Model Regulations

In discussion with Sanctuary personnel, the common view was that the regulations as drafted were insufficient to provide the level of desired protection in several areas. The EC believes that in many cases the resources that the Sanctuary is attempting to protect are unrelated to fishing. We recommend the following language in order to alleviate this concern and protect all of the things desired:

Unless already prohibited by 50 CFR part 660, or the section above on fishing regulations in a marine reserve or marine conservation area, it is unlawful to harvest, remove, take, injure, destroy, possess, collect, move, or cause the loss of any living or dead organism, geological resource, cultural or historical resource, or other Sanctuary resource, or attempt any of these activities.

In addition, the EC noted that the Sanctuary listed all of the pelagic fish species that were allowed to be taken in Marine Conservation Areas with hook and line and spear fishing, and that list mirrors the regulations of the State of California. The Staff proposal does not address this issue, and in order to be consistent, the list of species that can be taken should be listed in the Federal Regulation.

One other item listed in the Sanctuary proposal caused us some concern - the anchoring of vessels in Marine Reserves, which do not allow take of fish. The EC does not feel that anchoring should be allowed if it involves the possession of fish species. We were advised that the anchoring allowance was consistent with California State regulations, but where it involved the

possession of fish, the proposal would be inconsistent with current federal regulations. If fish were not allowed to be possessed during anchoring, then the proposal and current regulation would be in alignment. For Marine Conservation Areas, which do allow some take, as long as the species in possession complied with regulations for the area being anchored in, this activity would be allowed.

Please find attached the EC's regulation proposal for the Channel Islands.

SUMMARY OF EC PROPOSED REGULATIONS FOR CHANNEL ISLANDS

2.1 No-Take Marine Reserve Closure. It is unlawful to fish² or possess fish within the following marine reserve areas (defined by the coordinates below in 2.4 Marine Protected Area Descriptions): Anacapa Island, Carrington Point, Footprint, Gull Island, Harris Point, Judith Rock, Painted Cove, Richardson Rock, Santa Barbara, Scorpion, Skunk Point, and South Point, except for possession as provided below under 2.3 Fish and Fishing Gear in Transit.

2.2 Marine Conservation Area Closure. It is unlawful to fish¹ or possess fish within the Anacapa Island Marine Conservation Area (defined by the coordinates below in 2.4 Marine Protected Area Descriptions), except for (1) fishing and possession of fish caught with (a) recreational fishing with hook and line gear as defined and limited in this regulation or recreational fishing gear for lobster as defined in this regulation and (b) commercial fishing with gear as defined in this regulation and (2) possession as provided below under 2.3 Fish and Fishing Gear in Transit.

2.2.a Recreational hook and line fishing gear definition. Recreational hook and line fishing gear is defined for the purpose of this regulation (~~(as the current definition in the State of California Fish and Game Code of Regulations)~~) **INSERT NEW LANGUAGE HERE** for recreational hook and line fishing gear, absent any reference to the use of weights; such gear used in this area may not be augmented with any weights such that the total weight of the terminal gear is greater than 6 ounces, not counting the weight of any natural bait. **INSERT PELAGIC FINFISH SPECIES LIST HERE**

2.2.b Recreational lobster fishing gear definition. Recreational lobster fishing gear is defined for the purpose of this regulation as the current gear and methods allowable under (~~the State of California Fish and Game Code of Regulations~~) **INSERT NEW LANGUAGE HERE** in the immediately adjacent open area.

² *To fish* is defined for the purpose of this regulation is defined as in the *Code of Federal Regulations* (50 CFR part 660 Section 600.10): *Fishing*, or *to fish* means any activity, other than scientific research conducted by a scientific research vessel, that involves: (1) The catching, taking, or harvesting of fish; (2) The attempted catching, taking, or harvesting of fish; (3) Any other activity that can reasonably be expected to result in the catching, taking, or harvesting of fish; or (4) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (1), (2), or (3) of this definition.

2.2.c Commercial fishing gear definition. Commercial fishing gear is defined for the purposes of this regulation as the current definition in the ~~State of California Fish and Game Code of Regulations~~ **INSERT NEW LANGUAGE HERE** for allowable lobster gear and methods in the immediately adjacent open area. It is unlawful to retain fish other than lobster when using commercial fishing gear allowable under this regulation.

2.2.d Size and Bag Limits. It is unlawful to possess fish caught under this regulation in the Anacapa Island Marine Conservation Area different than the allowable size limit in place in the immediately adjacent open area, or in an amount greater than the daily retention limit in place in the immediately adjacent open area.

2.3 Fish and Fishing Gear in Transit.

No- take Marine Reserve

It is unlawful to possess or transport (1) fish ~~taken legally in open waters~~ and/or (2) fishing gear, through the no-take marine reserve areas described in 2.4 Marine Protected Area Descriptions except while in a vessel in active transit though the area in question with all fishing gear stowed and not in use.

Marine Protected Areas: It is unlawful to possess or transport (1) fish taken ~~legally~~ in open waters with gear other than allowed under 2.2 above and/or (2) fishing gear not allowable under 2.2 above, through the marine conservation area described in 2.4 Marine Protected Area Descriptions except while in a vessel in active transit though the area in question with all fishing gear stowed and not in use.

2.3.a Stowed Gear Definition. For the purposes of this regulation, (1) stowed recreational hook and line fishing gear is defined as hook and line gear with all line reeled to the reel or rod tip and no fishing gear other than a swivel attached to the line, with the rod and reel placed on the vessel in a manner different than when actively fishing; (2) stowed recreational lobster fishing gear is defined as ~~placed on or below a vessel surface and tied to such surface in a manner would not allow immediate deployment~~ un-baited hoop-net gear with all lines detached from the net; and (3) ~~stowed commercial fishing gear is defined as placed on or below a vessel surface and tied to such surface in a manner that would not allow immediate deployment~~ Insert language from Federal Regulations here concerning the stowage of fixed gear while transiting the RCA.

Unless already prohibited by 50 CFR part 660, or the section above on fishing regulations in a marine reserve or marine conservation area, it is unlawful to harvest, remove, take, injure, destroy, possess, collect, move, or cause the loss of any living or dead organism, geological resource, cultural or historical resource, or other Sanctuary resource, or attempt any of these activities.

Anchoring – the EC requests guidance from the Council on how to deal with the anchoring issue where State law may be in conflict with Federal Regulations.