

FISHERY REGULATION WITHIN THE CHANNEL ISLANDS  
NATIONAL MARINE SANCTUARY

The Council has been coordinating with Channel Islands National Marine Sanctuary (CINMS) and the State of California since April 2001 in their development of proposed marine protected areas (Marine Protected Areas [MPAs], which include both no-take marine reserves and marine conservation areas where some fishing is allowed and some prohibited) within CINMS. At the November 2005 Council meeting, the Council elected not to forward any proposed fishing regulations for the CINMS under the regulatory authority of the National Marine Sanctuaries Act (NMSA). Instead, the Council notified the National Oceanic and Atmospheric Administration (NOAA) of the Council's intent to develop regulations that achieve the stated goals and objectives of the CINMS under the aggregate of the various Magnuson-Stevens Fishery Conservation and Management Act (MSA) complimentary state law authorities.

In a written response, the Under Secretary of Commerce for Oceans and Atmosphere, Vice Admiral Conrad C. Lautenbacher, informed the Council of NOAA's intent to pursue the necessary CINMS designation document changes and fishery regulations under the NMSA to achieve limited and no-take zones in the water column within the CINMS. The Vice Admiral concluded by encouraging the Council to continue to pursue management measures under MSA authority that meet the goals and objectives of the CINMS and states that if the Council is successful "...the scope of the NMSA regulations could be reduced."

At the March 2006 meeting, the Council scheduled further development of alternatives for implementing fishing regulations under the MSA to create the proposed no-take and limited take areas within the CINMS by utilizing existing MSA provisions for extending state fishery regulations into federal waters. The Council directed Council staff to work with National Marine Fisheries Service (NMFS) Southwest Region (SWR) and NOAA General Counsel to provide further detail on the functional necessities of this mechanism and to research the existing administrative record on this matter for relevant content.

To begin the process of demonstrating a Council administrative record, Council staff compiled a historical record of Council action relative the creation of marine protected areas in federal waters within the CINMS. This initial documentation serves to demonstrate the Council's lengthy consideration process with regard to maintaining consistency with proposed (and ultimately existing) State of California marine protected area (MPA) fishing regulations for MPAs in the CINMS, preserving MSA authority for fishing regulations in the U.S. Exclusive Economic Zone, and achieving the goals and objectives of the CINMS (Agenda Item I.1.a, Attachment 1).

At the time of advance Briefing Book compilation, the NMFS SWR, is working with NOAA General Counsel on an analysis of the administrative, regulatory, and scheduling considerations of achieving CINMS fishing regulations under the aforementioned MSA mechanism (Supplemental Agenda Item I.1.b, NMFS Report). Regarding MSA, the analysis focuses on the Council's March 2006 recommendation to use existing discretionary provisions in MSA that give the Council legal authority to incorporate relevant state actions in federal law. Possible factual bases for such action includes the rationale for the original State action, additional

rationale discussed at various Council meetings, the link to the stated need for better scientific information on the ecology and status of stocks in at least three Council fishery management plans (FMPs), and the role MPAs can play as control sites in research and monitoring programs, as well as other matters. It has yet to be determined if Council action under this provision would require a regulatory amendment, an FMP amendment, or other mechanism. An amendment process carries workload implications and could result in a significant delay in the development of MSA regulations, potentially putting MSA regulations behind the ongoing NMSA process.

The Council, along with all eight Regional Fishery Management Councils, has been requesting clarification on the competing statutes of MSA and NMSA in the next reauthorization of the MSA. Although this request has not yet been addressed in existing federal legislation on MSA reauthorization, it is anticipated that legislation will soon be introduced in the U.S. House of Representatives that may address this matter. The Council's Legislative Committee is tentatively scheduled to meet on April 26 to review MSA reauthorization and will prepare a report for the June Council meeting in Foster City, California.

Options for the Council include: 1) taking no further regulatory action while tracking the establishment of NMSA fishing regulations within the CINMS and relevant legislation to reauthorize the MSA, 2) adopt final recommendations to implement MSA regulations under an existing FMP authority (if available) and administrative record to achieve CINMS goals and 3) direct initiation on an amendment process and schedule for establishing the necessary and MSA authority to achieve CINMS goals. The Council is anticipated to discuss relevant materials and options and provide guidance on a recommended course of action regarding fishing regulations for the water column in the federal water portion of the proposed MPAs of the CINMS.

### **Council Action:**

#### **Adopt Final Recommendations to NMFS or Provide Guidance on Further Action.**

#### **Reference Materials:**

1. Agenda Item I.1.a, Attachment 1: Record of Council Actions Relative to Marine Protected Areas in Federal Waters within the CINMS.
2. Agenda Item I.1.b, Supplemental NMFS Report: Discussion Paper, Draft Analysis of Water Column Closures at the CINMS Using Either the NMSA or the MSA.

#### **Agenda Order:**

- a. Agenda Item Overview
  - b. NMFS Report
  - c. Reports and Comments of Advisory Bodies
  - d. Public Comment
  - e. **Council Action:** Adopt Final Recommendations to NMFS or Provide Guidance on Further Action
- Mike Burner  
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