

FISHERY REGULATIONS 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) and complimentary state law authorities. On a closely related matter, the Council will review proposed action to create MPAs through the NMSA under Agenda Item F.2.

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. NOAA has since released a Draft Environmental Impact Statement and proposed rule on this matter for public review (see Agenda Item F.2.a, Attachment 1 and Attachment 2). The Vice Admiral concluded his letter 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.

In response, Council staff, in coordination with the NMFS SWR and NOAA General Counsel completed an initial analysis of the administrative, regulatory, and scheduling considerations of achieving CINMS fishing regulations under the aforementioned MSA mechanism (Agenda Item F.1.a, Attachment 1). 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 include 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 further behind the ongoing NMSA process.

To begin the process of demonstrating a Council administrative record, Council staff compiled an historical record of Council action relative to the creation of MPAs 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 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 F.1.a, Attachment 1, Appendix A).

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 was addressed in previous versions of draft Federal legislation on MSA reauthorization in the U. S. House of Representatives, such provisions do not currently exist in any introduced Federal legislation on this matter.

Options for the Council include: 1) taking no further regulatory action while providing comments on the establishment of NMSA fishing regulations within the CINMS under Agenda Item F.2 and tracking relevant legislation to reauthorize the MSA, 2) continue work on identifying ways to implement MSA regulations under an existing FMP authority and administrative record to achieve CINMS goals, and 3) direct initiation on an amendment process for establishing the necessary 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:**

#### **Consider Further Recommendations to NMFS for Establishing Fishery Regulations in National Marine Sanctuaries via the Magnuson-Stevens Act**

#### **Reference Materials:**

1. Agenda Item F.1.a, Attachment 1: Draft Analysis of Water Column Fishing Closures at Channel Islands National Marine Sanctuary Using the Magnuson-Stevens Fishery Conservation and Management Act.

#### **Agenda Order:**

- a. Agenda Item Overview
- b. Reports and Comments of Advisory Bodies
- c. Public Comment
- d. **Council Action:** Consider Further Recommendations to NMFS for Establishing Fishery Regulations in National Marine Sanctuaries via the Magnuson-Stevens Act

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