

Staff Report 56

PARTIES:

California State Lands Commission, Ocean Protection Council, California Natural Resources Agency, California Department of Fish and Wildlife, California Fish and Game Commission, California Department of Parks and Recreation, State Water Resources Control Board, California Coastal Commission, California Ocean Science Trust, MPA Collaborative Network, Resources Legacy Fund

PROPOSED ACTION:

Authorize the Executive Officer, or her designee, to execute a Memorandum of Understanding among the Parties relating to implementation of the California Marine Life Protection Act.

BACKGROUND:

The State of California completed designation of a network of Marine Protected Areas (MPAs) along the California coast as required by the Marine Life Protection Act (MLPA) (California Fish and Game Code section 2850 et seq.) in December 2012. While the California Fish and Game Commission has primary responsibility to implement the provisions of the MLPA, not all activities necessary to or beneficial in implementing the MPA network are the sole responsibility of any one entity. Many other agencies, including the Commission, are responsible for, and have undertaken, activities related to the protection, restoration, enforcement, and management of natural resources of the State, including activities related to MPAs.

In 2015, in an effort to memorialize and facilitate cooperative planning, implementation, and management of MPAs, the California Ocean Protection Council developed a Memorandum of Understanding (MOU) that would bring together several State agencies with jurisdictional responsibilities important to MPA effectiveness as "Core Parties" as well as several federal agencies as "Collaborating Entities" committed to sharing information and expertise relevant to MPA management. In addition, the MOU reinforced the public-private partnership among the California Natural Resources Agency, California Department of Fish and Wildlife, and the Resources Legacy Fund. The Resources Legacy Fund Foundation is

an independent nonprofit organization that supports and performs essential services to promote land, freshwater, and marine conservation; its role in the MOU is to assist the parties in achieving the implementation objectives of the MLPA by providing funding and other assistance.

DISCUSSION:

The Commission authorized the first MOU at its February 2015 regular meeting ([Item 96, February 20, 2015](#)). As the end of the 5-year term of the existing MOU approaches, the Ocean Protection Council led the MPA Statewide Leadership Team, on which the Commission is a member, to update the MOU for another 6-year implementation term. In addition to the new MOU (Exhibit A), the Leadership Team collaborated to develop a Charter (Exhibit B) to serve as a guiding document for the operational procedures of the Leadership Team. The Charter is a companion document to the MOU but is not a legally binding document and does not require signatures of the Parties.

Like its predecessor, the 2021-2026 MOU would provide a framework for the Commission's participation in collaborative efforts to implement the MPA network and to achieve the goals of the MLPA. As part of the MOU, the Commission would agree to cooperatively undertake implementation efforts and share information and expertise where relevant or necessary for that effort to be successful. These cooperative efforts could also include entering into regional or local agreements with other parties wishing to assist with MPA implementation. Since the prior MOU's signing in 2015, the Leadership Team established Tribal representation on the Leadership Team, recognizing the important contributions of Tribal governments to ocean stewardship and the value of including Native perspectives in effective MPA management. Membership on the MPA Statewide Leadership Team includes a Primary and an Alternate seat for regional Tribal Representatives as outlined in the MPA Statewide Leadership Team Charter.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, and 6301; Fish and Game Code section 2850 et seq.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Commission staff believes the proposed MOU would continue the effective framework established over the last 5 years. The MPA network protects California's natural resources, a purpose the Public Trust Doctrine shares. By signing the proposed MOU, the Commission would commit to assisting with MPA implementation, including MPA monitoring, public education, and enforcement, and also commit to coordinate on identification and recruitment of regional MPA implementation partners. The Commission, by participating in the MOU, would join the other parties in building on past actions and relationships to facilitate effective, collaborative, and cost-effective implementation of the MPA network.

OTHER PERTINENT INFORMATION:

1. This action is consistent with strategy 1.2 of the Commission's 2016-2020 Strategic Plan to "provide that the current and future management of ungranted sovereign lands and resources... is consistent with evolving Public Trust principles and values, particularly amid challenges relating to climate change, sea-level rise, public access, and complex land use planning and marine freight transportation systems."
2. The subject authorization to execute a Memorandum of Understanding is not a project as defined by the California Environmental Quality Act because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

EXHIBITS:

- A. Memorandum of Understanding for Implementation of the California Marine Life Protection Act
- B. MPA Statewide Leadership Charter, October 29, 2020

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed MOU will not substantially interfere with Public Trust needs and values, is consistent with the common law Public Trust Doctrine, and is in the best interests of the State.

AUTHORIZATION:

Authorize the Executive Officer or her designee to execute a Memorandum of Understanding among the State Lands Commission, Ocean Protection Council, California Natural Resources Agency, California Department of Fish and Wildlife, California Fish and Game Commission, California Department of Parks and Recreation, State Water Resources Control Board, California Coastal Commission, California Ocean Science Trust, MPA Collaborative Network, and Resources Legacy Fund, relating to implementation of the California Marine Life Protection Act, substantially in the form attached as Exhibit A.

MEMORANDUM OF UNDERSTANDING FOR IMPLEMENTATION OF THE CALIFORNIA MARINE LIFE PROTECTION ACT

I. OBJECTIVES

- 1.1 By this Agreement the California Ocean Protection Council, California Natural Resources Agency, California Department of Fish and Wildlife, California Fish and Game Commission, California Department of Parks and Recreation, State Water Resources Control Board, California Coastal Commission, California State Lands Commission, California Ocean Science Trust, MPA Collaborative Network, and Resources Legacy Fund (hereafter referred to as "Core Parties") seek to memorialize their commitments to successful implementation of the network of marine protected areas (MPAs) established by the State of California pursuant to the Marine Life Protection Act (MLPA, California Fish and Game Code Section 2850 et seq.), implement the state's MLPA Master Plan for MPAs, and establish the State Interagency Coordinating Committee pursuant to California Public Resources Code 36800 and 36602.
- 1.2. By this Agreement, the California Environmental Protection Agency, United States Department of Commerce National Oceanic and Atmospheric Administration, including the Office of National Marine Sanctuaries, United States Department of the Interior National Park Service, United States Coast Guard, and United States Bureau of Land Management (hereafter referred to as the "Collaborating Entities"), seek to memorialize their commitments to share information and expertise with the Core Parties where relevant for the purpose of ensuring successful implementation of the State of California's MPA network and subject to applicable confidentiality and privilege restrictions. The signatories to this Memorandum of Understanding (MOU) may be referred to as Parties.

II. RECITALS

- 2.1 The state completed designation of a network of MPAs along the California coast as required by the MLPA in December 2012. By a previous agreement, the California Natural Resources Agency, California Department of Fish and Wildlife, and Resources Legacy Fund entered into a public-private partnership for that process. Public and private entities, including some of the Parties, have undertaken activities to cooperate in the protection, restoration, enforcement and management of natural resources of the state, and by this agreement seek to build on those cooperative actions and relationships to facilitate effective,

collaborative, and cost-effective implementation of the MPA network.

- 2.2 The Parties to this agreement recognize the importance and high priority of cooperative actions to effectively implement the MPA network created pursuant to the MLPA. Key areas of agreement among the Parties include recognition of the value of regional or statewide implementation partners and resources to assure the institutional and fiscal sustainability of MPA implementation efforts. The Parties have previously entered into MOUs to support these efforts, namely, the MOU for Implementation of the California Marine Life Protection Act (2015) and the MOU to Advance Management of California's Marine Protected Area Network (2017).
- 2.3 The Parties further recognize the importance of MPA implementation to the effectiveness of the MPA network designated by the California Fish and Game Commission pursuant to the MLPA and by this MOU seek to bring together commitments to assist with such efforts, including MPA monitoring, public education, enforcement, governance, and other aspects of implementation. The Parties also recognize a need for assistance in managing and coordinating the MPA implementation framework consistently with the Master Plan framework. Such efforts will be of critical assistance to the state in effectively and efficiently coordinating and managing MPA implementation.
- 2.4 Given the need for cooperative and coordinated efforts to implement the MPAs designated pursuant to the MLPA, the Core Parties, by this MOU intend and agree to cooperatively undertake implementation efforts, and the Collaborating Entities agree to share information and expertise where relevant or necessary for that effort to be successful and subject to applicable confidentiality and privilege restrictions. These cooperative efforts may include entering into regional or local agreements with other parties wishing to assist with MPA implementation. This MOU provides a framework for the coordination of commitments of the Parties to aspects of MPA implementation including monitoring, enforcement, public information and education. The MOU also provides a coordinated approach to the identification and recruitment of regional MPA implementation partners. Confidentiality of information will be maintained subject to and consistent with legal authorities available to the Parties, including but not limited to the California Public Records Act (PRA; Cal. Gov. Code §§ 6250 et seq.), the Privacy Act (5 U.S.C. § 552a), and the Freedom of Information Act (FOIA) (5 U.S.C. § 552).

- 2.5 The Parties to this agreement desire that participation in implementation of the MPA network be as inclusive as possible, involving all willing and able partners including tribal, federal, state, and local governments; universities and other educational institutions; recreational users; coastal businesses; conservation organizations, museums and aquaria; and fishing interests.
- 2.6 Effective implementation of the MPA network is a statewide undertaking requiring a broad focus and comprehensive approach on the part of all entities having a role in implementation. To coordinate and operationalize the implementation efforts, the Parties follow the guidance of the MPA Statewide Leadership Team Charter, a non-legally binding document that is collaboratively created by the Parties.
- 2.7 In addition to a statewide approach, effective implementation of the MPA network will require regional and local initiatives and agreements to enable implementation actions by a wide range of entities willing and able to perform implementation activities, including governments at the tribal, federal, state, and local level, fishery organizations, fishermen, coastal businesses or business organizations, conservation organizations, charitable foundations and others.
- 2.8 One mechanism for supporting MPA implementation is through regional or local MPA Collaboratives. MPA Collaboratives include governmental agencies (city, county, tribal, federal, and state), organizations, associations, and institutions that communicate regularly about the MPAs in a particular area. Local communities can use the MPA Collaboratives as: (1) a way to work on site-specific projects more effectively, (2) a forum to communicate with state agencies and key partners about any issues or concerns occurring on-the-ground, and (3) a way to receive information about monitoring efforts, enforcement updates, and outreach & education initiatives from agencies and partners.
- 2.9 The Parties to this agreement desire to create a model for effective and inclusive implementation of the coastwide MPA network created by the State of California pursuant to the MLPA.
- 2.10 It is acknowledged that the Parties to this Agreement may have applicable consultation policies that guide their respective engagement with recognized Tribes. Membership of the MPA Statewide Leadership Team includes a Primary and an Alternate seat

for regional Tribal Representatives as outlined in the MPA Statewide Leadership Team Charter.

III. PARTIES

- 3.1 The California Ocean Protection Council (OPC), consisting of the Secretary for Natural Resources, Secretary for Environmental Protection, Chair of the State Lands Commission, two legislative members and two public members, was created by the California Ocean Protection Act of 2004. OPC is tasked with coordinating the activities of ocean-related agencies to improve the effectiveness of state efforts to protect ocean resources and establishing policies to coordinate the collection and sharing of scientific information related to coast and ocean resources. OPC serves as the state's MPA policy lead and its staff administers the MPA Statewide Leadership Team.
- 3.2 The California Natural Resources Agency (Agency) is a State of California cabinet-level agency which seeks to restore, protect, and manage the state's natural, historical, and cultural resources for current and future generations using creative approaches and solutions based on science, collaboration, and respect for all the communities and interests involved. The Agency oversees the policies and activities of 25 departments, boards, commissions, and conservancies.
- 3.3 The California Department of Fish and Wildlife (Department) is a state agency within the Agency that is the trustee for fish and wildlife resources in the State of California and has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and habitat necessary for biologically sustainable populations of those species. The Department is also responsible for management of specific lands and waters under their ownership. With respect to the state's MPA Management Program, the Department is the primary authority to provide recommendations regarding management of the MPA Network to the California Fish and Game Commission to meet the goals and objectives of the MLPA.
- 3.4 The California Fish and Game Commission (Commission) is a constitutionally-established state agency within the Agency whose core mission is to ensure the long-term sustainability of California's fish and wildlife and their habitats. The Commission's wide range of responsibilities include formulating general policies for the conduct of the Department of Fish and Wildlife, setting hunting and fishing regulations, and designating and regulating the use of protected lands

and waters such as wildlife areas, ecological reserves, and MPAs.

- 3.5 The California Department of Parks and Recreation (State Parks) is a state agency within the Agency whose mission is to provide for the health, inspiration, and education of the people of the California by helping to preserve the state's extraordinary biological diversity, protecting its most valued natural and cultural resources, and creating opportunities for high-quality outdoor recreation. As a trustee agency, State Parks is responsible for managing almost one-quarter of California's coastline within State Park units, including dune ecosystems, beaches, coastal wetlands, estuaries, and nearshore marine areas.
- 3.6 The State Water Resources Control Board (State Water Board) is a state agency within the California Environmental Protection Agency whose mission is to preserve, enhance, and restore the quality of California's water resources, and ensure their proper allocation and efficient use for the benefit of present and future generations. The State Water Board oversees nine California Regional Water Quality Control Boards (Regional Water Boards). The mission of the State Water Board and the nine Regional Water Boards is to develop and enforce water quality objectives and implementation plans that will protect the State's waters, recognizing local differences in climate, topography, geology, and hydrology. The State Water Board has designated and continues to provide protection of natural water quality in thirty-four Areas of Special Biological Significance, a sub-set of State Water Quality Protected Areas.
- 3.7 The California Coastal Commission (Coastal Commission) is an independent, quasi-judicial state agency. The Coastal Commission's mission is to protect, conserve, restore, and enhance environmental and human-based resources of the California coast and ocean for environmentally sustainable and prudent use by current and future generations. The Coastal Commission, in partnership with coastal cities and counties, plans and regulates the use of land and water in the coastal zone. Development activities, which are broadly defined by the Coastal Act to include (among others) construction of buildings, divisions of land, and activities that change the intensity of use of land or public access to coastal waters, generally require a coastal permit from either the Coastal Commission or the local government.
- 3.8 The California State Lands Commission is an independent, quasi-legislative state agency that has exclusive control, jurisdiction and administration authority over all ungranted tide and submerged lands and the reversionary and residual interest of the State as to public trust lands legislatively granted to local governments. The Commission serves

the people of California by providing stewardship of the lands, waterways, and resources entrusted to its care through economic development, protection, preservation, and restoration. Its members include the Lieutenant Governor, the State Controller and the Governor appointed State Director of Finance. The Commission administers its management responsibilities through leases with users of tide and submerged lands. Many of these leases pre-date the enactment of the MLPA in 1999.

- 3.9 The California Ocean Science Trust (OST) is a nonprofit public benefit corporation dedicated to accelerating progress towards a healthy and productive ocean future for California. Established pursuant to the California Ocean Resources Stewardship Act of 2000, OST bridges the gap between cutting-edge scientific research and sound ocean management.
- 3.10 The Resources Legacy Fund (RLF) is an independent non-profit organization that supports and performs essential services to promote land, freshwater and marine conservation. Consistent with its mission, RLF has developed and administered many strategic charitable programs, and receives support from charitable organizations to advance the implementation of California's MPA network in compliance with this MOU. RLF seeks to assist the parties to achieve the implementation objectives of the MLPA by providing funding and other assistance with such assistance limited to available charitable funding. At the time of signature, RLF is the fiscal sponsor for the MPA Collaborative Network.
- 3.11 The MPA Collaborative Network (CN) is an organization that represents, supports and facilitates communication and resource sharing between the MPA Collaboratives, a consortium of 14 diverse working groups locally established along the California coastline. MPA Collaboratives are organized at the county level and provide local fora for tribal representatives, non-profit organizations, fishermen, government staff, municipalities, academic institutions, scientists, teachers, ocean businesses and aquaria to work together on stewardship and management of their county's MPAs.
- 3.12 The California Environmental Protection Agency (CalEPA) is a State of California cabinet-level agency whose mission is to restore, protect, and enhance the environment to ensure public health, environmental quality, and economic vitality. CalEPA oversees the policies and activities of the six departments, boards, and offices that are charged with developing, implementing, and enforcing the state's environmental protection laws to

ensure clean air, clean water, clean soil, safe pesticides, and waste recycling and reduction. CalEPA also coordinates the state's climate change activities.

- 3.13 The United States Department of Commerce, National Oceanic and Atmospheric Administration (NOAA) is a federal science agency whose mission is to understand and predict changes in Earth's environment and conserve and manage coastal and marine resources to meet the nation's economic, social, and environmental needs. The Office of National Marine Sanctuaries (ONMS) within NOAA manages fourteen sanctuaries and two national monuments including four national marine sanctuaries off the California coast. The legal authority for ONMS to enter into this Agreement is the National Marine Sanctuaries Act (NMSA), 16 U.S.C. § 1442(a), which authorizes the Secretary of Commerce to enter into cooperative agreements, contracts, or other Agreements with State, local governments, or other persons to carry out the purposes and policies of the NMSA.
- 3.14 The United States National Park Service (Park Service) is a federal agency within the United States Department of the Interior whose mission is to preserve unimpaired the natural and cultural resources and values of the national park system for the enjoyment, education, and inspiration of this and future generations. The Park Service cooperates with partners to extend the benefits of natural and cultural resources conservation and outdoor recreation throughout this country and the world. The National Park System of the United States now comprises 419 areas covering more than 84 million acres in 50 states, the District of Columbia, American Samoa, Guam, Puerto Rico, Saipan, and the Virgin Islands. In California, the Park Service manages 10 park units along the coast, including 148,750 water acres and 471 miles of shoreline.
- 3.15 The United States Coast Guard (Coast Guard) is one of the five armed forces of the United States and the only military organization within the Department of Homeland Security. The Coast Guard is an adaptable, responsive military force of maritime professionals whose legal authorities, assets, geographic diversity and partnerships provide a presence along rivers, in ports, coastal regions and on the high seas. Coast Guard presence and impact is local, regional, national and international, making the Coast Guard a unique instrument of maritime safety, security and environmental stewardship.
- 3.16 The Bureau of Land Management (BLM) is a federal agency within the United States Department of the Interior that manages 245 million surface

acres in the United States. BLM manages public lands for outdoor recreation, livestock grazing, and mineral development, while also working to conserve natural, historical, cultural, and other resources on public lands. Managed by BLM and established by Presidential Proclamation in 2000 (Proclamation 7264), the California Coastal National Monument (CCNM) consists of all unappropriated or unreserved lands and interest in lands owned or controlled by the United States in the form of islands, rocks, exposed reefs, and pinnacles above mean high tide within 12 nautical miles of the shoreline of the State of California. Six onshore units were added to the CCNM via two subsequent Presidential Proclamations in 2014 and 2017 (Proclamations 9089 and 9563, respectively). The CCNM was nationally recognized in the Proclamations as a biological, cultural, and geological treasure, rich in biological diversity, and providing essential habitat for many species of scientific interest.

IV. GENERAL TERMS

- 4.1 The Parties to this MOU recognize that not all activities necessary to or beneficial in implementing the MPA network designated by the Fish and Game Commission pursuant to the MLPA and the MLPA Master Plan for MPAs are the sole responsibility of any one entity. The Parties commit to collaborative efforts to implement and/or support the MPA network and to achieve the goals of the MLPA, as consistent with the authorities of each party. To the extent that law or regulations place sole or primary responsibility for particular aspects of MLPA implementation with one entity, the efforts and resources of that entity can and should be supplemented by cooperative efforts of state and federal agencies, non-government organizations and others.
- 4.2 The Parties recognize that individually and as a group they each have important and valuable roles to play in implementing and/or supporting the state's MPA network and the Parties therefore commit to cooperative efforts to perform their respective implementation responsibilities.
- 4.3 Consistent with existing law and with all other statutory, common law public trust doctrine, and jurisdictional obligations, the Parties with permitting or leasing jurisdiction over existing or new activities that may impact individual MPAs, or the MPA network as a whole, commit to requiring avoidance or reduction of significant impacts, and mitigation for any impacts that cannot be avoided, to the extent feasible. The Parties also commit to sharing information about potential impacts to MPAs with one another, subject to applicable confidentiality and

privilege restrictions. With respect to sensitive or confidential information provided by Parties and Tribes, the Parties shall engage in early and frequent consultation or consideration, as appropriate, about the treatment of potentially confidential information, and in particular, issues or documents provided by Tribes that could expose sacred sites to vandalism or harm, or fisheries to vulnerability, including considering whether received information can be protected under Evidence Code § 1040, Pub. Resources Code § 21082.3, subd. (c)(2)(A), and other trade secret protocols at the State level, and exceptions to FOIA (5 U.S.C. § 552) releases including the Archeological Resources Protection Act, the Self-Determination Act, and the National Historic Preservation Act to name a few, as described in the Bureau of Reclamation Native American and International Affairs Office's Protocol Guidelines¹.

- 4.4 Nothing in this MOU shall be deemed to override or otherwise limit decision-making authority vested solely in one or more of the signatory Parties. Confidentiality of information will be maintained subject to and consistent with legal authorities available to the Parties, including but not limited to the California Public Records Act (PRA; Cal. Gov. Code §§ 6250 et seq.), the Privacy Act (5 U.S.C. § 552a), and FOIA (5 U.S.C. § 552), and the Parties commit to exploring the use of protections and exemptions where such requests were timely made and where doing so is consistent with law.
- 4.5 In recognition of the need for regionally based implementation initiatives, the Core Parties to this MOU commit, consistent with the mission of the respective Parties, to cooperatively identify and engage with other potential statewide, regional, and local implementation partners who will take on responsibilities for important aspects of MPA implementation. The Parties agree to memorialize additional specific commitments and undertakings of other implementation partners in regional or local agreements covering each of the geographical regions in California in which MPA networks have been designated. The regional or local agreements can provide a vehicle to formally identify MPA implementation partners and to set forth commitments to achieve cost-effective and collaborative accomplishment of the goals of the MLPA. As agreements are entered into by any of the Parties with regional implementation partners, copies of the agreements will be provided to the other Parties for their information and will be attached to this MOU as exhibits.

¹ https://www.usbr.gov/native/policy/protocol_guidelines.pdf

- 4.6 Neither this MOU nor any provision hereof may be waived, modified, amended, or discharged except by an instrument in writing signed by the Parties.
- 4.7 This MOU constitutes the entire agreement of the Parties with respect to the matters set forth herein and it supersedes all prior or contemporaneous understandings or agreements among the Parties with respect to the subject matter of the MOU.
- 4.8 Nothing contained in this MOU shall be construed as binding any Party to expend in any one fiscal year any sum in excess of appropriations made by Congress or the California State Legislature for the purposes of this MOU for that fiscal year. All future expenditures are subject to and conditioned upon appropriation.
- 4.9 Notwithstanding paragraph 4.6, if a court of competent jurisdiction determines that a provision included in this MOU is legally invalid, illegal, or unenforceable, and such decision becomes final, such provision shall be deemed to be severed and deleted from this MOU and the balance of the MOU shall be reasonably interpreted to achieve the intent of the Parties. The Parties further agree to replace such void or unenforceable provision of this MOU with a valid and enforceable provision that will achieve, to the extent possible, the purposes of the void or unenforceable provision.
- 4.10 This MOU and any amendment may be executed in two or more counterparts, and by each Party on a separate counterpart, each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document. Amendments to this MOU when executed by the Parties may be added as operative provisions by attachment(s) to the MOU without the necessity for re-circulation and signature of the original MOU in its entirety.
- 4.11 New members may join this agreement by signing this MOU as operative provisions by attachment(s) to the MOU without the necessity for re-circulation and signature of the original MOU in its entirety. New members must be recommended to the Secretary for Natural Resources by the Parties in accordance with the recommendation process as listed in the MPA Statewide Leadership Team Charter, and subsequently invited by the Secretary for Natural Resources to sign this MOU.

- 4.12 With respect to (1) information or materials that may be shared with the Parties by federal agencies and designated as confidential by federal agencies and (2) information or materials acquired/developed by the Parties in performance of the agreement and jointly designated as confidential by the Parties, the Parties agree to keep such information in the strictest confidence consistent with sections 4.3 and 4.4 of this MOU. The Parties also agree not to publish or otherwise divulge such information, in whole or in part, in any manner or form, nor to authorize or permit others to do so, taking such reasonable measures as are necessary to restrict access to such information while in the Parties' possession, to those employees or agents needing such information to perform the activities described herein, i.e., on a "need to know" basis, except as required by law. The Parties agree to immediately notify federal agencies in writing in the event that any Party determines a breach of this requirement has occurred. Confidentiality of information will be maintained subject to and consistent with legal authorities available to the Parties, including but not limited to the Privacy Act (5 USC § 552a) and FOIA (5 USC § 52). This Agreement imposes no obligation with respect to information that: is or becomes a matter of public knowledge; is received without a duty of confidentiality; is disclosed with prior written approval; or is required by law to be disclosed.
- 4.13 As required by 5 U.S.C. § 2302(b)(13) and the annual Appropriations Act, these provisions are consistent with and do not supersede, nor conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling. This paragraph shall not be construed to authorize the withholding of information from Congress or the taking of any personnel action against an employee who discloses information to Congress. This paragraph shall not be construed to bar disclosures to an authorized official of an executive agency or the Department of Justice that are essential to reporting a substantial violation of law.
- 4.14 The agreement will become effective on signature by all parties and will terminate on December 31, 2026 but may be amended at any time by an instrument in writing signed by the parties.

- 4.15 Any Party shall be entitled to withdraw from this MOU by providing a 10-day written notice to the other Parties.
- 4.16 Nothing in this MOU shall be deemed to create a partnership or any other trust relationship between the Parties, it being expressly understood and agreed that the Parties obligations to each other under this MOU are not fiduciary in nature.
- 4.17 Each signatory below attests that he or she is duly authorized to execute this MOU on behalf of the Party he or she represents.

V. SPECIAL TERMS

- 5.1 The Core Parties commit to frequent and open communication on their respective implementation efforts. This shall include quarterly milestones meetings with interested private persons or parties and responsive information being provided upon inquiry.
- 5.2 At least twice each year the Chair of the Ocean Protection Council will convene senior policy officials to address the accomplishments of MPA implementation efforts and to discuss the performance of the parties in achieving the purposes of the MLPA and this MOU. The Chair of the OPC may engage and convene representatives of other public or private entities, including RLF, at these meetings. At the meetings, each policy official will report on their activities representing progress toward or impediments to effective implementation of the MPA network and discuss potential impacts to local MPAs or the statewide MPA network that may fall under the jurisdiction of one or more of the Parties.
- 5.3 The Ocean Protection Council will annually provide to all Parties a written summary of activities the Core Parties have taken to implement the MPA network and will especially highlight cooperative actions taken as a result of this MOU. If Collaborating Entities have also participated in furthering MLPA implementation efforts, that work will be highlighted as well.
- 5.4 The Core Parties, and to the extent relevant and appropriate, the Collaborating Entities, will inform, engage the support of, and coordinate with other tribal, federal, state, and local government agencies and organizations with important coastal or marine responsibilities and jurisdiction. These agencies include but are not limited to:

- a. United States Department of Defense
- b. United States Bureau of Indian Affairs
- c. United States Army Corps of Engineers
- d. United States Fish and Wildlife Service
- e. California Native American Heritage Commission
- f. California Coastal Conservancy
- g. San Francisco Bay Conservation and Development Commission
- h. North Coast Regional Water Quality Control Board
- i. San Francisco Bay Regional Water Quality Control Board
- j. Central Coast Regional Water Quality Control Board
- k. Los Angeles Regional Water Quality Control Board
- l. Santa Ana Regional Water Quality Control Board
- m. San Diego Regional Water Quality Control Board
- n. Federally recognized tribes and tribal communities
- o. Marine Protected Area Collaboratives

- 5.5 Within available funding and consistent with legal constraints on expenditures of funds, the Core Parties commit to designate personnel at sufficient staffing levels and expertise to accomplish those tasks to which they have committed in implementing the MPA network.
- 5.6 The Parties agree in good faith to work together to fulfill the objectives of this MOU. Toward that end, each Party will designate a policy-level official to engage with the other parties in accomplishing the purposes of this MOU, to act as the point of contact for the Party in connection with this MOU and to be responsible for that party's activities in implementing the MPA network, resolving issues relating to areas of responsibility or conflicts in management policy, and fostering effective inter-agency coordination.

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed by their duly authorized representatives.

[Name]

[Title]

[Agency/Organization]

Date

MPA Statewide Leadership Team Charter

This Charter was created by consensus by the Working Group of the Leadership Team and was agreed upon on October 29, 2020.

Statement of Purpose

While the Memorandum of Understanding for Implementation of the California Marine Life Protection Act (MLPA) establishes the Parties to the MPA Statewide Leadership Team (Leadership Team), this Charter serves as a guiding document for the operational procedures of the Leadership Team. It is not a legally binding document and does not require signatures to be upheld.

Background

The California legislature passed the [MLPA](#) (California Fish and Game Code, section 2850 et seq.) and it was signed into law in 1999, responding to the need to redesign California's marine protected areas (MPAs) and improve their effectiveness at supporting healthy and sustainable marine ecosystems. The redesigned MPA network was completed in 2012. Through the science-based and stakeholder-driven process to implement the MLPA, state resource managers realized a key component to success was strong and active partnerships.

In April 2014, the Leadership Team was convened in Sacramento, California by the Secretary for Natural Resources (Secretary) as a standing advisory body to ensure communication, collaboration, and coordination among entities that have significant authority, mandates, or interests that relate to the MPA network. The founding membership of the Leadership Team was guided by the [Marine Managed Area Improvement Act](#) (Public Resources Code section 36600 et seq.) which describes a State Interagency Coordinating Committee to ensure coordinated management of marine managed areas, which include MPAs. State, federal, and key non-profit partners that are actively engaged in the MPA Management Program include those that are signatories on the [MLPA Implementation Memorandum of Understanding](#).

Membership

Executive Committee and Working Group

The Leadership Team is made up of two primary components; the Executive Committee and the Working Group. The Executive Committee, which includes the Secretary and the Directors of member organizations, comes together twice a year generally in March and September at the MPA Milestones Meeting in Sacramento. These meetings provide opportunities for high level review of the

MPA Statewide Leadership Team Charter

outcomes from the Working Group, and for setting the Leadership Team's priority work areas for the coming months. The Working Group is composed of a representative from each member organization at a program manager (or higher) level. The Working Group meets quarterly in Sacramento, and more frequently via teleconference as needed, to complete tasks and projects identified by the Executive Committee and identify priority work areas for the Leadership Team for approval by the Executive Committee. The Leadership Team is administered by Ocean Protection Council staff.

State and Federal Agencies

The Leadership Team includes state and federal agencies, departments, boards, and commissions with jurisdiction or management interests over marine managed areas, including MPAs. The [California Department of Fish and Wildlife](#) manages the statewide MPA network and enforces MPA regulations, and the [California Ocean Protection Council](#) serves as the state's MPA policy lead. The [California Fish and Game Commission](#) is the regulatory authority, which designates MPAs and adopts their rules and regulations. The [California Department of Parks and Recreation](#) and its Commission also are designated as a managing and regulatory authority for some types of MPAs. Other regulatory and trustee agencies, such as the [California Coastal Commission](#), [California State Lands Commission](#), and [State Water Resources Control Board](#), have jurisdictions that overlap with MPA management activities, as does the [Office of National Marine Sanctuaries](#), the [National Park Service](#), and the [Bureau of Land Management](#).

Tribal Representation

California's Native American tribes are sovereign nations that have lived and thrived in the state for thousands of years; the many dozens of coastal tribes possess extensive and invaluable knowledge of marine systems. Recognizing the inherent importance of California tribes' traditional and current participation in ocean stewardship, the Secretary prioritized tribal engagement through the establishment of Tribal Representative seats for four coastal regions, with one Primary and one Alternate Representative for each region:

- North – California/Oregon border to Mattole River
- North Central – Mattole River to Golden Gate Bridge
- Central – Golden Gate Bridge to Point Conception
- South – Point Conception to US/Mexico border

Tribal representation is critical to ensuring that California's MPAs are governed fairly and effectively. Tribal Representatives play a leadership role in Work Plan items across the four focal areas.

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Because Tribal Representatives take part on behalf of their region, Representatives are selected through a nomination process described in “Membership Eligibility” below. The Secretary appointed the first Regional Tribal Representatives to the Leadership Team in 2018.

Non-Governmental Partners

Key non-governmental partners also serve an important role on the Leadership Team. The [California Ocean Science Trust](#), is a non-profit boundary organization that supports a science-based approach to ocean and coastal management, including helping to design and implement the [MPA Monitoring Program](#). The [MPA Collaborative Network](#) engages California’s diverse coastal communities through a consortium of 14 county-based Collaboratives to enhance knowledge about the MPA network and increase compliance with MPA regulations. The MPA Collaborative Network is a signatory of a Memorandum of Understanding that formalizes the working relationship between the MPA Collaborative Network and the Leadership Team, and also recognizes the MPA Collaboratives’ significant contributions to the management of the state’s MPA network. The [Resources Legacy Fund](#) designs and administers initiatives for philanthropic foundations and individuals that result in significant conservation outcomes. The Resources Legacy Fund contributed significantly to the MLPA initiative and is a signatory of a Memorandum of Understanding with the state to continue to support the implementation of the MLPA. Effective stewardship of California’s MPA network requires an active, coordinated approach among the organizations on the Leadership Team, as well as other partners.

Membership Eligibility

Ex officio seats on the Leadership Team are designated by the leadership of each agency or organization and are approved by the Secretary.

Representatives from tribes that are listed with the [California Native American Heritage Commission](#) are eligible to apply for a Primary or Alternate Tribal Representative seat during an open application period. It is preferable that the Primary and Alternate Representatives for each region are from different tribes, to broaden perspectives and representation. A 90-day call for applications will be posted on the Ocean Protection Council’s [MPA Statewide Leadership Team webpage](#) and distributed widely via the Ocean Protection Council’s listserv, social media, and official outreach channels to California’s tribal governments and associations.

Tribal Representatives nominated by a tribal governing body are appointed by the Secretary and serve three-year terms. At the end of a term, a Tribal

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Representative can re-apply for another term. There is no limit on the number of terms that may be served by a Tribal Representative. All eligible applications will be considered, and previous service as a Tribal Representative on the Leadership Team does not predetermine the Secretary's decision.

Future Membership

Since its inception, the Leadership Team has evolved and added members to ensure a comprehensive representation of key partners in the MPA Management Program. The Secretary has the sole discretion to designate new member organizations or remove existing member organizations from the Leadership Team. Should it become necessary to enact membership change, the Leadership Team will provide a consensus opinion to advise the Secretary. If a unanimous decision is not reached, the Leadership Team will provide a recommendation with both the consenting and dissenting opinions.

Leadership Team Meetings

The Executive Committee meets twice per year in Sacramento at the MPA Milestones meeting, generally in March and September. The Working Group meets quarterly in Sacramento, and as necessary in sub-groups between meetings. Remote attendance at meetings is available but in-person attendance is preferred. Ocean Protection Council staff sends meeting agendas to the Leadership Team via e-mail approximately 10 days prior to each meeting. Leadership Team meetings are not open to the public.

Operational Procedures

The quarterly Working Group meetings serve as an opportunity to consider issues and advance work on a particular topic as a group. In the event that a topic requires more time than is available, the Working Group may split into smaller sub-groups and meet as necessary to address the topic among the relevant members.

The Leadership Team generally works to achieve consensus when providing formal recommendations or advice to decision makers. In times when unanimous agreement is not achieved, recommendations will include both the consenting and dissenting opinions. The Working Group will deliver recommendations to the Executive Committee, which will then deliver recommendations to the Secretary at MPA Milestones meetings. The Secretary will make the final decision.

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A member or members may suggest changes to the Charter in writing at least 10 business days prior to a quarterly Leadership Team Working Group meeting. The Working Group will discuss the proposed changes at its next meeting and come to consensus about adopting the changes. The Working Group will make significant effort to assure that all members' needs and concerns are met when determining whether to change this document. If consensus cannot be reached, the Working Group will provide written explanation of the differing views to the Executive Committee, which will then provide direction to the Working Group on how to proceed.

Guiding Documents

The Leadership Team has developed "[The California Collaborative Approach: Marine Protected Area Partnership Plan](#)" and a [Work Plan](#) to guide the partnership-based [MPA Management Program](#). The Work Plan is composed of strategic priorities, actions, and outcomes within the four focal areas of the MPA Management Program which are outreach and education, enforcement and compliance, research and monitoring, and policy and permitting. The Work Plan is updated every three years as a roadmap for program implementation. At the first Working Group meeting of the year, typically in January, the Working Group reviews progress made from the previous year and sets the timeline toward completing the goals of the Work Plan for the year to come. The Ocean Protection Council serves as the lead entity for Work Plan facilitation to ensure accountability and adjust timelines as needed and agreed upon by the Working Group.

Travel Reimbursement

Primary Tribal Representatives will be reimbursed for travel expenses, contingent upon availability of funding. Alternate Tribal Representatives may attend meetings in-person in addition to the Primary, though travel expenses will only be reimbursed if the Primary is unable to attend the meeting and is contingent upon availability of funding.

Roles & Responsibilities

All Leadership Team members agree to the extent consistent with their legal authorities, to:

- Be fair and represent their agency's, organization's, network, or tribal region's priorities.
- Convey information from their agency or organization to the Leadership Team and disseminate information from the Leadership Team back to the

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appropriate people in their agency, organization, network, or tribal region.

- Maintain open communication among Leadership Team members; preserve confidentiality and trust regarding sensitive and/or privileged topics and information to the fullest extent possible. Parties commit to early and frequent consultation and consideration about confidential information, and in particular, issues or documents provided by Tribes that could expose sacred sites to vandalism or harm, or fisheries to vulnerability, including considering whether received information can be protected under Evidence Code 1040, Public Resources Code 21082.3, subdivision (c)(2)(A), and other trade secret protocols at the State level, and exceptions to Freedom of Information Act releases, including the Archeological Resources Protection Act, the Self-Determination Act, and the National Historic Preservation Act to name a few, as described in the [Bureau of Reclamation Native American and International Affairs Office's Protocol Guidelines](#); and uphold the intent of [The California Collaborative Approach: Marine Protected Area Partnership Plan](#) and the [MLPA Implementation Memorandum of Understanding](#).
- Commit to consistent attendance at meetings. If members are unable to attend a meeting, they may send their designated alternate in their place. It is the responsibility of the member to inform alternates of meeting procedures.
- Acknowledge tribal sovereignty while promoting and advocating for the well-being of California tribes.
- Consider the interests of all California stakeholders.
- Be open, honest, and transparent in all issues.