



“Public Access” to Marine Protected Areas

The MLPA Initiative Staff, and other organizations working on the MLPA, have received numerous questions asking if the designation of and regulation of Marine Protected Areas (MPAs) will restrict or prohibit public access or non-consumptive uses in these areas. This memorandum is written to help clarify the questions about limited public access to MPAs.

First, the Marine Life Protection Act (MLPA) and Marine Managed Area Improvement Act (MMAIA) encoded in the Fish and Game Code both make clear that one of the benefits and goals of designating MPAs is to:

Provide and enhance opportunities for public enjoyment of natural and cultural resources¹.

The Fish and Game Code also includes the goal:

To improve recreational, educational, and study opportunities provided by marine ecosystems that are subject to minimal human disturbance, and to manage these uses in a manner consistent with protecting biodiversity².

It is clear from this language that the Legislature specifically recognized and encouraged opportunities for non-consumptive uses – with the implicit goal of providing maximum public access to these areas.

However, under certain circumstances, public access may need to be managed in a way that is consistent with the goal of protecting biodiversity. The question of access is usually associated with swimmers, divers, surfers and others entering the MPA from the land--specifically associated with protected intertidal zones.

The Legislature considered the potential conflict between encouraging non-consumptive recreational use and limiting access to these areas:

In a State Marine Reserve, it is unlawful to injure, damage, take, or possess any living geological or cultural marine resource, except under a permit or specific authorization from the managing agency for research, restoration, or monitoring purposes. While, to the extent feasible, the area shall be open to the public for managed enjoyment and study, the area shall be maintained to the extent practicable in an undisturbed and unpolluted state. Access and use for activities such as walking, swimming, boating, and diving may be restricted to protect marine reserves. Educational activities

¹ Fish & Game Code § 36620(d)

² Fish & Game Code § 2853(a) (3)

and other forms of nonconsumptive human use may be permitted by the designating entity or managing agency in a manner consistent with the protection of all marine resources³.

The Code contains similar language for State Marine Conservation Areas and State Marine Parks⁴. The Fish and Game Commission and the Park and Recreation Commission have the authority to limit human uses (both extractive and non-extractive activities) within state MPAs in order to protect marine resources. However, neither Commission has exercised that authority thus far.

Therefore, it is incumbent upon the Fish and Game Commission to adopt MPAs that encourage non-consumptive recreation while balancing the protection of the area's biodiversity. It is also apparent from the MLPA process in the Central Coast and North-Central Coast Regions, as well as the on-going process in the South Coast Region, that these potentially conflicting goals will be rare – if they exist at all. **To date, none of the designated or proposed Marine Protected Areas in the Central Coast or North-Central Coast have prohibited public access or non-extractive uses – nor have any access prohibitions been recommended or considered in the on-going South Coast process.**

Further, the MMAIA offers guidance on addressing this subject when designing the Marine Life Protection Program. To increase the coherence and effectiveness of protecting the state's marine life, habitat, and ecosystems, California's MPA system needs:

Clearly defined objectives, effective management measures, and adequate enforcement...⁵.

Therefore, it is both practical, and the letter of the law, that the Regional Stakeholder Group carefully consider the objectives of individual MPAs, and adopt site-specific management measures that encourage public access and non-consumptive recreational uses of the area. For example, if there are places where access limitations are deemed necessary to protect tide-pools and sensitive inter-tidal protected areas, the RSG should consider designated access routes and management measures that are encourage non-extractive uses while protecting the area's habitat values and biodiversity.

Further, as part of the public outreach and efforts to encourage broad participation, it should be clear that public access will not be affected by the designation of MPAs, unless it is recommended and adopted in the management measures for a particular MPA. The public should know where and why an area has been recommended for limited access – as well as who made and justified this extraordinary management measure.

For more information on the Surfrider Foundation and the Marine Life Protection Act visit: <http://www.surfrider.org/mlpa>

³ Fish & Game Code § 36710(a), [emphasis added]

⁴ See Fish & Game Code §§ 36710 (b) and (c) for SMCA and SMP

⁵ Fish & Game Code § 2853 (b) (5)