

***1053 SOUTHERN CALIFORNIA'S RECENT ADOPTION OF THE MARINE LIFE PROTECTION ACT TO CREATE MARINE PROTECTED AREAS**

I. MARINE LIFE PROTECTION ACT

Coastal development, water pollution, and other human activities threaten the health of marine habitat and the biological diversity found in California's ocean waters [E]cosystems throughout the state's oceans are being altered, often at a rapid rate.¹

This is the legislative finding that resulted in California's Marine Life Protection Act ("MLPA" or the "Act"). The Act was passed into legislation and codified by the state's Department of Fish and Game (DFG) in 1999, but it did not take effect in Southern California until just recently, on January 1, 2012.² The Act establishes marine reserves, called "marine protected areas" (MPAs), in which the "consumptive use" of marine life and habitat is regulated.³ Essentially, the MPAs restrict any kind of fishing along 15% of Southern California's coast.⁴ The legislative goal is to rebuild the fish and marine habitats needed for both a viable fish ecosystem and a sustainable fishing industry for California's fishermen.⁵

Northern and Central California implemented MPAs several years ago, but in Southern California, conflict between the fishermen, environmentalists, businessmen, and conservationists created difficulty in agreeing on the placement of the reserves, the oceanic area to be covered, and the strictness of limitations.⁶ As of the beginning of 2012, however, *1054 fifty new reserves were created in Southern California.⁷ The reserves cover 350 square miles of ocean from Santa Barbara County to the U.S.-Mexico border.⁸

II. BENEATH THE SURFACE OF THE MLPA

The six specific goals of the MPLA include "protect[ing] the natural diversity and abundance of marine life," "help[ing] sustain, conserve and protect marine life populations," and "improv[ing] recreational, educational, and study opportunities provided by marine ecosystems."⁹ Beneath these noble aims, however, lurk statutory limitations, difficulties in implementation, and dubious politics.

A. Statutory Limitations

Although the MLPA regulates the consumption and taking of marine life by fishermen and beachgoers, in order to reach these goals, it does not protect against "oil spills and drilling, pollution, military testing, corporate aquaculture, wind and

wave energy projects and all human impacts on the ocean other than fishing and gathering.”¹⁰ The lack of oil spills and drilling regulation can perhaps be attributed to the fact that a committee of the MLPA is chaired by Catherine Reheis-Boyd, a “big oil industry lobbyist” and the president of the Western States Petroleum Association.¹¹

B. Difficulties in Implementation

The highest hurdles in implementing the MLPA are enforcing the reserves’ restrictions and apprehending MPA violators. The sole enforcer of the Act, the DFG, currently has a departmental budget of \$66 million for the enforcement of every hunting and fishing regulation within the state.¹² Yet, because the MPA program costs an estimated \$40 million per year to operate, the DFG is struggling to maintain financial control of it.¹³ California also has fewer DFG wardens per capita than any other state, with a total of 75 positions in marine enforcement, of which only 60 are currently filled.¹⁴ To further illustrate the disparity between coastal area and DFG personnel, there are only ten small vessels and *1055 one large DFG vessel that patrol the ocean area from the central coast up to the Oregon state border.¹⁵

This lack of consistency in violators’ fines creates additional problems with enforcing the Act.¹⁶ While fines may be as high as \$1,000 per crab pot, the fine amount is entirely within the discretion of the county judges.¹⁷ DFG Captain Don Kelly has seen fines range from an ineffective ten dollars up to a staggering \$4,000.¹⁸ Crab poachers in Northern California are understandably “emboldened by this lack of law enforcement presence”; the violators would much rather take the risk of an arbitrary fine than lose the three dollars’ profit per pound of crab.¹⁹

C. Murky Politics

Because enforcing the MPLA accounts for two-thirds of the DFG’s annual budget, five local nonprofit organizations donated approximately \$20 million to create Southern California’s MPAs.²⁰ As a result, there are allegations of corruption and conflicts of interest within the MLPA governance.²¹ Privatization of natural resources has essentially occurred because of the donations from these nonprofits, all of which have questionable interests in the MLPA, and some of which have been described as “money laundering operations.”²² MLPA officials claim that the private funding of a public process is “good public policy,” but they fail to expand on this view.²³ The monetary supporters of the Southern California MPAs are the Western States Petroleum Association, a collection of corporate environmental non-governmental organizations, Safeway Stores, and Wal-Mart.²⁴

Furthermore, there is a lack of transparency and openness within the governance of the Act.²⁵ The MLPA Blue Ribbon Task Force (Task Force), in charge of implementing the law, is charged with having a “corrupt private process.”²⁶ The Task Force, dominated by heads of the state’s oil industry, real estate corporations and marina developers, allegedly holds unlawful private meetings before scheduled public meetings in order to “script” their *1056 required “public” meetings.²⁷ Such alleged private meetings violate the open-meeting requirement mandated by the Bagley-Keene Open Meeting Act.²⁸

These alleged improprieties have led a group of fishermen to take legal action. The group is currently appealing a denial of its request for a Writ of Mandate voiding the MPAs in Southern California based on illegal implementation of California law.²⁹ The three petitioners before the San Diego Superior Court--Coastside Fishing Club, United Anglers of California, and Bob Fletcher--“strongly believe” that the MLPA was not “implemented in a fair and even-handed manner as the legislature directs.”³⁰

III. THE EFFECTS OF THE MLPA

As the first state to regulate marine life, California is a leader in marine life protection.³¹ And while the MLPA has an honorable environmental goal, the Act’s lack of funding will create economic hardships for the state’s fishing industry, as well as the DFG.³²

A. Economic Effect

Although the environmental benefits of the MLPA are proven, the monetary values of the program simply do not add up. To

illustrate this point, assume that the average violation will result in a \$1,000 fine (a highly inflated average). Using the estimated program cost of \$40 million a year and assuming the DFG will fill its marine department with the additional 15 enforcement officers, each of the 75 officers will need to apprehend 533 violators each year.³³ That amounts to 10 violations per week, per officer. Only one violation has been cited in Orange County as of the beginning of March 2012.³⁴ Furthermore, in 2011, the DFG actually had to pay fishermen back due to a “lack of producing important information” about the regulations.³⁵ Apart from the costs of the program itself, it is estimated that local commercial fishing businesses will lose millions of dollars in revenues.³⁶ Rodger Healy, an Orange County lobsterman estimates that he will lose between 60% and *1057 65% of the area he normally fishes, which can account for 75% of his income in a given year.³⁷

B. Environmental Effects

While the economics of the Act seem unpromising, the expected environmental rehabilitation of fish ecosystems throughout Southern California is assuring. California is the first state to regulate marine life consumption and restrict fishing to this extent and scope, and marine conservationists are hopeful about other coastal states following suit.³⁸ Baja California restricted fishing to a similar degree, and the results were impressive: the amount of marine life quintupled in ten years.³⁹ The Channel Islands conducted a similar experiment in 2003, and larger and more abundant fishes are now found throughout the islands.⁴⁰ Greg Helms, local ocean conservationist, thinks the MPAs in Southern California are a “major step forward for marine conservation” that “transforms marine management ... for the extrinsic value of fish and for the people who want to experience those fish in their natural state and in their natural abundance.”⁴¹ The Marine Protection Officer in Laguna Beach, Calla Allison, estimates that it will take a few years to establish a baseline of data from the fish habitats in her area. Allison states that a reassessment of the habitats will occur every five years and predicts that the MPAs restrictions and size will be adjusted after ten years if needed.⁴²

C. Laguna Beach -- An Example of Local Enforcement

The MLPA created two MPAs in the Orange County coastal town of Laguna Beach.⁴³ There is a State Marine Reserve on the North end of the beach, which “prohibits all take and consumptive use,” and a State Marine Conservation Area to the South, which “prohibits commercial take but may allow select recreational harvest” and allows “operation and maintenance of artificial structures and facilities, beach grooming, maintenance dredging, and habitat restoration.”⁴⁴ These two MPAs cover the entire seven-mile stretch of the town and extend approximately three miles out into the sea.⁴⁵ The City of Laguna Beach (the “City” or “Laguna Beach”) created a part-time Marine Protection Officer position, *1058 currently held by Allison, who works collaboratively with the DFG to control the MPAs.⁴⁶ Currently, Allison’s most important goal is to educate the commercial and recreational fishermen of the Act’s existence and its restrictions.⁴⁷ This education primarily takes the form of posted notifications throughout the coves of Laguna Beach.⁴⁸ Allison stated that the Orange County recreational fishers are still learning; because the MPA restrictions just recently went into effect on January 1, 2012, she is allowing somewhat of a “probation period” and handling violations on a case-by-case basis.⁴⁹ However, Allison warns, if an egregious and intentional violation were to occur, she would be forced to issue a citation.⁵⁰

Because of the limitations of the DFG’s enforcement ability, the City has gone a step further in regulating its offshore MPAs. The City has adopted the “Marine Protected Areas” code, written by Allison, which does the following: it adopts the establishment of MPAs; outlines the responsibility of the Marine Protection Officer; lists the unlawful acts of taking or disturbing “live or dead tidal marine animal or plant life”; and creates a permit process for removal for scientific research reasons.⁵¹ The Marine Protected Areas code provides the city with another tool to enforce the MLPA by allowing the Marine Protection Officer, as well as officers of the Laguna Beach Police Department and city lifeguards, to give an administrative citation of \$100 for minor MLPA offenses.⁵²

So far, most of the Act’s violations in Laguna Beach have been by recreational fishermen and unassuming beachgoers and tourists.⁵³ A spear fisherman’s prized catch of a handful of fish or an innocent tourist’s bucket of shells will not catch the attention of the DFG; in fact, Allison says that a citation for either of those violations would “get thrown out of court so quickly for wasting the judge’s time.”⁵⁴ These “small” violations, however, are the most common in Laguna Beach, and they need to be enforced to deter the recreational general public from violating the MLPA.⁵⁵

CONCLUSION

While the leadership enforcing and financially supporting the MLPA is questionable, its environmental mission is not. With successful outcomes from similar marine reserves, the Act is definitely a “step in the right direction” of preserving Southern California’s marine habitat. State resources to enforce the Act are limited, but if local communities, like Laguna Beach, step up by educating potential violators and regulating the MPAs on a municipal *1059 level, coastal ecosystems could flourish. This will require large expenditures and continued effort from Southern California cities; but for active environmentalists, local beachgoers, and Calla Allison, the precious beaches and private coves of Laguna Beach will always be worth it.

Footnotes

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- ¹ Marine Life Protection Act (MLPA), CAL. FISH & GAME CODE §§ 2850-2863 (West 2012).
- ² *Id.*
- ³ *Marine Life Protection Act Implementation Update*, CAL. DEP’T OF FISH & GAME (Oct. 7, 2011), <http://www.dfg.ca.gov/mlpa/pdfs/processupdate100711.pdf>.
- ⁴ Erik Olsen, *California’s Coastline Controversy*, N.Y. TIMES (Jan. 12, 2012), <http://green.blogs.nytimes.com/tag/marine-life-protection-act/>.
- ⁵ FISH & GAME § 2853.
- ⁶ Olsen, *supra* note 4.
- ⁷ *Id.*
- ⁸ *Id.*
- ⁹ FISH & GAME § 2853.
- ¹⁰ Dan Bacher, *Halfway Marine Protection Measures Launched in California*, RED GREEN & BLUE, Jan. 1, 2012, <http://redgreenandblue.org/2012/01/01/halfway-marine-protection-measure-launched-in-california/>.
- ¹¹ *Id.*
- ¹² DEPARTMENT OF FISH AND GAME, FISCAL YEAR 2011-12 BUDGET FACT BOOK (2011), *available at* <http://www.nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=26501>.
- ¹³ *MLPA Info*, SAVE CA FISHING, <http://www.savecafishing.org/mlpa-info/> (last visited Jan. 29, 2012).
- ¹⁴ Jason Dearen, *Protecting California Marine Sanctuaries a Tough Job*, SAN FRANCISCO CHRONICLE, Jan. 14, 2012, <http://www.sfgate.com/cgi-bin/article.cgi?f=/n/a/2012/01/14/state/n132311S39.DTL>.

15 *Id.*

16 *Id.*

17 *Id.*

18 *Id.*

19 *Id.*

20 Dan Bacher, *The Big Corporate Money Behind Fake Marine 'Protection'*, CAL. PROGRESS REP. (Feb. 21, 2011), <http://www.californiaprogressreport.com/site/big-corporate-money-behind-fake-marine-protection>.

21 *Id.*

22 *Id.*

23 *Id.*

24 Bacher, *supra* note 10.

25 *Id.*

26 *Id.*

27 Bacher, *supra* note 20.

28 Bagley-Keene Open Meeting Act, CAL. GOV'T CODE §§ 11120-11132 (West 2012).

29 Bacher, *supra* note 10.

30 *Id.*

31 Olsen, *supra* note 4.

32 *Id.*

33 This apprehension count is figured as follows: (\$40 million program cost)/(\$1,000/violation x 75 officers) = 533.33 violations/officer.

34 Tony Barboza, *Diver Accused of Poaching 47 Lobsters from New Marine Sanctuary*, L.A. TIMES (Jan. 16, 2012), <http://latimesblogs.latimes.com/lanow/2012/01/lobster-poaching-marine-sanctuary-laguna-beach.html>.

35 *MLPA Ordered to Pay Back Anglers*, SAVE CA FISHING, <http://www.savecafishing.org/uncategorized/mlpa-ordered-to-payback-anglers/> (last visited Jan. 29, 2012).

36 Olsen, *supra* note 4.

37 *Id.*

38 *Id.*

39 *Id.*

40 *Id.*

41 *Id.*

42 Telephone Interview with Calla Allison, Marine Protection Officer, Laguna Beach (Jan. 28, 2012).

43 *South Coast Marine Protected Areas*, CAL. DEP'T OF FISH & GAME, http://www.dfg.ca.gov/mlpa/scmpas_list.asp (last visited Jan. 29, 2012).

44 *Id.*

45 *Southern California State and Federal Marine Protected Areas*, CAL. DEP'T OF FISH & GAME (Oct. 31, 2011), <http://www.dfg.ca.gov/mlpa/pdfs/scmpas121510.pdf>.

46 Allison, *supra* note 42.

47 *Id.*

48 *Id.*

49 *Id.*

50 *Id.*

51 Marine Protected Areas, 18 LAGUNA BEACH MUN. CODE § 29 (2012).

52 Allison, *supra* note 42.

53 *Id.*

54 *Id.*

