

9.0 Appendices

9.1 Appendix A: List of acronyms

ASMFC	Atlantic States Marine Fisheries Commission
BRZ	Bottomfish recovery zone
CEQA	California Environmental Quality Act
CFR	Code of Federal Regulations
EA	Environmental Assessment
EO	Executive Order
FKNMS	Florida Keys National Marine Sanctuary
FMP	Fishery Management Plan
FR	Federal Register
GIS	Geographic Information System
MLPA	Marine Life Protection Act
MPA	Marine Protected Area
MRWGMarine	Reserve Working Group
NAS	National Academy of Sciences
NEPA	National Environmental Policy Act
NFCC	National Fisheries Conservation Center
NGO	Non-governmental organization
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NRC	National Research Council
SAC	Sanctuary Advisory Council
SSC	Scientific and Statistical Committee
TAC	Total Allowable Catch

9.2 Appendix B: Introductory statement about the project

The National Marine Protected Areas Center (NMPAC) has initiated a project to evaluate six recent marine protected area (MPA) planning processes. The goal of this project is to identify “lessons learned” that can improve future and ongoing planning processes. This memo is to let you know that a contractor will be calling you to request a phone interview to discuss one or more of the six processes being evaluated. You have been selected as an interview candidate because of your unique experience with and perspective on one or more MPA planning process. We believe strongly in the value of learning from past MPA planning experiences, and hope you will participate in the project. We believe you can provide important insights that will help to improve future processes.

Project overview

The following six MPA designation processes were selected to represent a range of governmental levels and geographic regions:

- Carl N. Schuster Horseshoe Crab Reserve (Delaware Bay)
- Channel Islands Marine Reserves (California)
- Gulf of Mexico Grouper Closures (Gulf of Mexico)
- San Juan County Bottomfish Recovery Zones (Washington)
- Tortugas Ecological Reserve (Florida)

- Marine Life Protection Act (MLPA): Phase I (California).

The first phase of the Lessons Learned project, recently completed, objectively documented the establishment processes. (You may have been contacted sometime in the past year by Brie Kessler, who did this work.) This first phase included producing a timeline of events and identifying the various entities involved in each process. A report containing detailed case studies for five of the processes, as well as a shorter document providing summaries of all six processes, is available online at <http://www.csc.noaa.gov/mpa/process.html>. (A complete case study was not produced for the MLPA since this process is ongoing.)

The second phase of the project, now underway, involves interviewing participants to get individuals' subjective perception of what worked and what did not for each process. In addition to resource managers from involved agencies, a wide range of stakeholder groups, including commercial and recreational interests, environmental groups, and scientists will be interviewed. A final report will summarize strengths and weaknesses, and provide recommendations for future and ongoing MPA planning efforts. Primary audiences for this report are the National MPA Center and federal, state, local, and tribal resource agencies involved in MPA planning.

Project team

The National MPA Center is a partnership between the National Oceanic & Atmospheric Administration (NOAA) and the Department of the Interior (DOI). Since both of these agencies were involved in the processes being studied, the MPA Center has hired the National Fisheries Conservation Center (NFCC) and the Marine Resources Assessment Group (MRAG) Americas, Inc. to bring impartiality to the interview phase. These contractors have extensive experience in marine resource management topics, but were not directly involved in the processes under review. The following individuals (in alphabetical order) make up the joint NFCC/MRAG Americas team:

- Brock Bernstein (brockbernstein@sbcglobal.net)
- Heidi Lovett (heidi.lovett@mragamericas.com)
- Suzanne Martley (suzanneiudicello@rushmore.com)
- Graeme Parkes (graeme.parkes@mragamericas.com)
- Charlie Stringer (cmstringer@sbcglobal.net)

One of these individuals will be contacting you to request an interview. It is anticipated that interviews will take between a half hour and an hour. Interviews will take place over the course of the summer, and a final report is scheduled to be submitted by the end of September.

If you have any questions about the Lessons Learned project, please do not hesitate to contact us. We can be reached at the following numbers and e-mail addresses:

Heidi Recksiek, Training & Technical Assistance Coordinator, National MPA Center (843)740-1194; Heidi.Recksiek@noaa.gov

Dr. Charlie Wahle, Director, MPA Science Institute, National MPA Center (831)242-2052; Charles.Wahle@noaa.gov

Thank you in advance for time you devote to an interview, and we look forward to sharing the lessons learned. The findings of this project will inform future planning activities, and your input is a critical component of an effective assessment.

9.3 Appendix C: Guidelines for regulatory amendment

From: Operational Guidelines, Fishery Management Plan Process, National Marine Fisheries Service, May 1, 1997. Pages F4-F5.

Phase V: Continuing and contingency fishery management, 1. Continuing Fishery Management; Regulatory Amendments

Regulatory amendments amend regulations, not an FMP. Section 303(c)(2) of the Magnuson-Stevens Act provides that a Council shall submit proposed regulations the Council deems necessary or appropriate to modify regulations implementing an FMP/amendment at any time after the FMP/amendment is approved. A regulatory amendment is used to clarify Council intent or to interpret broad terms contained in approved FMPs; it may be used to implement a portion of an approved FMP/amendment that was reserved and the Council now desires NMFS to implement.

Regulatory amendments can be used when a Council believes a specific problem may occur in the fishery that would require addition to or amendment of the original regulations, but the exact nature of the event or the remedial action cannot be foreseen at the time the FMP is being prepared. An example is the concern that, with the growth of a fishery, a gear conflict might arise that could lead to serious disruption. In such cases, a Council may not be able to predict the nature, location, or magnitude of the event with sufficient certainty to describe the measures needed to address the problem, the effects of the regulatory change, or the criteria to be used with sufficient precision to use abbreviated rulemaking procedure. Nevertheless, there may be a need to act more rapidly than is possible through the FMP amendment process. The mechanism to use under these circumstances is a regulatory amendment, if the authority is provided for in the FMP.

Regulatory amendments must go through the normal rulemaking procedure, including determination of significance under E.O. 12866; time saved is derived from the fact that the change was anticipated within the scope of the FMP/amendment (thus obviating the necessity for the full FMP amendment process), and the comment period is normally 15 to 30 days, instead of the 60-day period set forth by the Magnuson-Stevens Act for FMP/amendments. However, a regulatory amendment submitted by a Council under section 303(c)(2) of the Magnuson-Stevens Act must be reviewed by NMFS according to statutory deadlines: 5 days to initiate evaluation of the proposed rule, 15 days for F to make a consistency determination and clear the proposed rule, a standard 30-day public comment period, and publication of the final rule within 30 days after the close of the comment period on the proposed rule. An interim final rule may be used when a measure must be made effective immediately and, when justified, the advance period of public notice and comment and APA delayed effectiveness can be waived; however, public comment is requested upon publication of the interim final rule. A final rule, which responds to public comments, implements the final rule on a permanent basis, if still found necessary and appropriate.

The FMP and associated documents should define and analyze as completely as possible the problems foreseen; the kinds of actions that may be taken to overcome them; any criteria for action that may be foreseen; the economic, social, and environmental effects that may occur as a result; and the procedures that are to be used for taking the action. The implementing procedures should compensate for the fact that appropriate analysis and opportunity for public comment on the action may have been limited in the original FMP.