

Date of Hearing: June 25, 2024

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Diane Papan, Chair

ACR 210 (Bennett) – As Introduced June 6, 2024

**SUBJECT:** Conservation: Marine Protected Areas

**SUMMARY:** Calls upon the relevant state entities to prioritize the creation of Marine Protected Areas (MPAs). Specifically, **this bill:**

- 1) States a number of findings, including:
  - a) Our identity and well-being as Californians is inextricably tied to the Pacific Ocean and our majestic coastline;
  - b) That the changes that would occur by exceeding the two-degree threshold of global temperatures will be irreversible for hundreds of years;
  - c) That the state’s MPA network offers a proven model to safeguard marine habitat and wildlife from climate and extractive stressors;
  - d) The Ocean Protection Council (OPC) is advancing four key strategies to reach the 30% goal by 2030 in coastal waters; and
  - e) Creating state marine reserves and certain limited-take state marine conservation areas is the best way the state can protect biodiversity and promote climate resilience for California’s marine ecosystems.
- 2) Calls upon California Natural Resources Agency (CNRA), OPC, the Fish and Game Commission (Commission), and the Department of Fish and Wildlife (DFW) to prioritize the creation of new fully and highly protected MPAs through the pathways of strengthened protections within National Marine Sanctuaries (NMS) and adaptive management of the California MPA network following its first Decadal Management Review

**EXISTING LAW:**

- 1) Directs CNRA to combat the biodiversity and climate crisis by, among other things, establishing the California Biodiversity Collaborative and establishing the 30x30 goal, which is to conserve 30% of California’s lands and coastal waters by 2030 (Executive Order No. N-82-20).
- 2) Codifies the 30x30 goal [Public Resources Code (PRC) § 71450].
- 3) Establishes the Marine Life Protection Act (MLPA), which, among other things, requires that OPC assume the responsibility for the direction of policy of MPAs, makes finding and declarations about MPAs, and requires that the master plan that guides the adoption and implementation of MLPA use the best readily available scientific information and engage the public [Fish and Game Code (FGC) § 2850 *et. seq.*].
- 4) Declares the six goals of MLPA:

- a) To protect the natural diversity and abundance of marine life, and the structure, function, and integrity of marine ecosystems;
  - b) To help sustain, conserve, and protect marine life populations, including those of economic value, and rebuild those that are depleted;
  - c) 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 biodiversity;
  - d) To protect marine natural heritage, including protection of representative and unique marine life habitats in California waters for their intrinsic value;
  - e) To ensure that California's MPAs have clearly defined objectives, effective management measures, and adequate enforcement, and are based on sound scientific guidelines; and
  - f) To ensure that the state's MPAs are designed and managed, to the extent possible, as a network (FGC § 2853).
- 5) Defines MPA as a named, discrete geographic marine or estuarine area seaward of the mean high tide line or the mouth of a coastal river, including any area of intertidal or subtidal terrain, together with its overlying water and associated flora and fauna that has been designated by law or administrative action to protect or conserve marine life and habitat. MPAs are primarily intended to protect or conserve marine life and habitat, and are therefore a subset of marine managed areas (MMAs) [FGC § 2852(c) and PRC § 36602].
- 6) Describe the six classification of MMAs and the process for proposing new MMAs (PRC § 36600 *et seq.*).
- 7) Makes commercial fishing in MPAs a misdemeanor (FGC § 12012.5).

**FISCAL EFFECT:** Unknown. This resolution is keyed fiscal.

**COMMENTS:**

- 1) **Purpose of this resolution.** According to the author, "As the climate continues to change, we must do all we can to protect sensitive areas and ecosystems both on land and in water. [MPAs] have been shown to bolster ocean ecosystem health and improve the resilience of fisheries. They also store carbon, creating a valuable site to help combat the climate crisis."
- 2) **Background.** MPAs are a subset of MMAs. MPAs generally permit all form of non-extractive recreation and are a mechanism used by the state to durably protect and conserve coastal waters and count toward the states 30x30 goal. There are three MPA designations:
  - State Marine Reserves: An MPA classification that prohibits damage or take of all marine resources (living, geologic, or cultural), including recreational and commercial take.
  - State Marine Parks: An MPA classification that prohibits damage or take of any marine resources for commercial purposes (restrictions vary)

- State Marine Conservation Areas: An MPA classification that may allow some recreational and/or commercial take of marine resources (restrictions vary)

Other MMAs include State Marine Recreational Management Areas and special closure areas that are not designated as MPAs.

*MLPA.* In 1999, the Legislature passed MLPA, which mandated the redesign of California’s pre-existing patchwork of MPAs and required the new assemblage of MPAs to be designed and adaptively managed as an ecologically connected network (see the six goals in Existing Law #4). The MLPA also sets up a process to establish MPAs using scientific data and encourages many levels of public participation.

The Commission is the primary decision-making authority for MPA regulations and designating MPAs. DFW is responsible for managing the MPA network, providing biological data and expertise to inform Commission decisions, and enforcing MPA regulations. OPC is the lead for guiding the policy direction for the MPA network and works broadly to advance the Governor’s priorities for healthy coastal and ocean ecosystems.

Every 10 years DFW solicits input from stakeholders to inform the MPA Management Program, called the Decadal Management Review. The first Decadal Management Review was completed in 2022 and is the first comprehensive evaluation of the entire statewide MPA network. The report indicates that there is evidence of MPA protections benefiting key species and habitats, although it is still considered too early to determine the full scope and efficacy of the MPA network. Other research efforts have indicated that California’s MPAs have led to increased fish biomass, but do not necessarily indicate increased biodiversity.<sup>1</sup> The Decadal Management Review also recommended 28 adaptive management recommendations and associated potential management actions.<sup>2</sup> None of the recommendations call for the expansion of the MPA network.

*30x30 in coastal waters.* OPC is leading implementation of 30x30 in coastal waters. Currently, California has 124 MPAs, which cover approximately 852 square miles of state waters, which equates to about 16% of all coastal waters. To conserve an additional 13.8% of coastal waters by 2030, OPC suggests four actions:<sup>3</sup>

- Action #1: Adaptively managing the state’s MPA network;
- Action #2: Strengthening biodiversity conservation in California’s federally-managed NMS;
- Action #3: Supporting tribally-led conservation, including through the creation of Indigenous Marine Stewardship Areas (IMSA); and
- Actions #4: Exploring the role of other MMAs beyond MPAs and NMSs in conserving biodiversity.

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<sup>1</sup> California Collaborative Fisheries Research Program— Monitoring and Evaluation of California MPAs

<sup>2</sup> DFW, California’s Marine Protected Area Network Decadal Management Review (2022)

<sup>3</sup> OPC, 30x30 Draft Decision-Making Framework for Coastal Waters (2024)

In regards to MPAs, the adaptive management process includes making changes to MPA laws or regulations for better functioning and management of the MPA network. Petitions for changes to MPAs go through a public process at the Commission (see below). Adaptive management of the existing MPA network may include changes to MPA boundaries and designation, but these expansions are not explicitly called out as a method for achieving 30x30 in coastal waters. Creation of new MPAs is also not explicitly mentioned in OPC's decision-making framework. Expanding the MPA network has not been considered a component of achieving the state's 30x30 marine conservation goals in the Pathways strategy, especially prior to release of the decadal management review.<sup>4</sup>

There are additional forms of conservation in California coastal waters. This includes four NMS, three of which cover nearly 41% of state waters (Greater Farallones NMS, Monterey Bay NMS, and Channel Islands NMS). Since each NMS has different regulations and policies, each will need to be separately assessed to determine if they meet the state's 30x30 definition of conserved. As noted in action #2, OPC is working with federal partners to determine if additional measures could be added to existing NMS management plans so they may be included in the state's efforts.

OPC is also in the early stages of developing policies to support IMSAs (action #3), which is also an established priority action in the Pathways strategy. OPC is also in the process of generating a comprehensive inventory of other effective area-based conservation measures to evaluate if these too may meet the state's definition of conserved.

*Expansions to the MPA network.* The creation of new MPAs, expanding boundaries of existing MPAs, or increasing protections in MPAs must follow the MPA adaptive management process which requires all actions to be science-based and community-driven. Briefly, the process to petition for changes to MPAs involves regional stakeholder groups who develop MPA proposals that were reviewed and evaluated by DFW. Then, based on these evaluations and public input, DFW makes recommendations to the Commission—the sole authority empowered to adopt and implement MPAs.

The Commission is currently evaluating petitions to change MPA regulations, which have all been referred to DFW for review, and will be discussed at the July 2024 meeting of the Commission's Marine Resources Committee.<sup>5</sup> These petitions include non-regulatory items, expansion and limitation of take of certain sea creatures, adjusting boundaries of MPAs, and establishing new MPAs.<sup>6</sup>

- 3) **Policy considerations.** Any new proposals regarding MPAs as called for in this resolution will need to undergo the process outlined above. However, this does put a finger on the scale on how changes to the MPA network (i.e., the creation of new MPAs, expansion of existing MPAs, or strengthening protections on existing MPAs) which is a currently under consideration at the Commission. *The question before this Committee is if it wants to*

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<sup>4</sup> Pathways to 30x30 (2022)

<sup>5</sup> Fish and Game Commission, Marine Resources Committee, Staff Summary regarding MPAs. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=220333&inline>

<sup>6</sup> Fish and Game Commission, Marine Resources Committee, Regulation Change Petition Items. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=219990&inline>

*prioritize expansions of the MPA network when there are three other actions being considered to achieve California's 30x30 marine conservation goals.*

- 4) **Proposed committee amendments.** To provide clarity about the role of MPAs and how they are evaluated, the Committee may wish the author to consider the following amendments:

WHEREAS, The ocean holds social, cultural, and traditional significance, especially to the original stewards of this land, the indigenous communities of California, who have protected the ocean since time immemorial ~~for centuries~~; and

WHEREAS, The California Marine Protected Area Network offers a ~~proven~~ model to safeguard marine habitat and wildlife from climate and extractive stressors; and

WHEREAS, The Ocean Protection Council is advancing four key strategies to reach the 30-percent goal by 2030 in coastal waters; and

WHEREAS, ~~Creating state~~ State marine reserves (“fully” protected) and certain limited-take state marine conservation areas (“highly” protected) are key ways ~~is the best way~~ the state can protect biodiversity and promote climate resilience for California’s marine ecosystems; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature calls upon the Natural Resources Agency, the Ocean Protection Council, the Fish and Game Commission, and the Department of Fish and Wildlife to prioritize, as supported by science, public process, and the adaptive management process, the expansion of California's ~~creation of new fully and highly protected Marine Protected Areas through the pathways of strengthened protections within National Marine Sanctuaries and adaptive management of the California Marine Protected Area Network following its first Decadal Management Review~~ to achieve the state's 30x30 marine conservation goals; and be it further

- 5) **Arguments in support.** A coalition of environmental organizations write, “By making the ocean healthier and more resilient to climate change, stronger marine protections preserve everyone’s ability to enjoy the ocean through various activities far into the future. Given the state’s limited resources and the impending threats to our ocean and communities, state agencies should prioritize creating, strengthening, and expanding fully and highly protected areas to meet the 30x30 goal in coastal waters. [...] The state has an opportunity and a responsibility to California communities to strengthen protections within National Marine Sanctuaries and ensure the MPA network is strengthened and continues to effectively conserve biodiversity through adaptive management.”
- 6) **Arguments in opposition.** A collection of commercial and recreational fishing associations voice opposition to this resolution. Concerns include (1) promoting MPAs before their effectiveness is well established and (2) that this resolution is biasing the scientific and public process that has been underway for the last several years at the Commission. One letter states, “We also are very concerned that the resolution circumvents the established mechanisms of the MPA Decadal Management Review, MLPA, and Executive Order No. N-82-20 (30x30), which both include JEDI governance so all voices in this public process have identical access and carry equal weight, and instead applies pressure to influence outcomes of

these processes directly through legislative action.” These groups support the goals of 30x30 noting that “there are few other groups whose present and future are more deeply connected to the persistent health of our marine ecosystems.” They also call attention to the other pressures on ocean wildlife that do not stem from fishing, namely pollution and climate change impacts.

7) **Related legislation.** SB 337 (Min), Chapter 392, Statutes of 2023, codifies the 30x30 goal.

AB 2220 (Bennett) of the current legislative session would have made several changes to commercial fishing laws, including prohibiting DFW from issuing a new gill net or trammel net permits and expanding the prohibition of their use to all ocean waters of the state. AB 2220 was held in this Committee at the request of the author.

AJR 47 (Bloom) of 2018, would have affirmed legislative support for science-based action to conserve, protect, restore, and effectively manage California’s coastal and ocean ecosystems and urged both federal and state government entities to take certain actions. AJR 47 was held in the Senate Rules Committee.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Azul (Co-Sponsor)  
 Environment California (Co-Sponsor)  
 Environmental Defense Center (Co-Sponsor)  
 Natural Resources Defense Council (Co-Sponsor)  
 Audobon California  
 California Coastkeeper Alliance  
 California Institute for Biodiversity  
 Clean Earth 4 Kids  
 Clean Water Action  
 Earth Echo International  
 Environmental Action Committee of West Marin  
 Environmental Center of San Diego  
 Environmental Protection Information Center  
 Fish On  
 Marine Conservation Institute  
 Pacific Environment  
 Planning and Conservation League  
 San Diego Zoo Wildlife Alliance  
 Save the Waves Coalition  
 So Cal 350 Climate Action  
 Wildcoast

**Opposition**

All Waters Protection and Access Coalition  
 American Sportfishing Association  
 Backcountry Hunters & Anglers  
 California Fishermen’s Resiliency Association

Coastal Conservation Association of California  
Coastside Fishing Club  
Pacific Coast Federation of Fishermen's Associations  
San Diego Fishermen's Working Group  
Ventura County Commercial Fishermen's Association  
West Coast Fisheries Consultants

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