
Case Analyses

Creating Stable Agreements in Marine Policy: Learning from the California South Coast Marine Life Protection Act Initiative

Scott McCreary, Phyllis Grifman, and Meredith Cowart

In this article, we examine the California South Coast Marine Life Protection Act Initiative stakeholder process, evaluate its shortcomings, and consider what could have been done differently. Our objective is to make recommendations to improve future multi-stakeholder marine policy processes. In our view, while the South Coast stakeholder process had many positive outcomes, it failed to reach what we call here a “stable agreement.” Our analysis is based on two of the authors’ involvement (one as a facilitator and the other as a stakeholder representative) in the process and a post-hoc survey of participants. We find that several ill-advised process design and management choices significantly destabilized the negotiations, leading to an ultimately unstable agreement.

We highlight four major problematic process design and management decisions, including the following: representation on the multi-stakeholder group was imbalanced, the pre-meeting caucuses were not paired with training in interest-based negotiation, adequate incentives to negotiate toward a consensus agreement were not provided, and the use of straw voting at one point in the process was unclear and inconsistent. As a result of these and other process design and management flaws, many stakeholders believed that the process was biased and that their ends would be better achieved by anchoring

Scott McCreary is the founder and principal of CONCUR, Inc., a public dispute resolution firm in Berkeley, California. His e-mail address is scott@concurinc.net.

Phyllis Grifman is the associate director of the University of Southern California Sea Grant Program in Los Angeles. Her e-mail address is grifman@usc.edu.

Meredith Cowart is an associate at CONCUR, Inc. Her e-mail address is meredith@concurinc.net.

negotiations and engaging in positional bargaining. Ultimately, this meant that near-consensus on a single cross-interest marine protected area proposal was not reached, the scientific guidelines put forth were not fully met, the process was not and is not viewed as fair by the stakeholders directly or indirectly involved, and the marine protected area regulations lack broad-scale support.

These pitfalls of the South Coast stakeholder process could have been avoided had the management and facilitation team consistently followed best practices in dispute resolution. We recommend that future marine planning processes learn from this example, particularly those occurring in highly complex, urban ocean environments.

Keywords: negotiation, public policy dispute resolution, process design, incentives to negotiate, ground rules, straw voting, coastal and marine spatial planning, Marine Life Protection Act, stakeholder engagement.

Introduction

In 2004, the California Marine Life Protection Act (MLPA) Initiative was established to address declining fish stocks and habitat loss off the California coast. Specifically, the initiative sought to strengthen California's existing network of marine protected areas — marine and estuarine areas that restrict some uses in order to protect marine life and habitat.¹ The initiative established a multi-stakeholder group in four California regions (including the South Coast, the focus of this article), each with the goal of developing proposals to enhance the local marine protected area network. Each stakeholder group, which included the full suite of ocean users (representatives of commercial, recreational, and conservation entities, among others), negotiated cross-interest proposals that informed the final regulations adopted by the Fish and Game Commission.²

In this case analysis, we examine California's South Coast MLPA stakeholder process, evaluate its shortcomings, and consider what could have been done differently. In our view, the South Coast stakeholder process was a good process with a good outcome, but it was not a great process with a great outcome. In other words, while the process had many positive outcomes (e.g., several proposals were developed that informed the final regulations), it failed to reach what we refer to in this article as a "stable agreement." A stable agreement is one in which (1) significant cross-interest agreements are made, (2) consensus or near-consensus is reached, (3) objective scientific criteria are met, (4) the process is widely viewed as fair, and (5) the agreement is widely supported. Although the other regions

achieved more stable outcomes, in the South Coast none of these criteria were met.

We find that several misguided process design and management choices significantly destabilized the negotiations, leading to an ultimately unstable agreement.³ We highlight four key problematic process design and management decisions, including the imbalanced representation of the multi-stakeholder group, the decision to hold pre-meeting caucuses that were not paired with training in principled negotiation, a failure to provide incentives to negotiate toward a consensus agreement, and the unclear and inconsistent use of straw voting at one point in the process. Because of these and other process design and management flaws, many stakeholders felt the process was biased, and that their ends would be better achieved by anchoring negotiations and engaging in positional bargaining. In the longer run, this meant that near-consensus on a single cross-interest proposal was not reached, the scientific guidelines put forth were not fully met, the process was not and is not viewed as fair by the stakeholders directly or indirectly involved, and, importantly, the ultimate regulations lack broad-scale support.

These pitfalls could have been avoided had the management and facilitation team consistently followed best practices in dispute resolution, including ensuring equal representation on the multi-stakeholder group, providing interest-based negotiation training for stakeholders, creating stronger incentives for negotiating toward consensus, consistently articulating strong ground rules and decision rules, and giving all members of the facilitation team an opportunity to participate in making critical decisions about key process design choices. Ideally, all of these improvements would be features of a well-structured complex multi-stakeholder policy process. Each of our “lessons learned” is already known in the dispute resolution field, but, as our case emphasizes, not consistently implemented in practice — thus, this case analysis seeks to reinforce existing theory and encourage its widespread implementation in policy processes.

Two authors of this study participated in the South Coast MLPA stakeholder process: Scott McCreary served as the lead facilitator of the South Coast stakeholder group and Phyllis Grifman served as a stakeholder representing the University of Southern California (USC) Sea Grant program.⁴ Meredith Cowart helped analyze the survey results. Following the final negotiations, we (CONCUR and USC Sea Grant) conducted a post-hoc survey of the stakeholder group to analyze the process outcomes and identify specific process successes and failures.

Background: The South Coast Regional MLPA Process

The MLPA Initiative was a public-private collaboration established in 2004 between the California Natural Resources Agency, the California

Department of Fish and Game, and the Resources Legacy Fund Foundation.⁵ The foundation helped fund the initiative, with all members' roles and responsibilities clearly defined in a Memorandum of Understanding between the parties (California Marine Life Protection Act Initiative 2004).

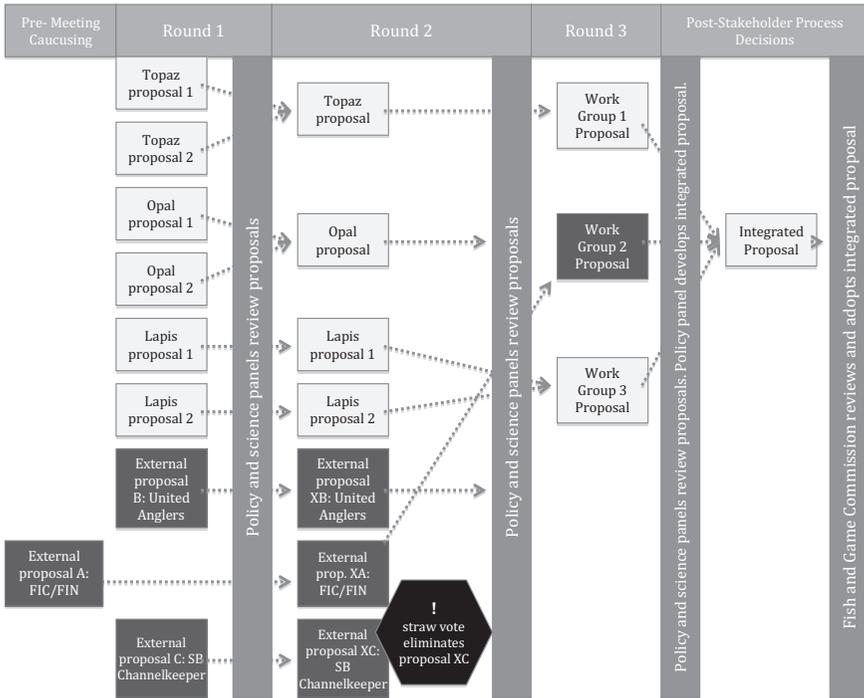
In the South Coast, as in each of the California regions, a stakeholder group (known as the "Regional Stakeholder Group") was established. Its membership included representatives from the full range of ocean resource interests: commercial fishing businesses, recreational users, coastal businesses, local governments from coastal cities, harbor masters, local and state natural resource management agencies, conservation organizations, water quality treatment interests, tribal interests, the U.S. Department of Defense, coastal resource management agencies, ports and harbors, conservation organizations, and charter boat operators, among others.

The stakeholder group's mission was to develop a set of marine protected area proposals over three distinct rounds of negotiation, each including both plenary and smaller working group sessions, over the span of one year. For the first two rounds of negotiation, stakeholder representatives were appointed to three different cross-interest groups to increase collaboration; in this first round, these were called Gems Groups: Topaz, Opal, and Lapis. In the final round, members primarily self-selected their membership to work groups based on interests: cross-interest, consumption-oriented, and conservation-oriented (Fox et al. 2013). A planning team of contractors with expertise in geographic information systems (GIS), marine science, and facilitation and project management coordinated the process and made the great majority of decisions about its structure. (The planning team was referred to as the "I-Team.")

During each of the three rounds of negotiation, the work groups negotiated separately and developed and refined proposals. In the first round, each work group developed two proposals. In the second round, two groups developed one proposal and the other group developed two. In round three, each interest-based group developed one proposal each. In addition, three external interest groups developed proposals independently (see Figure One).

At the end of each round, the marine protected area proposal(s) developed by the stakeholder groups, along with proposals developed by external groups, were forwarded first to a science panel (called the "Scientific Advisory Team") and then to a policy panel (called the "Blue Ribbon Task Force") for review. Both panels provided feedback regarding how well the proposals met the MLPA goals. The policy panel also requested that the stakeholder group reduce the number of proposals on the table by combining elements to create cross-interest proposals. The proposals were then forwarded to the next round of negotiation.

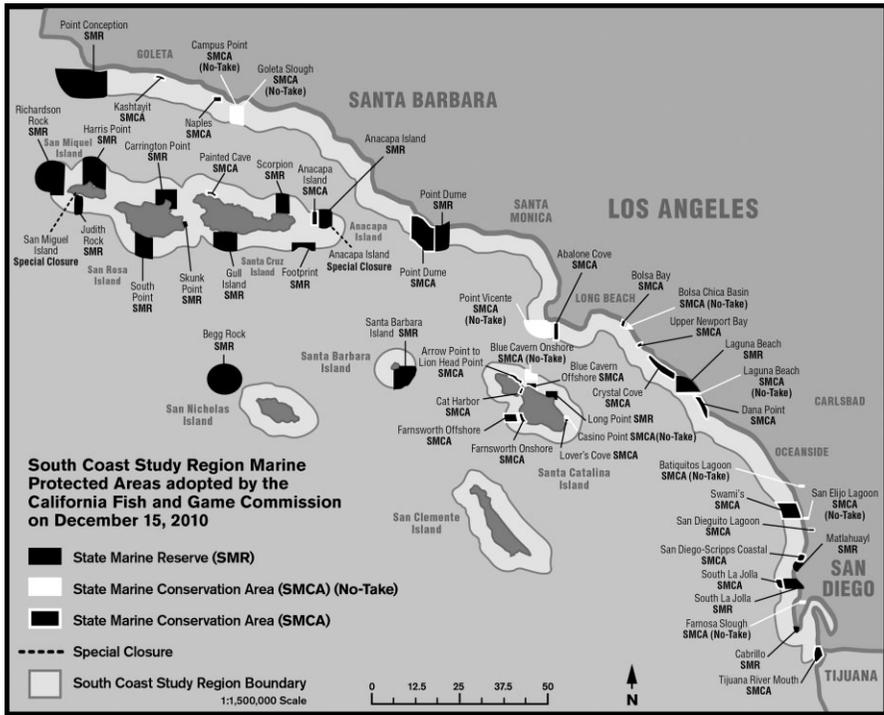
Figure One
South Coast MPA Proposal Development Process



Both panels were convened separately from the stakeholder meetings. The science panel comprised academic and agency scientists with relevant expertise in marine ecosystems, conservation biology, oceanography, fisheries biology, and related fields. Members of the policy panel were individuals with long experience in public policy for natural resources management.

At the end of round two, stakeholders had not managed to reduce the number of proposals on the table significantly, so the planning team implemented a straw vote to eliminate one proposal. This led to what came to be called the “double reverse” straw vote. The vote indeed narrowly eliminated one proposal, but prompted backlash from some stakeholders, which in turn prompted the planning team to decide not to eliminate the proposal after all. This in turn prompted additional backlash, and the proposal was then eliminated a second time (i.e., the “reversal” was again “reversed”). (This episode is described in greater detail below under the heading *Straw Voting*.)

Figure Two
Map of the South Coast Study Region



From the three proposals that emerged from round three the external policy panel then created a single integrated proposal (called the “Integrated Preferred Alternative”), which it recommended to the Fish and Game Commission (Commission). On December 15, 2010, the Commission adopted the integrated proposal in full. The regulations took effect on January 1, 2012, creating fifty new marine protected areas and two special closures that all together encompass 356 square miles (15 percent) of state waters in the region (California Department of Fish and Game n.d.). Figure Two details the final marine protected area regulations.

Challenges of the South Coast Region

The South Coast presented an unusual set of challenges, which teams in the other MLPA regions did not experience, making it especially critical to closely observe best practices in process design. The South Coast study region is a large region with high population density: more than fifty incorporated cities border the coast from Santa Barbara to the Mexican

Border south of San Diego (see Figure Two), and more than seventeen million people live within eighty kilometers of the ocean (Schiff, Weisberg, and Raco-Rands 2002).

The region is heavily used by a diverse array of commercial fishermen, recreational anglers and boaters, surfers, divers, beach-goers, and birdwatchers, and affected by the activities of homeowners and wastewater discharge and industrial facilities, to name a few. The South Coast includes territory under military jurisdiction, and several ecologically sensitive and impaired areas within the region have adopted management systems already in place.⁶ Use conflicts can arise between consumption- and nonconsumption-oriented users. Implementing strategies to avoid conflicts among user groups is a central tenet of coastal management (Sorensen and McCreary 1990; Cicin-Sain and Knecht 1998), but the complexity of the issues and severe competition for marine resources in the South Coast region created unusually intense challenges that impeded the ability of stakeholders to negotiate agreement.

Good versus Great: Why Process Design Matters

The MLPA Initiative was designed according to the principles of coastal and marine spatial planning, which call for developing regulations from the “bottom up” by the range of ocean users, rather than “top down” by political bodies. These stakeholder-based marine planning initiatives are taking place around the world, and we believe that the experience of the South Coast process can inform stakeholder engagement in ocean planning, as well as other forms of complex multi-stakeholder policy processes. It is particularly important to engage the range of ocean users in developing ocean planning policy to coordinate across many sectors and user groups, take advantage of local knowledge of marine resources, foster relationships between competing users, and generate buy-in for the policy among resource users (Pomeroy and Douvère 2008; Halpern et al. 2012; National Oceanographic Atmospheric Administration Office for Coastal Management n.d.). As such, effective stakeholder engagement is critical to successful marine planning processes (Pomeroy and Douvère 2008; Fox et al. 2013; Gleason et al. 2013).

“Bring stakeholders to the table to ‘talk things out,’ ” however, is not nearly specific enough process advice; designing a negotiation that encourages interest-based bargaining requires careful planning. Engaging stakeholders to achieve a stable solution requires what we call here an effective “process design.” We use this term to refer to the ways in which stakeholders are brought together to negotiate a plan, from the assessment phase through the adoption of regulations. We note that some authors use the term “process design” to refer only to the “basic building blocks” of a process, while the actual negotiations, management decisions, and process closure are considered distinct elements (see, e.g., Podziba 2012, Chapter 7). In this article, we use the term to refer to the stakeholder engagement process more broadly.

Effective process design must answer questions such as:

- How should appropriate stakeholder representatives be selected?
- How large should the stakeholder group be?
- How should personal attacks be handled?
- What portion of the negotiations should be devoted to public comment?
- Should marine protected area proposals be required to meet all, most, or only some science guidelines?
- Should negotiators strive to produce a single consensus document or generate several alternative options?

Answering these questions wisely can make the difference between a good process and a great one, and thus between a good outcome and a great one. When best practices in dispute resolution guide the design and management of a process, the process is more likely to lead to a stable agreement. We believe that future marine planning processes should build on decades of experience in the dispute resolution field to achieve stable and effective agreements.

Methodology

Our analysis is based on our own experience in the process as lead facilitator (Scott McCreary) and stakeholder (Phyllis Grifman). We have also examined documents generated during the South Coast process, including a series of “lessons learned” reports prepared by independent evaluators and MLPA Initiative program documents, such as memoranda from the facilitation team.

We have also used the results of a forty-question retrospective survey conducted to better understand and document the stakeholder experience. The survey was conducted jointly by the USC Sea Grant Program and CONCUR⁷ and based on an evaluation framework developed by the U.S. Institute for Environmental Conflict Resolution (Orr, Emerson, and Keyes 2008). (For a detailed summary of the survey methods and findings, see the USC Sea Grant-CONCUR Retrospective Study; Grifman, McCreary, and Cowart 2016.)

The Good: Successes of the South Coast MLPA Process

The South Coast MLPA was, we believe, a good process with a good outcome. Much of the process design and management followed best practices (and we do not discuss the strong process design decisions in this article), and as a result the outcome was also good. In other words, the primary goal of the process — to develop a set of marine protected area

proposals — was achieved. The proposals were then used by the policy panel to inform a single integrated proposal, which was in turn adopted by the Fish and Game Commission.

The process met other complementary goals as well. For example, the proposals developed represent significant cross-interest involvement; not only did a diverse range of ocean user groups take part in the sixty-person stakeholder group, but an extensive outreach campaign with dedicated staff members successfully involved hundreds of diverse members of the public (Sayce et al. 2013). A web-based GIS tool called Marine Map empowered stakeholders to simulate the ecosystem impacts of various proposals, allowing collaborative problem solving based on a common scientific understanding (Fox et al. 2013). The regulations ultimately adopted by the Fish and Game Commission designated a total of fifty marine protected areas and two special closures in the South Coast region, and, combined with the other regions' regulations, make up the largest noncontiguous marine protected area network in the world.⁸ Regulations were adopted on December 15, 2010 and have been in effect since January 1, 2012. Unfortunately, however, the implementation of the MLPA Initiative in the South Coast now takes place in an environment characterized more by mistrust and frustration than by a general willingness to cooperate with the regulations.

The Not Great: Shortcomings of the South Coast MLPA Process

Several process design and management decisions encouraged positional bargaining, anchoring, and a recurring perception of unfairness among stakeholders. As a result, the ultimate agreement cannot be considered stable. Rather than reaching unanimous or nearly unanimous agreement on one proposal, the stakeholder group developed three proposals with key design differences that could not be reconciled (Fox et al. 2013).

What's worse, the final integrated proposal tilts toward the positions of the consumption-oriented stakeholders, reflecting the consequences of positional bargaining and "anchoring" by these interest groups. As a result, the science guidelines created to guide the proposal development process were not met. Slightly more than half of the fifty South Coast marine protected areas can be considered sufficiently protective to support the MLPA's ecological goals. Of these, ten fall below the minimum size range recommended by the science panel. Many spacing guidelines were also unmet (more than in any other study region), potentially compromising "the ecological connectivity of the network — even though the habitat was available to reduce these gaps" (Saarman et al. 2013). Also importantly, the process was not broadly perceived as fair and some stakeholders even perceived it as illegitimate: several process design decisions created the sense that stakeholder representation was

imbalanced, that decision tools were upheld arbitrarily rather than consistently, and that some stakeholders were unwilling to engage in interest-based bargaining.

While we do not argue that it is necessary for all stakeholders to enthusiastically support a process or its outcome, a stable outcome requires that all stakeholders agree they “can live with” that outcome. The majority of South Coast MLPA stakeholder representatives, however, report dissatisfaction with the process outcomes. When asked to rate their level of agreement with the statement “I am satisfied with the final [marine protected area] design adopted by the Commission on December 15, 2010” on a scale of 1–6, with 1 meaning a very low level of satisfaction and 6 meaning a very high level of satisfaction, the average response was 2.5 (Grifman, McCreary, and Cowart 2016).⁹ This mean score of 2.5 is strikingly low in contrast to findings from the North Central Coast stakeholder group (the process conducted immediately prior to the South Coast) where the mean satisfaction score was 4.03 (Grifman, McCreary, and Cowart 2016). While a substantial number of stakeholders registered only tepid support for the outcome, a few members of the South Coast stakeholder group went as far as to sue to block implementation of the very MLPA regulations that they had been charged with helping to craft (American Sportfishing Association n.d).¹⁰

Process Design Challenges

Our analysis reveals several well-intentioned process design and management decisions that had unintended outcomes during and after the South Coast MLPA process. These include:

- representation on the stakeholder group was imbalanced;
- the pre-meeting caucusing was not paired with training in interest-based negotiation;
- stakeholders were not provided with sufficient incentives to negotiate to agreement;
- the use of straw voting was unclear and inconsistent; and
- members of the facilitation team were not included in all critical process design decisions.

(We have also identified three other less crucial, but still significant, process flaws: an insufficiently rigorous conflict assessment, inconsistent application of formal process guidelines, and insufficient boundary conditions on public involvement relative to face-to-face negotiation. We do not detail them in this article, but they are described in our companion USC Sea Grant–CONCUR Retrospective Study; Grifman, McCreary, and Cowart 2016.)

The post-hoc survey was conducted over the course of forty-five days, from January 18 to March 4, 2011. The instrument was an online survey, distributed by e-mail, and backed up with a series of reminder e-mails and phone calls. Forty-five of the sixty-two stakeholders completed the post-hoc survey, for a response rate of 73 percent. The response rate from the rounds one and two cross-interest Gems Groups was even (fifteen Lapis, fifteen Topaz, thirteen Opal, two unidentified). All round three interest-based work groups were also fairly evenly represented (sixteen Group One, thirteen Group Two, thirteen Group Three, two unidentified), although response rates did vary (70 percent Group One, 16/23; 54 percent Group Two, 13/24; and 87 percent Group Three, 13/15).

Representation on the Stakeholder Group

A series of incremental decisions, intended to be inclusive of and responsive to the diversity of stakeholders, resulted in imbalanced representation on the stakeholder group. Originally, the group included only thirty-two representatives and reflected a balanced range of interests within the study region. Alternates were also selected for each representative.¹¹

Some user groups argued that, because of the region's complexity and vast size, there was greater diversity of interests among the South Coast groups than in other regions. For example, within the stakeholders representing "commercial fisheries," differences among the groups included the target species type (bait, urchin, lobster), geography (deep water, near shore, or northern and southern parts of the study region), and gear type (trawl, hook and line, trap). To accommodate this diversity, the planning team chose to further increase the number and type of fishing representatives. This choice "unintentionally resulted in an imbalance between extractive and non-extractive users" (Fox et al. 2013). Then, this imbalance doubled when the planning team chose to include not only the thirty-two representatives, but also their alternates (another thirty-two members), as full deliberating stakeholders.

The balance and composition of a stakeholder group are critical to its success (Pomeroy and Douvere 2008). Balanced representation determines fairness, and participants' sense of whether the representation is fair greatly influences their behavior throughout a process, as well as their willingness to abide by an outcome once it is established (Susskind and Cruikshank 1987). In the South Coast, however, many participants felt that the stakeholder group was imbalanced. When asked to indicate their level of agreement on a scale of 1-6 with the statement "[stakeholder group] participants' interests were well balanced," where 1 represents strongly disagree and 6 represents strongly agree, the conservation-dominated group responded with a mean of 1.69, indicating broad dissatisfaction with the composition of the negotiating group. Overall, South Coast stakeholders responded with a mean of 3.02, demonstrating at best mild agreement with

the statement overall. Similarly, Michael Harty's post-process surveys (2010) found that 45 percent of South Coast stakeholders characterized the stakeholder group as "poorly balanced." This contrasts with findings of 32 percent and 22 percent on the Central Coast and North Central Coast, respectively.

Evan Fox and his colleagues (2013) pointed out that "the numerical advantage of extractive users may have contributed to some stakeholders engaging in block voting and refraining from collaborating across interests and seeking mutual gains," as they perceived these tactics would better serve them than would interest-based negotiation tactics. In his analysis of the South Coast process, Harty also found that the lack of balanced representation "had a significant impact on the ability of stakeholders to identify cross-interest solutions and engage in mutual-gains negotiations" (Harty 2010). In the longer term, the perception that a process is unfair increases the likelihood that stakeholders may seek to undermine the outcome (Susskind and Cruikshank 1987).

Caucusing and Training

Because they perceived that consumption-oriented users had been disadvantaged in the MLPA processes in other regions, those users asked the foundation to support a series of pre-meeting caucuses in the South Coast. Two detailed post-hoc studies of efforts in the Central Coast region had explicitly recommended negotiation and consensus-building training (CONCUR Inc 2006; Raab 2006). The foundation supported the caucusing, but that caucusing was not accompanied by training. Because the parties thus lacked a robust understanding of the benefits of interest-based negotiations, this decision led to the creation of a positional bloc, the Fishermen Information Committee (FIC)/Fishermen Information Network (FIN) alliance. At these meetings, FIC/FIN members developed a proposal for marine protected areas and a negotiation strategy that members brought with them to the first round of negotiation. This group apparently perceived its interests would best be met by engaging in positional bargaining and by anchoring negotiations.

Positional Bargaining

Many negotiators believe that cross-interest negotiating will not serve the parties' interests, despite their intentions. Indeed, our analysis suggests that many FIC/FIN member organizations could have found solutions that better served their own interests as well as a broader array of interests had they readily engaged in interest-based negotiation. Because they are unaware of the potential benefits that can accrue from "mutual gains" negotiation outcomes, they often fail to take steps to "expand the pie" (Susskind, Levy, and Thomas-Larmer 2000). To prevent stakeholders from defaulting to a purely distributive negotiation style, many scholars and practitioners of public dispute resolution have long advised providing

stakeholders with training in interest-based negotiation (Wondolleck and Yaffee 2000).

Based on their understanding of the processes in other regions, members of the FIC/FIN caucus had legitimate concerns, and indeed the caucus had some positive outcomes.¹² As intended, the caucus enabled consumption-oriented user groups to develop a common platform before formal negotiations began and commercial and recreational groups to work together, some for the first time. But because this happened without training in interest-based negotiation, the formation of the caucus also served to bring these users together around a hardened position before they had a robust understanding of a consensus-based process.

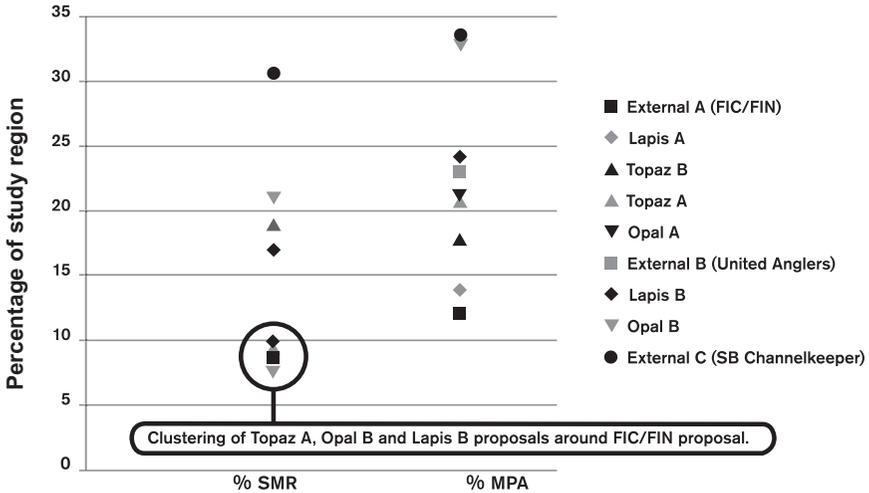
Consequently, rather than going into the negotiations considering multiple options and openly inventing new options, FIC/FIN members went into round one with just one predetermined proposal, expressed as a position, from which many were unwilling to deviate. In contrast, non-FIC/FIN stakeholders thought that all round one proposals were “soft” offers and that other parties should still be flexible and willing to integrate ideas. One of the other stakeholders said: “From the very beginning, the fishing community came in with a single map and a broad agreement from many of the commercial and recreational consumptive interests to support that map and to oppose all others . . . This of course destroyed whatever cooperation could have been achieved” (Grifman, McCreary, and Cowart 2016: 19).

Anchoring

The consumption-oriented stakeholders’ unified support for the FIC/FIN proposal produced a set of very similar round one proposals, all of which closely matched the FIC/FIN version. As Figure Three shows, the three work groups each emerged with one proposal that closely matched the FIC/FIN proposal, and one more moderate proposal. Figure Three illustrates the way in which the Topaz B, Lapis A, and Opal A (as well as External B) proposals all closely matched the FIC/FIN position in the percent of area set aside as a state marine reserve (a state reserve offers the highest level of protection) as well as in the total size of all marine protected area designations. Although some consumption-oriented representatives were aware that elements of other proposals met their interests, they did not openly bargain or build on those suggestions because they did not want to jeopardize the agreements that had been made during the caucus. They set their initial offer as an “anchor” in the negotiation. One fisherman said: “If I don’t support the FIC/FIN agreement, they will throw me under the bus and I will lose what was negotiated” (Grifman, McCreary, and Cowart 2016).

Because consumption-oriented interests were unified early on and many of these representatives apparently felt they couldn’t deviate from the initial coalition “agreement,” round one failed to achieve its goal of “invention without commitment.” As it became apparent that the caucus members

Figure Three
Clustering of Round One Marine Protected Area Proposals around FIC/FIN Proposal



had not brainstormed multiple options for potential marine protected areas, many conservation-focused stakeholder representatives perceived their lack of flexibility as a refusal to negotiate in good faith and lost trust in the process.

Partly because of this anchoring, the ultimate regulation that emerged from this process, the integrated proposal recommended by the policy panel and adopted in full by the Fish and Game Commission, fell short of the MLPA conservation goals as interpreted by the science panel in its guidelines.¹³ What’s more, the proposals found a low level of convergence — as Fox and his colleagues (2013) have pointed out, the unwillingness to integrate designs from other groups led to alternative proposals in the South Coast that “retained key design differences (e.g., specific proposed boundaries and regulations)” (Fox et al. 2013: 27). This outcome does not, however, necessarily indicate that the FIC/FIN alliance was successful: we believe that individual FIC/FIN members could have better met their specific interests by searching more diligently for cross-interest solutions. The result of such a process would have been a more broadly supported regulation.

Incentives to Negotiate

Conveners of policy-making processes often identify process goals that encourage stakeholders to come to the table and negotiate in good faith

toward an agreement (Susskind and Cruikshank 1987). A consensus decision rule “makes everyone work harder and take responsibility for the complexity of the situation, including the reality of limitations” (Podziba 2012: 150). In a survey of coastal managers that have used consensus-building techniques, Jean Poitras, Robert Bowen, and Jack Wiggin (2003) identified several barriers to negotiation and collaboration, including the lack of incentive to seek a compromise. Unfortunately, as described above, many stakeholders perceived that their interests would best be met by anchoring one of the three proposals, rather than working collaboratively to develop a single cross-interest proposal.

Indeed, the stated process goal of developing “multiple Marine Protected Area (MPA) proposals, for consideration by the [policy panel]” (California Marine Life Protection Act Initiative 2008: 1) in pursuit of an integrated preferred alternative had the profoundly unintended consequence of reducing stakeholders’ incentive to collaborate. This goal gave representatives the sense that it was the policy panel’s charge (and not their own) to integrate three (likely) divergent proposals. This decision rule likely provided additional incentive to these members to take more absolutist positions in order to influence an outcome closer to their self-interested ideal rather than to one that integrated a broad range of interests. In many public processes, a core incentive for stakeholders is the promise that if they can negotiate an agreement that addresses all areas of concern and also has widespread support, then the decision-making body will act on the agreement.¹⁴ While the agreement is officially considered a recommendation to the governing body, the *quid pro quo* understanding is often that a consensus agreement will likely be adopted (Podziba 2012). When this process goal is made clear in ground rules and then reinforced by facilitators, negotiators can be sure that their own interests will be better met in the long run if they come to consensus at the negotiating table.

When polled after the process, many stakeholders reported that they perceived little incentive to negotiate. They noted the absence of “carrots” to leverage more principled negotiation (Grifman, McCreary, and Cowart 2016). As Table One indicates, members of Groups One and Three were, on average, ambivalent when asked whether there were clear incentives to work toward an agreement, and members of Group Two (dominated by fishing interests) were even less likely to see clear incentives to negotiate (Grifman, McCreary, and Cowart 2016).

One member who expressed the view that “there were no incentives” to negotiate also stated that “Representing the commercial lobster interests there was nothing we stood to gain on any level. The process was seeking the best habitat and that is the very habitat that holds lobsters” (Grifman, McCreary, and Cowart 2016: 19). We believe that if negotiators had perceived a strong incentive to negotiate, more stakeholders would have come to the table open to finding integrated solutions.

Table One
Stakeholder Group Responses: Clear Incentives to Negotiate
(Average Responses to Question 11n)

Question	Work Group 1	Work Group 2	Work Group 3	Cumulative
There were clear incentives in each step (round one, round two, round three) to work toward agreement in my Gems Group or proposal negotiating team.	3.47	2.55	3.67	3.29

Scale from 1 to 6, where 1 = strongly disagree and 6 = strongly agree.

Straw Voting

Straw voting was used successfully in several different contexts both throughout the MLPA process and within the South Coast process.¹⁵ But on an occasion that became known as the “double reverse,” this decision rule was used without sufficient care and not upheld consistently. This undermined many, if not most, stakeholders’ perceptions of process legitimacy. Because they perceived that they were unable to influence process outcomes, some stakeholders became even less willing to collaborate and more entrenched in their positions.

Straw voting occurs when an informal count is taken to determine how individuals stand on various potential options. Unlike one binding majority vote, iterative straw votes can clarify divergence, test for emerging agreement, and help parties develop ideas and packages with greater support, thus propelling the process toward agreement.¹⁶

As with any decision-making tool, however, straw voting does not exist in a vacuum: certain preconditions and boundaries must be met to use this tool well. First, stakeholders must be aware of the consequences of the vote and how these outcomes fit into the broader process. Second, in cases in which interest groups are not equally represented, using a strict numerical tally to choose an option can be unfair, unless modifications are used (such as a weighting factor). Lastly, guidelines around straw voting must be consistently applied, or it may appear that the facilitation team is biased toward one group over others.

The planning team included the use of straw voting in the decision rules of the South Coast process, which were then adopted by the stakeholder group. Accordingly, the planning team employed straw voting effectively on several occasions within work groups to winnow the number of options on the table.¹⁷

For instance, during round one deliberations, the Topaz Group, which, like all Gems Groups, represented a range of consumption- and conservation oriented interests, emerged with one draft marine protected area which, according to stakeholder Jonna Engel in a memorandum to the policy panel, “came together in a spirit of cross-interest collaboration” (Engel 2009: 2). During one Topaz Group work session, straw votes were taken at least twenty times on eight different marine protected area options (McCreary 2009). “No single interest group prevailed in developing the proposal with the most support. Instead, the authors of the most broadly supported options varied” (Engel 2009: 1). In these instances, straw voting was used successfully to foster cross-interest collaboration, resulting in stable decisions.

When straw voting was used to make a more sweeping decision among the full stakeholder group, however — to remove one proposal from moving on to round three — it increased polarization and mistrust in the process. The FIC/FIN caucus formation caused positional bargaining and anchoring, which severely restricted the development of cross-interest proposals. The hoped-for convergence in proposals had not begun to occur even by the end of round two deliberations. As a result, there were seven proposals on the table, four from the Gems Groups and three from external groups (the Fisherman’s Network, United Anglers of Southern California, and Santa Barbara Channelkeeper/Santa Monica Baykeeper). The proposals had a low degree of overlap in protected area location, size, and levels of protection.

To focus attention in the final round, the policy panel requested that the stakeholder group eliminate one proposal, so the planning team devised a straw voting process, which they presented to the stakeholder group. They distributed a paper ballot and asked each stakeholder to indicate which five of the seven proposals they wanted to advance to round three.

By a narrow margin, an external proposal put forth by the Santa Barbara Channelkeeper/Santa Monica Baykeeper organizations received the fewest votes. By the South Coast decision rules, this proposal was deemed excluded for further refinement in round two. But the vote prompted a major backlash from conservation interests, who mobilized and pressed for re-inclusion of the proposal. The planning team then recognized (in hindsight) that, due to the overrepresentation of consumption-oriented interests, the straw vote had not been numerically “fair.” To correct this problem, the planning team distributed a memo indicating that this external proposal, known as Proposal C, was back on the table.

The reversal of the decision in turn (predictably) triggered an even bigger backlash from the fishing community. According to a *Los Angeles Times* article about the event, the decision “was perceived as a slap to the face of those who had been working within guidelines during a long, arduous process that still has months to play out. The United Anglers charged that if a pro-fishing proposal had received the fewest votes it would have remained shelved” (Thomas 2009: 1). The issue of whether to carry forward Proposal C became so roiled in controversy that at a public meeting more than two hundred members of the public, alongside stakeholders, came to the podium and declared their preference for keeping or eliminating it.

The policy panel then “reversed their reversal,” acting decisively to eliminate the proposal from further consideration — but by this point, stakeholders’ trust in the process was shaken. On the one hand, consumption interests’ fear that behind-the-scenes manipulation was taking place was reinforced; on the other hand, conservation interests came to feel more strongly that the stakeholder group’s representation was balanced in favor of consumption-oriented interests.

One member of the fishing-dominated group wrote: “I believe the fatal mistake was to allow the external ‘C’ proposal to ‘backdoor’ into the process after it had been overwhelmingly rejected by the [stakeholder group]. At that point, a small but significant group on the preservation side knew they would not have to find the middle ground, and a smaller, but vocal segment of the fishing community came to believe that we were being herded to a predetermined outcome.”

For conservation interests, the voting on Proposal C reinforced the perception of biased representation in the stakeholder group, in the favor of consumption-oriented stakeholders. One participant wrote: “Straw voting with a highly slanted group is not conducive to any type of cross-interest collaboration and only fosters bullying.”

The outcome was highly divisive. One stakeholder commented: “The vote at the end of round two forced the stakeholders to take sides for either the conservation or consumptive interests . . . [polarizing] those who saw themselves as more neutral or middle ground.” As a result of the unclear guidelines and the “double reverse,” what should have been a relatively minor interim step instead became the focus of intensely polarized debate.

Other Process Challenges

In addition to the major shortcomings listed above, several other problematic process design decisions further weakened the ability of the process to find a stable agreement. First, because of an insufficiently rigorous conflict assessment, those unwilling to negotiate toward a mutual gains solution were not screened out of the process, and the planning

team was not fully prepared to deal with the full set of marine resource issues in the region that eventually posed challenges to collaboration. Second, because formal process guidelines were inconsistently applied, good behavior was not consistently enforced, which often led to an atmosphere of animosity and distrust. Third, a substantial effort was invested to mobilize broad public participation and attendance at MLPA Initiative meetings, but insufficient attention was given to delineating the time allocation between interest-based bargaining and lengthy public comment sessions, reducing the amount of time spent directly on negotiations, and restricting the ability of the stakeholder representatives to openly brainstorm. Our companion USC–Sea Grant CONCUR Retrospective Study (Grifman, McCreary, and Cowart 2016) describes these challenges in more detail. While each of these challenges was significant, no single one was sufficient to notably weaken the process; however, when compounded, these process design challenges significantly weakened the stability of the final agreement.

Designing Future Multi-Stakeholder Marine Planning Processes

As Lawrence Susskind and Jennifer Thomas-Larmer (1999:99) wrote, “[t]he ultimate success of every consensus building process depends on . . . early design decisions.” Now, with the clarity of hindsight, we are at liberty to reflect on the South Coast process and ask: how might alternative best practices in dispute resolution have propelled the process toward more stable results?

Five primary lessons from the MLPA Initiative South Coast process stand out. To be most effective, the process should:

1. ensure equal representation on the stakeholder group;
2. provide up-front training in interest-based negotiation for stakeholder representatives;
3. create stronger incentives for negotiation toward consensus;
4. consistently articulate strong decision rules; and
5. integrate the facilitation team in all critical process design choices.

While no single key decision destabilized the process, several choices converged to prevent the process from finding a stable agreement. Implementation of many or all of these recommendations may well have shaped a more stable agreement in the South Coast. Their widespread use would very likely lead to more stable cross-interest decisions in future multi-stakeholder marine planning processes, particularly in complex urban areas.

Equal Representation

According to Susskind and Thomas-Larmer (1999: 121), “[i]n recommending who should participate, the assessor should think about inclusion and balance. All categories of stakeholders should be identified, and an approximately equal number of representatives from each major category should be determined. Ideally, the resulting mix should not be skewed toward one interest or another.” Balanced size and diversity of representation on the stakeholder group will help to enhance the efficiency and effectiveness of the facilitation and negotiations while enhancing the ability for stakeholders to build relationships, problem-solve, and trust. To do so, we recommend appointing seats to more nearly equal number of participants for consumptive-oriented and nonconsumption-oriented members. If there appear to be more stakeholders on one side than another, consider the first suggestion of consolidating their interests into a representative group able to represent their viewpoints.

Negotiation Training

“In resolving resource conflicts,” wrote Mary Gleason and her colleagues (2010: 66), “there is . . . a strong need to build capacity of stakeholders to negotiate, optimize goals and objectives, and converge around solid alternatives.” In multi-stakeholder policy negotiations, process literacy among negotiators is key to making collaboration work (Gray 1989; Wondolleck and Yaffee 2000). “Training should focus on ‘people’ skills, such as how to interact with different individuals or groups in various situations, and ‘process skills’, such as how to structure and facilitate collaborative problem solving processes” (Wondolleck and Yaffee 2000: 218).

Training can provide stakeholders with skills in interest-based negotiating, while also clarifying the benefits of employing these strategies. In the USC Sea Grant-CONCUR Retrospective Study, stakeholders responded that a training workshop in mutual gains negotiation early in the process would have been very helpful; the average rating was 4 out of 6 with a mode of 5 (Grifman, McCreary, and Cowart 2016: 28).

What’s more, offering training provides an opportunity to explain the overall process structure and the stakeholders’ role within that structure. An upfront understanding by the FIC/FIN caucus that the goal was to discuss and develop options and leave room for give-and-take negotiation once the full group convened could have prevented the anchoring and positional bargaining that significantly impaired the early stages of the process.

Stronger Incentives

For multi-stakeholder policy negotiations to be effective, the parties involved must have an incentive to wholly engage. The policy-making body can provide this incentive by committing to implement a cross-interest proposal. For example, in Jonathan Raab’s (2006) evaluation of the Central

Coast stakeholder group process, he suggested the policy panel and Fish and Game Commission give the stakeholders more encouragement to create consensus, including “a clear promise that if the stakeholders are able to reach agreement on a single [marine protected area proposal], that the [policy panel] will recommend this single [proposal] to the [DFG] as its preferred alternative, and that the [DFG] will, in turn, recommend it as its preferred alternative to the [Fish and Game Commission]” (Raab 2006: 10).

Another option is to have the policy panel work with the stakeholder group to more clearly explain and reinforce the characteristics of the kind of proposal that it would be willing to advance. What’s more, the policy panel could work actively to bridge apparently intractable issues related to meeting science panel guidelines in tough geographies. Another option is to incorporate would-be policy panel members directly into the stakeholder group. As active, policy-wise, and politically savvy stakeholders, they could provide the stakeholder group with valuable political insight throughout the process while fostering political buy-in for a stakeholder package and building trust within the communities that make up a single negotiating body.

Strong Decision Rules

It is crucial to build and maintain trust in negotiating groups by making decisions in a consistent manner — by ensuring that such decision rules as straw voting, for example, are consistently applied. Greater predictability gives stakeholder representatives greater confidence in the integrity of the process. It also provides the assurance that stakeholders are in fact able to influence the outcomes of the process, a key to willing engagement in interest-based negotiation.

Policy Panel Design

During the South Coast process, the facilitation team was not present at most policy panel meetings, and only occasionally conferred with the policy panel. The lack of opportunity to directly inject substantial process knowledge and expertise into formative decisions about process design communication caused an inadvertent disconnect. We argue that more robust, sustained discussion of key process design choices could have helped the policy panel anticipate and avoid process design pitfalls. Most notably, at a May 2009 policy panel meeting, a member of that body stated the hope, as the meeting was winding down in a live-streamed recording, that straw voting would not be used to exclude proposals. In fact, the planning team had already developed and internally agreed upon a process game plan to take a straw vote if necessary to achieve the target number of proposals at the next day’s stakeholder group meeting.

This disconnect in process design contributed to the sense among stakeholders that inconsistent process design decisions were being made, creating mistrust in the integrity of the process. In the future, building

consistent dialogue between the facilitator and any group making significant decisions that will shape how the stakeholder process will unfold would help generate trust in the process.

As we reflect on the MLPA Initiative South Coast process and consider other multi-stakeholder marine planning processes, we can identify several critical process design choices that should be discussed jointly between the senior policy level and facilitators in a robust strategic planning process. These include:

- establishing and reaffirming whether a stakeholder group is devising options, or negotiating to produce a final, widely supported preferred alternative;
- establishing the number of proposals that should advance at each round of planning activity;
- establishing decision rules for winnowing plan options;
- organizing training in principled mutual gains negotiation for both the stakeholder representatives and policy panel; and
- determining how to strike a balance between structured negotiations and more informal public comment.

Conclusion

The California South Coast MLPA Initiative process illustrates multiple challenges that affect multi-stakeholder public dispute negotiations more broadly, and marine planning in particular. Future marine planning projects can look to the challenges of and lessons learned from this process to inform and strengthen their own efforts. In the South Coast, the inherent complexity of the region increased the need for the planning team, policy panel, and facilitators to closely adhere to best practices in dispute resolution. In this case, insufficient adherence to best practices led to a minimally collaborative stakeholder process. With greater attention to the key recommendations in this article, future processes will find themselves better positioned for a truly stable agreement.

Each one of these recommendations has intrinsic merit, but they have even greater power when adopted together. A successful strategic effort should include ensuring equal representation on the stakeholder group, providing interest-based negotiation training for stakeholder representatives, creating stronger incentives for negotiation toward consensus, and consistently articulating strong decision rules. Ideally, all these components would be features of a well-structured marine planning effort.

As other states and nations look to build on California's path-breaking work on the MLPA Initiative process to designate marine protected areas,

site for offshore renewable energy, and plan for climate change adaptation, particularly in urban high-use areas, lessons from the South Coast can help inform smarter process design choices and more stable agreements.

NOTES

Support for the USC Sea Grant-CONCUR retrospective study referenced in this article and summarized in our companion article (Grifman, McCreary, and Cowart 2016) was provided by the University of Southern California Sea Grant Program, a component of the National Sea Grant College Program, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, under grant number NA100AR4170058 (USC Sea Grant) and by the California Natural Resources Agency. The views expressed herein do not necessarily reflect the views of NOAA or any of its sub-agencies. The U.S. government is authorized to reproduce and distribute copies for any governmental purposes.

1. Networks of well-designed and well-managed marine protected areas are more than the sum of their parts. Networks build on the ecosystem protection, fisheries management, and research and education outcomes from individual marine protected areas to better protect a range of habitats and sustain more marine populations across a larger geographic region (IUCN 2008).

2. The five regions include North Coast, North Central Coast, Central Coast, San Francisco Bay, and South Coast. To date, all but one of the five regions, San Francisco Bay, have completed the MLPA process, and regulations are currently in effect.

3. Please note that in this article we use “process design” to describe all elements of designing and managing the stakeholder engagement process, from the assessment phase through the passage of regulations. For some authors, the term “process design” is used to refer only to the “basic building blocks” of a process, while the actual negotiations, management decisions, and process closure are considered distinct elements (see, e.g., Podziba 2012, Chapter 7).

4. The USC Sea Grant program focuses on the “urban ocean” issues that accrue when highly populated regions are adjacent to coastal and ocean geographies. The USC Sea Grant Program was involved in the South Coast MLPA process as a neutral voice for evidence-based science, and in this study with the goal of exploring the processes used in order to improve future ocean-related decision-making processes.

5. The Resources Legacy Fund Foundation is an organization that pools funding from multiple donors to advance conservation goals. The foundation chose to support the MLPA Initiative as a public-private planning process that would not otherwise have occurred. The foundation did not have a seat at the negotiation table or make any process design or management decisions.

6. The U.S. Department of Defense has a number of operations in the area and the military exercised preemptive jurisdiction in a few key locations. This constrained invention of marine protected area proposals until it was determined whether (and which) military areas could be included in the negotiation. What’s more, government agencies at all levels, including the U.S. Department of Defense, demonstrated greater interest in participating in marine protected area planning than they had in previous study regions (Fox et al. 2013).

7. CONCUR, Inc. provides services in strategic planning, policy analysis, and agreement-focused facilitation of environmental and public policy disputes.

8. The Great Barrier Reef marine park covers an area larger than the California network, but it is one contiguous area, rather than a coordinated network of marine protected areas.

9. These findings echo those of Michael Harty (2010), who also surveyed South Coast stakeholder group members on their “overall level of satisfaction” with the process, finding a mean of 2.59, with 53 percent of respondents reporting that they were either “very unsatisfied” or “somewhat unsatisfied.”

10. On January 27, 2011, opposition groups representing consumption-oriented users and including members of the South Coast process filed a lawsuit in the San Diego County Superior Court seeking to set aside the MLPA regulations (which are now in effect) in the North Central and South Coast study regions. These opponents cited flaws in the MLPA process and stated that the Fish and Game Commission does not have legal authority to make decisions that effectively limit, and in some cases prohibit, their ability to fish and recreationally access designated “no fishing zones” (American Sportfishing Association n.d.). After a series of petitions and appeals, an appellate court ruling (Fourth Appellate District, Division I) on April 15, 2013 denied the Coastside Fishing

Club's petition for writ of mandate. Opposition groups state they will "continue to explore all possible avenues to maximize recreational fishing access in California" (American Sportfishing Association n.d.).

11. Traditionally, an alternate is used when a primary member cannot attend a meeting, and they communicate between each other to ensure each has the most current, relevant information.

12. In previous MLPA study regions, some observers argued that while conservation representatives were able to meet and identify top priorities for the study region before the MLPA stakeholder group meetings commenced, the fishing community was more disparate and would benefit from assistance so that they could better articulate their priorities. Some argued that fishing interests were disadvantaged in their negotiations compared with conservation interests because they lacked organizational support, had few paid staff, and were constrained by the long hours needed to earn a living from fishing (Grifman, McCreary, and Cowart 2016).

13. None of the final round three South Coast marine protected area proposals, nor the ultimate integrated proposal, met all science panel guidelines. Specifically, only twenty-six of the fifty marine protected areas delineated in the South Coast area can be considered sufficiently protective to likely contribute toward the ecological goals of the MLPA. Of these, ten fall below the recommended size, nine fall within the minimum size range, and only seven fall within the preferred size range. What's more, many spacing guidelines were not met, potentially undermining the intended ecological connectivity of the marine protected area network (Saarman et al. 2013).

The science panel evaluated the likelihood that marine protected area proposals would meet the MLPA's conservation goals with an evaluation system that included six levels of protection, ranging from very high for no-take areas, to low for marine protected areas that allowed uses with the potential for habitat alteration and ecosystem-wide impacts (Saarman et al. 2013). The policy panel, from their vantage point looking at the broader policy context, then determined which levels of protection would be considered sufficient to contribute to the MLPA's stated conservation goals.

14. This was the dynamic at work in many other cases CONCUR has mediated, including the Guadalupe River Flood Control Project, the program design for the CALFED Water Use Efficiency Program (Fuller 2009; Karl, Susskind, and Wallace 2007), and the consensus solutions to avoid bycatch in a series of Take Reduction Teams convened by the National Marine Fisheries Service and facilitated by CONCUR.

15. At several points in the North Central Coast and the Central Coast stakeholder group processes, straw voting was used successfully to find widespread support for an increasingly smaller number of marine protected area packages.

16. For example, in the Central Coast stakeholder group process, an elimination straw vote was successfully used to winnow the number of proposal packages from six to three. In this effective use of a straw vote, each of the more than thirty members of the Central Coast stakeholder group identified their first choice alternative, and any proposal that received fewer than three votes was eliminated (10 percent of the stakeholder group members was the threshold). In this case, the outcome of the elimination straw vote was increasing agreement on a smaller number of options.

17. Straw voting was used both within work groups to make choices on marine protected area boundaries and regulations to create components of marine protected area packages, and within the stakeholder group as a whole to make choices regarding which full marine protected area proposals to advance to the next round of consideration, in order to arrive at a bounded number of proposals.

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