



San Diego Ocean Planning Partnership

October 19, 2018

California State Lands Commission  
C/O Betty Yee, Chair

100 Howe Avenue #100S

Sacramento, CA 95825

Board of Port Commissioners, Port of  
San Diego

C/O Rafael Castellanos, Chair

Port of San Diego, Administrative  
Building

3165 Pacific Coast Highway

San Diego, CA 92101

*Via ema*

RE: Comments and recommendations on the Ocean Planning Partnership's  
"DRAFT Preliminary Assessment Report" ("DRAFT Report")

Dear Chairs Yee and Castellanos,

The San Diego Fishermen's Working Group ("SDFWG") is a 501-c-3 non-profit, dedicated to representing the commercial fishing men and women of the greater San Diego region. Our primary mission includes educating the public about commercial fisheries. The SDFWG's nine-member Board of Directors is comprised of representatives of all the major fisheries in the area. The SDFWG appreciates the opportunity to comment on the DRAFT Report.

The SDFWG has both concerns and constructive suggestions about the "Ocean Planning Partnership" between the State Lands Commission (SLC) and the San Diego Unified Port District (Port), and the Draft Report that is its first major product. It is clear that Port staff worked hard to produce the DRAFT Report. The SDFWG appreciates the time Port Staff committed to reaching out to us for our knowledge and to hear our concerns.

First, SDFWG members utilize nearly all of the ocean territory from shore out to the western edge of the US Exclusive Economic Zone. Thus, we are necessarily concerned about any ocean planning effort in these waters. Areas we are excluded from have already been set aside, for habitat preservation, marine protected areas (for scientific research), fisheries management purposes, and for projects, such as oil platforms and telecommunications cables. These zones have been removed from fishing with significant economic consequences to our harvesters. Thus, we are the singular group that will stand to lose should new uses be proposed in the "Project Area". This is not to say that there is no room for other uses; rather, since we have lost so much already, our voice must be given great weight. As food producers and suppliers of ocean resources, we feel the people of California value and need us, and that we deserve respect in this planning process. Commercial fishermen are literally founding members of San Diego's "Blue Economy".

We will acknowledge several encouraging sections in the Report later in this comment letter. First we must point out that the SDOPP got off on a bad footing starting in October, 2016. We believe that the Board of Port Commissioners (BPC) did not know that the National Ocean Policy (NOP) and Marine Spatial Planning contained within, were and are highly controversial. As the Port must know, the Presidential Executive Order which established the NOP has now been rescinded. Further, as the SDFWG commented

previously (June 12, 2018) to the BPC, in its first year the SDOPP process suffered from an acute lack of stakeholder outreach and transparency.

The SDFWG can see from the Draft Report that some of our earlier concerns have been mentioned; others have not been addressed. In particular, the Report makes a clear statement that zoning the ocean is NOT an anticipated outcome of the SDOPP. We thank Port staff for that clarification, while noting that the Memorandum of Agreement, (MOA) must be amended to reflect this change.

A large concern of fishermen is the appearance (and probability) that a significant economic conflict of interest exists in a Port role of planning for and deciding future uses. The Port is an economic partner in several aquaculture ventures located in or proposed for the Project Area (or nearby). While the Port may be an "ideal" partner with the SLC because of its relationship with many stakeholders, this conflict of interest will limit the Port's ability to be an impartial arbiter of competing uses when one of the uses is aquaculture.

Likewise, the SLC is also in a potential conflict of interest situation, should it be in the position of weighing non-lease uses over income-producing new lease applications.

The DRAFT Report makes mention (pg 23) of conflict resolution ("CR"), characterizing the expression of concern by fishermen in this way:

*"Commercial fishermen (the SDFWG) suggested that conflict resolution could be a beneficial outcome of the SDOPP".*

With respect, the SDFWG statement was clear that identifying a fair CR process should be a major priority of the SDOPP, and a framework for resolving potential conflicting uses be a primary product of the SDOPP.

The SDFWG believes that any CR process must be in the hands of a neutral arbiter. The SDFWG is encouraged that there are references to CR in the DRAFT Report, which also appears to be included in the Report's "early assessment" discussion. We are concerned, however, that CR did not receive the prominence that we think is called for as a key outcome of the Report, and how the SDOPP will move forward. The SDFWG was expecting to see details about how a CR process might be structured in a way that was clearly knowledge and science-based, fair and impartial, transparent, and free of conflicts of interest. We hope that any future draft or final Report will include this information as a recommendation for future action.

There are models of successful CR processes, such as are utilized for placing telecommunication cable pathways and interactions between the offshore oil industry and commercial fishermen. We suggest that the principles protecting commercial fishing infrastructure found in the California Coastal Act would provide guidance for a fair CR process. We believe that it is no legal stretch to value and protect our fishing grounds as vital commercial fishing infrastructure.

The Web Mapping Application, an important piece of the SDOPP and the DRAFT Report, must be carefully applied in any future planning process. It does create a sense of various and possible competing uses of ocean space, so it provides a good start for negotiation and decisions. It has several inaccuracies or limitations which need to be addressed for any specific project:

- The Mapping Application can never keep up with changing ocean conditions which then influence use.
- For fishing effort, it does not express the degree and cumulative effect of multiple permanent and seasonal regulatory closures. Therefore, the effects of additional closures from new projects will be hard to assess.

- A number of data points need further work or better explanation: 2013 Vessel Density; 4-digit Fishing Blocks; Annual Commercial Landings in tons by gear type; Biologically important areas for cetaceans; CA recreational fisheries survey; Canopy forming kelp survey; and, Whale density data.
- Economically significant sites will be hard to recognize as fishing effort can re-locate in different years. An area may not be important every year, but could represent a majority of landings and revenues in other years.
- Future commercial and recreational uses are not expressed. For example, there is plenty of potential for a squid fishery to exist within the Project Area. It does not currently exist due to a lack of key infrastructure within the Port. This is a very profitable fishery, the importance of which will be completely missed by a backward-looking web tool.

As specific projects are proposed, the SDFWG is willing to assist in ground-truthing the past, current, and potential uses of a given location. Our years of on the water, empirical observations can bring real value to a planning effort.

The DRAFT Report glows in referencing the CA Marine Life Protection Act (MLPA) process, calling it a "*model for marine ecosystem conservation and resource management*". We find this highly disturbing. If the MLPA process is in any way a model for the SDOPP, the Port and SLC will find commercial and recreational fishermen, along with other ocean resource users, deeply suspicious of and resistant to the process. The MLPA process was neither science nor stakeholder driven; it was a purely political effort disguised as a public process. The State of California, and the SDOPP, can and should do better than that. The

SDFWG would like to hear assurances that marine spatial planning in California waters will not emulate the MLPA process.

There is also ambiguity about the Project Area. At times it is defined as CA State waters from the Mexican border to the Orange County line. At other times, it includes data from far outside that area, such as the Leatherback Turtle zone in Central California.

The definition of the Project Area is also confounded by this statement in the DRAFT Report, in the section titled, “Potential Next Steps for the (State Lands) Commission” (pg 51):

*“Finally, the Commission will explore using the SDOPP as a model for regional ocean planning projects that could be implemented in other areas of the state that face similar complex challenges related to ocean space and balancing Public Trust uses”.*

This statement of intent by the SLC infers that the project area is potentially ALL state waters. It draws into question the transparency and outreach of the SDOPP. It would seem that all California coastal counties and their ocean users have a stake in the development and outcome of the SDOPP.

The section on Interagency Cooperation suggests a fundamental question for the SLC: While it clearly is a SLC responsibility to ensure that State Tideland’s are used for Public Trust purposes, is it not also the responsibility of numerous other agencies (e.g., Coastal Commission, Fish and Game Commission, National Marine

Fisheries Service, CA Department of Fish and Wildlife, etc) to evaluate and permit projects in state waters? If so, it would seem that the SLC and its staff have a role in any lease of tidelands, but not necessarily in the merits of the project, other than meeting Public Trust values. Does the SLC view itself as the final decider of ocean uses in state waters? We would appreciate clarification on this point.

The DRAFT Report acknowledges that amendments to the MOA will be needed. The SDFWG hopes that amendments will be made that reflect our concerns and recommendations.

**Recommendations:**

To summarize, the SDFWG believes the SDOPP will be successful if it:

- 1) Continues to refine the Web Mapping Application, while openly recognizing the limits of such a tool; and
- 2) Develops a framework for a fair, knowledge-based conflict resolution process, independent of any conflicts of interest by those managing the process, and
- 3) Results in a MOA amended to reflect the above two recommendations, plus the removal of ocean zoning as a product of the SDOPP.

Thank you for considering comments from the San Diego Fishermen's Working Group.

Pete Halmay, President

SDFWG