

CALIFORNIA OCEAN PROTECTION COUNCIL

Staff Recommendation

December 16, 2011

**CALIFORNIA VOLUNTARY SUSTAINABLE SEAFOOD PROGRAM:
PROTOCOL ADOPTION**

File No.: 11-062-01

Project Manager: Sam Schuchat / Valerie Termini McCormick / Moira McEnespy

RECOMMENDED ACTION: Adoption of the California voluntary sustainable seafood program protocol dated December 2011.

LOCATION: Statewide

STRATEGIC PLAN OBJECTIVES: Governance, Ocean and Coastal Ecosystems

EXHIBITS

Exhibit 1: Assembly Bill 1217 (Monning, 2009)

Exhibit 2: California Voluntary Sustainable Seafood Program Protocol, December 2011

Attachment 1: Marine Stewardship Council Principles and Criteria for Sustainable Fishing

Attachment 2: Marine Stewardship Council Chain of Custody Standard

Exhibit 3: California Voluntary Sustainable Seafood Program Advisory Panel Roster

RESOLUTION AND FINDINGS:

Staff recommends that the Ocean Protection Council adopt the following resolution pursuant to Sections 35500 *et seq.* of the Public Resources Code:

“The Ocean Protection Council hereby adopts, as of January 1, 2012, the California voluntary sustainable seafood program protocol dated December 2011 and attached to the accompanying staff recommendation as Exhibit 2. The Council finds that (1) the program protocol was developed through an open and public process and (2) the provisions of Public Resources Code Section 35550(c) regarding ‘internationally-accepted standards for sustainable seafood have been met.’”

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PROJECT SUMMARY:

Staff recommends that the Ocean Protection Council (OPC) adopt the California voluntary sustainable seafood program protocol dated December 2011.

Assembly Bill 1217 (Monning, 2009; Exhibit 1) directed the OPC to develop and implement a voluntary sustainable seafood certification program for California commercial fisheries, which includes developing a protocol, developing a competitive grant and loan program (in years in which funds are appropriated by the Legislature) to assist qualifying fisheries in becoming certified, designing a label to identify seafood certified under the California program, and implementing a marketing assistance program.

With input from an advisory panel and the public, staff has developed a California protocol to guide entities on how to become independently certified to internationally-accepted standards for sustainable seafood (protocol attached as Exhibit 2). The protocol describes how fisheries will be certified and how the OPC will consider funding fisheries seeking certification, and is designed to be periodically reviewed and updated as new information becomes available.

PROJECT BACKGROUND AND HISTORY:

Market-based approaches to fisheries management:

California fisheries are at the forefront of new sustainable management approaches that may inform national and international efforts. For example, legislation such as the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act and implementation of California's Marine Life Management Act seek to attain sustainable, well-managed fisheries. In addition, market-based approaches (such as "eco-labels") that can incentivize sustainable fishing practices have recently gained traction in the public sphere. Such labels may add value to fisheries due to market demand from consumers desiring seafood caught "sustainably," thereby creating an economic incentive to fish sustainably.¹

Generally, eco-labeling programs evaluate fishing practices and production processes against established environmental standards set by an independent third party. If the practices and processes meet these standards, the producer or marketer may buy a license to use a specific eco-label in its marketing. The label conveys to the consumer otherwise unobservable information concerning a product's environmental impact. In the case of seafood markets, consumers who prefer seafood products that are sustainably-caught provide a market-based signal to fishermen and resource managers, creating an incentive to maintain sustainable fisheries resources.²

California Sustainable Seafood Bill

Assembly Bill 1217 (Monning, 2009; Exhibit 1)³ required the OPC to develop and implement a voluntary seafood promotion program for California fisheries. The intent of AB 1217 is to

¹ Roeim C, Thalassorama. *Early Indications of market impacts from the Marine Stewardship Council's eco-labelling of seafood*. Marine Resource Economics, 2003. Volume 18, pp. 95–104.

² Ibid.

³ AB 1217 added Section 35617 to the Public Resources Code and amended Sections 35550 and 35650 of the Public Resources Code.

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encourage California fisheries to seek certification in accordance with internationally-accepted standards for sustainability and to promote the purchase and consumption of certified sustainable California seafood.

The statute directs the OPC to: 1) develop a protocol to guide entities on how to be independently certified to internationally-accepted standards for sustainable seafood; 2) develop a competitive grant and loan program (in years in which funds are appropriated by the Legislature) to help qualifying fisheries become certified as sustainable; 3) design a label or labels that may be used exclusively to identify seafood caught sustainably in California; and 4) implement a marketing assistance program for such seafood in cooperation with the California Department of Food and Agriculture.

AB 337 (Monning, 2011) further clarified that the program, each component of the program, and actions taken by the OPC to implement the program are not regulations for the purposes of the Administrative Procedure Act, and expressly required that any substantive amendments or revisions to the protocol be developed in a transparent process and adopted by the OPC in a public meeting.

OPC Actions to date:

Developing a trustworthy eco-label for California wild capture fisheries is not an easy task. California must ensure that the process is credible and that it is improving the sustainability of California's marine fisheries and habitats. Therefore, any eco-label that California develops must be easily understood, and verifiable such that consumers are assured that what they are buying is from California, is sustainable, and is helping our local fishermen continue fishing sustainably.

At its March 3, 2010 meeting, the OPC approved the appointment of a public advisory panel to assist with implementing the tasks under AB 1217 (see Exhibit 3 for a roster of panel members). The panel included representatives from fishery management agencies, non-governmental organizations, the commercial fishing industry, fish processors, fish retailers, restaurateurs, fishing port officials, and the scientific community. The panel was tasked to bring vision, strategic thinking, and pragmatic knowledge to the sustainable seafood program protocol development process. Panel members reviewed existing sustainable seafood protocols and reports; gave advice about how guidelines should be tailored for California fisheries; and identified critical issues and provided feedback on developing a sustainable seafood program in California, including traceability and marketing components.

In addition, public comment was accepted from November 29, 2010 to January 18, 2011. Comments were posted on the OPC website (<http://www.opc.ca.gov/2010/03/california-sustainable-seafood-initiative/>).

With input from the OPC (at its November 29, 2010 and May 12, 2011 meetings), the advisory panel, and the public, staff has developed a California voluntary program protocol to guide entities on how to become independently certified to internationally-accepted standards for sustainable seafood (protocol attached as Exhibit 2). The protocol describes how fisheries will be certified, how the OPC will consider funding fisheries seeking certification, and is designed to

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be periodically reviewed and updated as new information becomes available.

PROJECT DESCRIPTION:

California's Voluntary Sustainable Seafood Program Protocol

The California voluntary sustainable seafood program protocol consists of meeting the following standards:

1. The Marine Stewardship Council (MSC) fishery certification program for sustainable seafood.
2. A higher-than-MSC standard with respect to two performance indicators: 1) stock status and 2) by-catch of ETP (endangered, threatened, and protected) species. California-certified fisheries will have to obtain a score of at least 80 for these two performance indicators.
3. Additional independent scientific review.
4. Additional traceability and consumer information components.

See the "Definition of California's Program" section of the protocol (contained in Exhibit 2) for more detail. In addition, although not specifically called for in AB 1217, staff will work with partner agencies to ensure that the best information available on marine fisheries toxicity is made accessible to the public because toxicity is an important part of consumer choice.

The OPC has determined that the MSC's sustainable seafood certification program is the most appropriate one upon which to base California's program because it is or does the following:

- Meets the principles and criteria for internationally-accepted standards for sustainable seafood as required by AB 1217 and Public Resources Code Section 35617.
- Is the only existing seafood certification program that is also consistent with "The Code of Conduct for Responsible Fishing" (UN FAO⁴), the "The Guidelines for Eco-labeling of Fish and Fishery Products from Marine Capture Fisheries" (UN FAO), "The Code of Good Practice for Setting Social and Environmental Standards" (ISEAL⁵), and the "World Trade Organization Technical Barriers to Trade Agreement."
- Includes third-party verification; is set up such that the development of a standard is completely independent from the assessment of the fishery against that standard.
- Uses a completely open and transparent process.
- Maintains and regularly improves certification status and performance indicators.
- Has been established for over a decade and has been noted in several scientific studies as the most credible, robust assessment of sustainability- and well-managed fisheries.
- Helps avoid consumer confusion, and is likely to have the greatest impact on improving fishery and marine ecosystem health.

⁴ The Food and Agriculture Organization of the United Nations (UN FAO) has a mandate to raise levels of nutrition, improve agricultural productivity, better the lives of rural populations, and contribute to the growth of the world economy. The UN FAO is an intergovernmental organization that has 191 member nations, two associate members, and one member organization (the European Union).

⁵ The ISEAL Alliance is a global association for social and environmental standards, and incorporated as a not-for-profit organization in 2002. MSC is a founding member.

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Protocol consistency with requirements of AB 1217

California's voluntary sustainable seafood program protocol meets the requirements of AB 1217 and Public Resources Code Section 35617 as follows:

Requirement: Protocol must be developed in a public process:

The California protocol was developed with input from an advisory panel that included representatives from fishery management agencies, non-governmental organizations, the commercial fishing industry, fish processors, fish retailers, restaurateurs, fishing port officials, and the scientific community. Six publicly noticed meetings (four of the advisory committee and two of the OPC) were held at which the draft protocol was discussed and the opportunity for public comment was provided. In addition, the OPC website provided a page devoted to development of the program, offering links for public comment on the draft protocol; posting meeting notifications, agendas, and summaries; and posting comment letters received to date (<http://www.opc.ca.gov/2010/03/california-sustainable-seafood-initiative/>). Finally, the protocol states that the OPC may concur with any fishery's certification under the California program only at a public meeting.

Requirement: A public document must identify that the criteria for "internationally-accepted standards for sustainable seafood" have been met:

Criterion 1: Meet or exceed the "Guidelines for the Eco-labeling of Fish and Fishery Products from Marine Capture Fisheries" promulgated by the FAO.

In September 2006, the MSC program achieved full consistency with the "Guidelines for the Eco-labeling of Fish and Fishery Products from Marine Capture Fisheries," an internationally-agreed upon set of principles for a credible fishery certification and eco-labeling scheme. Key points of these guidelines are that eco-labeling programs have:

- Objective, third-party fishery assessment using scientific evidence;
- Transparent processes with built-in stakeholder consultation and objection procedures;
- Standards based on three factors: Sustainability of target species, ecosystems, and management practices.

California's protocol contains standards that are equivalent to or exceed those of the MSC program. Therefore, California's program meets this criterion.

Criterion 2: Conform to three specified principles concerning stock status, ecosystem health, and an effective management system.

The MSC program is based on these three principles as explained in the "Definition of California's Program" section of the protocol (contained in Exhibit 2, below). California's protocol is based upon the MSC program, and therefore meets this criterion.

Requirement: The protocol must provide guidance on the steps necessary to be independently certified to internationally-accepted standards:

See the "Process for Certification" section of the protocol (contained in Exhibit 2, below).

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The protocol must be adopted by the Council in a public meeting:

Action item to adopt the protocol was placed on the OPC's December 16, 2011 meeting agenda.

Project Details and Scope of Work:

This authorization:

Staff is recommending that the OPC adopt the California voluntary sustainable seafood program protocol dated December 2011.

Potential future authorizations:

Per the requirements of AB 1217, staff anticipates developing a competitive grant and loan round open to various fishery groups and associations to assist California fisheries in qualifying for certification with the California protocol. Such grants or loans will likely assist qualifying fisheries in undertaking pre-assessments, the first step to becoming certified as sustainable under the protocol. Potential candidates could include (but are not limited to) the following fisheries, or segments therein (2007 rankings by value or weight are shown): Market squid (#1 rank by value, #2 rank by weight), Dungeness crab (#2 rank by value, #6 rank by weight), spiny lobster (#5 rank by value), sea urchin (#6 rank by value, #4 rank by weight), spot prawn (#9 rank by value), and the California segment of the west coast albacore fishery.⁶

Program availability and information about the application process will be noticed on the OPC website. Applications may be evaluated, among other things, on the degree to which prospective fisheries meet at least the following criteria:

- Support from the state or federal management agency: California Department of Fish and Game (CDFG) and/or the Pacific Fishery Management Council (PFMC);
- Existence of a feasible organizational structure: For example, a Community Fishing Association (CFA) or similar entity that can serve as a co-client with the OPC to the MSC;
- Availability of matching funds and/or a repayment feature (loan component).

Staff anticipates that the OPC would award more grants in the early rounds, and more loans for future re-certifications, because fisheries may have realized financial benefit from the initial certification and will be in a better position to secure other funds once the certification is in place. Using loans for re-certification assistance will also enable the OPC to continue funding assistance in perpetuity.

Staff expects to also contract for assistance as needed with developing a traceability program and refining design of an eco-label to identify seafood caught sustainably in California. Finally, staff will begin developing a marketing assistance program for such seafood in cooperation with the California Department of Food and Agriculture (CDFA), and may contract for initial assistance should preliminary information needs be identified. Currently, two California fisheries have developed marketing schemes with CDFA, the Chinook salmon fishery and the sea urchin

⁶ This is not meant to be a comprehensive list, but to present an idea of fisheries potentially ready to participate in the program. It is also possible that all or part of a fleet at a particular port could seek certification for some or all of their catch.

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fishery. The purpose of CDFA marketing programs is to help solve production and marketing problems collectively that could not be addressed individually, and may include commodity promotion, research, and maintenance of quality standards.

Once fisheries are selected through a competitive grant and loan round to receive assistance (e.g., to conduct pre-assessments), staff anticipates returning to the OPC to receive concurrence on award selection and authorization for the OPC to become a co-client for certification.

Note that a “fishery client” is an individual, an organization, or a group of organizations that make(s) a formal application for a fishery to become assessed and certified. In providing funds, the OPC may choose to join a fishery as a co-client in seeking a pre-assessment or full assessment under California’s program. As such, the OPC would have a voice in selecting the certifier and in the development and implementation of the assessment.

Staff anticipates returning to the OPC in a similar manner for authorization and concurrence to fund full assessments, and finally for concurrence with certification or re-certification of any particular fishery. All authorizations and actions will be made in a public meeting (which will be properly noticed and will provide opportunity for public comment on the fishery).

PROJECT GRANTEE:

None proposed for this authorization. Staff is recommending only that the OPC adopt the California voluntary sustainable seafood program protocol dated December 2011.

PROJECT FINANCING:

None proposed for this authorization. Staff is recommending only that the OPC adopt the California voluntary sustainable seafood program protocol dated December 2011.

CONSISTENCY WITH CALIFORNIA OCEAN PROTECTION ACT:

The proposed project is consistent the Ocean Protection Act, Division 26.5 of the Public Resources Code, in the following respects:

Consistent with Section 35617(a), the proposed project will develop a voluntary sustainable seafood promotion program for the state that carries out the program components specifically articulated in section 35617(b). Furthermore, consistent with Section 35617(b)(1), the protocol guides entities on how to be independently certified to internationally-accepted standards for sustainable seafood, and meets the criteria for “internally-accepted standards for sustainable seafood” contained in Section 3550(c) as shown in the “Protocol consistency with requirements of AB 1217” section of this report, above.

Consistent with Section 35650 (b)(2)(C), the proposed project will foster sustainable fisheries by laying out the steps necessary for fisheries to become certified under the new California voluntary sustainable seafood program protocol. This market-based approach is intended to incentivize sustainable fishing practices. Development of programs and labels adds value to

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fisheries due to market demand from consumers desiring seafood caught “sustainably,” thereby creating an economic incentive to fish sustainably.

CONSISTENCY WITH THE OPC'S STRATEGIC PLAN:

The proposed project is consistent with the OPC's Strategic Plan adopted June 8, 2006, in the following respects:

Goal A (Governance) Objective 2b: *“Work with all relevant state agencies to develop necessary legislation, regulations, or other tools to improve ocean governance.”* The OPC will work with relevant state agencies to implement AB 1217, a program aimed at encouraging and promoting sustainably-managed fisheries.

Goal E (Ocean and Coastal Ecosystems) Objective 4c: *“Investigate the potential for consumer-oriented market approaches, such as a California sustainable seafood certification program or direct-to-consumer sustainable seafood markets.”* The proposed project will implement AB 1217, which requires development of a California voluntary sustainable seafood certification program. The program is based on a consumer-oriented market approach, and will encourage California fisheries to seek certification in accordance with internationally-accepted standards for sustainability and promote the purchase and consumption of verified California sustainable seafood.

Goal E (Ocean and Coastal Ecosystems) Objective 5a: *“Encourage and support new and innovative economic activities that can be conducted in a sustainable manner along or off the California Coast.”* The proposed project will implement AB 1217, which requires development of a new and innovative market- and incentive-based program to promote sustainable fisheries in California. AB 1217 seeks to build a program that provides incentives to fisheries that meet certain sustainable fishing criteria, including internationally-accepted standards.

CONSISTENCY WITH THE OPC'S GRANT PROGRAM FUNDING GUIDELINES:

The proposed project is consistent with the OPC’s Grant Program Funding Guidelines adopted November 20, 2008 in the following respects:

Required Criteria

1. **Directly relate to the ocean, coast, associated estuaries, or coastal-draining watersheds:**
The proposed project will implement a California sustainable seafood program, which directly relates to ocean-based fisheries.
2. **Support of the public:** The proposed project will implement a legislative mandate, AB 1217, which requires the OPC to develop and implement a voluntary sustainable seafood program for the state. Support has been expressed at previous OPC meetings and Advisory Panel meetings, and comment on the draft protocol has been received. Meeting summaries and letters may be viewed on the OPC website: <http://www.opc.ca.gov/2010/03/california-sustainable-seafood-initiative/>).
3. **Greater-than-local interest:** The proposed project will implement a program that is available on a voluntary basis to all fisheries of the state (except seafood produced through

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aquaculture or fish farming, until nationally- or internationally-accepted sustainability standards have been developed and implemented).

Additional Criteria

4. **Innovation:** The proposed project will implement a market-based approach to fisheries management, and will incorporate development and use of an “eco-label.”
5. **Improvements to management approaches or techniques:** The proposed project will apply a market-based approach to fisheries management, which has helped 42 fisheries around the world become more sustainable in the last ten years.⁷
6. **Coordination:** The proposed project involves coordination with other state agencies such as the California Department of Fish and Game, the California Department of Food and Agriculture, and the Office of Environmental Health Hazard Assessment, as well as with representatives from fishery management agencies, non-governmental organizations, the commercial fishing industry, fish processors, fish retailers, restaurateurs, fishing port officials, and the scientific community.

CONSISTENCY WITH THE OPC’S PROGRAM PRIORITIES FOR 2009 THROUGH 2010:

The proposed project is consistent with the following “OPC Program Priorities for 2009 through 2010,” which are still the most current adopted priorities:

- Agency Coordination and Ocean Management Activities;
- Sustainable Fisheries Management – Maintaining California’s Fishing Heritage.

The proposed project will foster sustainable fisheries and help maintain California’s fishing heritage by presenting to the OPC for adoption a California voluntary sustainable seafood program protocol. This market-based approach is intended to incentivize sustainable fishing practices. Development of programs and labels add value to fisheries due to market demand from consumers desiring seafood caught “sustainably,” thereby creating an economic incentive to fish sustainably.

COMPLIANCE WITH CEQA:

The proposed project is categorically exempt from review under the California Environmental Quality Act (“CEQA”) pursuant to 14 Cal. Code of Regulations Section 15306 because the project involves only data collection, research and resource evaluation activities that will not result in a serious or major disturbance to an environmental resource. Staff will file a Notice of Exemption upon approval by the OPC.

⁷ <http://www.msc.org/business-support/net-benefits>