MEMORANDUM OF UNDERSTANDING

among

THE CALIFORNIA RESOURCES AGENCY

THE CALIFORNIA DEPARTMENT OF FISH AND GAME

and

THE RESOURCES LEGACY FUND FOUNDATION

for

THE CALIFORNIA MARINE LIFE PROTECTION ACT INITIATIVE SECOND PHASE

This Memorandum of Understanding (MOU), effective January 1, 2007, is made and entered into by the California Resources Agency (Agency) the California Department of Fish and Game (Department) and the Resources Legacy Fund Foundation (Foundation). Each of the Agency, Department and Foundation may be referred to individually as a Party or collectively as Parties.

I. OBJECTIVES

By this MOU the Parties seek to accomplish the following objectives:

1.1 To memorialize their agreement to fund and implement a process (referred to in this MOU as the second phase of the MLPA Initiative) to achieve the objectives of the Marine Life Protection Act (MLPA; California Fish and Game Code section 2850 et seq.) for the second phase of developing a statewide network of marine protected areas (MPAs);

1.2 To set out a publicly transparent, science-based process for the development of siting recommendations for the second phase of the MLPA process;

1.3 To set out within this process opportunities for timely and meaningful participation by the general public and stakeholders through regional and statewide meetings and workshops;

1.4 To incorporate within the process certain elements of the previous MLPA Initiative process on the Central Coast (Pigeon Point to Point Conception), including the Blue Ribbon Task Force (Task Force), the Science Advisory Team and Regional Stakeholders Group;

1.5 To clearly set out the roles and responsibilities of the parties to make the process transparent to the public, to maximize efficiencies, to enhance opportunities for cooperation and to avoid conflict or confusion;

1.6 To articulate a mutually agreeable process by which the Parties intend to secure the delivery of the Task Force recommendation for alternative MPA proposals and a proposed preferred alternative for the second phase of the MLPA process to the Fish and Game Commission by March 15, 2008, to secure the delivery of the Department's analysis and comments on those alternatives and Task Force recommendation to the Commission by April 15, 2008, and to complete the CEQA and rulemaking process for MPA proposals for this next phase of the MLPA process by January 15, 2009;

1.7 To develop information during the process that will assist the state in coordinating the management of MPAs and MLPA Program with the federal government;

1.8 To effectively support the role and decision making of the Fish and Game Commission by keeping the Commissioners, and the Commission staff informed and engaged throughout the process.

1.9 To refine the MLPA Initiative process to benefit from and be responsive to the lessons learned in the first phase of the MLPA process for the Central Coast (Pigeon Point to Point Conception);

1.10 To provide productive opportunities for participation in and integration into the process by the Department of Fish and Game based on its expertise and statutory jurisdiction;

1.11 To reflect the commitment of the parties to timely and effective implementation of the Fish and Game Commission's decision on a MPA network for the first phase of the MLPA process on the Central Coast (Pigeon Point to Point Conception).

II. RECITALS

2.1 Through its California Ocean Resources Management Program, the Agency seeks to ensure comprehensive and coordinated management, conservation and enhancement of California's ocean resources for their intrinsic value and for the benefit of current and future generations.

2.2 The Department is the trustee for fish and wildlife resources in the State of California, and has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and habitat necessary for biologically sustainable populations of those species.

2.3 The Foundation is an independent non-profit organization that supports and performs essential services to promote land and marine conservation. Consistent with its mission, the Foundation has developed and administered many strategic charitable programs, including one which is designed to achieve significant advances in coastal and marine conservation in California.

2.4 The MLPA declares the need to reexamine and redesign California's MPAs to increase their coherence and effectiveness at protecting the state's marine life, habitat, and ecosystems and, to that end requires, among other things, that the Fish and Game Commission adopt a Marine Life Protection Program to improve the design and management of the state's array of MPAs as well as accomplishing other goals.

2.5 In order to fulfill its obligations under the MLPA, the Commission has adopted a draft master plan to guide the adoption and implementation of the program.

2.6 Consistent with the master plan, the Commission has identified a preferred alternative and is circulating an environmental impact report for alternative networks of MPAs for the first phase of the program along the Central Coast (Pigeon Point to Point Conception).

2.7 The parties desire to achieve the objectives of this MOU through a robust, publicly transparent, science-based process that takes into account the existing limitations on state funding. Given their mutual interests, the Parties are willing to make the commitments set forth below to fund and implement such a process to achieve the objectives of the MLPA for the second phase of the MLPA Initiative process.

2.8 The Department seeks to obtain the assistance of the Agency and Foundation in preparing the alternative MPA proposals for the next phase of the MLPA process in recognition of the state's existing budgetary constraints and the Agency and Foundation seek to assist the Department in this process. The Parties also seek to enhance the State's capacity to complete and implement the master plan and to manage its networks of MPAs by improving coordination with key federal agencies and identifying new sources of long-term funding for the state's implementation of the master plan and related activities under the MLPA.

2.9 The Parties previously entered into a MOU dated August 27, 2004 to complete the first phase of the MLPA process, the preparation of the master plan framework and the development of alternative MPA proposals in an area along the Central Coast (Pigeon Point to Point Conception). That MOU has expired and the Parties wish to continue their relationship in the form set forth in this MOU.

III. COMMITMENTS OF THE PARTIES

A. ORGANIZATIONAL STRUCTURE, ROLES AND RESPONSIBILITIES

Resources Agency

3.1 The Resources Agency will provide state policy leadership and direction, including coordination with state agencies in furtherance of the state commitments made in this MOU.

3.2 The Resources Secretary will appoint the members of the Blue Ribbon Task Force to guide the development of alternative MPA proposals and to recommend a preferred alternative to the Fish and Game Commission for the second phase of the MLPA process. The members of the Blue Ribbon Task Force, consisting of people known for their integrity, intellect, experience in public policy and concern for the common good, will serve at the pleasure of the Secretary for Resources for a term no longer than the period from January 1, 2007 through December 31, 2008. The Secretary will appoint a Chair for the Task Force, will convene the Task Force to accomplish the objectives of this MOU and will provide the Task Force a charge. The charge shall contain a clear statement of the scope of the Task Force's authority and the duties to be performed including:

a) prepare and make publicly available information and recommendations for coordinating management of MPAs with federal agencies;

b) guide the development of alternative MPA proposals, modify proposals presented to the Task Force by the Regional Stakeholders Group as the Task Force deems appropriate and craft alternative MPA proposals for presentation to the Fish and Game Commission;

c) recommend to the Fish and Game Commission a range of alternative proposals and a preferred MPA alternative proposal for the next phase of the MLPA Initiative process;

d) approve work plans for achieving its responsibilities within the timeframe set forth in Exhibit A;

e) direct key personnel, including the Executive Director of the MLPA Initiative, who will be retained as independent consultants by the Foundation upon the advice and concurrence of the chair of the Blue Ribbon Task Force.

f) approve a budget for the consultants to the Task Force to accomplish the objectives of this MOU.

3.3 The Agency will identify a qualified senior policy Agency staff person to provide advice to the Task Force and the Executive Director of the MLPA Initiative, to serve as liaison between the Agency and the Task Force, to assist the Agency in fulfilling its commitments under this MOU, and to participate in the work of the steering committee that guides the work of the Task Force in furtherance of the objectives of this MOU.

3.4 The Resources Agency will provide state leadership to make state budget requests for adequate current and future funding for the commitments made in this MOU including requests for funding for necessary Department personnel, funding needed to implement the first phase of the MLPA process on the Central Coast (Pigeon Point to Point Conception) and funding as necessary to complete future phases of the MLPA.

3.5 The Agency will provide, as necessary and available, office space, telecommunications equipment and support, and general clerical support for its staff and selected consultants to the MLPA Initiative.

3.6 The Agency will support, in light of available resources and consistent with applicable law, timely and efficient implementation of the Fish and Game Commission's MPA decisions reached in the first phase of the MLPA process.

Department of Fish and Game

3.7 The Director of the Department and Chair of the Blue Ribbon Task Force will jointly appoint the Regional Stakeholders Group, with a desired membership of no more than 20 members. The Department will appoint the Science Advisory Team, with a desired membership of no more than 15 members. The Director, on concurrence of the Resources Secretary, will provide to the Regional Stakeholders Group and the Science Advisory Team a charge or charter setting forth the scope of authority of the bodies and ground rules for the conduct of business by the groups and their individual members. The Science Advisory Team members and the members of the Regional Stakeholders Group will serve at the pleasure of the Director from January 1, 2007 through December 31, 2008. The Science Advisory Team members will select the Team's chair or co-chairs.

3.8 The Department will participate fully in the deliberations of the Blue Ribbon Task Force, Science Advisory Team and Regional Stakeholders Group to afford those bodies access to the Department's expertise and perspective in the development of alternative MPA proposals. The Department will provide to the Task Force, Science Advisory Team and Regional Stakeholders Group specific information on the Department's analysis and concerns regarding alternative MPA proposals during the second phase of the MLPA process.

3.9 The Department will assign key personnel required to assist in achieving the objectives of this MOU and may assign additional specialists or other personnel to assist in achieving the MOU objectives as the process goes forward.

3.10 The Department will by March 1, 2007 provide to the Blue Ribbon Task Force, Science Advisory Team and Regional Stakeholder Group a statement of the feasibility criteria that the Department will use in analyzing siting alternatives for the second phase of the MLPA process.

3.11 The Department, along with the Agency and staff of the Fish and Game Commission will participate as a member of the steering committee to guide the flow of work required to achieve the objectives and commitments of this MOU. The Department will provide staff support for the Science Advisory Team and the Regional Stakeholders Group.

3.12 The Department, along with the Executive Director of the MLPA Initiative, will participate in the briefings and discussions provided to the Ocean Protection Council, if any, and at least every two months beginning February 2007, to the Fish and Game Commission on the nature and progress of the MPA design process and alternatives under consideration.

3.13 The Department, in the exercise of its statutory jurisdiction, and in addition to participation in the development of alternative MPA proposals, may provide information, analysis and comments as appropriate to the Fish and Game Commission on the alternative MPA proposals and on the recommendation for a preferred MPA alternative proposal made to the Commission by the Blue Ribbon Task Force for the second phase of the MLPA process. The purpose of such information, analysis and comments is to provide advice to the Commission on feasibility of aspects of the MPA proposals and on the prospects of the MPA proposals to achieve the goals of the MLPA.

3.14 The Department will make available to the Task Force and Science Advisory Team any public data and other technical resources within the possession of the Department that are relevant to marine conservation and that are useful to help complete the objectives of this MOU.

3.15 The Department will provide office space, telecommunications equipment and support and general clerical support as necessary to fulfill its commitments under this MOU.

Resources Legacy Fund Foundation

3.16 The Foundation will use its best efforts to obtain, coordinate and administer philanthropic investments to fulfill the objectives of this MOU through December 31, 2008.

3.17 On July 1, 2007 the Foundation will provide to the Agency, the Department and the Task Force a description of funds the Foundation will contribute to fulfill the objectives of this MOU (the "Funding Description"). Between January 1, 2007 and July 1, 2007, the Foundation will pay reasonable expenses to fund the activities contemplated in this MOU. The Funding Description will reflect the Foundation's expenses for the period January 1, 2007 and July 1, 2007. The Parties acknowledge that the Foundation's financial contribution is limited to the available funds identified in the Funding Description. The Foundation may periodically revise the Funding Description according to changes in available funds.

3.18 Subject to the Funding Description, and subject to consultation with and general oversight of the Department, the Foundation will provide funding for consultants for staffing support for the Task Force through December 31, 2008. Upon recommendation and concurrence of the Chair of the Task Force, the Foundation will contract with qualified personnel or will renew the contracts of existing personnel as appropriate, to fill the key positions.

3.19 Upon the request of the Task Force, and with its recommendation and concurrence, the Foundation will contract with qualified consultants and experts as reasonably necessary to carry out the discrete research, writing and other technical tasks required to achieve the objectives of this MOU.

3.20 The Foundation, subject to the Funding Description and based in part on general oversight by the Agency and Department, will provide funding for the reasonable expenses of the Task Force, Regional Stakeholders Group and Science Advisory Team, including equipment, travel and meeting costs through December 31, 2008.

3.21 The Foundation recognizes and the Parties agree that the funding and services provided by the Foundation are solely in support of the process contemplated in this MOU and are not in any way contingent on the content of the recommendations made by the Blue Ribbon Task Force nor on the MPA alternative that is ultimately selected by the Fish and Game Commission.

B. GENERAL PROVISIONS

3.22 The Task Force will convene in public and open meetings whenever a majority of the members is scheduled to be present.

3.23 The Science Team and Regional Stakeholders Group will convene in public and open meetings whenever a majority of the members is scheduled to be present.

3.24 The Task Force and Science Team will provide regular opportunities for stakeholder and public input.

3.25 Final work products developed pursuant to this MOU by the Task Force and the Science Team and the Funding Description provided by the Foundation will be made available to the public.

3.26 The parties agree to the development of certain products to accomplish the objectives of this MOU including:

a) alternative MPA proposals for the second phase of the MLPA Initiative process that satisfy the goals and requirements of the MLPA;

b) a recommendation by the Task Force to the Fish and Game Commission for a preferred MPA alternative for consideration and action by the Commission.

3.27 The Parties acknowledge that the funds provided by the Foundation are predicated upon the mutual commitment of the Parties to the objectives of this MOU, and that the availability of the funds as set forth in the Funding Description is contingent upon the Parties fulfilling their commitments made in this MOU and in turn the commitments of the Agency and Department are contingent on the availability of funds as reflected in the Funding Description. If the Funding Description is revised to reduce the amount of funds available, the Agency may revise its charge to the Blue Ribbon Task Force, as set forth in paragraph 3.2 of this MOU and the Parties may make other changes to the process contemplated in this MOU as may be necessary to reflect available funding.

3.28 In March and September of each year the Department, with concurrence of the Agency, will provide written reports to the Foundation concisely describing the key milestones, accomplishments and challenges in meeting the objectives of this MOU.

3.29 The Parties recognize and the Department acknowledges that the Department has a statutory obligation to implement and enforce the MPA network when approved by the Fish and Game Commission for the second phase of the MLPA process.

3.30 At least once every quarter, the Parties, Executive Director of the MLPA Initiative, Executive Policy Officer of the Ocean Protection Council, Executive Director of the Fish and Game Commission and other of their personnel as the Parties think appropriate will meet to discuss progress toward and any challenges in achieving milestones leading to accomplishment of the objectives of this MOU (milestones meetings). The Parties will be represented at milestones meetings by senior staff knowledgeable of the MLPA Initiative and its work. The milestones meetings will be chaired by the Resources Secretary.

C. STANDARD PROVISIONS

3.31 The parties agree in good faith to work to fulfill the objectives of this MOU. Nothing in this MOU shall be construed as obligating the Agency or the Department to expend funds, or for the future payment of money, in excess of appropriations authorized by law.

3.32 Neither this MOU nor any provision hereof may be waived, modified, amended or discharged except by an instrument in writing signed by the Parties.

3.33 This MOU constitutes the entire agreement of the Parties with respect to the matters set forth herein and it supersedes all prior or contemporaneous understandings or agreements among the Parties with respect to the subject matter of the MOU.

3.34 If a court of competent jurisdiction determines that a provision included in this MOU is legally invalid, illegal or unenforceable, and such decision becomes final, such provision shall be deemed to be severed and deleted from this MOU and the balance of the MOU shall be reasonably interpreted to achieve the intent of the Parties. The Parties further agree to replace such void or unenforceable provision of this MOU with a valid and enforceable provision that will achieve, to the extent possible, the purposes of the void or unenforceable provision.

3.35 This MOU and any amendment may be executed in two or more counterparts, and by each Party on a separate counterpart, each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document.

3.36 None of the Parties may assign any rights granted by this MOU without prior written approval of the other Parties. Approval of assignment may be granted or withheld in any Party's reasonable discretion.

3.37 This MOU shall become effective on January 1, 2007 and shall be in effect from that date through December 31, 2008, unless it is terminated by withdrawal of one or more of the Parties or extended through an amendment.

3.38 If any Party is dissatisfied for any reason with performance of the commitments of this MOU, the Party may give written notice to the other Parties informing them of the facts giving rise to the dissatisfaction and giving the Parties an opportunity to remedy the situation. The Parties shall meet and confer at least once at a mutually agreeable time no more than 30 days from the date of the notice to resolve the issues presented in the notice and to discuss related concerns of other Parties. During the 30-day period, the Foundation will continue to pay obligations incurred prior to the date of the notice but may decline to encumber additional funds during the 30-day period.

3.39 At any time following a meeting pursuant to paragraph 3.38, any Party shall be entitled to withdraw from this MOU by providing a 10-day notice to the other Parties. Unless the Party withdraws the notice within the 10-day period, this MOU will automatically terminate at the end of the 10-day period. Following any notice of termination, the Foundation may withhold all unencumbered funds from further commitment; however, the Foundation will pay all obligations outstanding as of the date of the notice of termination whether invoices are presented to the Foundation before or after the date of termination.

3.40 The only remedy of any Party for a breach of this MOU is termination of the MOU as set forth herein. Under no circumstances shall any Party be liable to any other Party in connection with this MOU for any direct, indirect, incidental or consequential damages or be entitled to any legal or equitable relief other than termination of this MOU.

3.41 Nothing in this MOU shall be deemed to create a partnership or any other trust relationship between the Parties, it being expressly understood and agreed that the Parties obligations to each other under this MOU are not fiduciary in nature.

3.42 Each signatory below attests that he or she is duly authorized to execute this MOU on behalf of the Party he or she represents.

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed by their duly authorized representatives.

Mike Chrisman — 12/20/06
Mike Chrisman — Date
Secretary
California Resources Agency

L. Ryan Broddrick — 19 DEC 06
L. Ryan Broddrick — Date
Director
California Department of Fish and Game

W. John Schmidt — 12/19/06
W. John Schmidt — Date
Executive Director
Resources Legacy Fund Foundation

EXHIBIT A–SIGNIFICANT MILESTONES

1. December 31, 2006—Announce selection of next study region and agreement to new MOU.

2. January 15, 2007—Membership in Blue Ribbon Task Force announced

3. January 30, 2007—First meeting of Blue Ribbon Task Force

4. February 15, 2007—Membership in Science Advisory Team (SAT) announced

5. February 2007—First presentation to Fish and Game Commission on program (every two months thereafter)

6. April 2007—Fish and Game Commission to consider changes to draft Master Plan

7. September 2007—Fish and Game Commission policy review of draft MPA proposals and guidance to Blue Ribbon Task Force on proposals

8. March 15, 2008—Presentation of Blue Ribbon Task Force proposed siting alternatives and recommendation for preferred alternative to the Fish and Game Commission

9. April 15, 2008—Presentation of Department's analysis and comments, if any, on the Task Force packages and recommendation to the Fish and Game Commission

10. May 15, 2008--Commission consideration of alternative MPA proposals and selection of its preferred alternative for CEQA analysis

11. November 21, 2008--Completion of "lessons learned" analysis for the second phase of the MLPA Initiative process

12. January 15, 2009—Completion of the CEQA and rulemaking processes