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10 Attorneys for Petitioners and Plaintiffs
United Anglers of Southern California, Coasts
11 Fishing Club, and Robert C. Fletcher

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 FOR THE COUNTY OF SAN DIEGO

14 CENTRAL DIVISION

15 UNITED ANGLERS OF SOUTHERN
CALIFORNIA; COASTSIDE FISHING
16 CLUB; AND ROBERT C. FLETCHER,

17 Petitioners and Plaintiffs,

18 vs.

19 CALIFORNIA FISH AND GAME
COMMISSION,

20 Respondent and Defendant.
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Case No. 37-2011-00084611-CU-WM-CTL

Date: September 26, 2011
Time: 10:00 a.m.
Dept.: 71
Judge: Hon. Ronald S. Prager

DECLARATION OF DAVID D. COOKE
IN SUPPORT OF AMENDED PETITION
FOR WRIT OF MANDATE AND
COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF

(THIRD, FOURTH AND FIFTH CAUSES
OF ACTION RE NORTH CENTRAL
COAST MPA REGULATIONS)

1 I, David D. Cooke, declare:

2 1. I am an attorney in the law firm of Allen Matkins Leck Gamble Mallory &
3 Natsis, LLP, counsel of record for Petitioners and Plaintiffs United Anglers of Southern
4 California, Coastside Fishing Club, and Robert C. Fletcher ("Petitioners"), in the above-
5 captioned action. I am a member in good standing of the State Bar of California. I make
6 this Declaration in support of Petitioners' Amended Petition for Writ of Mandate and
7 Complaint for Declaratory and Injunctive Relief with respect to the Third, Fourth and Fifth
8 Causes of Action relating to the North Central Coast Regulations. I have personal
9 knowledge of the facts set forth in this Declaration and, if called as a witness, could and
10 would testify competently thereto.

11 2. Attached as Exhibit A to Petitioners' Request for Judicial Notice in Support
12 of Opening Brief (the "RJN") is a true and correct copy of the Background Information
13 Request, AB 2800, from the Assembly Committee on Water, Parks and Wildlife (the
14 Assembly Committee to which AB 2800 was assigned), to Assembly Member Shelley,
15 author of AB 2800, and response prepared by Assembly Member Shelley's office, part of
16 the legislative bill file of the Assembly Committee on Water, Parks and Wildlife on
17 Assembly Bill 2800. Exhibit A was provided to me by Legislative Intent Service, Inc.,
18 pursuant to my request for the legislative history of AB 2800. Also attached as part of
19 Exhibit A is the Declaration of Maria A. Sanders, Legislative Intent Service, Inc.,
20 authenticating the documents provided to me.

21 3. Attached as Exhibit B to the RJN is a true and correct copy of the California
22 MLPA Initiative Master Plan Framework and appendices, adopted by the California Fish
23 and Game Commission on August 22, 2005. The Master Plan Framework was
24 downloaded from the Department of Fish and Game's website at
25 <http://www.dfg.ca.gov/mlpa/pdfs/mpf082205.pdf> and the appendices were downloaded
26 from <http://www.dfg.ca.gov/mlpa/pdfs/mpfapp082205.pdf>.

27 4. Attached as Exhibit C to the RJN is a true and correct copy of the
28 October 26, 2010 Order on Petition for Writ of Mandate and Motion for Judgment on the

1 Pleadings in *Fletcher v. Blue Ribbon Task Force of the MLPA Initiative, et al.*, Sacramento
2 County Superior Court Case No. 34-2010-80000555. On February 19, 2010, Petitioner
3 Robert C. Fletcher requested public records pursuant to the California Public Records Act,
4 Govt. Code §§ 6250 et seq., from the California Natural Resources Agency ("Resources
5 Agency"), the Department of Fish and Game, the Fish and Game Commission (the
6 "Commission"), the MLPA Initiative—Blue Ribbon Task Force ("BRTF") and the MLPA
7 Initiative—Science Advisory Team and Master Plan Team ("Master Plan Team"). The
8 Resources Agency, the Department of Fish and Game, and the Commission each
9 responded, but the BRTF and Master Plan Team refused to respond, claiming they were
10 not "state agencies" within the meaning of California Government Code section 6252(f).
11 Petitioner Fletcher sought a writ of mandate from the Sacramento County Superior Court
12 compelling the BRTF and Master Plan Team to respond. In its order issued October 26,
13 2010, the court found that the BRTF and the Master Plan Team functioned "as components
14 of the state administrative structure for the purpose of implementing the MLPA" and were
15 "'state bodies' engaged in state governmental functions" (RJN Ex. C p. RJN 196.) The
16 superior court thereafter issued a writ of mandate compelling the BRTF and Master Plan
17 Team to respond to the February 19, 2010 requests.

18 5. Attached as Exhibits D, F, H, J, L and N to the RJN are true and correct
19 copies of letters I sent on December 23, 2010 to the Resources Agency, the California
20 Department of Parks and Recreation, the California State Water Resources Control Board,
21 the California Coastal Commission, the Department of Fish and Game, and the California
22 State Lands Commission, seeking public records pursuant to the California Public Records
23 Act, Government Code sections 6250 et seq. The agencies to which these requests were
24 directed are members, designated by Pub. Res. Code section 36800, of the State
25 Interagency Coordinating Committee ("Coordinating Committee"). The requests to these
26 agencies are substantively identical and seek records of activities of the Coordinating
27 Committee after August 27, 2004 in connection with proposals for new or amended marine
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1 managed areas ("MMAs") in the North Central Coast, South Coast or North Coast study
2 regions.

3 6. Attached as Exhibits E, G, I, K, and M to the RJN are true and correct copies
4 of the responses to my Public Records Act requests that I received, respectively, from the
5 Resources Agency, the Department of Parks and Recreation, the State Water Resources
6 Control Board, the Coastal Commission, and the Department of Fish and Game. The
7 January 7, 2011 response from the Resources Agency (Exhibit E) and the December 31,
8 2010 response from the Department of Fish and Game (Exhibit M) each advised that they
9 would contact me after they had located any responsive documents. Neither agency ever
10 advised me that they had located any responsive documents.

11 7. Attached as Exhibit O to the RJN is a true and correct copy of a January 6,
12 2011 letter I received from the State Lands Commission, with attached documents
13 responsive to my Public Records Act request. I have reviewed the documents produced
14 with this letter. The only references to the Coordinating Committee are contained in two
15 email strings, one in 2003 and one in 2004, concerning the need for a lease from the State
16 Lands Commission when designating MMAs. Also enclosed is a 2004 email re "marine
17 protected area leases" pertaining to re-naming of established MPAs. None of the
18 documents produced with this letter pertain to any meeting of the Coordinating Committee
19 or review of proposed MPAs in the North Central or South Coast regions.

20 8. Attached as Exhibit P to the RJN is a true and correct copy of a
21 December 23, 2010 letter I sent to the Commission pursuant to the Public Records Act,
22 seeking copies of records since August 27, 2004 constituting or pertaining to actions on
23 petitions received by the Commission from interested parties to add, delete or modify
24 marine protected areas ("MPAs") in the North Central Coast, South Coast or North Coast
25 study regions. The request also sought records pertaining to the Commission's adoption of
26 site proposal guidelines pursuant to Pub. Res. Code § 36870, and to its act, if any, of
27 forwarding proposals for designation of MPAs within the North Central Coast, South
28 Coast or North Coast study regions to the Coordinating Committee. Finally, the request

1 asked the Commission to produce the same categories of records sought in my Public
2 Records Act requests of the same day to the members of the Coordinating Committee, but
3 only if the Commission had been designated as a member of the Coordinating Committee.

4 9. Attached as Exhibits Q, R and S to the RJN are true and correct copies of the
5 responses from the Commission to my Public Records Act request to it. Exhibit S contains
6 true and correct copies of the documents the Commission produced in response to my
7 request. The Commission identified these documents as six petitions it received. I have
8 reviewed the documents, and these "petitions" may be described as: (1) a collection of
9 signatures expressing concern over human health effects resulting from the site selection of
10 fishing closures in Palos Verdes; (2) a collection of signatures against fishing closures in
11 Laguna Beach and Dana Point and in support of a proposal for partial closure in Central
12 Laguna Beach; (3) a collection of signatures against fishing closures on the North Palos
13 Verdes Peninsula and in support of a proposal for partial closures in Southern-Central
14 Palos Verdes; (4) a request by the Kashia Band of Pomo Indians to the Commission, and
15 supporting documents, seeking a modification to the proposed regulation and an
16 emergency amendment to the adopted regulation establishing an MPA at Stewarts Point
17 State Marine Reserve in the North Central Coast to allow tribal activities (these documents
18 bear dates of April and June, 2010, after the Commission's adoption of the North Central
19 Coast Regulations); (5) a collection of signatures supporting High Tech High Sierra Club's
20 Petition to Support MLPA Plus, "the largest agreement of reserves . . . creat[ing] a reserve
21 from Windansea beach to the Crystal Pier" (in San Diego County); and (6) a collection of
22 signatures supporting a state marine reserve at Naples Reef in Santa Barbara County. The
23 Commission's response to my request included no records pertaining to the adoption of site
24 proposal guidelines, no records reflecting its forwarding of MPA proposals to the
25 Coordinating Committee, no records suggesting that it had been designated as a member of
26 the Coordinating Committee, and no records of activities of the Coordinating Committee,
27 if any.

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1 10. I have reviewed the administrative record prepared by Respondent in this
2 case for documents demonstrating that the Commission forwarded to the Coordinating
3 Committee any proposals made to the Commission for designation, modification or
4 deletion of MMAs within the North Central Coast region. I was unable to locate any such
5 documents.

6 11. I have searched the administrative record prepared by Respondent in this
7 case for references to the Coordinating Committee. None of the documents in the
8 administrative record, or those produced in response to Public Record Act requests,
9 provide any evidence of any meeting, review or any other action by the Coordinating
10 Committee with respect to MPAs in the North Central or South Coast. I have been able to
11 locate no record in the administrative record that the Coordinating Committee was even
12 convened in connection with these MPAs.

13 12. Under the Administrative Procedures Act, petitions for agency action
14 resulting in adoption of regulations must be part of the agency's "rulemaking file"
15 submitted to the Office of Administrative Law ("OAL"). I have searched the
16 administrative record prepared by Respondent in this case for references to any petition to
17 add, delete or modify MPAs in the North Central Coast region. Attached hereto as
18 Exhibit 1 is a true and correct copy of a letter dated August 3, 2011, from Deputy Attorney
19 General Carol Squire, Esq., advising that the administrative record produced by
20 Respondent includes an exact replica of the rulemaking file for the North Central Coast
21 Regulations submitted by the Commission to the OAL. I have been able to locate no
22 record in the administrative record that provides any evidence of a petition to add, delete or
23 modify MPAs upon which the Commission acted in adopting the North Central Coast
24 Regulations.

25 13. I have reviewed the administrative record prepared by Respondent in this
26 case and have been unable to identify, within its contents, any documents evidencing an
27 application to the California Coastal Commission for, or issuance by the California Coastal
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1 Commission of, a coastal development permit in connection with the Commission's
2 adoption of a network of MPAs for the North Central Coast region.

3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct.

5 Executed this 18th day of August, 2011, at San Francisco, California.



7 DAVID D. COOKE

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EXHIBIT 1

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



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August 3, 2011

VIA E-MAIL

David D. Cooke
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San Francisco, CA 94111-4074

RE: United Anglers of S. California; Coastside Fishing Club; & Fletcher, Robert C. v. CA
Fish & Game Commission
Superior Court of California, County of San Diego, Case No. 37-2011-00084611-CU-
WM-CTL

Dear Mr. Cooke:

This letter responds to your letter received via email on August 2, 2011.

First, I trust that all the issues relating to the DVD have been resolved. I am unsure why the DVD copy sent to you did not contain a Bates-stamped copy of the January 2008 Revised Draft Master Plan. We have sent a new DVD to your office in San Francisco, and yesterday, to expedite the process, a member of our Litigation Support Section personally delivered another copy to John Kaup in the San Diego office of Allen Matkins. She confirmed with Mr. Kaup that the new DVD contained a Bates-stamped Revised Draft Master Plan and that Mr. Kaup was able to perform a global search of the entire record.

Second, in my haste to get you the DVD earlier than the court-ordered deadline, I inartfully described the DVD's contents. The DVD contains an *exact* replica of the rulemaking file submitted to OAL, which includes documents that pre-date the Notice of Proposed Rulemaking. For purposes of identifying what comprises the rulemaking file submitted to OAL, please note that **all documents** on the DVD, *with the exclusion of the documents designated as Bates-stamped numbers 810 through 1780; 34244 through 35089; and 35497 through 35526-4*, comprise the rulemaking file submitted to OAL. As a general proposition, Administrative Record documents Bates-stamped numbers 810 through 1780; 34244 through 35089; and 35497 through 35526-4, were not a part of the rulemaking file submitted to OAL (some of these Bates-

David D. Cooke
August 3, 2011
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stamped documents include public comments received *after* the Notice of Proposed Rulemaking and therefore may be part of the rulemaking file also.)

Third, the "California Marine Life Protection Action Initiative Master Plan Framework" was superseded by the January 2008 Revised Draft Master Plan, which is a part of the rulemaking file.

Fourth, the certification of the record will be provided to you on Friday. Judge Prager generally does not want the record lodged until all briefs have been filed.

Sincerely,



CAROL A. SQUIRE
Supervising Deputy Attorney General

For KAMALA D. HARRIS
Attorney General