



Protecting California's Coastal Communities: Four Models of Public Interest Lawyering

*Capt. James Mize**

TABLE OF CONTENTS

I. INTRODUCTION	201
II. BACKGROUND.....	201
A. California's Coastal Communities and Resources	201
B. Legal Tactics and Other Avenues Used to Help Coastal Communities	202
III. ANALYSIS	205
A. Representative Organizations.....	205
1. Earthjustice	205
2. The Oceans Conservancy.....	207
3. Surfrider Foundation	209
4. United Anglers of Southern California	210

* JD/MBA Candidate, University of California, Los Angeles, expected 2008, and can be reached at james.mize.2008@anderson.ucla.edu. This paper was written under the guidance of the UCLA School of Law Program in Public Interest Law and Policy. The author wishes to thank Professor Gary Blasi for support and editorial review. All opinions are those of the author unless otherwise indicated. Any remaining errors are solely attributable to the author.

- B. But What About Legal Aid?..... 212
- C. Case Study – Responses to the Implementation of Marine Reserves in the Channel Islands..... 214
- IV. CONCLUSION..... 218

I. INTRODUCTION

This paper considers several organizations as emblems of different approaches to public interest lawyering for the purpose of protecting ocean and coastal resources and the communities that rely upon them. These organizations do not always agree, but they do avail themselves of similar methods in varying degrees to achieve their goals, and may thus be comparable in evaluating their efficacy. The organizations reviewed in this paper include: *Earthjustice*, which focuses on protecting “marine life biodiversity” in the North Pacific Ocean and actively pursues litigation options;¹ *The Ocean Conservancy*, which concentrates on promoting “healthy and diverse ocean ecosystems” and opposing “practices that threaten ocean life and human life” largely through legislative avenues;² *Surfrider Foundation*, which concerns itself with “the protection and enjoyment of the world’s oceans, waves, and beaches for all people” by organizing such users for collective action;³ and *United Anglers of Southern California*, which represents “sport fishermen from all parts of California who would like to pass on the sport they love to future generations.”⁴ All four groups claim a concern for marine resources and coastal communities alike, yet each employs different means to reach their intended audiences. These approaches and relative successes are each considered in turn and evaluated for their usefulness in protecting the interests of disadvantaged coastal communities.

II. BACKGROUND

A. California's Coastal Communities and Resources

Fish and shellfish harvested in a sustainable manner are critical to California as a source of healthy food, financial revenue and jobs. Coastal communities that have sprung up to support this industry have contributed substantially to the state’s economy over the years.⁵ Increasingly, however, competing demands upon marine resources, urban runoff pollution impacts, and conflicting values

¹ Earthjustice, Oceans, <http://www.earthjustice.org/program/oceans/> (last visited Feb. 28, 2007).

² The Oceans Conservancy, About Us, http://www.oceanconservancy.org/site/PageServer?pagename=abt_aboutus (last visited Feb. 28, 2007).

³ Surfrider Foundation, Surfrider Foundation Mission and Principles, <http://www.surfrider.org/howweare2.asp> (last visited Feb. 28, 2007).

⁴ United Anglers of Southern California, About Us, <http://www.unitedanglers.com/news.php> (last visited Feb. 28, 2007).

⁵ R. MOLLER & J. FITZ, CALIFORNIA’S OCEAN RESOURCES: AN AGENDA FOR THE FUTURE (California Resources Agency 1997), available at <http://resources.ca.gov/ocean/97Agenda/PDF/>.

for the management of fish and its habitat imperil these communities.⁶ Often these impacts threaten the health of the fisheries,⁷ as a common response to the problems has been to reduce access to fishery resources which further distresses the communities that rely upon them.⁸ Between fishermen⁹ there are conflicts as well, in that large-scale industrial seafood companies enjoy more representation than smaller-scale community-based fishing operations¹⁰ and even more diffuse recreational and subsistence users. This conflict marginalizes the legacy of coastal fishing communities, rendering their way of life anachronistic and obsolete.

B. Legal Tactics and Other Avenues Used to Help Coastal Communities

Law can help to preserve the lore of fishing communities and protect these communities from disappearing from California's culture. Possible legal tactics include litigation to change the way managing agencies treat coastal communities, efforts to influence legislation (both locally and nationally), community organizing and advocacy efforts to support these approaches, or direct legal services to assist the members of these communities. Section 301 of the Magnuson-Stevens Fishery Conservation and Management Act

⁶ PEW OCEANS COMMISSION, AMERICA'S LIVING OCEANS: CHARTING A COURSE FOR SEA CHANGE 2-1 (2003) (*hereinafter* "PEW"), available at http://www.pewtrusts.org/pdf/env_pew_oceans_final_report.pdf; See also U.S. COMMISSION ON OCEAN POLICY, AN OCEAN BLUEPRINT FOR THE 21ST CENTURY, FINAL REPORT 38 (2004) (*hereinafter* "USCOP"), available at <http://www.oceancommission.gov/> (describing increasing threats to ocean and coastal assets due to cumulative effects of human activities).

⁷ It is important to note that a "fishery" or "fisheries" are distinct from fish stocks or ecosystems in that it incorporates the interaction of humans with the fishes: "Broadly, a fishery may be defined as a system for harvesting and managing a particular type of fish that would include fishermen, seafood processors and vendors, and others involved in the process among them, environmentalists." Environmental Defense Oceans Alive, Glossary, <http://www.oceansalive.org/explore.cfm?subnav=glossary> (last visited Feb. 28, 2007).

⁸ CHARLES S. COLGAN, LIVING NEAR...AND MAKING A LIVING FROM...THE NATION'S COASTS AND OCEANS 16 (Oct. 2003), in USCOP, available at http://www.oceancommission.gov/documents/prelimreport/append_c.pdf.

⁹ Authorities are divided over the appropriate use of the gender-specific "fishermen" as opposed to the gender-neutral "fishers." While academicians prefer the latter, this author's personal communications with women-who-fish suggests a preference for the male gender descriptive as illustrative of the ruggedness of their chosen occupation and lifestyle, with a corresponding revulsion to the gender-neutral as depriving them of the honor earned through their labors. In respect of this sentiment, this paper relies on the terms "fisherman" and "fishermen" as unisex descriptors inclusive of both women and men in the fisheries. See Blair Shewchuk, *Men, Women, and Fishers*, CBC NEWS ONLINE, Aug. 24, 2000, <http://www.cbc.ca/news/indepth/words/fishermen.html>.

¹⁰ "[M]any observers of U.S. fisheries increasingly see the fishing industry trending toward consolidation, specialization, and industrialization . . . [which] could have important implications for jobs, fishery values, and the diversity and stability of coastal communities."

PEW OCEANS COMMISSION, SOCIOECONOMIC PERSPECTIVES ON MARINE FISHERIES IN THE UNITED STATES 3 (2003) (*hereinafter* "PEW II"), available at http://www.pewtrusts.com/pdf/environment_pew_oceans_socioeconomic_perspectives.pdf.

("MSFCMA") is one example of national legislation. Here, amendments passed in the Sustainable Fisheries Act of 1996 require federal fishery managers to consider fishing communities, provide for their sustained participation in the fishery, and minimize adverse economic impacts upon them when making management decisions.¹¹ Within state waters as well, legislation granting management authority requires minimizing adverse impacts on fishing communities.¹² Litigation brought against state or federal agencies can enforce managing agencies to comply with standards such as these (or other relevant laws).¹³ Likewise, private actors that impact fisheries have legal requirements of their own to meet. Individual legal challenges to the sufficiency of measures taken to meet these legislative requirements may stave off adverse effects on the coastal communities that are impacted by them.

However, much of the conflict takes place outside of the courts. As new members that do not share in the fishing traditions join coastal communities, old values supporting the extractive use of fisheries are supplanted by new values, which include preservationist philosophies and apathy.¹⁴ To address this

¹¹ National Standard 8 of the Magnuson-Stevens Fishery Conservation and Management Act states:

Conservation and management measures shall, consistent with the conservation requirements of this chapter (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

16 U.S.C. § 1851(a)(8) (2007).

¹² California's Marine Life Management Act mandates:

In order to achieve the primary fishery management goal of sustainability, every sport and commercial marine fishery under the jurisdiction of the state shall be managed under a system whose objectives include all of the following: ...[¶]... The adverse impacts of fishery management on small scale fisheries, coastal communities, and local economies are minimized.

CAL. FISH & GAME CODE § 7056(j) (West 2007). For an eminently readable treatment on the balancing of policy constraints in the management of fisheries under the jurisdiction of California, see MICHAEL L. WEBER & BURR HENEMAN, GUIDE TO CALIFORNIA'S MARINE LIFE MANAGEMENT ACT 13 (Common Knowledge Press, 2000), at <http://www.fgc.ca.gov/mlma/home.html> (last visited Mar. 2, 2007).

¹³ Other relevant laws include procedural laws such as the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-70 (2007) ("NEPA") and the Administrative Procedures Act, 5 U.S.C.A. §§ 551-96 (2007) ("APA") for federal actions or the equivalent for state actions, the California Environmental Quality Act, CAL. PUB. RES. CODE §§ 21000-21178.1 (West 2007) ("CEQA"), and substantive laws such as the state and federal Clean Water Act, 33 U.S.C. §§ 1251-1387 (2007), the state CAL. WATER CODE §§ 13000-14958 (West 2007), the federal Endangered Species Act, 16 U.S.C. §§ 1531-1544, the state CAL. FISH & GAME CODE §§ 2050-2933 (West 2007), the federal Coastal Management Act, 16 U.S.C. §§ 1451-65, and the state CAL. PUB. RES. CODE §§ 30000-30900 (West 2007), *inter alia*.

¹⁴ The communities' interests exceeds the fishing industry's interests:

phenomenon, public opinion makes more of an impact than legal opinions. Community organizing, advocacy and social marketing skills work better than traditional legal strategies at strengthening and defining the community to be protected. Communication raises public awareness of the issues and frames the debate around protecting coastal communities' traditional values, or reforming them in a sort of compromise.¹⁵ For these issues, an organizer does not need to be a lawyer, but knowing the applicable law underlying controversies helps to craft messages that achieve the desired legal outcomes.¹⁶

Within this broad context of "saving coastal fishing communities," several approaches may be found. Some constituents favor an approach that focuses on preservation of the fish species and its habitat, trusting that the fishing community will save itself if the resource remains healthy.¹⁷ Such "deep ecologist" leaning organizations traditionally advocate no taking of marine life whatsoever.¹⁸ This type of approach would do little to support the fishing communities themselves, as these communities are accustomed to exploiting the resource based on its scientific management.¹⁹ Other constituents are more

Fisheries do belong to the public, and our management should keep that in mind. The public interest is represented not just by fishermen, consumers, and scuba divers. It is represented by those people who don't fish, eat fish, or even look at fish, even if they aren't aware of fisheries and don't care about how they are managed. The government must speak for the disenfranchised.

Margaret F. Hayes, Assistant General Counsel for Fisheries, National Oceanic and Atmospheric Administration, *as quoted in* THE H. JOHN HEINZ III CENTER FOR SCIENCE ECONOMICS AND THE ENVIRONMENT, *FISHING GROUNDS: DEFINING A NEW ERA FOR AMERICAN FISHERIES MANAGEMENT* 77 (Island Press 2000).

¹⁵ See Susan Nall Bales & Franklin D. Gilliam, Jr., *Communications for Social Good* (Apr. 2004), in *PRACTICE MATTERS: THE IMPROVING PHILANTHROPY PROJECT* 12-16 (Patricia Patrizi, Kay Sherwood & Abby Spector, eds., Foundation Center 2005), available at http://foundationcenter.org/gainknowledge/research/pdf/practicematters_08_paper.pdf (expressing the power of communication outreach programs to place issues on the policy formation agenda, to frame those issues favorably, and to persuade members of the public).

¹⁶ "When people hear personal, emotional stories about the working poor, they see the personal flaws of the individual that may have contributed to the problem...Or they marvel at the ability of the person to get out of the problem, concluding anyone can do it. This makes the problem about the individual, not the system. We need to change the system."

Douglas Gould & Co., *Framing for a New Economic Vision*, in *WORDS THAT WORK: MESSAGING FOR ECONOMIC JUSTICE* 6 (Rosi Reyes, & The SPIN Project, eds. 2005), available at <http://www.spinproject.org/downloads/EconJusticeMessaging.pdf>.

¹⁷ A familiar quote relied upon by purveyors of the preservationist view comes from the land ethic movement: "A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise." ALDO LEOPOLD, *A SAND COUNTY ALMANAC AND SKETCHES HERE AND THERE* 224-25 (1949).

¹⁸ For a discussion of the role and impact of Aldo Leopold's land ethic, "deep ecology," and other environmental ethics in the realm of natural resource management, see generally Christopher Stone, *Do Morals Matter? The Influence of Ethics on Courts and Congress in Shaping U.S. Environmental Policies*, 37 U.C. DAVIS L. REV. 13 (2003).

¹⁹ For instance, the Magnuson-Stevens Fishery and Conservation Management Act requires

anthropocentric, focusing on the preservation of fishermen's liberty to engage in historical practices, and protecting the right of access to the fish. These constituents trust that fisheries managers will fulfill their responsibilities for sound management of the resources.²⁰ Extremists on this end of the spectrum view the taking of fish as a "God-given right" as announced in the Bible, and believe that no mortal agency can deprive them of such right, regardless of the health of the fishery.²¹

III. ANALYSIS

A. Representative Organizations

Between the views on either end of the spectrum exists a multitude of approaches to pursue dual goals of environmental and community protection. Conservationist non-governmental organizations (NGOs) and fishermen's organizations differ in their approach and methods, but agree that the success of their efforts depends upon the health of the ecosystem as balanced against socioeconomic concerns.

1. Earthjustice

Earthjustice sees itself as the non-profit law firm that protects the environment, representing on a *pro bono* basis other public interest clients pursuing environmental protections.²² Through its Ocean Law Project,²³

measures to achieve "optimal yield . . . [¶] . . . based on the best scientific information available." 16 U.S.C.A. § 1851(a)(1-2)(West 2007).

²⁰ Adherents to this "people first!" approach to fishery resources rally around guarantees in California's State Constitution:

The people shall have the right to fish upon and from the public lands of the State and in the waters thereof, excepting upon lands set aside for fish hatcheries, and no land owned by the State shall ever be sold or transferred without reserving in the people the absolute right to fish thereupon; and no law shall ever be passed making it a crime for the people to enter upon the public lands within this State for the purpose of fishing in any water containing fish that have been planted therein by the State; provided, that the Legislature may by statute, provide for the season when and the conditions under which the different species of fish may be taken.

CAL. CONST. art. 1, § 25.

²¹ "Then God blessed Noah and his sons, saying to them 'Be fruitful and increase in number and fill the earth. The fear and the dread of you will fall . . . upon all the fish of the sea; they are given into your hands. Everything that lives and moves will be food for you.'"

Genesis 9:1-3, THE HOLY BIBLE, NEW INTERNATIONAL VERSION (American Bible Society, 1978).

²² Earthjustice, About Us, <http://www.earthjustice.org/about/> (last visited Mar. 2, 2007).

²³ The Ocean Law Project, funded by the Pew Charitable Trusts, was an initiative launched in 1998 within Earthjustice as a program through which to pursue oceans-related litigation. See Earthjustice, Staff, http://www.earthjustice.org/about_us/offices_staff/staff/steve_roadly.html (last

oceans,²⁴ and water²⁵ campaigns, Earthjustice pursues a policy of representing client organizations to bring litigation against government agencies and industry alike in order to uphold existing environmentally protective laws.²⁶

In the past, Earthjustice has challenged federal agencies to prevent overfishing and to reduce bycatch as required by the Sustainable Fisheries Act ("SFA")²⁷ amendments to the MSFCMA.²⁸ The firm has also challenged commercial fishing practices it finds repugnant, such as the use of gillnets that results in the incidental take of endangered sea turtles and marine mammals in violation of the Endangered Species Act ("ESA") and Marine Mammal Protection Act ("MMPA").²⁹ But while Earthjustice may take on both the fishing industry and government agencies, neither group finds itself in opposition to the firm all the time. Sometimes Earthjustice intervenes on the government's behalf,³⁰ and sometimes Earthjustice finds itself aligned with fishing groups.³¹

This apparent fickleness may raise conflicts between the various clients of Earthjustice. At the very least, under the Rules of Conduct of the State Bar of California, the Earthjustice attorneys would need to obtain informed, written consent from each client after divulging not only actual conflicts between the

visited Mar. 2, 2007).

²⁴ See Earthjustice website, *supra* note 1.

²⁵ See Earthjustice, Issues, http://www.earthjustice.org/our_work/issues/water/ (last visited Mar. 2, 2007).

²⁶ A cursory review of published cases where Earthjustice is listed among the parties to the litigation in Westlaw's California State and Federal Cases database ("CA-CS-ALL") reveals 79 cases; of these nearly half fall within the ambit of the ocean and water campaigns (32 cases). *E.g.*: Turtle Island Restoration Network v. U.S. Dept. of Commerce, 438 F.3d 937 (2006); Northwest Environmental Advocates v. National Marine Fisheries Service, 460 F.3d 1125 (2006); WaterKeepers Northern California v. State Water Resources Control Bd., 102 Cal.App.4th 1448 (2002).

²⁷ Sustainable Fisheries Act, Pub.L. 104-297, Oct. 11, 1996, 110 Stat. 3559.

²⁸ *E.g.*: Ocean Conservancy v. Evans, 260 F.Supp.2d 1162 (M.D.Fla. 2003); See also Press Release, Earthjustice, Conservation Groups File Suit Against National Marine Fisheries Service (June 1, 1998), available at http://www.earthjustice.org/news/press/004/conservation_groups_file_suit_against_national_marine_fisheries_service.html (announcing Sustainable Fisheries Act action).

²⁹ Endangered Species Act of 1973, 16 U.S.C. § 1531-44 (2007) ("ESA"); Marine Mammal Protection Act of 1972, 16 U.S.C. § 1361-1423 (2007) ("MMPA"); See also Earthjustice, Victories: Protecting Marine Mammals off California's Coast, available at http://www.earthjustice.org/our_work/victory/protecting_marine_mammals_off_californias_coast.html (last updated April 20, 2001).

³⁰ See *e.g.* VCCFA, *infra* note 76 (intervening to support designation of marine reserves in California's Channel Islands).

³¹ See, *e.g.*, Press Release, Earthjustice, U.S. EPA Sued Over Failure to Regulate Invasive Species Discharged by Ships: Ballast water: The nation's largest source of invasive species (Dec. 22, 2003), available at http://www.earthjustice.org/news/press/003/us_epa_sued_over_failure_to_regulate_invasive_species_discharged_by_ships.html. For a general discussion of the increasing role of both the judicial branch in the management of federal fisheries, see Mary Gade, et al., *Courts, Congress, and Constituencies: Managing Fisheries by Default*, NATIONAL ACADEMY OF PUBLIC ADMINISTRATION, July, 2002, available at <http://www.napawash.org/publications.html>.

parties, but also potential future conflicts that may arise in the subject case or through any separate cases where the clients are adverse to each other.³² Earthjustice should be very careful in choosing which issues it wishes to pursue and which plaintiffs it agrees to represent in bringing challenges because it may compromise its ability to forge coalitions in future cases.

2. The Oceans Conservancy

The Oceans Conservancy ("TOC"), one environmental NGO that serves as a perennial plaintiff for Earthjustice, dedicates itself to the protection of the ocean environment and marine life.³³ TOC pursues four distinct yet complementary objectives: to "restore sustainable American fisheries;" to "protect marine wildlife from human impacts;" to "conserve special ocean places;" and to "reform government for better ocean stewardship."³⁴ While TOC has served as a plaintiff in numerous legal actions pursuing ocean and coastal protection, its most significant work has been political. TOC's political accomplishments in influencing legislation affecting the ocean environment include its success in helping to create the National Marine Sanctuaries Program, assisting in drafting portions of the SFA, helping draft amendments to the MMPA, and pushing to require fishermen to engage in practices with less bycatch of protected species (such as through trawler's use of turtle excluder devices, or "TEDs").³⁵

The tactics TOC uses differ from those employed by Earthjustice. Rather than waiting for a perceived violation of environmental laws to occur in order to sue in response, TOC proactively looks for ways it can harness scientific research to promote ecosystem-based management reforms and seeks regulatory enactment of its suggestions.³⁶ Two reasons the organization succeeds at this effort are its investment in scientific research, and its narrowly targeted message to lawmakers.³⁷ Legislators and regulators must rely on sound science to make decisions, but often lack funding to pursue independent scientific research.³⁸

³² See THE STATE BAR OF CALIFORNIA, RULES OF CONDUCT, RULE 3-310(C): AVOIDING THE REPRESENTATION OF ADVERSE INTERESTS (2007), available at http://www.calbar.ca.gov/state/calbar/calbar_extend.jsp?cid=10158 (last visited Mar. 3, 2007).

³³ The Oceans Conservancy, What We Do, http://www.oceanconservancy.org/site/PageServer?pagename=www_whatwedo (last visited Mar. 3, 2007).

³⁴ *Id.* at 8.

³⁵ THE OCEAN CONSERVANCY, STRATEGIC PLAN 2005 THROUGH 2008 4-5, available at http://www.oceanconservancy.org/site/DocServer/Strategic_Plan.pdf?docID=1261 (last visited Mar. 3, 2007).

³⁶ *Id.*

³⁷ *Id.*

³⁸ See MSFCMA: "Conservation and management measures shall be based upon the best scientific information available." 16 U.S.C. § 1851(a)(2) (2007); see also MLMA:

It is the policy of the state to ensure the conservation, sustainable use, and, where feasible, restoration of California's marine living resources for the benefit of all the

Science from third parties, such as that provided by TOC, can be very persuasive to an underfunded and overworked decision-maker struggling to make positive strides in balancing competing interests in ocean and coastal protection measures, particularly in the absence of contradicting science.³⁹ By focusing its communication efforts so narrowly on this group of lawmakers, TOC can be very effective at actually shaping the laws in this field.⁴⁰

However, writing protective laws does not mean that the laws actually accomplish what was intended. TOC proudly proclaims its successes, but is less forthright about political fallout when legislation it sponsors fails to achieve popular support, or where budgeting woes prevent the implementation of its recommendations regardless of legal mandates. An example of legislation failing in the public arena was seen when the MMPA's provisions for granting fishing permits shifted the burden of proof to fishermen to show that incidental takes do not disadvantage marine mammal populations.⁴¹ Budgeting is also a potential problem: successful drafting of language in the SFA failed to achieve lofty goals for reducing fisheries bycatch due to a lack of sufficient funding.⁴²

citizens of the state. The objective of this policy shall be to...[¶]...[s]upport and promote scientific research on marine ecosystems and their components to develop better information on which to base marine living resource management decisions.

CAL. FISH & GAME CODE § 7050(b)(5) (West 2005).

³⁹ For a robust discussion of the concept of unfunded mandates in the environmental arena, see Robert W. Hahn, *The Impact of Economics on Environmental Policy*, 39 J. ENVTL. ECON. & MGMT. 375, 387 (2000), available at <http://www.sciencedirect.com/> (last visited Mar. 3, 2007).

⁴⁰ See MIKE WEBER, *FROM ABUNDANCE TO SCARCITY: A HISTORY OF U.S. MARINE FISHERIES POLICY* 146 (Island Press 2002).

⁴¹ This example predates the involvement of TOC, but provides the classic example of the danger of marine conservation groups' overreaching in drafting environmentally protective provisions in fisheries. When the burden-shifting provisions originally advocated by conservation groups were upheld against foreign fleets fishing in U.S. waters in *Kokechik Fishermen's Association v. Secretary of Commerce*, 839 F.2d 795 (D.C. Cir. 1988), domestic fishing fleets revolted at the standard being applied to them. One principal negotiator of the Center for Marine Conservation (an environmental NGO predecessor to TOC involved in MMPA reauthorization discussions at the time) stated: "'Oh my god, you can't shut down fishing on the West Coast just because these people are going to kill some sea lions and fur seals,' people said. The political reality brought all parties to the table." Suzanne Iudicello, as quoted in WEBER, *supra* note 40, at 158.

⁴² "NMFS does not have the people, funds or flexibility to conduct a credible program consistent with its mission." Ray Kammer, *Testimony before the Senate Committee on Commerce, Science and Transportation Subcommittee on Oceans, Atmosphere and Fisheries* (May 8, 2002), available at <http://commerce.senate.gov/hearings/050902kammer.pdf> referencing R.G. KAMMER, AN INDEPENDENT ASSESSMENT OF THE RESOURCE REQUIREMENTS FOR THE NATIONAL MARINE FISHERIES SERVICE. A REPORT TO THE DEPUTY UNDER SECRETARY, NOAA AND THE ASSISTANT ADMINISTRATOR, NATIONAL MARINE FISHERIES SERVICE (National Academy of Public Administration 2000). See also NATIONAL RESEARCH COUNCIL, SCIENCE AND ITS ROLE IN THE NATIONAL MARINE FISHERIES SERVICE 68 (National Academy Press 2002) ("Congress should examine the cost of collection, analysis, and management of data required by NMFS to fulfill its current mandates...[¶]...For example, the cost of full observer coverage in fisheries in which bycatch rates are unknown should be determined").

Part of this may be the price of success, in that such legislation is aspirational and one's reach always exceeds one's grasp. A more cynical view would question whether legislative successes actually achieve the desired goals, or if it is mere window dressing as other approaches make the real changes in practice.

3. Surfrider Foundation

One other approach that may lay claim to achieving real change is the community organizing approach implemented by the Surfrider Foundation ("Surfrider"), headquartered in Southern California.⁴³ Originally formed as a group of ragtag surfers organized to protect the famous surfing break in front of Malibu, Surfrider pursues legal cases where it sees an opportunity to protect beaches or public access to beaches.⁴⁴ But while Surfrider occasionally avails itself to the courts to achieve its goals, its chief virtue is its ability to consolidate multiple stakeholders that use and enjoy the coastal zone in its role as a grassroots organizer.⁴⁵ Not only does the group include surfers as members, it also welcomes divers, kayakers and other boaters, beachgoers in general, and fishermen (both recreational and commercial).⁴⁶

Surfrider's championing of fishing communities' legal interests can be seen in its appointment of Joe Geever as the Southern California Coordinator for its campaigns.⁴⁷ At age 46, after a lengthy career in the fisheries, Joe pursued his law degree at University of Virginia under a public interest fellowship to realize his "long-range hope... to help mobilize fishing communities to become more involved in environmental issues to protect their areas and their work."⁴⁸ Now he works toward this goal by tirelessly trodding between meeting halls and the docks to translate conservation issues to affected fishermen in a language they can understand, and to bring issues back from the boats to the decision makers

⁴³ Surfrider Foundation, Contact Us, <http://www.surfrider.org/whoweare11.asp> (last visited Mar. 3, 2007).

⁴⁴ See e.g. *Surfrider Found. v. Cal. Coastal Com.*, 26 Cal. App. 4th 151 (1994) (challenging installation of parking meters at beach site); *San Diego Chapter of the Surfrider Found. v. Dalton*, 196 F.3d 1057 (9th Cir.1999) (protecting wetlands near San Diego); see also Surfrider Foundation, Surfrider Foundation Accomplishments, <http://www.surfrider.org/whoweare6.asp> (last visited Mar. 3, 2007).

⁴⁵ "Surfrider is a grassroots organization, effective through the participation of its members. Surfrider activities emphasize the value of an involved membership." Surfrider Foundation, Surfrider Foundation Mission and Principles, *supra* note 3.

⁴⁶ Surfrider Foundation, Take Action: Overview, <http://actionnetwork.org/surfrider/home.html> (last visited Mar. 3, 2007).

⁴⁷ Surfrider Foundation, Our Staff, <http://www.surfrider.org/whoweare5a.asp> (last visited Mar. 3, 2007).

⁴⁸ Bob Brickhouse, *The Rewards of Public Interest Law Lure a Fisherman*, UNIV. OF VIRGINIA NEWS, April 18, 2000, available at <http://www.virginia.edu/topnews/releases2000/geever-april-18-2000.html>.

who would otherwise be unaware of fisherman culture.⁴⁹ Notably, Joe doesn't individually represent the organization as its attorney, but rather mobilizes the efforts of Surfrider's volunteer members.

4. United Anglers of Southern California

The United Anglers of Southern California ("UASC") is another group that mobilizes its membership to raise the awareness of fisheries issues.⁵⁰ UASC represents itself as a "volunteer-driven, non-profit organization dedicated to the enhancement of marine resources through management, conservation, and education in order to pass the sport of fishing on to future generations."⁵¹ UASC's focus on sport fishing allows it to pursue issues that encroach on this particular subset of fishing communities with campaigns focused on limiting commercial fisheries competition for fishery resources and safeguarding the access rights to recreational fisheries.⁵²

The demographics of the UASC and Surfrider's constituent members demonstrate a key difference between the two groups. UASC members share a common interest in individually taking fish from the ocean and often are visitors to the coast,⁵³ while Surfrider members enjoy the coast in a variety of means (many non-lethal) and mostly live in coastal areas.⁵⁴ This raises an important

⁴⁹ While fishermen are quick to howl in the face of more restrictive regulations, they are notoriously reticent to acknowledge positive benefits gained by political decisions (the author speculates this derives from lessons learned in safeguarding secret knowledge of favored fishing holes). Walking the docks and sharing a cup of coffee with fishermen in their own environment can be illuminating in what it reveals through conversations more candid than public disclosures. See generally JAMES C. SCOTT, *DOMINATION AND THE ARTS OF RESISTANCE: HIDDEN TRANSCRIPTS* 183 (Yale University Press 1992)(discussing the political importance of the divergence between public and private discourses of dominant and subordinate groups).

⁵⁰ United Anglers of Southern California website, *supra* note 4.

⁵¹ *Who We Are and What We Do*, UNITED ANGLERS OF S. CAL. NEWSLETTER (United Anglers of S. Cal.), Fall 2006, at 20 available at http://www.unitedanglers.com/e107_files/downloads/newsletters/UNITED_ANGLER_fall_2006.pdf (last visited Mar. 4 2007).

⁵² See United Anglers of Southern California, About UASC, available at <http://www.unitedanglers.com/page/php?1> (last visited Mar. 3, 2007) (challenging commercial fishing practices); see also United Anglers of Southern California, Business Plan, available at <http://www.unitedanglers.com/buisness.php> (last visited Mar. 3, 2007) ("UASC increased its membership by 30% while leading our members in opposing legislation aimed at closing our most productive fishing grounds").

⁵³ United Anglers of Southern California website, *supra* note 4 ("We represent sport fishermen from all parts of California who would like to pass on the sport they love to future generations").

⁵⁴ Surfrider Foundation, Surfrider Foundation Chapters, available at <http://www.surfrider.org/chapters.asp> (last visited Mar. 3, 2007) ("The Surfrider Foundation Chapters are the heart, soul and body of the Surfrider Foundation. The Surfrider Chapters act locally to protect their community's coast"); see also Surfrider Foundation website, Surfrider Foundation people, available at <http://www.surfrider.org/whoweare5.asp> (last visited Mar. 3, 2007) ("Surfrider relies on the people who work for it, locally at the chapter level and at the National Office in San Clemente, CA. Almost everyone at Surfrider is a non-paid volunteer, except for fewer than 20 full-time, modestly paid staff members at the National Office.").

question – who are the members of the “community” when considering community interests? Whether members are traditional commercial fishermen living along the waterfront or “weekend warriors”⁵⁵ that maintain their “right to fish” on special occasions may be somewhat irrelevant, as a community can exist where participants share the same interests in a particular resource as opposed to mere geographical location.⁵⁶ However, defining the community by focusing on one activity in isolation can be contentious, particularly where the activity is in direct conflict with rival interests, as when allocation of fish resources is concerned. Such specialization in UASC’s representation risks dividing the broader community in coastal areas, rather than building social capital between various coastal stakeholders.⁵⁷

UASC also departs from other public interest fishermen’s organizations in that it mobilizes its members primarily through advocacy efforts by marketing its message to constituents.⁵⁸ Rather than draw from the membership base to direct its goals and objectives, UASC “educates” its members.⁵⁹ As delegated advocates, subscribers of UASC’s message (its members) do their own marketing of the issue through “public outcry to lawmakers, the ultimate customers who bought the idea in exchange for promise of reelection.”⁶⁰ UASC’s approach also differs from Surfrider’s. While Surfrider assembles the aggregated power of individuals through its decentralized chapter structure as a sort of “bottom-up” pressure group, UASC follows a “top-down” model that

⁵⁵ A “weekend warrior” is “any person who vigorously pursues activities (such as sports training) outside of the workweek, in a worklike and intensive manner,” which may include recreational fishing activities. Webster’s New Millennium Dictionary of English, Preview Edition (v 0.9.6). Lexico Publishing Group, LLC; available at <http://dictionary.reference.com/browse/Weekend-warrior> (last visited Mar. 3, 2007).

⁵⁶ “It [is] possible to have the attributes of an effective geographically based community fisheries management system among groups of fishers who do not come from a single geographical community.” Gordon Munro, Nathaniel Bingham, and Ellen Pikitch, *Individual Transferable Quotas, Community-based Fisheries Management Systems, and “Virtual” Communities*, FISHERIES MGMT. – PERSPECTIVE, Mar. 1998.

⁵⁷ See Amitai Etzioni, *Communal Considerations*, 8 THE AMERICAN EXPERIMENT QUARTERLY 16, 16 (Spring 2005), available at <http://www.gwu.edu/~ccps/etzioni/A332.pdf> (“what we need is a change in the balance between public and communal and individual disposition of our assets, not the elimination of one in favor of the other”); see generally ROBERT PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* (Simon & Schuster 2000).

⁵⁸ SEYMOUR FINE, *The Parties to the Process*, in *MARKETING THE PUBLIC SECTOR PROMOTING THE CAUSE OF PUBLIC & NONPROFIT AGENCIES* 124 (Seymour Fine, ed., 1992) (“An exchange transaction in which a highly credible source popularizes a concept and thereby generates widespread demand for it is known as advocacy”).

⁵⁹ See United Anglers of Southern California, Business Plan, *supra* note 52 (stated goals include: “[to] [e]ducate our members regarding the impact of new legislation aimed at closing recreational fisheries [and] [e]ducate our members regarding the importance of supporting legislation removing destructive fishing gear and gear that produces by-catch”).

⁶⁰ FINE, *supra* note 58, at 124.

sends the agenda from headquarters to the field.⁶¹

B. *But What About Legal Aid?*

One would assume that with substantial disruption to fishing communities and inadequate representation for smaller operations, there would be a need for legal aid. Where are the direct services for affected fishing communities? In populous regions such as Southern California, it may be that other public services serve fishermen's more general needs and the market niche of providing support specific to fishing communities may be too narrow for the broader population. Thus, fishermen who avail themselves of direct services are not acknowledged as receiving benefits specific to fishing communities.⁶²

However, in other communities where fishing historically provides the cornerstone of the economy, direct legal services are not common.⁶³ Why have no legal clinics sprung up in disadvantaged communities such as Fort Bragg or Crescent City, two northern Californian towns dramatically affected by downturns in the fishing economy, with no significant substitutes for the displaced workers? The question makes a worthy topic for future empirical analysis with interdisciplinary aspects drawing from sociology and anthropological disciplines. Part of the answer may be that fishermen are notoriously rugged individualists and may be unwilling to accept legal aid.⁶⁴ Fishermen could also simply be too tired to pursue legal remedies after having to travel farther and work longer and harder in the face of increasingly stringent management restrictions.⁶⁵ Perhaps it is simply that fishing is still a commercial

⁶¹ Ironically, UASC's Executive Director decries the approach when employed by government agencies charged with fisheries conservation and management: "We're concerned when we see a top-down process where committees are appointed outside of public view and control access to California's resources." Tom Raftican, *quoted in* Ryck Lydecker, *Lockout has anglers reeling*, 1 BOAT/U.S. MAGAZINE 8, Jan. 1, 2003, at 31.

⁶² As communities change, so too do the identities of those within the community: "[G]entrification of the coast – and the resulting rise in property costs and taxes – is pushing fishermen off the waterfront." PEW OCEANS COMMISSION, A DIALOGUE ON AMERICA'S FISHERIES 3 (2003) (*hereinafter* "PEW III") available at http://www.pewtrusts.com/pdf/environment_pew_oceans_dialogue_fisheries.pdf.

⁶³ For the purpose of this paper, the author did not conduct a port-by-port investigation of whether any fishing community fosters a legal aid clinic to address legal issues specific to socioeconomic impacts of fisheries management, but rather relied upon queries of other commercial fishermen via email and through relevant fisheries "listserv" bulletin board services (i.e. fishfolk@mitvma.mit.edu, www.fishpolitics.com/forum, etc.).

⁶⁴ "...[F]ishermen, regardless where they are located, greatly value autonomy and their corresponding social identity as independent and rugged individualists ..." John Van Maanen, Marc L. Miller, Jeffrey C. Johnson, *An occupation in transition: traditional and modern forms of commercial fishing*, in SLOAN WORKING PAPERS, WP 1124-80, 18 (Alfred P. Sloan School of Management, Massachusetts Institute of Technology 1980), available at <http://dspace.mit.edu/handle/1721.1/1962> (last visited March 27, 2007).

⁶⁵ "Fishing requires unique levels of commitment (extended periods of absence from home and

enterprise, no matter how disadvantaged the fishing community may be, and market solutions exist for the community's needs either by hiring attorneys individually (albeit from a pool of diminished resources) or by banding together in industry associations to hire representatives for their common interests.⁶⁶ Issues facing fishermen can be complex and esoteric, so representation by legal aid attorneys not well-versed in the arcana of fisheries practices and its regulatory environment may unwittingly do more harm than good.⁶⁷ Rather than risk inferior individual representation, fishermen can aggregate demand by forming industry associations and appointing a "guru" specialized in the particulars of the given fishing community as executive director to represent the group.

The model of the community/industry association is repeatedly borne out among various fisheries and in various fishing ports where sufficient community interests exist to bind fishermen together.⁶⁸ While analogous to the community organizing model considered as a form of public interest lawyering, this association differs because it can be characterized as a market solution supported by pecuniary interests of its members rather than altruistic ideals. There exists a grey area between the two: a public interest attorney may demand less remuneration and serve communities otherwise unable to afford competent representation, or a top-notch fisheries lawyer may command premium pay for the recognized specialization.⁶⁹ The public interest attorney is more akin to a community organizer (à la Surfrider) while the fisheries lawyer would be just

community, long hours of demanding labor, and the acceptance of risk), attracts a unique set of character traits and values (independence, solitude, self-reliance), and for many has been a matter of family involvement for generations." H.J. Mederer & C. Barker, *Reconstructing Identities, Families, Communities, and Futures in the Wake of Fisheries Regulation*, in CHANGE AND RESILIENCE IN FISHING 71 (Susan Hanna & Madeline Hall-Arber, eds., 2002).

⁶⁶ PEW III, *supra* note 62, at 3.

⁶⁷ The risk, as perceived by fishermen, is that a public interest attorney from outside of the community may not be able to scale the steep learning curve of understanding the subtleties and interdependent dynamics between various parties within and around the fishery. THE STATE BAR OF CALIFORNIA, RULES OF CONDUCT, RULE 3-110(C): FAILING TO ACT COMPETENTLY, (2007), available at http://www.calbar.ca.gov/state/calbar/calbar_extend.jsp?cid=10158 (last visited Mar. 3, 2007) ("If a member does not have sufficient learning and skill when the legal service is undertaken, the member may nonetheless perform such services competently by 1) associating with or, where appropriate, professionally consulting another lawyer reasonably believed to be competent, or 2) by acquiring sufficient learning and skill before performance is required.").

⁶⁸ A representative, non-exhaustive list of such organizations includes: Institute for Fisheries Resources, Northern California Federation of Fly Fishers, Pacific Coast Federation of Fishing Associations, Pacific Marine Conservation Council, Purse Seine Vessel Owners Association, Sea Urchin Harvester's Association of California, Small Boat Commercial Salmon Fishermen's Association, Western Pacific Fisheries Coalition, Western Fishboat Owners Association, *inter alia*.

⁶⁹ "Among the factors to be considered, where appropriate, in determining the conscionability of a fee are the following:...[¶]...The novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly." THE STATE BAR OF CALIFORNIA, RULES OF CONDUCT, RULE 4-200(B)(3): FEES FOR LEGAL SERVICES, (2007), available at http://www.calbar.ca.gov/state/calbar/calbar_extend.jsp?cid=10158 (last visited Mar. 3, 2007).

another hired gun. The key issues are whether there are fishermen within the community that lack representation because the market doesn't serve them well, and how that need can be addressed. Where to draw the line between public interest lawyering in response to a market failure and private interests exploiting a perceived market niche is not clear.

C. Case Study – Responses to the Implementation of Marine Reserves in the Channel Islands

The way in which these various types of organizations interact both within the community and with each other can shed light on which model is best suited to protect coastal communities. Each of the representative organizations evaluated above represents various community interests arising in response to the designation of marine reserves in waters adjacent to the Channel Islands National Park (“CINP”).⁷⁰

In early 1997, a small group of conservation-minded sports fishermen and CINP representatives combined to bring a proposal to the California Fish and Game Commission to set aside a network of marine reserves along the six islands comprising the CINP.⁷¹ In response, the Commission instructed the Department of Fish and Game to create a process by which to consider the petition.⁷² The Department put together a “science-informed, stakeholder-driven process,” which established working groups, formed scientific advisory committees, and held hearings for public input into the design of reserves.⁷³ The marine reserves were controversial. Environmental NGOs and conservationist fishermen largely supported the effort while other fishermen resisted the process, fearing a loss of access to traditional fishing grounds.⁷⁴ Ultimately, the

⁷⁰ Marine reserves are areas designated to protect or restore rare, threatened or endangered species or habitats; outstanding, representative, or imperiled habitats, communities, habitats and ecosystems; diverse marine gene pools, and/or to provide opportunities for scientific research in outstanding, representative, or imperiled marine habitats or ecosystems; while the area is open for public enjoyment, “it is unlawful to injure, damage, take, or possess any living geological, or cultural marine resource, except under a permit” (such as for scientific purposes). CAL. PUB. RES. CODE § 36710(a) (West 2007). For a more thorough discussion of California’s experience with designation of the Channel Islands marine reserves and the implementation of the Marine Life Protection Act than that given here, see James M. Mize, *Lessons in State Implementation of Marine Reserves: California’s Marine Life Protection Act Initiative*, 36 ENVTL. L. REP. 10376-10391 (2006).

⁷¹ BROCK BERNSTEIN, SUZANNE IUDICELLO & CHARLES STRINGER, LESSONS LEARNED FROM RECENT MARINE PROTECTED AREA DESIGNATIONS IN THE UNITED STATES - A REPORT TO THE NATIONAL MARINE PROTECTED AREAS CENTER NOAA 25 (2004) available at <http://mpa.gov/pdf/helpful-resources/LessonsLearnedReport.pdf> (last visited Mar. 3, 2007); see also John Krist, *No Take Zones*, VENTURA COUNTY STAR, Nov. 10, 2002, at B11.

⁷² Joshua Sladek Nowlis, *California’s Channel Islands and the U.S. West Coast, in MARINE RESERVES: A GUIDE TO SCIENCE, DESIGN AND USE* 253 (Jack Sobel & Craig Dahlgren, eds., Island Press 2004).

⁷³ *Id.*

⁷⁴ Tony Ortega, *Fish Story: Is overfishing ruining the waters around the Channel Islands*,

Commission adopted a marine reserve plan which covered 175 square miles of ocean around the Channel Islands.⁷⁵ The organizations discussed earlier responded to the implementation of this plan in different fashions.

Commercial fishermen's associations sued to block the implementation of the Commission's decision. Upon losing at the trial court level, the associations appealed the decision, but were unsuccessful.⁷⁶ Joining the case upon appeal, Earthjustice intervened on behalf of the defense, and supported the trial court's denial of a temporary restraining order against implementation of the reserves.⁷⁷ The appellate decision was unpublished, which minimizes the case's precedential value and reduces the impact of the decision on future ocean and coastal controversies.⁷⁸ In addition, it is doubtful that the case would have been resolved any differently without Earthjustice's intervention, raising the question of how much Earthjustice's participation contributed to the outcome.⁷⁹ Furthermore, the firm's efforts in the courtroom may actually have distanced it from members of the fishing communities it supports - the courtroom is a long way from the docks.⁸⁰

known as North America's Galapagos? Scientists say yes, but local fishermen don't seem to care, NEW TIMES L.A., Mar. 28, 2002.

⁷⁵ David Montero, *New Reserve Adds to Rules That Fishermen Must Follow*, VENTURA COUNTY STAR, Oct. 25, 2002, at A01.

⁷⁶ Ventura County Comm'l Fishermen's Assn. v. California Fish & Game Commission, No. B166335, 2004 WL 293565 (Cal.App. 2 Dist. Feb 17, 2004) (unpublished decision) (*hereinafter* "VCCFA").

⁷⁷ VCCFA, Intervener's Brief, 2003 WL 23156232 at 1; *see also* Earthjustice, *Our Work Victory*, http://www.earthjustice.org/our_work/victory/channel_islands_nofishing_zone_protected.html (last visited Mar. 3, 2007).

⁷⁸ The California Rules of Court prohibit parties to an action or courts citing to or relying on unpublished opinions except in cases where the opinion is "relevant under the doctrines of law of the case, res judicata, or collateral estoppel" or "relevant to a criminal or disciplinary action because it states reasons for a decision affecting the same defendant or respondent in another such action." CALIFORNIA RULES OF COURT, Rule 8.1115: CITATION OF OPINIONS, (2007), available at http://www.courtinfo.ca.gov/rules/index.cfm?title=eight&linkid=rule8_1115 (last visited March 9, 2007).

⁷⁹ Earthjustice sometimes opposes organizations it otherwise supports in other litigation. Here, one industry association it found itself opposing, the Pacific Coast Federation of Fishermen's Associations, it finds itself aligned with in a case challenging the government on whether it meets requirements of the Endangered Species Act in operating water projects in California's Sacramento-San Joaquin Bay Delta, where water removals effect fish populations. *See* Earthjustice, *Politics Trumps Science in California Water Management*, Aug. 9, 2005, available at http://www.earthjustice.org/news/press/005/politics_trumps_science_in_california_water_management.html.

⁸⁰ Earthjustice's own litigators acknowledge the concern over public backlash from a litigation strategy. *see* Stephen E. Roady, *Colloquia Presentation, The New Wave of Ocean Advocacy-- Developments in the World of National NGO Marine Law and Policy* (Sept. 18, 2002), available at <http://www.hawaii.edu/elp/news/spring2004/Colloquium.htm#Roady> (last visited February 5, 2007) ("litigation can promote political backlash ... lawyers must educate themselves on the issues, so that needless and provocative litigation does not occur without investigating other, perhaps more productive, methods for change and compliance").

The Oceans Conservancy, for its part, became close to the affected community during the process preceding the designation of the Channel Islands marine reserves by participating in working groups.⁸¹ Rather than join the litigation, TOC focused its attention on the State capitol and pushed for full implementation of the Marine Life Protection Act of 1999 ("MLPA"), which mandates further development of marine reserves throughout California.⁸² While successful in getting the MLPA passed, TOC failed to acknowledge how difficult implementation would be within the time allotted in the legislation.⁸³ Further plans stalled in the face of California's budgeting woes, which substantially deferred the MLPA's implementation.⁸⁴ In response, TOC helped coordinate scientific research needed in order to implement the reserves under the MLPA in a public-private partnership between consolidated NGOs (including TOC) and state regulators, dubbed the MLPA Initiative.⁸⁵ TOC may be congratulated for its tenacious lobbying when initial plans stumbled, given the "on-again, off-again" implementation of the MLPA. However, one may wonder how close to the community TOC actually was since the legislative support for the Act differed widely from the community support to execute the legislation.

Surfrider took a different approach by going directly to the people rather than the legislature, and built support for marine reserve implementation in the directly affected coastal communities rather than in Sacramento. This became Surfrider's "Special Places" campaign, which drew from the diversity of its membership base to develop a balanced approach to supporting selective discrete protected areas along the coast.⁸⁶ The organization created a

⁸¹ See Ortega, *supra* note 74.

⁸² Nowlis, *supra* note 72, at 258-260; Marine Life Protection Act, CAL. FISH & GAME CODE §§ 2850-63 (West 2007).

⁸³ Ed Zieralski, *DFG scraps closure plans; Process will now include input from all parties*, THE SAN DIEGO UNION-TRIBUNE, Jan. 20, 2002, at C17.

⁸⁴ Jane Kay, *Marine Reserves on Hold: \$2 Million Budget Cut Suspends Program to Add Protected Areas*, S.F. CHRONICLE, Jan. 14, 2004, at A17; see also Kenneth R. Weiss, *State Efforts to Protect Coast Fisheries Halted Citing a lack of technical staff and funds due to budget constraints, officials postpone plans to establish a series of marine reserves*, L.A. TIMES, Jan. 14, 2004, at 7. Since then, MLPA implementation has resumed under the MLPA Initiative (MOU, *infra* note 85), however, final implementation is scheduled for 2011 substantially beyond the legislation's originally anticipated deadline of December 1, 2005. MOU, *infra* note 85, at 2; see, e.g., CAL. FISH & GAME CODE § 2859(b) (West 2007) (establishing deadline of December 1, 2005).

⁸⁵ See 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 (Aug. 27, 2004), available at <http://www.dfg.ca.gov/mrd/mlpa/mou.pdf> (last visited Mar. 4, 2007) (*hereinafter* MOU) (establishing process and expectations of the parties for joint efforts in implementation of marine reserve networks through the MLPA Initiative).

⁸⁶ Surfrider's position statement on marine protected areas demonstrates the careful reconciliation of multiple views among its membership base in regards to marine reserves:

comprehensive yet accessible handbook for the MLPA and related coastal protection legislation, and distributed it widely amongst its members to raise awareness of the reserves issues.⁸⁷ Surfrider volunteers also petitioned coastal city councils to proclaim support for MLPA implementation. While relatively non-controversial (the volunteers merely ask for an official body to affirm its support of already existing law), the petitions demonstrated widespread support for a law that was controversial when first passed. This tactic thwarts any political efforts to undo the protective act as it shows the community members continue to support the MLPA.

The United Anglers of Southern California, by contrast, opposed the implementation of marine reserves. Among the original representatives participating in the Channel Islands working group process, UASC adamantly contested restrictions on preferred recreational fishing grounds and blocked attempts at compromise.⁸⁸ When the group's position was outvoted by the Fish and Game Commission, the group joined in the ill-fated lawsuit to block the implementation of the plan.⁸⁹ By characterizing other voices in the community as "extreme conservationists," UASC originally tried to mobilize its members to oppose the MLPA.⁹⁰ Faced with lost social capital and diminished credibility from its divisive approach and in the face of defeat, the UASC regrouped in a *mea culpa* and instead now tries to reinvent itself as a coalition-builder.⁹¹

Our goal is to strike a balance between ... allowing ocean ecosystems to heal and perpetuate while still granting human access, recreation and economic livelihood. We believe that all areas of our ocean should be placed under different levels of protection, including some that should be set aside for full protection where fishing and the removing or disturbing of living and nonliving material is prohibited. Fully protected marine reserves can allow low-impact non-extractive recreational activities such as diving and surfing while providing opportunities for research and education. These activities still allow protection of the coastal and ocean environment's ecological integrity. In other areas, recreational uses, including fishing, should be allowed. While fisheries management continues to dominate discussions of marine protection efforts, the Surfrider Foundation supports marine protection efforts that provide for a broader range of goals, many of which are more directly relevant to the public at large.

Surfrider Foundation, Special Places Campaign: Surfrider Foundation Position Statement on Marine Protected Areas, <http://www.surfrider.org/specialplaces/position.htm> (last visited Mar. 4, 2007).

⁸⁷ STEPHANIE DART & JOE GEEVER, OWNER/OPERATOR MANUAL FOR CALIFORNIA'S MARINE LIFE PROTECTION ACT (Surfrider Foundation 2003).

⁸⁸ Ortega, *supra* note 74 ("Raftican, president of the United Anglers of Southern California, refused to entertain the thought of any reserves near the easternmost islands, the ones favored by recreational fishermen"); see also Gary Davis, *Science and Society: Marine Reserve Design for the California Channel Islands*, 19 CONSERVATION BIOLOGY 1745, 1747 (2005).

⁸⁹ VCCFA, *supra* note 76, at 1.

⁹⁰ Ed Zieralski, *Fighting for fishing: Anglers' groups work to rally support for issues in coastal waters*, SAN DIEGO UNION-TRIBUNE, Apr. 9, 2005, at D2.

⁹¹ In 2005, UASC announced new programs to coordinate campaigns with associations from commercial fisheries and the conservation community, its former nemeses. In explaining this move, UASC president Tom Raftican explained:

Instead of outright opposition to marine reserves, the organization now hopes to work as part of the process to lessen the impacts on its members.⁹²

Each of the methods of response to the Channel Islands marine reserves designation involved law to one degree or another. Some used the courts, some influenced the legislative process, and others spent more time on outreach initiatives to the members of community. The different outcomes reveal which processes work for protecting coastal communities.

IV. CONCLUSION

When protecting interests of disadvantaged coastal communities, organizations face a choice of how to balance protection of the marine resources relied upon by the communities and the people's right to use those resources. Legal tactics protecting either end of the spectrum have met with varying degrees of success. Litigation works well to enforce laws already on the books, but can create conflicts between community members and disrupt the socioeconomic fabric of the community. Introducing legislation can address issues not yet covered, but such laws can be inflexible and may not meet the changing needs of a community in transition. Advocacy efforts appear well-orchestrated to mobilize and defend individual rights, but suffer from rigidity by following a centralized "top-down" approach. Furthermore, when used for a subset of the community, they can be divisive and squander social capital. Given the fragile balancing required between various community members and the flexibility needed to incorporate the changing needs of a community in transition, a community organizing model satisfies goals of both ocean and coastal protection, and protection of fishing communities. Such a role draws support from the others, but in the end which model serves the community best depends on how the community is defined. While each type of organization fills a niche on the spectrum, the community organizer is well situated to moderate the debate between conflicting views within the place-bound structures of coastal communities dependent on resources at their doorstep. Armed with knowledge and skills of the legal profession and the strength of a decentralized and diverse constituent base, a community organizer serving disadvantaged

Clearly, it's time for us to look at the Big Picture, as our old stereotypes are no longer serving us very well. Today, we face an ever more difficult path to restore over utilized fisheries and battle no-take closures. If we are to succeed in the face of these challenges, it will take new approaches, new tools, new partners and new initiatives.

The President's Report, UNITED ANGLERS OF S. CAL. NEWSLETTER (United Anglers of S. Cal.), Spring 2005, at 3, available at http://www.unitedanglers.com/newsletters/2005/spring_newsletter_05.pdf (last visited December 17, 2005).

⁹² Zieralski, *supra* note 90 ("The Channel Islands closures woke everybody up," Raftican said. "What we found is we've got to make this process work for us. We can throw rocks at it, but it's not going to go away.").

fishing communities enjoys a strong position to protect California's coastal communities.

