GETTING BEYOND THE FISH: THE NEED FOR ESTABLISHING UNDERWATER HERITAGE PARKS IN CALIFORNIA

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Point Lobos State Reserve became the first Marine Protected Area in the United States on July 1, 1960. This began an effort by California State Parks to extend the park philosophy and management offshore. In recent decades, the Marine Life Protection Act (1999) and Marine Management Area Improvement Act (2000) established a system of zones and regulations for long-term sustainable management of marine life in California waters. They have been successful in bringing back fish stocks, but the submerged sites defining human interaction with the sea have not been adequately addressed. This article outlines next steps to ensure that California’s underwater parks encompass heritage resources and traditional activities in marine and inland aquatic settings.

California has a rich and varied maritime history extending back in time perhaps to the Pleistocene. The known inventory of submerged sites, structures, and landscapes is, at the present time, quite limited in comparison to terrestrial portfolios. There should be more known about humans and their interaction with the aquatic realm, but that requires more inventory, evaluation, and designation of significant heritage resources. So why devote time to thinking about this? Government is pulling back these days, doing less with less. If California cannot take care of terrestrial heritage sites, what chance do the underwater ones have? All good questions that deserve answers. I think of it in these terms: Humans have a right to their past. They deserve to have significant sites, structures, landscapes, and traditional properties preserved as touchstones of their heritage. These are places of learning, remembering, and meaning, both contemporary and past. Some of them are underwater on lands owned by the State of California. Yet only a very few are actually managed and interpreted for their heritage values. This article looks quickly at the problem and proposes actions to bring sites of cultural meaning into a management system that offers great potential value to the public.

STATE AGENCY DELEGATIONS AND LEGAL FRAMEWORK

The goals of marine and inland aquatic conservation and resource management are delegated to three main state agencies in California. These are the State Lands Commission (SLC), California Department of Fish and Wildlife (DFW), and California Department of Parks and Recreation (DPR).

State Lands Commission

This agency is the smallest of these entities in terms of staff and resource capabilities but has the broadest mandate and largest area to manage. The Commission itself is composed of the Lieutenant Governor, the State Controller, and the State Director of Finance. The first two are statewide elected officials and the last is a cabinet-level officer appointed by the Governor. With a total staff of about 200, it has jurisdiction over state submerged bottomlands from mean high tide to three nautical miles (NM) offshore along an 1,100-mile coastline (total of 3,427 miles, including tidal areas). In addition, they oversee submerged lands of all navigable lakes (40), rivers (120), and sloughs within the state. A total of four million square miles of sovereign or public trust lands fall under their jurisdiction. That amounts to a whopping 2,560,000,000 acres of state lands. The management program for submerged resources in state lands is drawn from several Public Resource Code sections. The salient points are abstracted below:

- The title to all abandoned shipwrecks and all archaeological sites and historic resources on or in the tide and submerged lands of California is vested in the state.
- All abandoned shipwrecks and all submerged archaeological sites and submerged historic resources of the state shall be in the custody and controlled by the SLC for the benefit of the people of the state of California.
- Significance determined by National Register or California Register eligibility. SLC may transfer title, custody, or control to other state agencies or recognized scientific or educational organizations, institutions, or individuals by appropriate legal conveyance.
- SLC, with the assistance of the State Office of Historic Preservation, shall identify, compile, and maintain an inventory of shipwreck sites, or sites of archaeological or historical significance and shall make the listing available to the public.
- Resources older than 50 years presumed significant.
- Permits for salvage operations involving submerged archaeological sites or submerged historic resources may be granted by the commission. Applications will be forwarded to the State Historic Preservation Office for review.
- SLC may contract with other state agencies to carry out these provisions.

(Amended by Stats. 2006, Ch. 135, Sec. 2. Effective January 1, 2007.)


- SLC shall administer the Shipwreck and Historic Maritime Resources Program.
- SLC may grant permits for conducting “salvage operations” upon or over those lands under its control.
- “Salvage operation” means any activity, including search by electronic means, or exploration or excavation using tools or mechanical devices, with the objective of locating, and recovering or removing vessels, aircraft, or any other cultural object from the surface or subsurface of state submerged lands. (Archaeology and treasure salvage subject to the same process.)
- SLC shall not require a permit for any recreational diving activity that does not disturb the subsurface or remove objects or materials from a submerged archaeological site or submerged historic resource.
- SLC shall provide for fair compensation to the permit holder in terms of a percentage of the reasonable cash value, or a fair share, of the objects recovered in a salvage operation.
- SLC may fix and collect reasonable fees and costs for the processing and issuance of permits under this section.

(Amended by Stats. 2006, Ch. 135, Sec. 1. Effective January 1, 2007.)


- Anyone who removes without permission or damages an archaeological or historic resource on state submerged lands is guilty of a misdemeanor.
- Punishment up to six months in county jail and up to $5,000.
- SLC or the Attorney General may also seek civil damages for the loss or destruction of a shipwreck, gear, cargo, archaeological site, or historic resource on state submerged lands.
- A vessel involved in the above may be subject to seizure.
- State and local law enforcement officers are directed to assist in enforcing this section.

(Amended by Stats. 2007, Ch. 130, Sec. 203. Effective January 1, 2008.)

It is important to note that the statutes as interpreted by SLC do not differentiate between commercial salvage of submerged materials and resource-oriented archaeological endeavors. Each has to pay a hefty fee to conduct studies and/or remove artifacts from a wreck or the seabed. Even a magnetometer or side-scan
survey for the purpose of locating, recording, and evaluating a submerged resource for historic preservation purposes may require a permit.

With a small staff and no cultural resources personnel, SLC regulates cultural resources but does not manage them. It has no capability to either conduct cultural resource studies or to have a program to involve other agencies, academic institutions, or non-governmental organizations in a systematic effort to locate and document significant submerged cultural resources on lands owned by the State of California. It relies solely on the State Historic Preservation Office to determine the adequacy of their efforts. Their permit fees make it difficult for independent researchers or other state agencies to conduct studies of submerged lands as part of their training.

California Department of Fish and Wildlife

The second agency involved in maritime resource protection is the California Department of Fish and Wildlife (DFW). Its mandate to manage living marine resources and habitats has been expanded since the passage and implementation of the California Marine Life Protection Improvement Act of 1999. After an extensive scientific analysis of the threats to living marine species and habitats, as well as a thorough public involvement process, the nation’s most comprehensive system of Marine Protective Areas (MPAs) was established in California.

California’s MPA network uses different Marine Managed Area (MMA) classifications. These classifications are defined in the Marine Managed Areas Improvement Act of 2000, which is used to designate marine areas intended to protect, conserve, or otherwise manage a variety of resources and their uses, including living marine resources and their habitats, scenic views, water quality, recreational values, and cultural or geological resources. MPAs are primarily intended to protect or conserve marine life and habitat, and are a subset of MMAs.

California’s MPA network includes three MPA designations (State Marine Reserve, State Marine Park, and State Marine Conservation Area), along with one additional MMA designation (State Marine Recreational Management Area). Special closure areas, established by the Fish and Game Commission, are also managed within the California MPA network.

State Marine Reserve

In a State Marine Reserve (SMR), it is unlawful to injure, damage, take, or possess any living geological or cultural marine resource, except under a permit or specific authorization from the managing agency for research, restoration, or monitoring purposes. While, to the extent feasible, the area shall be open to the public for managed enjoyment and study, the area shall be maintained to the extent practicable in an undisturbed and unpolluted state. Access and use for activities including, but not limited to, walking, swimming, boating, and diving may be restricted to protect marine resources. Research, restoration, and monitoring may be permitted by the managing agency. Educational activities and other forms of non-consumptive human use may be permitted by the designating entity or managing agency in a manner consistent with the protection of all marine resources. (PRC Section 36710(a))

State Marine Park

In a State Marine Park, it is unlawful to injure, damage, take, or possess any living or nonliving marine resource for commercial exploitation purposes. Any human use that would compromise protection of the species of interest, natural community or habitat, or geological, cultural, or recreational features, may be restricted by the designating entity or managing agency. All other uses are allowed, including scientific
collection with a permit, research, monitoring, and public recreation, including recreational harvest, unless otherwise restricted. Public use, enjoyment, and education are encouraged, in a manner consistent with protecting resource values. (PRC Section 36710(b))

State Marine Conservation Area

In a State Marine Conservation Area (SMCA), it is unlawful to injure, damage, take, or possess any living, geological, or cultural marine resource for commercial or recreational purposes, or a combination of commercial and recreational purposes that the designating entity or managing agency determines would compromise protection of the species of interest, natural community, habitat, or geological features. The designating entity or managing agency may permit research, education, and recreational activities, and certain commercial and recreational harvest of marine resources. (PRC Section 36710(c))

State Marine Recreational Management Area

In a state marine recreational management area, it is unlawful to perform any activity that, as determined by the designating entity or managing agency, would compromise the recreational values for which the area may be designated. Recreational opportunities may be protected, enhanced, or restricted, while preserving basic resource values of the area. No other use is restricted. (PRC Section 36710(e)). The Fish and Game Commission may designate, delete, or modify state marine recreational management areas for hunting purposes. (PRC Section 36725(a))

Marine Protective Areas Summary

A total of 87 MPAs have been designated within four regions of the California coast. They encompass an area of 848 square miles (542,720 acres). Most designations are SMR, SMCA, and various “special closures” for rookery protection and other sensitive areas. A few State Marine Parks have been classified. For example, the Cambria State Marine Conservation Area was also designated Cambria State Marine Park by the California State Park and Recreation Commission in August 2010.

The intent of Marine Protected Areas is to benefit the recovery and sustainability to fish stocks in California’s coastal waters. They include cultural resources as a peripheral aspect, but the focus is on protecting living marine organisms and habitats. DFW has a large state diving program and vessels to carry out its mission. There is, however, no cultural resource component or training to enable its personnel to recognize threats or damage to submerged heritage resources.

California Department of Parks and Recreation

California’s national leadership in the establishment of underwater parks was set when in 1960 Point Lobos became the first in the country, preceding John Penne camp Coral Reef State Park in Florida by two years. Under the direction of William Penn Mott, California State Parks pushed to bring “Parks to the People” by creating urban parks, starting Spanish language programming, hiring the first female rangers, and taking the park philosophy beyond mean high tide and the airy world (Engbeck 1980:105).

In 1968, Mott appointed the California Advisory Board on Underwater Parks and Reserves whose mission it was “to recommend to the Director of the DPR, a Statewide program of underwater reserves and park and recreation areas that will best serve the people of California by:
1. Protecting and preserving outstanding areas of the marine environment for present and future generations to enjoy;
2. Enhancing public understanding and appreciation of these underwater resources;
3. Facilitating the use of such recreation resources by all elements of the population”
(California State Parks 1985).

The Advisory Board’s charge was to look at the broad park and recreation needs of California’s underwater environment (both marine and inland waters) and to recommend additions to the State Parks system. The Board itself consisted of 12 members representing expertise in marine interpretation, biology, geology, archaeology, diving safety, sports diving, the SCUBA industry, and other areas as needed. The Board examined different ecological regions, areas of high recreation potential, and known or suspected cultural heritage areas underwater. Board members and park staff (including the author) conducted research dives and consulted with local experts in an attempt to find outstanding and representative additions to the State Parks system. This systematic approach resulted in early underwater extensions of Russian Gulch, MacKerricher, Van Damme, Salt Point, J. P. Burns, and Fort Ross. Subsequent additions, both inland and marine, were added to existing units. By 2004, the total area of underwater management by State Parks totaled some 59,600 acres. One limitation was imposed. It was decided not to add stand-alone underwater units due to difficulties in staffing and protection (Barry and Lasko 2003; Collier 1984) (Figure 1).

Figure 1. California State Parks operates some 21 underwater management areas. Most are leased from the State Lands Commission. They include marine and inland aquatic environments. The marine holdings, with the exception of Cambria State Marine Park, have not been designated as Marine Managed Areas and therefore do not benefit from statewide MPA interpretation and programming. Significant cultural heritage resources are protected within these management areas.
Significant underwater heritage features are now included within the State Park holdings. Most have been added as leases from State lands and now benefit from enhanced protection and interpretation efforts. History and cultural resources do not stop at mean high tide or land’s end. Parks can point to a number of examples where underwater cultural heritage values have been identified and interpreted:

1. Point Lobos State Natural Reserve contains the submerged vestiges of a 19th century shore whaling station as well as a granite block loading area.
2. Fort Ross State Historic Park contains the wreck of the SS Pomona, lost in 1908, and listed on the National Register. There are also submerged features related to the doghole port operations of 19th and early 20th century coastal trade (Foster 1984, 2002).
3. Point Cabrillo Light Station State Historic Park contains the wreck of the China clipper Frolic, lost in 1850 (Smith 2006). It is listed on the National Register.
5. Ahjumawi Lava Springs State Park contains a traditional stone fish trap complex that is still maintained and used by native Ahjumawi people (Foster 2000).
6. Emerald Bay State Park contains a sunken fleet of recreational boats of 19th and 20th century age that were part of the early resort complex. Two massive 19th century lumber barges have also been documented. This submerged cultural landscape is the best-known example of recreational watercraft in the country (Foster et al. 2016) (Figure 2).
7. Crystal Cove State Park contains the fragile remains of a US Navy F4-U Corsair, ditched after a training flight accident in 1949 (Dodds 2015). It also contains historic anchors and prehistoric artifacts related to coastal trade activity.

In recent years, however, the establishment of new MMAs has slowed. It is time, I would argue, for State Parks to resume the work begun under Director Mott and add to its portfolio more marine and inland aquatic areas of parkland. The particular focus should be on cultural heritage areas and properties with
outstanding recreational potential. These are not represented in the existing MPA system. The expanded system must include necessary areas not adjacent to existing park holdings. Where management of those areas is a challenge, a partnership among the three agencies should be developed to provide protection and interpretation. Each can contribute but California State Parks, as the state’s heritage agency, should lead the way.

The Marine Managed Areas Improvement Act provides the tools to establish offshore heritage parks in California. Authority for their designation and classification is conferred on the State Parks and Recreation Commission for State Marine Parks (see above), State Marine Cultural Preservation Area, and State Marine Recreational Management Area. Thus far, only a single area at Cambria has been acted on by the Commission.

It is recognized that overlapping designations exist within the tidal and submerged lands of California. Whatever the designation, however, regulations covering the taking of living marine species are enforced by Fish and Wildlife codes. So the designation of a shipwreck or other cultural heritage resource as a State Marine Park or State Marine Cultural Preservation Area does not alter fishing or any activities covered by regulation. A cultural, park, or recreation designation simply adds protection and invites heritage study and interpretation. For special recreation features, a recreational management area might be appropriate, but the State Marine Park would probably be the most appropriate designation to encompass a myriad of outstanding features and recreational activities.

THE FUTURE OF UNDERWATER HERITAGE PARKS IN CALIFORNIA

California has one of the longest coastlines in the country and has the potential for revealing evidence of maritime heritage tracing back 20,000 years or more. Recognized prehistoric artifact localities in the Southern California Bight alone number over 200, with the most common artifact being shallow stone mortars and shaped pestles (Masters 1985; Masters and Schneider 2000). It is possible that sites relating to the earliest exploration and colonization of the North American continent reside within that 3-NM band of submerged landscape (Erlandson et al. 2011).

There are also many important shipwrecks and submerged features that deserve further documentation and active management within an MMA system (Figure 3). A prime example is the S.S. Brother Jonathan, California’s greatest shipwreck loss-of-life. This former gold-rush passenger steamer was making a run from San Francisco to Portland and Vancouver, B.C. in 1865 when she struck an offshore pinnacle near Point St. George and became impaled in a raging storm. One by one, the lifeboats were smashed or capsized. Of the 244 souls on board, only a lucky 19 made landfall (Bowers 1998; Foster 2016). The ship was discovered by treasure hunters and following a legal battle, a settlement awarded the State of California title. She is listed on the National Register and significant structural remains and artifacts exist. The site deserves active protection as a heritage site (Figure 4).

Submerged gold rush vessels thus far identified in the Sacramento River also deserve formal designation and active management. Three documented wreck sites containing ship elements and related features are known. The Sterling wreck was discovered in 1984 (Hunter et al. 1984; Foster 1988, 2002). She was an 88-foot brig, built in 1833 in Duxbury, Massachusetts, by Samuel A. Frasier. A member of the “California Forty-Niner Fleet,” Sterling departing January 3, 1849, for San Francisco. After a six-month passage, she made her way to the Sacramento embarcadero, where she sank in the fall of 1855 (Foster 1988). Some 30 feet of her bow protrude from the riprap along the riverfront (Figure 5).

The grave of LaGrange, another gold rush ship, lies immediately upstream from Sterling on the Sacramento embarcadero. It was first discovered in a 1972 cable installation across the river when hull fragments and the log windlass were raised from the riverbed. Significant hull elements remain in place and a major amidships fragment of 25 feet has been documented. LaGrange was built in 1835 and sank on the Sacramento levee in 1859 during a flood. The hulk was refitted to serve as the first city jail. Eye pins for the prisoners’ chains attest to this use (Smith and James 1988) (Figure 6).

The most intact gold rush sailing vessel discovered in the Sacramento River is located about 20 miles downstream. Known as the “Clarksburg wreck,” it retains the large timbers of a ship skeleton along the east
Figure 3. There are many examples of known and significant submerged heritage resources in California. These examples are located on submerged state lands, but lack formal designation and active management. Many more await discovery as well as state protection and public interpretation.

Figure 4. The loss of the S.S. Brother Jonathan was the most significant maritime disaster in California history. Many of the dead, who floated ashore for weeks after the 1865 sinking, are buried in the Brother Jonathan Cemetery in Crescent City. The cemetery has been designated California Historical Landmark #541. The wreck itself belongs to the State of California, is listed on the National Register, but has no formal designation or active management. It is threatened by trawling nets and looting. Photo by John Foster.
Figure 5. The Sacramento embarcadero is the resting place for two gold rush vessels, Sterling and LaGrange. Both are National Register properties on lands owned by the State of California. They deserve active management, protection, and interpretation. Photo by John Foster.

Figure 6. A log windlass from the LaGrange shipwreck (1835-1859) was recovered in a cable installation across the Sacramento River in 1972. This original gold-rush artifact is part of the LaGrange collections of the Sacramento History and Museums Section. LaGrange served as the city’s first jail after her abandonment on the Sacramento waterfront. Photo by John Foster.
Figure 7. The Clarksburg shipwreck is located in the Sacramento River some 20 miles south of Sacramento. It is the best-preserved gold rush vessel known thus far. The hull has copper sheathing to prevent damage by shipworms and the cutwater area of her bow has additional lead sheathing. She awaits further documentation and evaluation. Photo by John Foster.

bank of the river (Foster and Smith 2009). This vessel, as well as its contemporaries, features a copper-sheathed hull, a common trait of mid-nineteenth century blue-water sailing ships. The presence of metal fastenings combined with the absence of metal knees or frames suggest a construction date in the 1840s or very early 1850s (Smith et al. 2006). The dimensions of the frames and keel suggest a vessel of approximately 100 ft in length and around 25 ft in breadth. The Clarksburg hull also has a lead sheathing over the cutwater bow (Figure 7).

So, the question that needs to be addressed is: As improved remote sensing and diving technology allow for a more thorough exploration of California’s submerged landscape, is there a management system in place to ensure the documentation, evaluation, and protection of underwater resources? I submit there needs to be the establishment of a system of MMAs under the guidance of California State Parks to select the best and most representative examples of California’s submerged cultural resources and recreation areas to be leased from SLC and added to the California State Parks system.

State Parks is the agency charged with preserving and interpreting California’s cultural history. It now needs to partner with SLC and DFW to provide a seamless management approach to the sites, features, traditional cultural properties, and recreational resources for marine and inland aquatic areas. This should include appropriate training of MPA and MMA enforcement staff to enhance cultural and heritage resource protection. It is time to get beyond the fish and beyond the silos of state government to designate a system of underwater heritage parks to protect and interpret marine and aquatic areas of significance to California’s past. These should not be confined to offshore areas adjacent to State Parks ownership. Their inclusion should be based on heritage value and an appropriate management partnership be developed to ensure adequate protection, interpretation, and public enjoyment.
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