

BILL ANALYSIS

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 | SENATE COMMITTEE ON NATURAL RESOURCES AND WATER
 | Senator Fran Pavley, Chair
 | 2011-2012 Regular Session
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BILL NO: SB 770

HEARING DATE: April 26, 2011

AUTHOR: Evans

URGENCY: No

VERSION: April 25, 2011

CONSULTANT: Bill Craven

DUAL REFERRAL: No

FISCAL: Yes

SUBJECT: Marine protected areas: Native American tribes.

BACKGROUND AND EXISTING LAW

The Marine Life Protection Act (MLPA) requires the Department of Fish and Game (DFG) to develop and implement marine protected areas using science-driven ecosystem-based management as a way to preserve and enhance fisheries and marine biological diversity. Several MPAs have been developed or proposed, and one is now pending on the north coast.

The Marine Life Protection Act presently does not have provisions pertaining to Native American fishing rights.

Recognized Native American tribes retain certain fishing rights through various mechanisms including treaties, presidential executive orders, or congressional acts. Defining with particularity those reserved rights is extremely contentious and is often accomplished through the allocation process undertaken by the Pacific Fishery Management Council, a regional group established by federal law. In addition, numerous court cases have made determinations that effect tribal fishing rights.

The Klamath basin has seen more than its fair share of acrimony, litigation, and social unrest over this issue going back many decades. The issue of tribal fishing rights is presently affecting the ongoing discussion of the proposed north coast marine protected area proposal. Last July, at Fort Bragg, several tribal representatives and others (numbering nearly 300) protested the proposal.

The California Resources Agency is currently working with tribal representatives and other stakeholders in a process to resolve

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these issues. The North Coast Regional Stakeholder Group for the proposed MPA includes several tribal representatives. There is general agreement that the traditional, non-commercial tribal uses of the fishing and marine resources of the north coast region should be recognized and protected in MLPA regulations.

An example from another state, Washington, may be useful to California. The Centennial Accord, adopted in 1989, included 25 federally-recognized tribes and the State of Washington in an agreement that included mutually acceptable procedures for

conducting negotiations on tribal fishing rights on a government-to-government basis.

PROPOSED LAW

As recently amended, this bill would include within the MLPA the following provisions:

1. That one or more recognized tribes could submit a proposal to the Secretary for Natural Resources for limited or full co-management of living marine natural resources. The proposal would include information about the geographic boundary, the covered species, and the respective roles of the tribe and California state government in developing the necessary science and how management would be shared.
2. The Secretary would consider the proposal, request additional information if necessary, deem the proposal complete, and instruct DFG to consult with the tribal governing body to develop a memorandum of understanding that provides for tribal access to its traditional fishing and gathering areas, co-management of these areas, and developing conservation strategies that will help meet the science-based goals of the MLPA.
3. The bill requires that each co-management proposal shall include a dispute resolution process.
4. The bill allows traditional tribal fishing and gathering to continue without interruption prior to and during the development of the memorandum of understanding.

ARGUMENTS IN SUPPORT

None received

ARGUMENTS IN OPPOSITION

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None received

COMMENTS

According to the author, this bill could serve two possible purposes: (1) it may assist the administration in its ongoing efforts to resolve this issue administratively, which the author believes is the preferable outcome. Second, should the administration effort get bogged down, the bill could become a legislative solution.

Assuming the bill moves forward, the author should consider a time limit or other provision for the last subdivision of the bill that allows traditional tribal fishing and gathering to continue during the period that a memorandum of understanding is developed. That provision, while respectful of existing tribal activities, could be read as removing an incentive to reach an agreement, even when the negotiations are conducted on a government-to-government basis, as the author hopes.

SUPPORT

None Received

OPPOSITION

None Received

