



YUROK TRIBE

190 Klamath Boulevard • Post Office Box 1027 • Klamath, CA 95548



June 16, 2011

California Fish and Game Commission
P.O. Box 944209
Sacramento, CA 94244-2090

Re: Marine Life Protection Act (MLPA), North Coast Region

Dear Commissioners:

The Yurok Tribe is pleased with the considerable progress that has been made addressing the continuous pre-historic and contemporary Tribal ceremonial, religious, and cultural marine harvesting on the North Coast. We appreciate the tone taken in staff report of *Options Regarding Marine Protected Areas for the MLPA North Coast Study Region: California Fish and Game Commission June 2011 Meeting* (June 9, 2011 amended 11:45am) and there are many opportunities presented to the Tribes and the Commission to come to a mutual agreement. The document is complex and we only recently received access to it so a subsequent detailed response will follow. The Yurok Tribe will take the opportunity between now and the 29th Commission meeting to with staff to further understand and refine the staff proposals. As throughout the MLPA proceedings the Tribe is reserving all rights for itself and our members to continue to harvest in the Ocean.

The Revised Round 3 MLPA North Coast Regional Stakeholders Group "Unified" MPA Proposal (RNCP) is unique in MLPA and North Coast history in that fisherman, environmentalists, federal government, state, local and tribal governments all made compromises to come up with a single Unified proposal that was submitted. We ask that the Commission support and respect the widespread community and local government support and the accomplishment that is the Unified Proposal.

The Yurok Tribe is submitting a considerable number of science documents. They all show an abundant level of mussels and species diversity in the intertidal area. This is with 10,000 years plus of Native American harvesting. We believe this science clearly shows no harm to the marine environment from traditional Native American take. Studies of other marine sanctuaries in California, Santa Barbara and South Africa have clearly shown that marine reserves have not worked as planned for mussels, a key species

for Native subsistence gathering. Despite pre-perceptions to the contrary, subsequent scientific studies could not find a statistical difference between the reserve and non-reserve for mussels. Key factors are the broadcast sexual breeding habits of mussels, lack of access protections, and an inability to enforce no-harvest provisions.

Here in California, despite some confusion in the past, Tribes must comply with all applicable federal environmental laws and most especially the Federal Endangered Species Act. The Commission should therefore be assured that Tribes are well equipped to protect the Marine environment consistent with the goals of the Marine Life Protection Act.

We request the following language for Option 2 of the Options for Traditional Tribal Gathering:

1. Add the language: *or pursuant to a request from a federally recognized Tribe allow tribal gathering pursuant to a tribal traditional use program established and implemented by the Tribe in accordance with a Memorandum of Understanding (MOU) between the respective Tribe and the Department of Fish and Game, which is consistent with the goals of the MLPA. This includes all MPAs. Any negotiated MOU will be subject to Fish and Game Commission public hearing provisions and will not replace Commission rule making procedures or requirements.*
2. Delete the Description of Redding Rock on page 6. When the Enhanced Compliance Alternative (ECA) was being discussed at the joint Blue Ribbon Task Force (BRTF) and Regional Stakeholder Group (RSG) meeting of October 26, 2010, there was a request by two RSG members to remove Redding Rock SMCA from the “ribbon” approach and retain the *entire* Redding Rock SMCA as an area open for all traditional Tribal uses. This request was made because unlike any other MPA in the Unified Proposal, the RSG had complied with the original policy guidance provided by the BRTF regarding accommodating traditional tribal uses by creating an inshore SMCA to allow for non-commercial Tribal uses and an offshore SMR. Thus, the additional creation of a “ribbon” may have only added to regulatory and enforcement concerns and would not have supported or recognized the Native American harvesting that does occur in that area, both onshore and offshore. Exhibits are attached concerning the giant redwood canoes constructed by Yurok’s for river and ocean transport. Such canoes are used in harvesting a variety of marine species, as well as for conducting ceremonies at Redding Rock. Furthermore, it was recognized at that meeting by the RSG that there are other non-tribal uses that occur within the Redding Rock SMCA that recreational users

were interested in retaining and thus, there was general support from the RSG to retain the entire SMCA as more species inclusive and NOT restricted to only those species and gear types with a moderate-high or high LOP. It seemed this request was supported by BRTF member Greg Schem, the maker of the ECA Motion and passed, however, this is not what is reflected in the Staff Report of Options for the Commission. The proposed change from seasonal restrictions to year round restrictions at False Klamath Cove is strongly resisted and should be deleted. This is a major Tribal harvesting area. The Tribe was unhappy with the seasonal closure, but understands the basis for the restriction to support critical seabird colonies located there. A year around restriction is not warranted and will probably be ignored.

The Yurok Tribe would like to stress to the Commission that the Science Guidelines are just that *guidelines*. The Tribe further rejects the Science Guidelines in as we were not allowed to present expert testimony regarding the model assumptions to the Science Advisory Team. The Tribe time and again requested to present existing empirical and quantifiable data and species surveys which demonstrate flaws in the Levels of Protection (LOP) Model used by the SAT. These LOP model assumptions greatly diminish the value of the final product. For example, one of the assumptions is that the harvest must be estimated by the maximum allowable harvest under state and federal law. While common experience suggests the commercial harvest is generally the more significant, that is not true under the SAT Levels of Protection (LOP) model. It requires for recreational harvesting that you multiply sports fisherman (two million licenses) times the maximum allowable take each and every day for 365 days or the season, whichever is shorter. For mussels, where the Fish and Game take standard is 10 pounds wet or 170 mussels, the LOP models predicts an astounding 340 million mussels a day are harvested in each of the North Coast MPAs each and every day. This is not possible. Worse the multiplier is times the Fish and Game Commission allowable take. When the Commission is worried about a species you do not allow much take and so there is not much to multiply and the LOP indicates not much MLPA protection is needed. In fact the opposite is true. The Fish and Game Commission based on experience and empirical data establish larger take for the least impacted species like mussels. Under the LOP multiplier this translates to the highest need of protection is the mussel. This means that mathematically the LOP predicts the risk the opposite of what you have determined. That's why out of all the species the LOP has determined mussels are the most in need of protection. Yet when you go out in the field the most abundant species is the mussel.

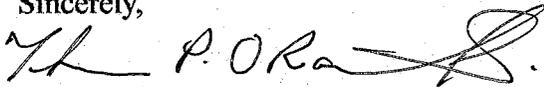
In summation the MLPA's Science Advisory Team Levels of Protection gives the exact opposite result of species protection than your regulations do. The LOP did not consistently apply the assumption to all species. Time and again in order to avoid the effects of the assumption, commercial and Indo-European species were judged by a different standard than for popular species harvested by Native Americans. This has

created bad and inconsistent science that has a disparate impact on traditional Tribal gathering foods.

Given these persisting unresolved issues and the ongoing disparities between the MLPAI science and that of the Department, it is critical to have ongoing discussions with Fish and Game staff to further understand the existing staff recommendation.

With these preliminary comments, the Yurok Tribe desires to work with the Commission and staff to protect our 10,000 year plus tradition of harvesting and protection for the marine environment.

Sincerely,



Thomas O'Rourke
Chairman

Enclosures:

- MLPA Slides for FGC
- Norgaard (2006) Healthy River, Healthy People: A Report on the Relationship Between the Ecological, Social and Physical Health of Yurok Tribal Members on the Klamath River.
- Borgeld, J. C., Crawford, G. (2006) Assessment of Coastal and Marine Resources Conditions, Redwood National and State Parks.
- Craig, S., Mulligan T. 2005. Marine Resources of Redwood National and State Parks: Comprehensive Report. (2004-2005) for Humboldt and Del Norte County, California. Department of Fisheries Biology and Biological Sciences, Humboldt State University.
- Fluharty, S. Sloan, K. (2010) Yurok Ancestral Territory: Marine Mussel Inventory. Yurok Tribe Environmental Program.
- Hildebrant, W. R., Jobson, R. W. (1980). The Distribution of Oceangoing Canoes on the North Coast of California. *Journal of California and Great Basin Anthropology*, 2 (2).
- Langlois, G. W. (2009) Marine Biotoxin Monitoring Program Annual Report. Submitted to California Department of Fish and Game by California Department of Public Health Division of Drinking Water and Environmental Management.

- Rius, M., S. Kaehler, and C.D. McQuaid. 2006. The relationship between human exploitation pressure and the condition of mussel populations along the south coast of South Africa. *South African Journal of Science*.102:130-136.
- Torben, R. C., Erlandson, J. M., Braje, T. J., Estes, J., Graham, M., & Vellanoweth, R. 2008. Historical Ecology and Human Impacts on Coastal Ecosystems of the Santa Barbara Channel Region, California. In Rick, T. & Erlandson, J. *Human Impacts on Ancient Marine Ecosystems: A Global Perspective*. (pp. 77-101). Berkeley: University of California Press.
- Voight, Hans. (2010) *Lack of MLP Plausibility*. Yurok Tribe.