Information Packet to the Blue Ribbon Task Force July 2010

Yurok Tribe

YUROK TRIBE

190 Klamath Boulevard • Post Office Box 1027 • Klamath, CA 95548
Phone: (707) 482-1350 • Fax: (707) 482-1377

Request for Policy Adoption by the Blue Ribbon Task Force
July 21, 2010

According to the California Secretary for Natural Resources, serious questions exist as to whether the State of California has legal authority to deal government to government with Tribes that will allow exclusive tribal gathering activities in Marine Protected Areas (MPAs). Until legal authority can more clearly be established for exclusive tribal gathering activities in MPAs, it is understood that non-commercial activities specifically authorized in tribal resource protection areas will be allowed by the State of California for all recreational users.

The legal issues are extremely complex. The Tribe does caution, however, that the Initiative, on behalf of the State, not adopt a black and white stand that could come back to haunt future state efforts to cooperate with the Tribe or open the State to litigation, but rather find a workable solution.

In that spirit, the Yurok Tribe requests the Blue Ribbon Task Force adopt the following policy recommendations in order to effectively provide policy guidance. This guidance seeks to resolve the matter in the short term, while clearly supporting a long term solution.

- **Support robust avoidance of Tribal subsistence, ceremonial, and customary use areas with the reservation of all rights;**
- **Support a legislative amendment to the MLPA that clearly acknowledges and does not infringe on Tribal subsistence, ceremonial, and customary uses, and allows for co-management with Tribes; and**
- **Support an amendment to the *Draft Master Plan for Marine Protected Areas* that articulates the position of California Tribes and Tribal communities, which would include, but is not limited to sections on Tribal governance and marine heritage.**

The State of California and the Yurok Tribe can accomplish the implementation of the MLPA in a manner that is protective of marine resources while preserving in total our culture and respecting Tribal sovereignty and governance.

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RESOLUTION
Of The
YUROK TRIBAL COUNCIL

RESOLUTION NO: **09-84**

DATE APPROVED: **November 16, 2009**

SUBJECT: Yurok Tribe Position Regarding the Marine Life Protection Act

WHEREAS: The Yurok Tribe is a Federally recognized Tribe; and

WHEREAS: The Yurok Tribal Council is the governing body of the Yurok Tribe under the authority of the Yurok Constitution of 1993; and,

WHEREAS: The Yurok Tribe is eligible for all rights and privileges afforded to federally recognized tribes, including but not limited to, the rights and privileges afforded under the Hoopa-Yurok Settlement Act; and

WHEREAS: The Ancestral Territory of the Yurok Tribe, as defined by the Yurok Constitution, includes approximately fifty miles of coastline from Little River to Damnation Creek, and extends west to the horizon; and

WHEREAS: The Yurok Tribe has never ceded our traditional rights to access, fish, harvest, gather, enjoy, and steward the coastal and marine plant and animal communities, or the right to access and conduct subsistence, ceremonial and other cultural uses within the lands and waters of the United States of America and States within; and

WHEREAS: The Yurok Tribe utilizes and stewards coastal and marine areas and resources within Ancestral Lands in a sustainable manner and has done so since time immemorial; and

WHEREAS: The inalienable aboriginal rights of Yurok People to access and use traditional coastal and marine areas predate and supersede all state and local laws and constitute a vital component of our ancestral and cultural inheritance; and

WHEREAS: The State of California through the Marine Life Protection Act

(MLPA) of 1999 is currently in the process of designating areas of coast and marine waters, from mean high tide to three nautical miles offshore for restricted use; and

WHEREAS: The Yurok Tribe is aware of and supports the need to protect and restore marine and coastal plant and animal communities; and

WHEREAS: The MLPA legislation and its guiding document, the Master Plan, fail to recognize the sovereign standing of federally recognized Tribes or to require government-to-government consultation with federally recognized Tribes; and

WHEREAS: The MLPA and its implementation ignore the subsistence, cultural, ceremonial uses, and the aboriginal rights of the Yurok Tribe; and

WHEREAS: The Yurok Tribe maintains a federally-reserved fishing right and the United States of America maintains a trust responsibility to protect our rights, including the right to take fish; and

WHEREAS: Implementation of the MLPA, particularly no-take areas, poses an imminent threat to the cultural and religious freedom, the health and wellbeing, and the cultural identity of Yurok Tribal members who require access to and use of coastal and marine areas to harvest, gather, enjoy, and otherwise use these areas for the preservation and continuation of our traditional ways of living.

NOW THEREFORE BE IT RESOLVED, that the Yurok Tribe does hereby support the recognition of the primacy of tribal subsistence, ceremonial, and cultural uses and rights of the Yurok Tribe and members. This body supports the amendment of the MLPA and/or its guiding document to ensure that Tribal aboriginal rights and traditional cultural ways, as well as federally-reserved fishing rights and the federal trust responsibilities are recognized and protected;

BE IT FURTHER RESOLVED: That the Chairperson is hereby authorized to sign this resolution and to negotiate all matter pertaining hereto and that the Recording Secretary is authorized to attest.

C*E*R*T*I*F*I*C*A*T*I*O*N

This is to certify that this Resolution Number 09-84 was approved at a duly called meeting of the Yurok Tribe on November, 16 , 2009 at which a quorum was present and that this resolution Number 09-84 was adopted by a vote of 8 for and 0 opposed and 0 abstentions. This resolution Number 09-84 has not been rescinded or amended in any way.

DATED THIS 16TH DAY OF NOVEMBER , 2009

Maria Tripp

Maria Tripp
Chair

ATTEST:

Cynthia McKernan
Executive Assistant

YUROK TRIBE

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Initial Critique of the Levels of Protection Designations

The California Marine Life Protection Act (MLPA) seeks to protect marine resources along the California Coastline by regulating only one activity that affects these resources, namely the take of marine species. The MLPA establishes a system whereby Marine Protection Areas (MPAs) will be created along the California Coastline. Depending on the "level of protection" specified for an MPA, certain types of take will be prohibited within the "backbone" of the MPA proposal.

The MLPA calls for an improved network of marine protected areas (MPAs) that includes "marine life reserves" and may include "areas with various levels of protection." To assist in comparing MPA proposals in order to make informed decisions on a Preferred Alternative, the MLPA Master Plan Science Advisory Team (SAT) developed a framework for assessing the "levels of protection (LOP)" to apply to each proposed MPA proposal. The SAT has characterized levels of protection according to the ecological characteristics of the species in question. So, if a species that has low mobility, and creates habitat for other species (mussels, for example) is allowed to be taken within an MPA, the MPA is only judged to afford a "low" level of protection. Other species that are more mobile can be taken within an MPA and still have the MPA afford a "high" level of protection.

This general classification system provides an overly simplistic way in which to compare "protection" and leads to a faulty understanding of the overall conservation benefits that may actually be provided by a particular geography. There are key assumptions made in the LOP determination flowchart, as well as critical elements absent, that significantly hinder the practicality and thus, credibility of the LOP designations. Due to the continued action in developing the policy around the LOP, the way in which the LOPs are determined is of heightened importance.

Failure to Acknowledge or Recognize the Importance of Level of Take

In the discussion of *Rationale for Categories of Protection* in the *Draft Master Plan for Marine Protected Areas,* it provides guidance on how to develop the levels of protection, stating, "[T]he level of protection and conservation value afforded by any particular MPA depends very much on the type and magnitude of fishing and other human activities that will be allowed within the MPAs" (page 53). The SAT LOP designation, however, does not seek to assess the magnitude of fishing and other human activities, which, as the Master Plan recognizes, is a critical piece of the rationale needed to assign categories of protection.

Rather, the SAT LOP is premised on the assumption that "*Any extractive activity can occur at high intensity.*" This assumption is fundamentally flawed as it does not take into account the magnitude of use that will actually occur within a MPA, which includes several contributing factors, including geography, topography, accessibility, population density, frequency of harvest,

weather, and tides. As such, the LOP does not provide a practical understanding of the conservation value (i.e. LOP) of a particular MPA in order to make a more informed comparison. Assuming high levels of harvest could, for example, lead to a ban on harvest where actual problems related to harvest of that species are vanishingly small. For example, there is a low level of mussel harvest on the north coast, but it is highly doubtful that it rises to the level where there is any significant overall effect in terms of population structure and ecological function. There are simply too many remote and inaccessible areas that are totally unharvested compared to the areas that are reachable, and mussels routinely reestablish colonies that are wiped out due to sand level fluctuations or impact from large driftwood and waves. Moreover, there are some species that are only collected by Tribal citizens and not the general public, which must be considered when assessing extraction levels/intensity.

A few specific examples follow that illustrate this point further and are specific to Yurok Ancestral Territory and the Yurok Tribe.

Accessibility: There are significant stretches of the coast in the North Coast Study Region that are completely inaccessible by vehicle. For example, within an approximate 50 mile coastline within Yurok Ancestral Territory there are only ten locations where the public has vehicular access to the beach and given the topography in those areas, only six are easily accessible on foot.

Population Density: While assuming a high rate of harvest may be a reasonable approach near urban centers with high recreational and commercial harvest rates, it is unrealistic to apply this assumption to the North Coast Study Region. According to the U.S. Census Bureau, "urban" is defined as all territory, population, and housing units located with an urbanized area (UA) or an urban cluster (UC). UA and UC boundaries encompass densely settled territory, which consists of:

- Core census block groups or blocks that have a population density of at least 1,000 people per square mile and
- Surrounding census blocks that have an overall density of at least 500 people per square mile.

According to the most recent US Census in 2000, there are no areas considered "urban" within the entirety of Yurok Ancestral Territory. As characterized in the *North Coast Regional Profile*, population in 2000 for the related Counties of Del Norte and Humboldt were 27,680 and 126,839 respectively. Compare this to Los Angeles County which had a population of 9,578,960 in 2000 as documented in the *South Coast Regional Profile*.

Frequency of harvest: There are several limiting factors that minimize the frequency of harvest on the North Coast, which can include weather conditions, water visibility, as

well as tide heights and times. Tide times and heights significantly contribute to accessibility since there are several gathering locations that require alongshore beach or offshore rock access and are inaccessible outside of a prime low tide; for example at False Klamath.

Further examples of topography, weather, etc… can be provided to further illustrate this point when time allows. In summary, there are many natural and cultural factors that make the assumption that "any extractive activity can occur at high intensity" highly questionable when applying the theory in practice to the North Coast. Moreover, this approach severally undermines the importance of magnitude of use, which is referenced in the *Master Plan* as a deciding factor to rationalizing categories for protection for comparison purposes.

Failure to Provide Context

Assessment of the levels of protection is greatly hampered due to the failure of the SAT to provide any context for their protection levels. There is no evidence that the SAT based their protection levels on any given fishery management regime; although so called 'scorched earth' fishery management has been discussed. Thus, rather than having a clear understanding of the percentage of unfished biomass required to maintain healthy stocks and/or return to sustainable harvesting, it is assumed that any take has an equal impact to the natural functions of the ecosystem.

Indigenous gathering has taken place since time immemorial and species continue to thrive within the traditional fishery management regime. This regime ensures the sustainability of the resources in a manner that promotes robust reproductively and minimizes take. There are several examples included in the *Yurok Tribal Profile*, which was submitted for inclusion in the *North Coast Regional Profile.* Moreover, there is no context for current fishery management regimes already in place by the Department of Fish and Game either. Thus, the lack of context for the LOP provides a very black and white understanding of take that is grossly oversimplified. Because the MLPA only contemplates complete prohibition of take as management response to protect marine resources, it is critically flawed. The MLPA needs to consider making management of resource harvest as an option, rather than simple closure.

Failure to Acknowledge or Recognize Method/Manner of Take

The current LOP does recognize gear type as defining the method of take. However, this is a superficial analysis in that a more robust understanding would include details on the manner in which a species is taken. A prime example is the harvesting of seaweed and the importance of manner of take. Traditional gatherers always remove the portion of the seaweeds located above the root system and do not scrape the roots from the rocks. This method of take has proven to allow for take, while enhancing the growth of the seaweeds the following season. However, by

having an analysis that does not account for the specific manner or method in which a species is taken leads to an inadequate understanding of impact and, therefore, the level of protection afforded by the taking of a particular species. Another example is the harvesting of mussels and the way in which mussels are carefully selected for take, yet there is no ability to incorporate such information into the analysis. Furthermore, other non-living resources are also not evaluated separately, for example, unoccupied seashells, salt, and driftwood.

Faulty Assumption that all Activities Occur in Isolation

Another key assumption in determining the LOP is that *"The proposed activity is occurring in isolation (i.e. without cumulative effects of multiple allowed activities)."* Again, this assumption can lead to mismanagement. The example that comes to mind is the interaction between sea otters, urchins, and kelp. With the decline of otters, urchin predation went way down, their population exploded, and kelp forests along the central coast were devastated. Thus, banning urchin harvest in the absence of other missing urchin predators may actually harm the kelp forest habitat.

Conclusion

Discussed is an initial description of some of the overarching concerns with the LOP designation. The Yurok Tribe will prepare additional and more detailed analysis as time permits. However, it is imperative to understand that the LOP designation is not providing a practical understanding of the actual protection provided by allowing certain species to be gathered. It would be extremely misguided for the Blue Ribbon Task Force to continue to revolve policy around this guideline in particular, as it does not provide a scientifically sound and complete understanding of the protection afforded by the continued uses of the Yurok.

YUROK TRIBE

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July 20, 2010

North Coast Study Region
Blue Ribbon Task Force
C/O California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

RE: Formal Request of Evidence of Institutional Review Board Compliance

There are research efforts underway that seek to collect data regarding subsistence, ceremonial, and customary activities of the Yurok Tribe and citizens for inclusion to the California Marine Life Protection Act Initiative (MLPAI) implementation process being undertaken on behalf of the State. This data collection effort is being lead by Satie Airamé, Science and Planning Advisory for the MLPAI and Policy Coordinator at the Marine Science Institute, University of California Santa Barbara (UCSB), with assistance from several UCSB graduate students.

On July 12, 1974, the National Research Act (Pub. L. 93-348) was signed into law, thereby creating the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research. One of the charges to the Commission was to identify the basic ethical principles that should underlie the conduct of biomedical and behavioral research involving human subjects and to develop guidelines which should be followed to assure that such research is conducted in accordance with those principles. In carrying out the above, the Commission was directed to consider: **(i)** the boundaries between biomedical and behavioral research and the accepted and routine practice of medicine, **(ii)** the role of assessment of risk-benefit criteria in the determination of the appropriateness of research involving human subjects, **(iii)** appropriate guidelines for the selection of human subjects for participation in such research and **(iv)** the nature and definition of informed consent in various research settings.

In order to ensure that research is done with ethics and human dignity whenever human subjects participate, the National Commission for the Protection of Human Subjects in Biomedical and Behavioral Research developed broad ethical principles to provide a basis on which specific rules could be developed in 1978. These principles are discussed in *The Belmont Report*, which provides for three basic principles relevant to the ethics of research involving human subjects; Respect for Person, Beneficence, and Justice.[1]

Compliance with policies that provide for protections for human subjects are mandated under Title 45 of the Code of Federal Regulations, Part 46, (45 CFR 46) and promulgated by the Federal Office for Human Research Protections at the U.S. Department of Health & Human Services. To assist researchers in determining whether research involving human subjects requires Institutional Review Board review, the Office for Human Research Protections (OHRP) has posted to its website a set of decision charts as graphical aids[2]. These charts are enclosed for your convenience. The University of California has a specific policy related to the research of human subjects[3] and Universities within the UC system have similar policies specific to their University, including UCSB.[4]

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[1] The Belmont Report, Ethical Principles and Guidelines for the Protection of Human Subjects of Research (GPO 887-809)
[2] Human Subjects Regulations Decision Charts (September 24, 2004)
[3] University of California Policy on Protection of Human Subjects (Office of the President, September 2, 1981).
[4] UCSB Policy on the Use of Human Subjects, Research Circular No. D.2 (Revised February 1997).

As noted in the UCSB Policy on the Use of Human Subjects, "Researchers conducting research involving the use of human subjects conducted at or sponsored by the University of California, Santa Barbara shall be guided by the Basic Ethical Principles developed for the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research and published in the Belmont Report..."[5] This UCSB Policy, "applies to all research involving human subjects conducted at UCSB or by the UCSB faculty, students, or staff, whether funded or unfunded, and if funded regardless of source of funding."[6]

Given these factors, the Yurok Tribe requests the following:

1. Evidence of compliance with the UCSB Policy for the Use of Human Subjects, in accordance with 45 CFR 46, which should include proof of review and findings of the UCSB Human Subjects Committee as established and composed in accordance with 45 CFR 46.107 and other applicable Federal regulations for related research.

2. Evidence of similar compliance for all other researchers involved in this research from their related University and/or Institution.

3. That the North Coast Blue Ribbon Task Force request proof of compliance to ensure that the data collection research with Tribes is conducted ethnically and with adequate informed consent by the individuals and/or Tribes.

We thank you for your consideration of this serious matter and look forward to an immediate response.

Sincerely,

T. P. O'Ra 7-20-10

Thomas O'Rourke, Chairman

Enclosed: Human Subjects Regulations Decision Charts (September 24, 2004)

cc: John McCamman, Director, Department of Fish and Game
Ken Weisman, Executive Director, MLPAI
North Coast MLPA Master Plan Science Advisory Committee

[5] *Ibid.*
[6] UCSB Policy on the Use of Human Subjects.

Human Subject Regulations Decision Charts

September 24, 2004

The Office for Human Research Protections (OHRP) provides the following graphic aids as a guide for institutional review boards (IRBs), investigators, and others who decide if an activity is research involving human subjects that must be reviewed by an IRB under the requirements of the U.S. Department of Health and Human Services (HHS) regulations at 45 CFR part 46. OHRP welcomes comment on these decision charts. The charts address decisions on the following:

- whether an activity **is research** that must be reviewed by an IRB
- whether the review may be performed by **expedited procedures**, and
- whether **informed consent** or its documentation may be waived.

Considerations

The charts are intended to assist IRBs, institutions, and investigators in their decision-making process and should not be used as substitutes for consulting the regulations. OHRP cautions that the full text of applicable regulatory provisions should be considered in making final decisions.

These charts are necessarily generalizations and may not be specific enough for particular situations. Other guidance documents are available related to specific topics, at OHRP Policy Guidance by Topic. OHRP invites inquiries for additional information.

The charts do not address requirements that may be imposed by other organizations, such as the Food and Drug Administration, National Institutes of Health, other sponsors, or state or local governments.

Chart 1: Is an Activity Research Involving Human Subjects?

Chart 2: Is the Human Subjects Research Eligible for Exemption?

Chart 3: Does Exemption 45 CFR 46.101(b)(1) (for Educational Settings) Apply?

Chart 4: Does exemption 45 CFR 46.101(b)(2) or (b)(3) (for Tests, Surveys, Interviews, Public Behavior Observation) Apply?

Chart 5: Does Exemption 45 CFR 46.101(b)(4) (for Existing Data, Documents, Records and Specimens) Apply?

Chart 6: Does Exemption 45 CFR 46.101(b)(5) (for Public Benefit or Service Programs) Apply?

Chart 7: Does Exemption 45 CFR 46.101(b)(6) (for Food Taste and Acceptance Studies) Apply?

Chart 8: May the IRB Review Be Done by Expedited Procedures?

Chart 9: May the IRB Continuing Review Be Done by Expedited Procedures?

Chart 10: May Informed Consent Be Waived or Consent Elements Be Altered under 45 CFR 46.116(d)?

Chart 11: May Documentation of Informed Consent Be Waived Under 45 CFR 46.117(c)?

Chart 1: Is an Activity Research Involving Human Subjects Covered by 45 CFR part 46?

September 24, 2004

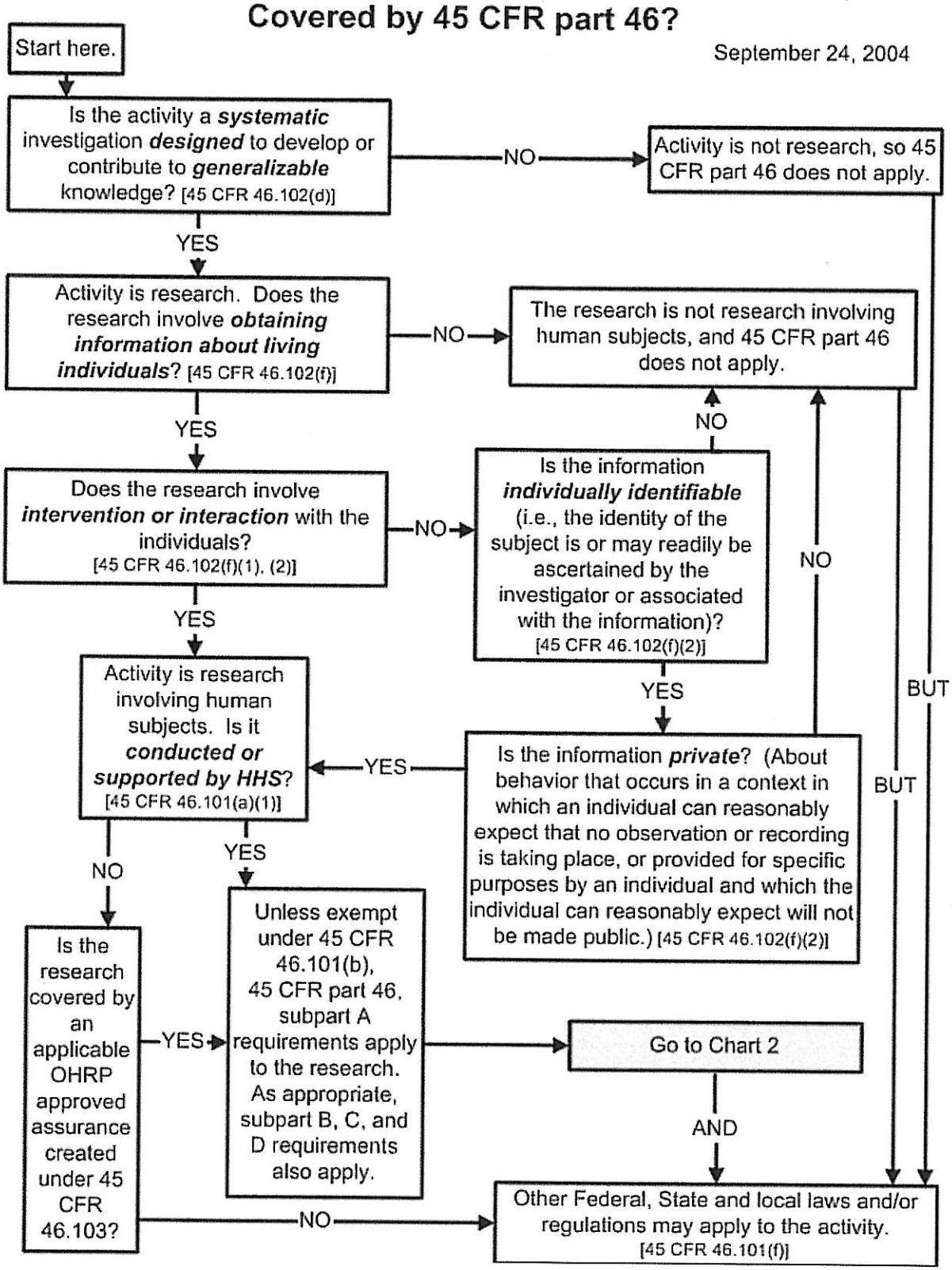


Chart 2: Is the Research Involving Human Subjects Eligible for Exemption Under 45 CFR 46.101(b)?

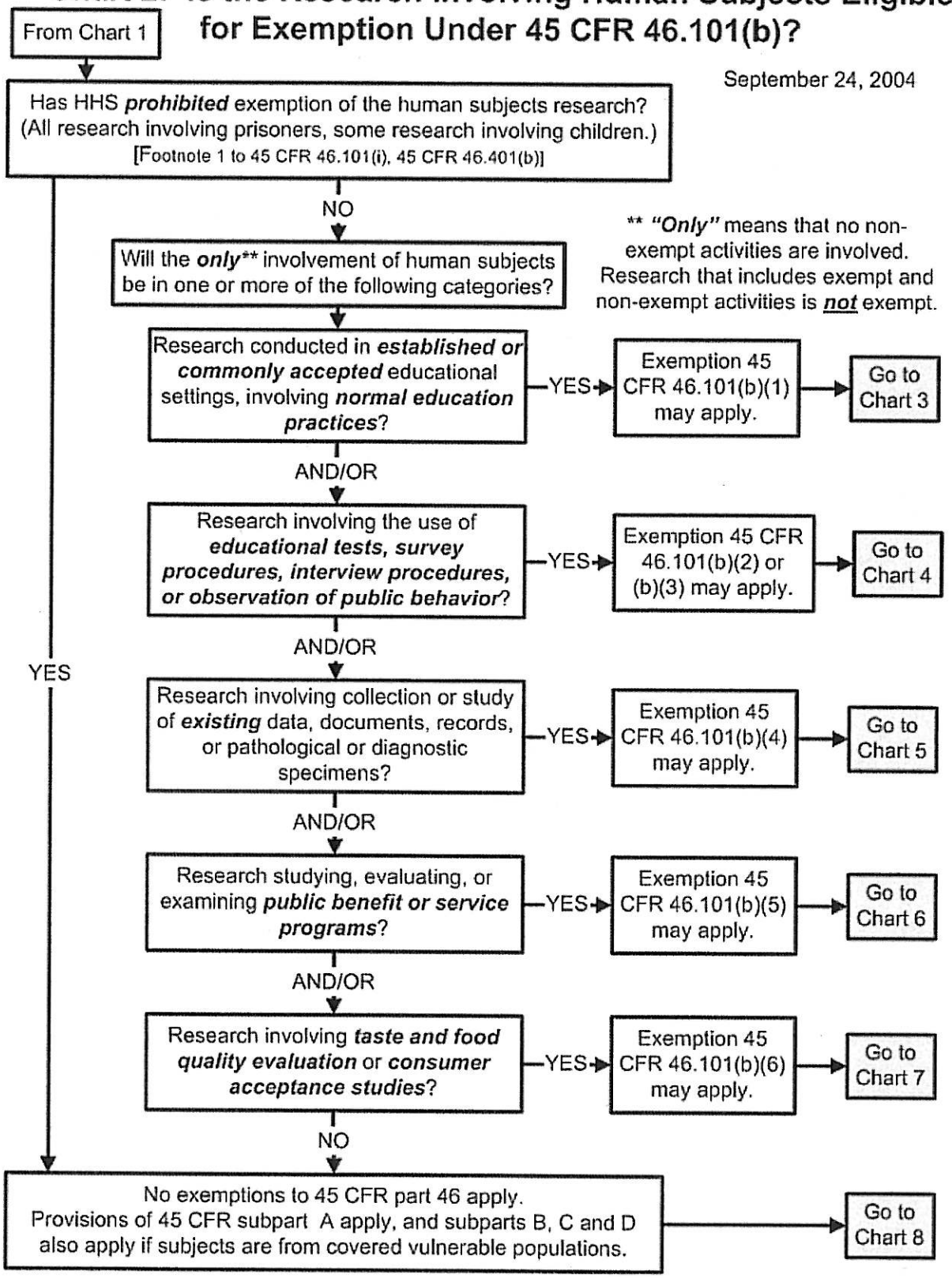
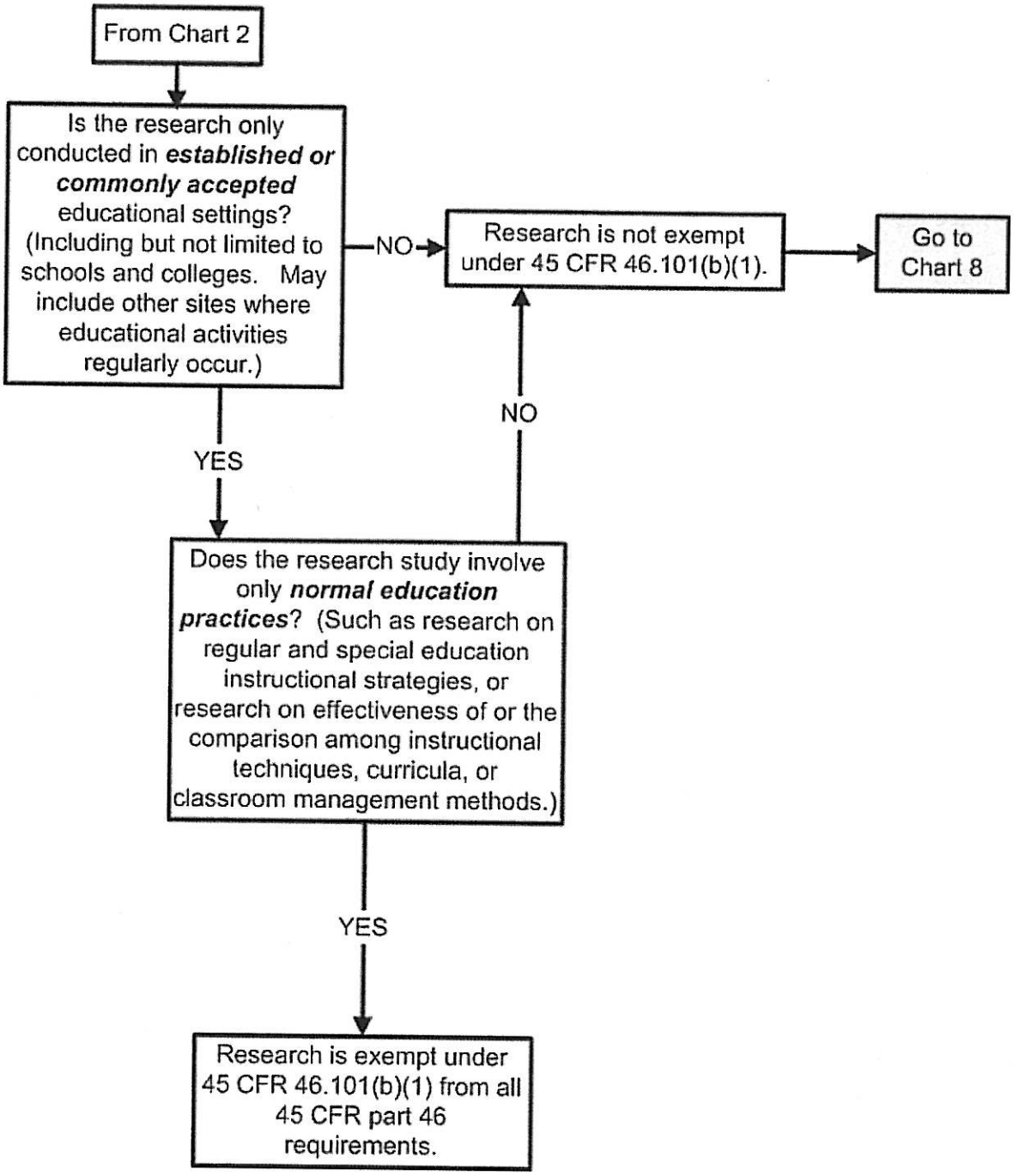
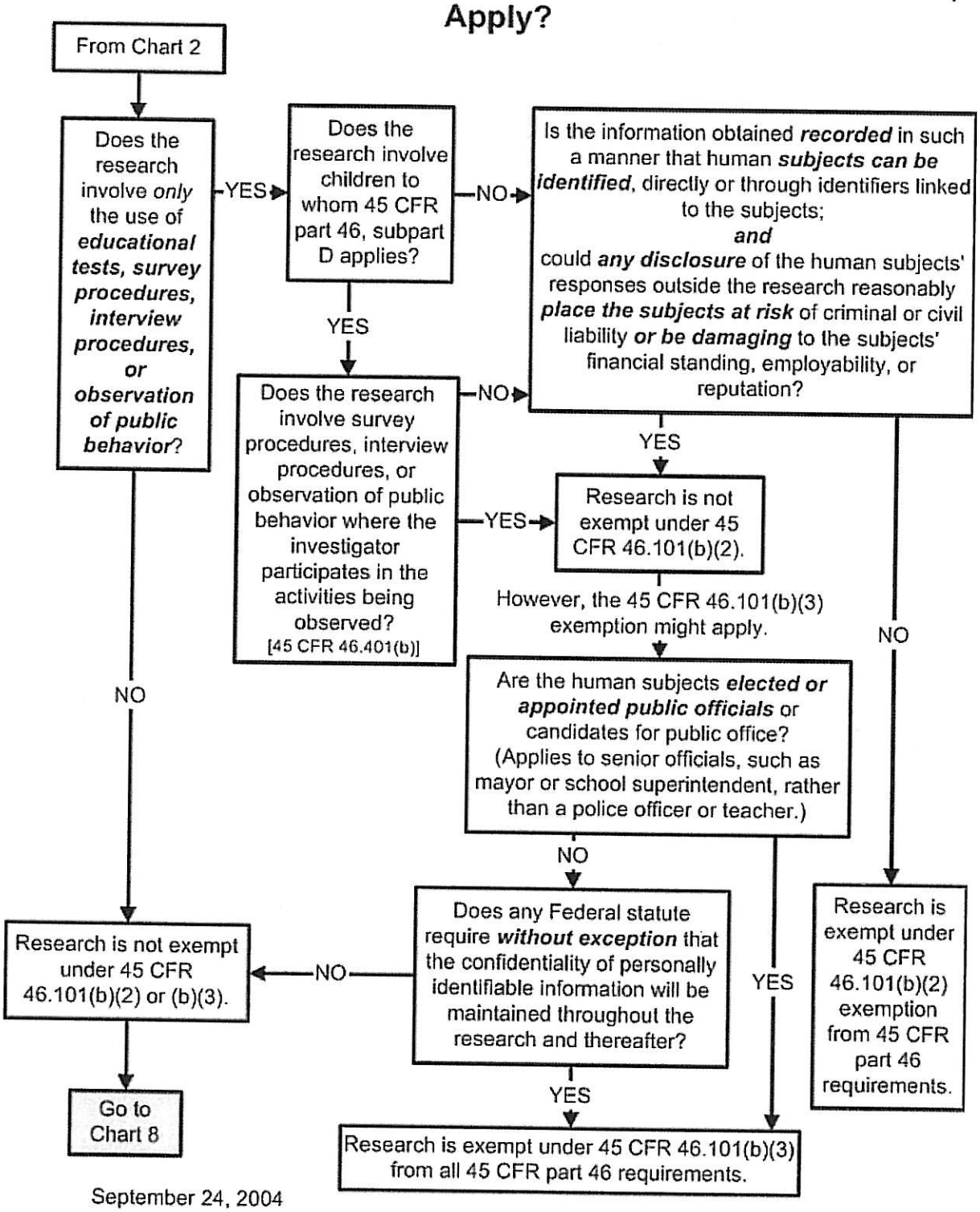


Chart 3: Does Exemption 45 CFR 46.101(b)(1) (for Educational Settings) Apply?



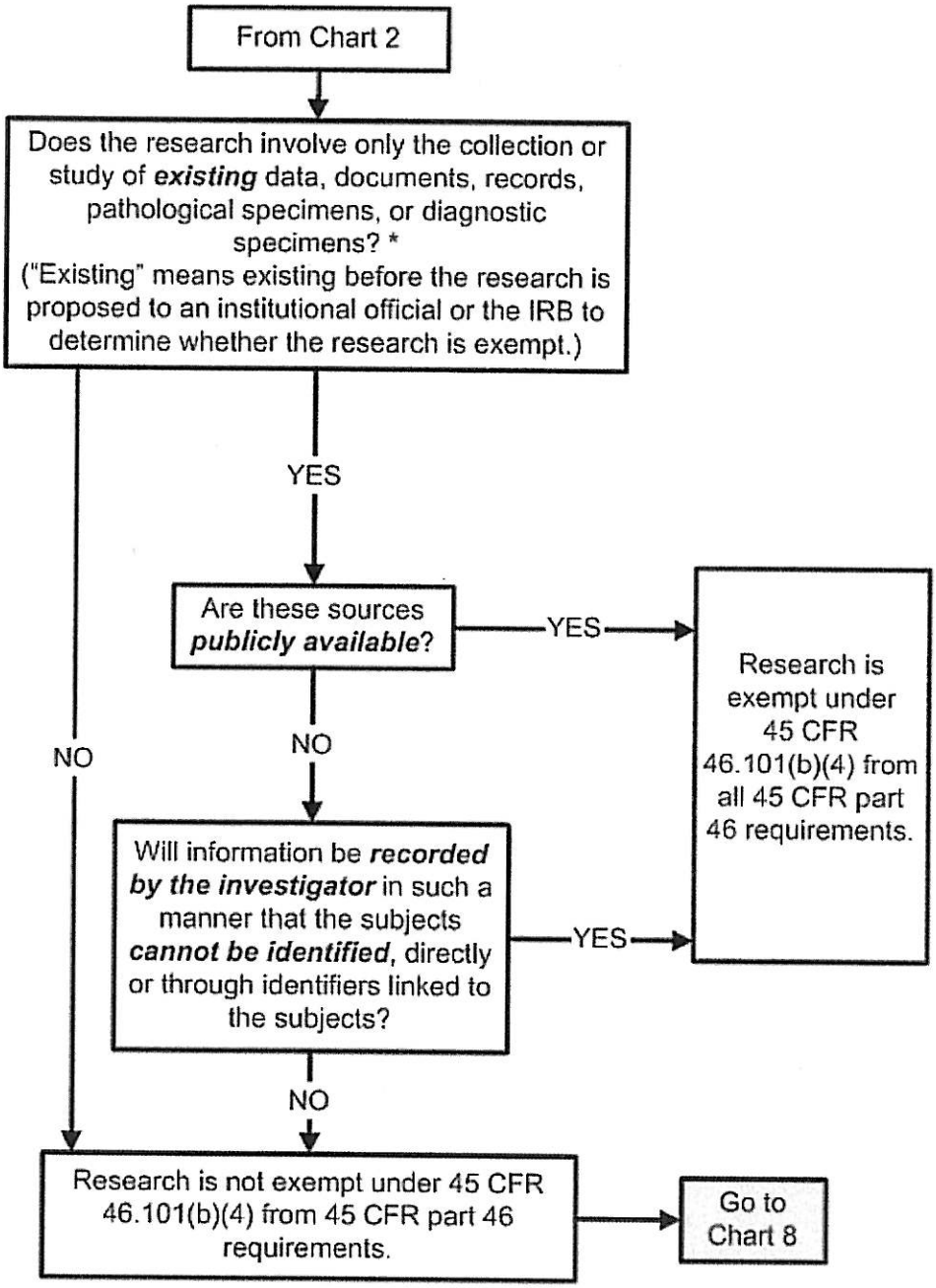
September 24, 2004

Chart 4: Does Exemption 45 CFR 46.101(b)(2) or (b)(3) (for Tests, Surveys, Interviews, Public Behavior Observation) Apply?



September 24, 2004

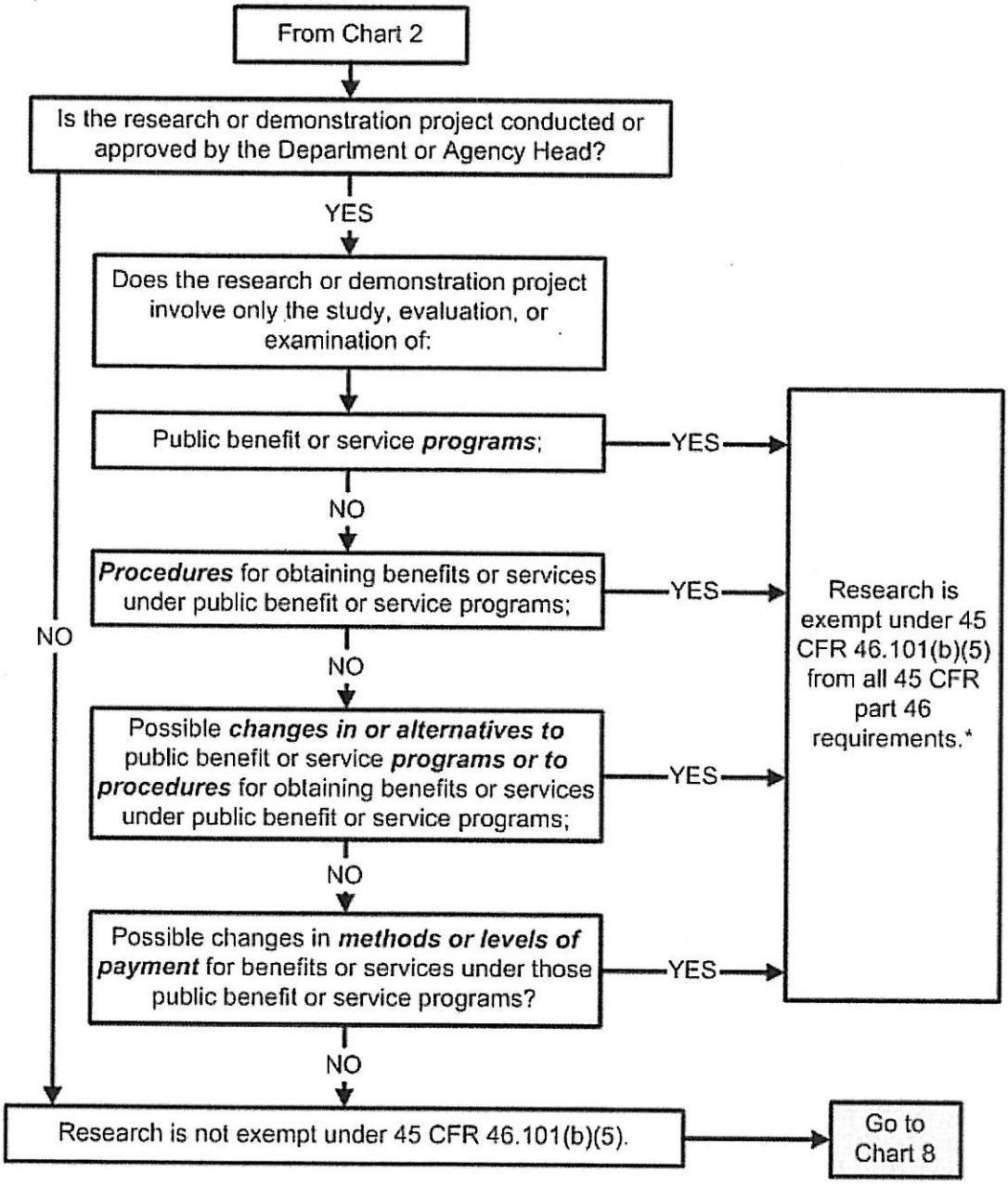
Chart 5: Does Exemption 45 CFR 46.101(b)(4) (for Existing Data Documents and Specimens) Apply?



* Note: See **OHRP** guidance on research use of stored data or tissues and on stem cells at http://www.hhs.gov/ohrp/policy/index.html#tissues and #stem, and on coded data or specimens at #coded for further information on those topics.

September 24, 2004

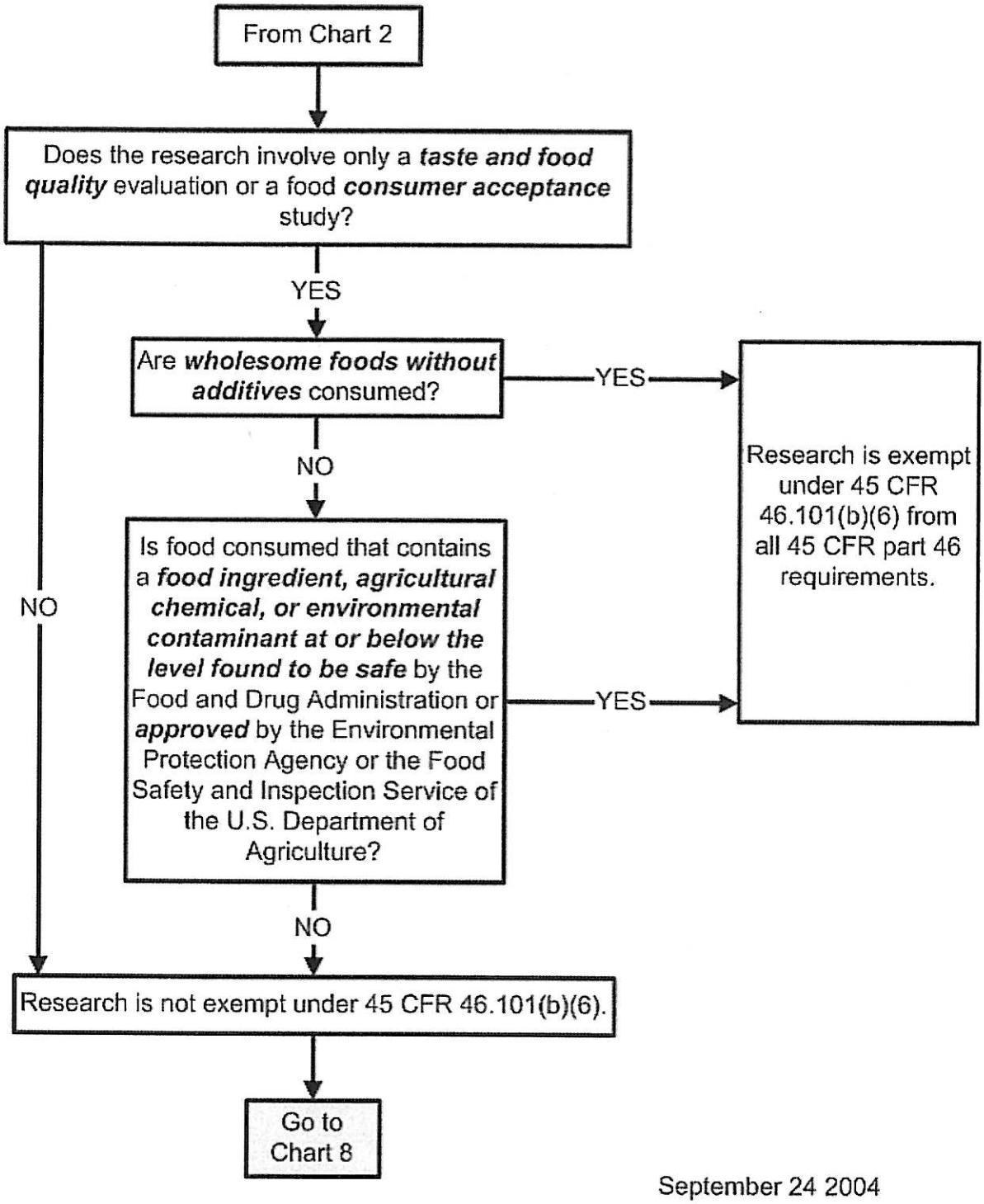
Chart 6: Does Exemption 45 CFR 46.101(b)(5) (for Public Benefit or Service Programs) Apply?



* Note: See **OHRP** guidance on exemptions at http://www.hhs.gov/ohrp/policy/index.html#exempt for further description of requirements for this exemption.

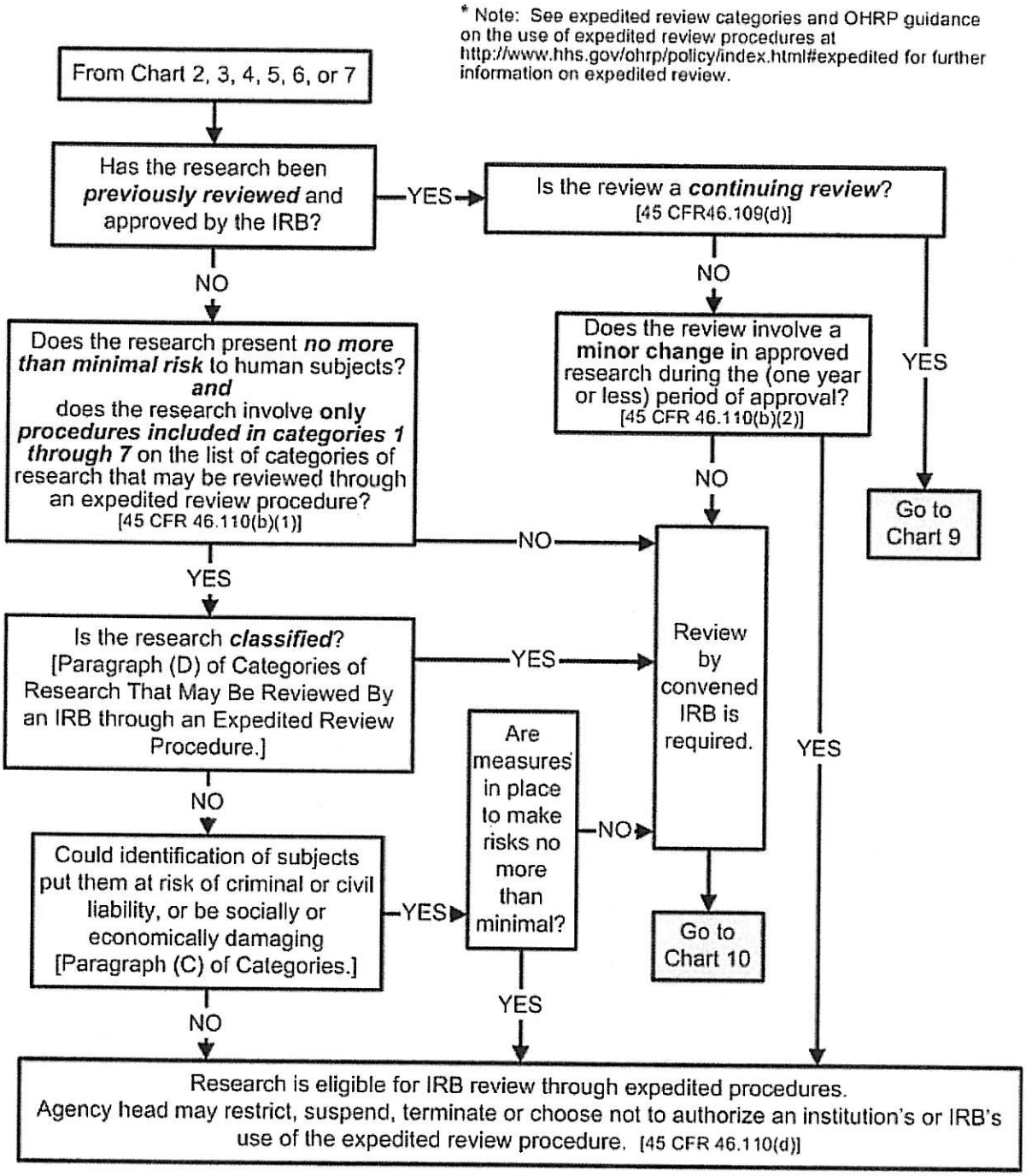
September 24, 2004

Chart 7: Does Exemption 45 CFR 46.101(b)(6) (for Food Taste and Acceptance Studies) Apply?



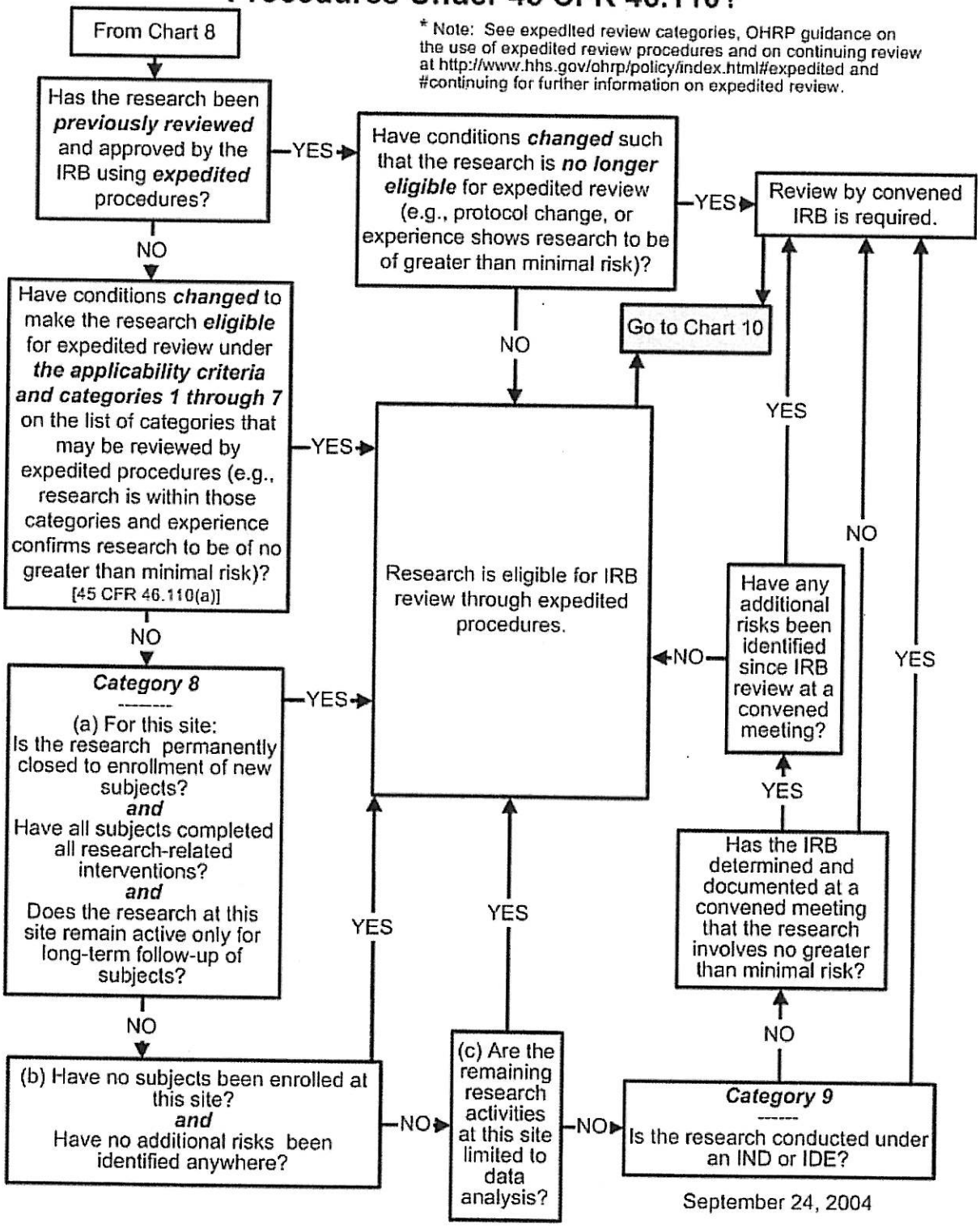
September 24 2004

Chart 8: May the IRB Review Be Done by Expedited Procedures Under 45 CFR 46.110?*



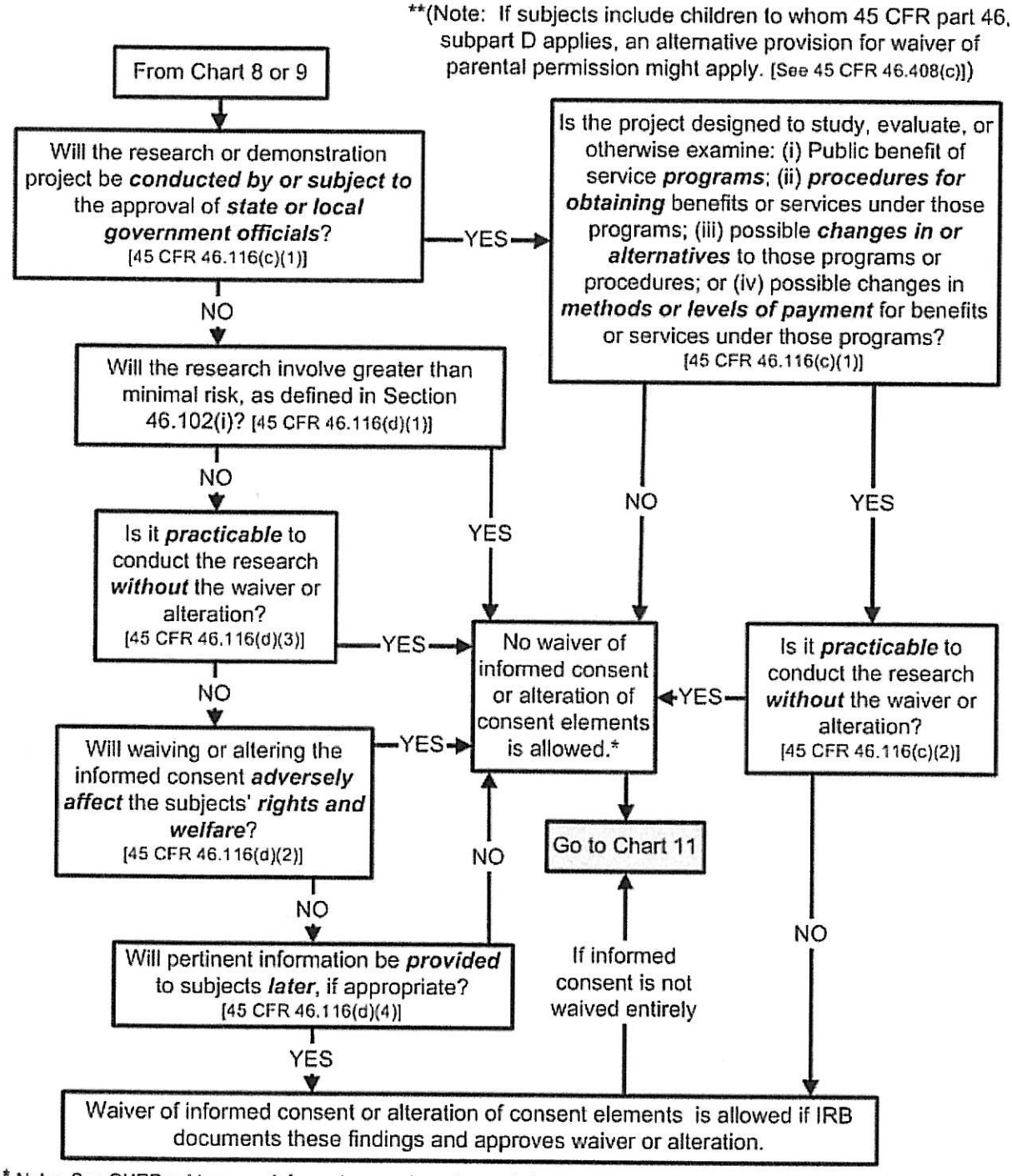
September 24, 2004

Chart 9: Can Continuing Review be Done by Expedited Procedures Under 45 CFR 46.110?



September 24, 2004

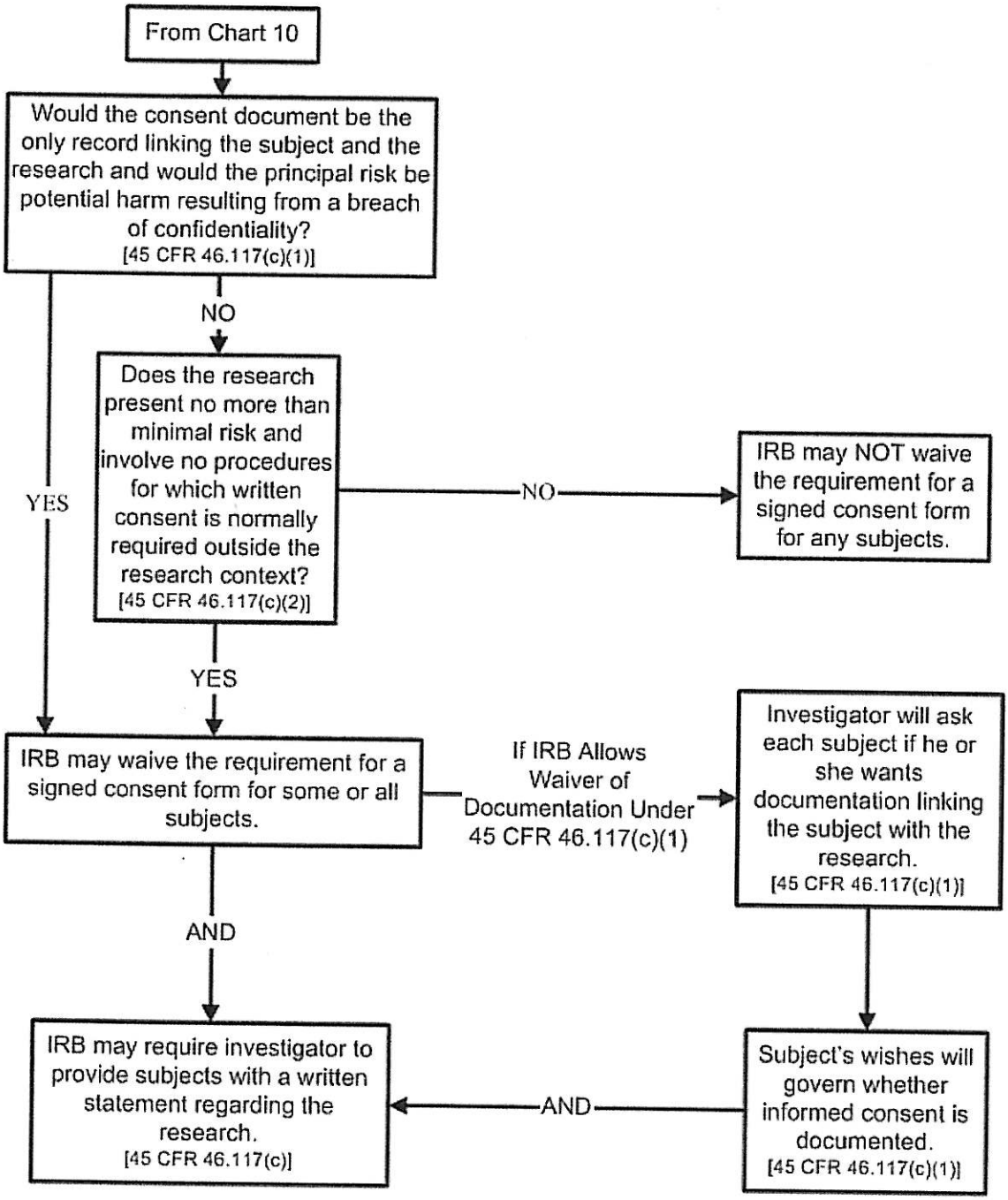
Chart 10: Can Informed Consent Be Waived or Consent Elements Be Altered Under 45 CFR 46.116(c) or (d)?**



* Note: See OHRP guidance on informed consent requirements in emergency research at http://www.hhs.gov/ohrp/policy/index.html#emergency for further information on emergency research informed consent waiver.

September 24, 2004

Chart 11: Can Documentation of Informed Consent Be Waived Under 45 CFR 46.117(c)?



September 24, 2004

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July 17, 2009

Mr. Donald Koch, Director
California Department of Fish and Game
1416 Ninth St.
Sacramento, CA 95814

Dear Mr. Koch,

The future of the Yurok Tribe depends upon the restoration, conservation and management of the diverse marine, riverine, lagoon, and terrestrial ecosystems that have always sustained our people. This means the Yurok Tribe's management, co-management and stewardship of resources on the Reservation and within our Ancestral Territory and associated coastal waters are essential to our continued survival as a people.

The State Government needs to consult with the Yurok Tribal Government and must recognize and affirm Tribal rights within the coastal waters if it wishes to adequately address the concerns and interests of the Yurok Tribe. We look forward to the co-management of any Marine Protected Areas (MPA) designated in coastal waters of Yurok Ancestral Territory and to consulting with the State as the Marine Life Protection Act (MLPA) process and implementation moves forward.

The Yurok People have lived on the North Coast of California since time immemorial, relying on the marine environment in our Ancestral Territory for subsistence and cultural resources. The ocean waters within our Ancestral Territory lie along a 50-mile coastal area from the Mouth of Little River north of Arcata to the Mouth of Damnation Creek south of Crescent City, extending west to the horizon. Yurok traditional cultural properties, including sacred sites, ceremonial areas, subsistence areas, and villages essential to the perpetuation of our culture lie on prominent points along this coast, within coastal freshwater and estuarine environments, as well as within ocean waters.

The Yurok Tribe strongly supports marine protection and is willing to work with the Federal and State governments to co-manage these coastal waters. The groundwork has been laid for such protection through discussions with and research by the Tribe, the National Oceanic and Atmospheric Administration, Redwood National Park, and the Bureau of Land Management with the goal of developing a Marine Sanctuary in these waters. The Tribe recognizes that the State has begun concurrent implementation of the MLPA and plans to designate certain areas within the North Coast region for state protection.

While the Tribe supports marine protection, we have grave concerns about the MLPA process and protected area design. First, the scientific data necessary to design appropriate and successful ecosystem management strategies for the region are lacking. Second, there has been too little scientific review of the impacts of current management strategies in this region. Although discussions have largely centered on fish species, there has been no analysis of current fisheries management that demonstrates deficiencies or the need for additional protection measures. Third, although the approach is supposed to be ecosystem-based, the restricted focus on fish species rather than a broader ecosystem management strategy threatens to replace the existing species-specific management regime with one that is equally inappropriate for successful protection of all marine species. Finally, the Tribe believes that implementation of MPA's without funding for monitoring and enforcement is inconsistent with the law and will lead to greater management problems than we currently face.

While we share the State's goal of developing marine protection, we are concerned that the State's MLPA process does not address the sovereign standing or interests of the Yurok Tribe. To date, there has been no government-to-government consultation requested by the State with any Tribe in California nor is there mention of the sovereign status of Tribes in the MLPA Master Plan or legislation. Tribal interests require government-to-government consultation and cannot be addressed by including Tribes as mere stakeholders in the MLPA process.

There has been no formal recognition of Tribal subsistence, ceremonial or cultural rights. Rather, the focus is commercial and recreational use of coastal waters, which explicitly ignores or rejects Tribal rights and interests. Subsistence and cultural uses are neither commercial nor recreational. These are resources our membership relies upon as primary and secondary food sources, and the continuance of these practices are essential to maintain our identity as Yurok People. The request by EcoTrust to prioritize fishing locations also demands that we monetize our culture, which is something we will not do.

Statements have been made that the Tribe has no hunting, fishing or gathering rights within the Klamath estuary. Similar arguments were made in the 1970s and 1980s by the state of California regarding Indian fishing rights in the main stem of the Klamath River. The State's legal stance, which ignored Tribal rights, severely strained the relationship between the Tribes and the State of California for decades. After a series of Federal and State Law Cases, the Yurok Tribal fishing right was firmly reaffirmed and California does not have the authority to regulate tribal fisheries. Yurok Tribal rights have been widely recognized by the Federal Government, the multi-state Magnuson-Stevens Fishery Conservation and Management Act, (Public Law 94-265), the California Parks and Recreation Department regarding gathering rights in State Parks and many other cooperative approaches. We had hoped that after a decade of collaborative fisheries management efforts on the Klamath River that California would choose the cooperative path laid out in its own Fish and Game Code 16500. "This division is … intended to encourage cooperative agreements to allow protection of the resource among all of the user groups." The Tribe also maintains prescriptive rights to access the coast as our people have done since time immemorial, as well as to continue to fish and gather at usual and accustomed places within our Ancestral Territory.

Any marine protection measures to occur within Yurok Ancestral Lands must consider the points discussed above, as well as include the Yurok Tribe. Please consider this a formal request for government-to-government consultation to discuss the implementation of MLPA.

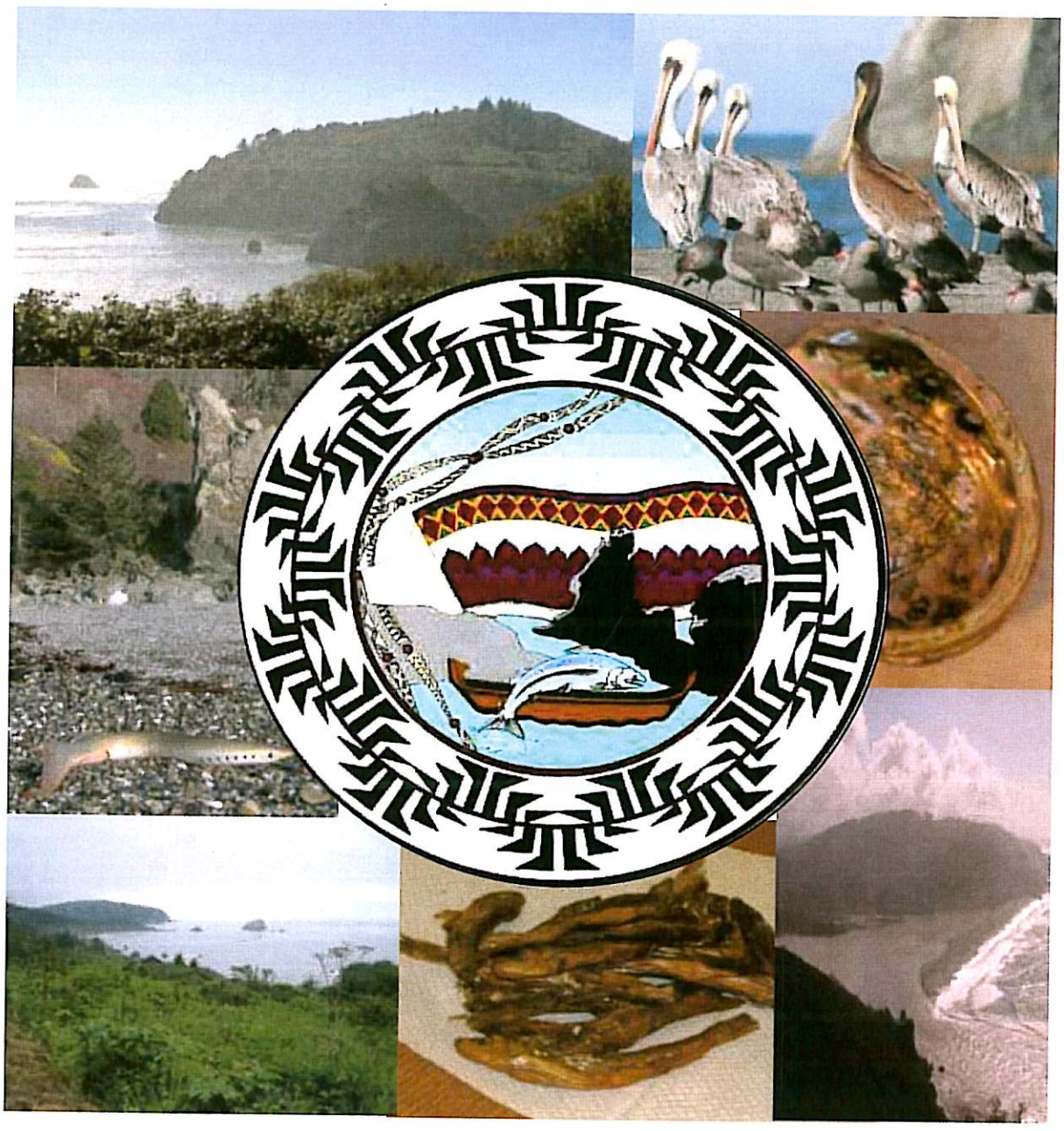
Respectfully,

Maria Tripp

Maria Tripp, Chair

CC: Ken Wiseman, Executive Director, MLPA Initiative

Yurok Tribe Profile

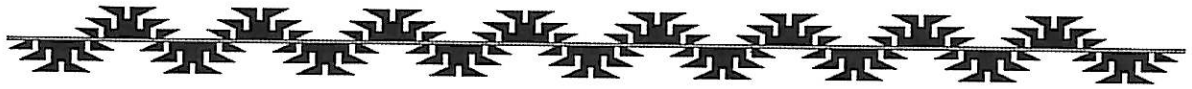


Prepared for the
California Marine Life Protection Act
North Coast Regional Profile
California Tribes and Tribal Communities Appendix
April 2010

All along the rocks were little quohogs and abalone. They use the shells to decorate Indian dresses. You either had to swim for them, or in deeper water take the boat out to get them. Then they broke the shells into chunks, and shined the pieces that were used on the dresses. We used to be able to hear them when they were all decked out for the last Brush Dance. You could hear the dresses talking…Hetch pah arey - the dresses are singing to you.

Anonymous, Respected Yurok Elder (Jarvis and Gates 2007)

Palmer's Point Looking North



Introduction

The Yurok Tribe is the largest federally-recognized Tribe in California and the entirety of Ancestral Territory for us is within the North Coast Study Region, as defined by the State of California's Marine Life Protection Act Initiative (MLPAI). A self-governance Tribe today, we remain on the lands and waters where our ancestors have survived since *Noohl Hee-Kon* (the beginning). This includes the Lower Klamath River and tributary watersheds, high country, coast and lagoons from Little River to Damnation Creek, and off this coastline the entire ocean west to the horizon. Our lifeway and identity are inextricably tied to this place.

This intrinsic relationship, which includes an inherent and traditional responsibility to *peesh-kahl* (the ocean) and the species that live within, stems from the creation of Yurok People and continues unbroken since time immemorial. The Yurok lifeway is rooted in this connection with, and reliance on, the resources for subsistence, health, bartering, tools, ceremonial, medicinal, spiritual, and other customary purposes. Thus, the sustainability and health of the resources and ecosystems of interest under the California Marine Life Protection Act (MLPA) are of supreme importance to the Yurok Tribe as they are inherently connected to the survivability of our lifeway and cultural identity. For Yurok, it has always been essential to sustainably harvest these resources so that they, as well as we, may flourish. As recognized in our Constitution, "This whole land, this Yurok country, stayed in balance, kept that way by our good stewardship, hard work, wise laws, and constant payers to the Creator" (Yurok Tribe 1993). The Yurok Tribe has a traditional, cultural, spiritual, and political responsibility to continue to play a vital role in protecting *peesh-kahl* and managing resources in the manner provided to us by the Creator. These are the underlying reasons why the Yurok Tribe is participating in the MLPAI in the North Coast Study Region. Part of this participation includes submitting this profile, which provides a glimpse of the ecological, governance, cultural, and socioeconomic setting of the Yurok Tribe. We would like to thank the MLPAI for providing a venue for us to tell our story in our own words.

The Yurok

Although today we are most commonly known and referred to as "Yurok" this term is what our neighbors, the Karuk up the Klamath River, called those downriver of them. When early non-Indian settlers passed through Karuk lands, they asked who the people downriver were and the Karuk name for us was used and has sustained. Traditionally when we refer to ourselves generally we say *Oohl*, meaning the people. When we reference people from downriver on the Klamath we call them *Pue-lik-lo'*, those on the upper Klamath and Trinity are *Pey-cheek-lo',* and on the coast *Ner-'er-ner'*. Today we are most commonly known and refer to ourselves collectively as Yurok.

Yurok Country

The traditional worldview of Yurok People conceptualizes the landscape as a flat extent that floats atop and is surrounded by *peesh-kahl*. In this worldview, it is believed that if one travels far enough up the Klamath River, you come to salt water again. If you paddle far enough out across the ocean, where the sky comes down to the water, it is

possible to slip underneath the sky and go to the home of supernatural beings; although these are places mortals rarely go. As the Klamath River is thought to bisect the world, direction is related to the flow of the river (*pets*, "upriver," and *pul*, "downriver"). Along the coast, north of the Klamath River is considered downriver and south of the Klamath is upriver, due to the manner in which the world is conceptualized.

The cultural geography where Yurok customary law applies is our Ancestral Territory. Ancestral Territory encompasses the coast of the Pacific Ocean and lagoons stretching north from Little River in Humboldt County to Damnation Creek in Del Norte County and including from the shore in a westerly fashion to the horizon. In addition to the Yurok coastal lands, Yurok Ancestral Territory extends inland along the Klamath River from the mouth of the river at Requa to the confluence of Slate Creek and the Klamath River and includes certain tributary watersheds, as well as the ceremonial high country, trails, and all usual and customary hunting, fishing, and gathering sites (Yurok Tribe 1993) (see Figure1).

Environments within this cultural geography include marine, coastal, riverine, estuarine, lagoon, forestlands (redwood, fir, oak, cedar, spruce, and pine), prairielands, and high mountains. This cultural geography, which includes the natural resources, is the cultural landscape of the Yurok and we have a traditional responsibility and aboriginal right to manage and utilize these places and resources, which has never been relinquished.

Within this cultural landscape are numerous potentially eligible Traditional Cultural Properties under the National Historic Preservation Act (P.L. 89-665; 16 U.S.C. 470 *et seq*), many of which have been identified contiguously along the entire coast and waters of Ancestral Territory (Yurok Tribe 2009a). Full evaluation and consideration of these potentially eligible historic properties must occur in the environmental review process when implementing the MLPA in order to thoroughly consider impacts to cultural resources, as required by law.

At the time of anthropological documentation, within Ancestral Territory there were over seventy known villages, which are situated along the banks of the Klamath River, ocean streams and lagoons (Kroeber 1925:8, Waterman 1920, Pilling 1978). Each village has its own geographical boundaries, which may include offshore rocks and pinnacles, as well as leaders, family members, and descendents who have traditional ownership to certain places. An example is at *o' sey-gen teen'*, which translates to "*Osegen* fishes". This identifies a coastal fishing site for those from the coastal village of *Osegen*, which is nearly three miles away. Similar examples exist for river fishing locations, hunting grounds, permanent and temporary home sites, seasonal sites, gathering areas, training grounds, ceremonial areas, and spiritual sites among other customary use areas. Within this ownership comes the responsibility to properly care and manage those areas and resources sustainably and in a culturally appropriate manner. For us, this responsibility continues unbroken for many villages and families since *Noohl Hee-Kon*. With this responsibility is the inherent requirement of stewardship and sustainability that is connected and intrinsic to place.

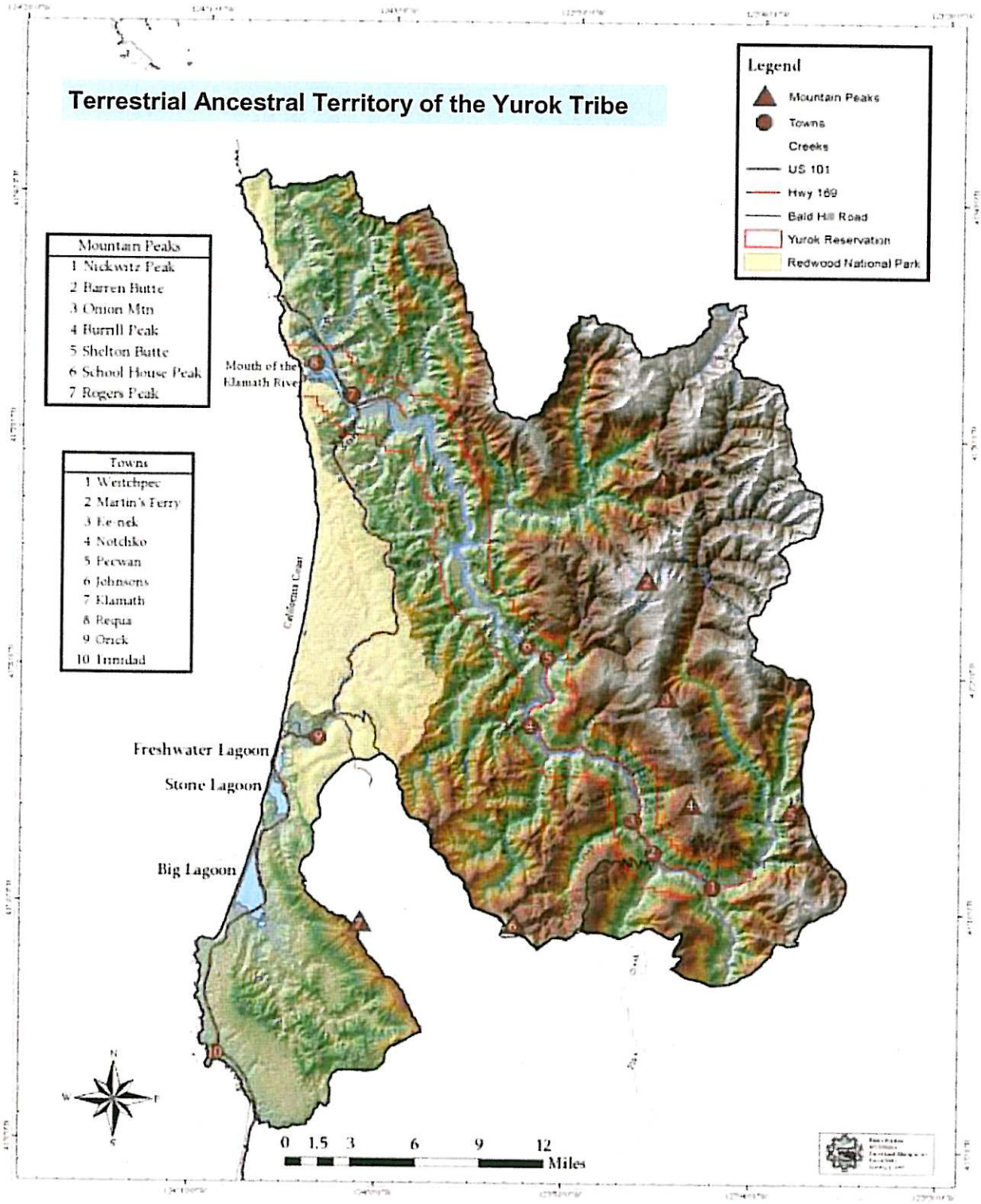
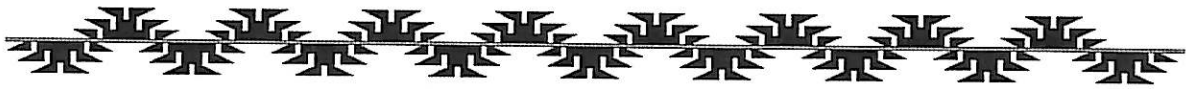


Figure 1: Terrestrial Ancestral Lands of the Yurok Tribe

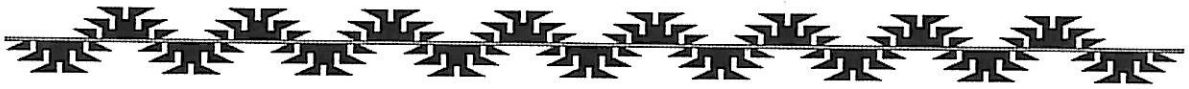


The first documentation of Yurok encountering non-Indians was in 1775 when Spaniards anchored in Trinidad Bay and met the inhabitants of the village of *Tsurau*. Little cross-cultural interaction occurred until 1849 when gold was identified in the Klamath, Trinity, and Salmon Rivers, which brought an influx of miners and settlers to the region, eager to remove us from our homelands by any means. Governmental policies and actions by settlers and miners to exterminate, colonize, corral, assimilate, and remove us from lands within Ancestral Territory continued, despite formally establishing lands to be reserved for the Yurok as early as 1855. These land designations by the federal government culminated in 1988 with the Hoopa-Yurok Settlement Act (HYSA), which explicitly identified the Yurok Reservation to include one mile on each side and including the Klamath River, beginning near the confluence of the Trinity and Klamath Rivers at Weitchpec, continuing downstream approximately 45 miles, and extending into ocean waters offshore the river mouth at Requa, for the sole purpose and use of the Yurok Tribe. Although there is a portion of the Yurok Reservation that includes the mouth of the Klamath River and the ocean waters offshore, the Reservation includes lands primarily along the Klamath River and not the coast. Although the Tribe does not currently hold fee title to those Ancestral lands outside the Reservation, aboriginal and customary use rights to hunt, fish, gather, pray, access, manage the cultural and natural resources, and other uses of those areas has never been ceded and the responsibility, connection, rights, and uses of those places persists. In addition to reaffirming a landbase along the Klamath, the HYSA lead to the formal establishment of the Yurok Tribe, as the sole Tribal government responsible for Yurok citizens.

Yurok Tribe Governance

The Yurok Tribe is federally-recognized as a separate and independent sovereign nation within the territorial boundaries of the United States. This sovereignty is inherent and flows from the pre-constitutional and extra-constitutional governance of the Tribe. Early federal policy and U.S. Supreme Court case law recognizes that Tribes retain the inherent right to govern within political boundaries (*Worcester v. Georgia* (1832)) and that power to interact with Tribes is vested with the federal government (*Cherokee Nation v. Georgia* (1831)). This established governmental structure, which recognizes the sovereign and political independence of Tribal nations, and maintains the regulation of Indian Affairs is with the federal government and not states has been affirmed on several occasions by the U.S. Supreme Court (*California v. Cabazon Band of Mission Indians* (1987) (citing *United States* v. *Mazurie* (1975) and *Wash. v. Confederated Tribes of Colville Indian Reservation* (1980)).

There is also a continuous affirmation through federal judicial decisions of the sovereign authority of Tribes over their citizens and their territory that extends beyond the boundaries of a reservation (see *United States v. Mazurie* (1975)) and this authority is recognized in our Constitution (Article 1, Section 3). Furthermore, it has been found that, "The sovereign governing authority of Tribes over their citizens is independent of location and this authority is an independent barrier to the exercise of state jurisdiction (see *White Mountain Apache Tribe v. Bracker* (1980)).



Stemming from this inherent right to self-govern and authority over citizens, is the ability to self-determine citizenship (see *Santa Clara Pueblo v. Martinez* (1978)). Yurok citizenship is determined by governing tribal law and recognized by the Yurok Tribal Council as the sole authority to determine citizenship, however determined appropriate. Tribal citizenship then is more accurately understood as a political classification and not a racial classification. This conceptualization of "Indian," meaning a citizen of a federally-recognized Tribe, as a political classification has been upheld in countless instances, including in the U.S. Supreme Court (see *Morton v. Mancari* (1974)), and most recently affirmed this year by the state in a California Attorney General's Opinion (No. 07-304, March 8, 2010).

The largest federally-recognized Tribe in California, the Yurok Tribe has over 5,500 members. A self-governance Tribe that promulgates and administers our own laws and programs, the Yurok Tribe established a formal government and Constitution in 1993. The Tribal citizenship is represented by a Tribal Council that consists of seven district representatives, a Vice-Chair, and a Chair. District representation is as follows:

- Weitchpec District: includes all ancestral lands located upriver of Coon Creek on the Klamath River. The ancestral villages included in this district are *Otsepor, Lo'olego, Weych-pues, Pekwututl, Ertlerger, Wahsekw, Kenek, Tsetskwi,* and *Kenekpul.*
- Pecwan District: includes all ancestral lands downriver, including Coon Creek on the Klamath River from the Weitchpec District to and including Blue Creek on the north side of the river and Ah Pah Creek and its drainage area on the south side of the river. The ancestral villages included in this district are *Merip, Wa'asel, Ke'p-el, Murekw, Himetl, Kohtskuls, Keihkes, Meta, Sregon, Yohter, Pekwan, Kolotep, Wohtek, Wohkero, Serper, Ayotl, Nagetl*, and *Erner.*
- Requa District: includes ancestral lands located downriver on the Klamath River from the Pecwan District and north of the center line of the Klamath River. The ancestral villages included in this district are *Tlemekwetl, Stawen, Sa'aitl, Ho'pau, Omenok, Amenok, Tmeri, Rekwoi* and *Omen.*
- Orick District: includes all ancestral lands located downriver on the Klamath River from the Pecwan District and south of the center line of the Klamath River. The ancestral villages included in this district are *Turip, Wohkel, Otwego, Wetlkwau, Osegen, Espau, Sikwets, Orek, Keihkem, Ma'ats, Opuyweg, Tsurau, Sumeg* and *Metskwo.*
- North District: includes all land north of the ancestral lands, east of the Pacific Ocean, west of a north-south line passing through Chimney Rock and within 60 miles of the ancestral lands.
- East District: includes all land east of the ancestral lands, east of a north-south line passing through Chimney Rock, east of the generally north-south mountain ridge passing through Schoolhouse Peak, and within 60 miles of the ancestral lands.
- South District: includes all land south of the ancestral lands, east of the Pacific

Ocean, west of the generally north-south mountain ridge passing through Schoolhouse Peak, and within 60 miles of the ancestral lands.

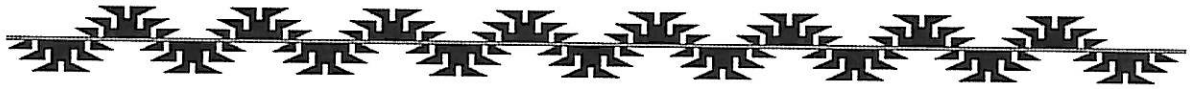
Traditional Yurok law is woven into our Constitution, which mandates the Council to "[p]reserve forever the survival of our tribe and protect it from the forces which may threaten its existence; uphold and protect our tribal sovereignty which has existed from time immemorial and which remains undiminished; reclaim the tribal land base...; preserve and promote our culture, language, and religious beliefs and practices, and pass them on to our children, our grandchildren, and to their children and grandchildren on, forever; provide for the health, education, economy, and social wellbeing of our members and future members; restore, enhance, and mange the tribal fishery, tribal water rights, tribal forests, and all other natural resources; and insure peace, harmony, and protection of individual human rights among our members and among others who may come within the jurisdiction of our tribal government" (Yurok Tribe 1993). It is the duty and responsibility of the Tribal Council, government, and staff to uphold the Tribal Constitution, as well as traditional Yurok law.

Yurok Coastal Resources

The marine, coastal, estuarine, and lagoon ecosystems of interest provide an abundance of resources that are relied on for subsistence, health, ceremonial, spiritual, medicinal, bartering, tools, and other customary purposes. All of these resources are Tribal trust species and it is the responsibility of the federal government, as the trustee for the Tribe, to protect and ensure the provision of these Tribal trust species in amounts sufficient for the Tribe. These species fall under the auspices of federal protection in that the federal government is obligated to fulfill commitments and responsibilities to Indian tribes as extended to tribal resources.

From a young age, Yurok are taught the interrelationships between species, their lifecycles, the seasons for harvest, proper harvest practices, and how to properly respect that which has been provided. There is an understanding of certain habitats and substrata evident in language associated with the cultural landscape. This is evident in the meaning of *pekw-tehl*, "piled up rocks" relating to a sea-stack that got this name because the strata was broken up in more or less flat masses. Another example is *e'n:lumn'w*, meaning "slanting," because this is a point where the slanting strata run out into the ocean. Places may also be named because of the abundance of a certain resource. This includes *o-riokwi'ts,* meaning "where he angles," referring to a place plentiful in perch (Waterman 1920).

In order to more completely document our coastal resources, the Tribe conducted over 35 interviews, primarily with elders, from 2004-2009 to document coastal resource use, including associated locations, uses, associated taboos and/or laws, harvesting techniques, processing, and other cultural information specific to Yurok coastal resources (Sloan and McConnell 2004-2006, 2007-2009). The information obtained was georeferenced and documented Yurok uses along the *entire* coast and offshore waters of Ancestral Territory and to some extent, in adjacent lands. From those interviews, over



130 various species and/or subspecies were identified relating to marine, coastal, estuarine, and lagoon ecosystems, as being utilized for various purposes by citizens of the Yurok Tribe. The following is a list of common names for some of those species found in these ecosystems to provide examples of species. This list should no way be deemed exhaustive, only illustrative:

Abalone (several)
Barnacle, (several)
Barnacle, acorn
Barnacle, giant
Barnacle, gooseneck
Black turban snails
Blue heron
Boccaccio
Bullhead
Cabazon
Candlefish
China hats
Chiton (several)
Clam, butter
Clam, freshwater
Clam, Geoduck
Clam, horseneck
Clam, littleneck
Clam, quohog
Clam, razor
Clam, softshell
Clam, Washington
Crab (several)
Crawfish
Dentilium
Duck (several)
Eel, California moray
Eel (Pacific lamprey)
Eelgrass
Flounder, starry
Greenling (several)
Halibut
Kelp, Bull
Kelp, Giant
Limpet (several)
Lingcod
Mussel, California
Mussel, freshwater
Night fish
Octopus (several)
Olivella
Oyster
Perch
Periwinkle
Rockfish (several)
Salmon, Chinook
Salmon, Coho
Sea anemones (several)
Sea cucumber
Sea lion, California
Sea lion, Stellar
Sea Palm
Sea urchin (several)
Seal, harbor
Seaweed (several)
Shrimp (several)
Steelhead
Sturgeon, green
Sturgeon, white
sucker fish
Surf fish
Surfperch (several)
Trout, cutthroat
Turtle (several)
Whale, grey
Wolf eel

Many of these resources are taken as subsistence foods and provide for the health and wellbeing of our people. Subsistence may be thought of those resources that are relied on as primary and/or secondary foods. The amount taken is accounted for by the need, family members, preservation capabilities, level of effort, and for shore-based extraction, the amount one is capable of packing. As an anonymous Yurok citizen accounted in 2007, "*I think moderation, of course, is the key for everything in our lives. I mean, you never want to have too much of anything. You know, in gathering, you gather just what you need, in moderation. You can't gather more than what you use – only what you need to get the job done*" (Jarvis and Gates 2007). The importance of moderation and related cultural laws enforced through story, specifically of ocean fish, is highlighted in a story about the crow.

> *In the beginning when there were no people, trees or animals or birds on the earth, there were nothing but spirits. Wah-peck-oo-May-aw (the Great Spirit) was surrounded with spirits. When the proper time had arrived, Wah-peck-oo-May-ow, decided the world must be populated with humans, birds, animals, fish, trees and all things that eventually came to be. He called the spirits together, and there were many, even more than when the*

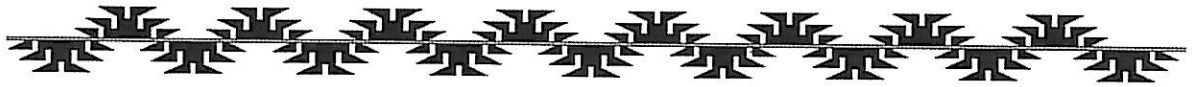
stars, and he told them that the time had arrived when the world must take on its burdens and fulfill its purpose. Each spirit would be permitted to choose what it wanted to be after Wah-peck-oo-May-ow had described the various elements and duties. Some wanted to be people, some wanted to be trees.

One spirit wanted to be the most beautiful bird in the world, to be a crow with a beautiful red crest, red shoulders on his wings, a large red spot at the base of its tail, and red legs. Wah-peck-oo-maw said to this spirit, "You will have to stand the test before you can be such a bird. Every spirit must stand a rigid test to prove that he is worthy to take on the life and appearance of that which he chooses to be. You must therefore fly to the ocean with your eyes shut, alight in the shallow water which is left after the waves have started to recede. You must then wade up to your knees, or even a bit deeper, and then come back to me without having opened your eyes, and I will judge your worthiness."

Crow flew away to the ocean and waded into the depth of his knees. He felt something bumping his legs and became curious, He opened his eyes and looked down and saw small fish trying to eat the short feathers which grew just above his knees. He had been flying for one moon with his eyes shut, and he was very hungry. Crow decided he would eat just one little fish. He was sure nobody would know. And anyway, he thought, Wah-Peck-oo-May-ow could not be so unjust as to penalize him for that. The little fish tasted so good that he ate another, and another, and another, until he was filled. The Crow heard a rushing noise as a heavy wind on the shore, and turning around beheld Wah-Peck-oo-May-ow watching him.

Crow waded ashore and confessed to Wah-Peck-oo-May-ow, declaring his penitence. Wah-Peck-oo-May-ow however, said "you have not obeyed me and are not worthy of your request, so you may be a crow but you cannot have any red feathers, nor red legs, and all the crows who will come into this world will forever be jet black from the tips of their beaks even to the ends of their claws." So it is that one never sees a crow with any other color than black. (Warburton and Endert, 1966).

This respect for moderate harvest and take, not just for us, but for the Tribal people up the river as well, is recognized in the building of the fish weir, as well as the First Salmon Ceremony. The First Salmon Ceremony commenced with the taking of the first fish at the village of *Wetlkwau* at the river mouth. After this had taken place, no one could gather any more except for immediate consumption until word traveled back that the fish had made it all the way up to the headwaters of the Klamath. Once we knew that those upriver villages and Tribes had fish, then we could gather for winter storage. This ensures that not only our neighbors and other animals have sustenance, but also ensures there is a healthy and significant population of fish returning to the river and



successfully spawning.

There are many Yurok families that reside inland along the Klamath River or more remote distances that come to the coast seasonally to harvest. There are also Yuroks and people of other Tribes from great distances that trade with those Yurok residing on the coast for a variety of resources. Even when resources are used for bartering, moderate take that is supportive of healthy habitats and sustainability are reinforced attributes both traditionally and contemporarily. Yurok coastal trade goods may include *key-ges* (dried surfish), *key'ween* (eels), *pee'ee* (mussels), *lep-kwoh* (dried seaweed), and *ney-puy* (salmon) for example. This traditional right to barter in regards to in-river salmon specifically has been formally acknowledged for us both by the federal and state government.

This federally-reserved in-river subsistence and commercial allocation to the fishery is codified in the California Fish and Game Code (16530-16532). Since 1994, the Yurok Tribe has assumed responsibility for the management of its fisheries from the Bureau of Indian Affairs and the U.S. Fish and Wildlife Service. With harvest, management, and regulation guidance from the Tribe's Fisheries Program and a Natural Resources Committee, the Yurok Tribal Council manages both the commercial and subsistence in-river fisheries. The commercial fisheries provides limited income to participating Tribal citizens and the Council ensures through allocation, an adequate amount of fish for subsistence use, particularly for elders, before determining the commercial allocation. Management is conservative and consistent with the prospective density of the runs, as the primary concern is the health and sustainability in the populations, which in some years has meant the Tribe withheld from allowing any commercial take.

Other uses for these resources are not consumptive, but are extractive. Although rare to this locale and more often obtained through trade from the north, an example includes the use of *terk-term* (dentilium) as traditional money, which can settle debts, pay a dowry, and purchase items. *Terk-term* is also used most commonly today on necklaces worn in traditional ceremonies, such as *u pyuewes* (White Deerskin Dance), *woo-neek-we-ley-goo* (Jump Dance) and *mey-lee* (Brush Dance). Other similar examples include various shells, such as Olivella, also used in ceremonial regalia along the coast and river, even among neighboring Tribes.

There are also a variety of non-consumptive uses of these ecosystems and associated resources, many of which are conducted in a spiritual, ceremonial, and/or cultural context. Examples include the use of a particular place for ceremony and prayer, the viewshed from a place for spiritual use, areas for spiritual training, and places related to traditional stories and songs. The intrinsic value and connection to the ocean for us is something that can never be replaced. As Yurok Councilmember, Dale Ann Frye Sherman states, "*When we have an ache in our hearts, it can't be consoled or healed in any other way or in any other place than if you go to the beach*" (Sherman, pers. corr. 2010). Not only access to these places, but also the health of the areas in an unpolluted state is of necessity. Furthermore, any interaction and take from these environments

must be recognized in a spiritual context. Regardless of the purpose(s) of interacting with *peesh-kahl,* each activity and/or use is fundamental to our cultural identity and our spiritual well-being. As such, all customary uses and ceremonial, religious, and spiritual places must be protected under applicable federal, tribal, state, and/or local law.

Methods of Take

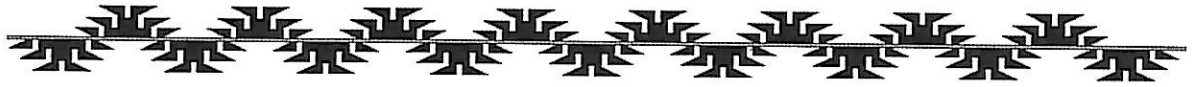
When we take, it is done with respect and reverence to the Creator and the spirit of the animal being. There is a prayer of thanks and in that is an inherent understanding that the being taken is providing its life for us, but also a recognition that its spirit lives on and in many cases is reborn. As Robert McConnell, Sr., Yurok Tribal citizen and ceremonial dance leader recognizes, "*When you take an abalone there is a prayer of thanks. In that is an inherent understanding that abalone will provide life as sustenance, but also will take on a new life, in the regalia. It is still alive*" (McConnell, Sr. pers. corr. 2010).

Taken with prayer, marine and coastal resources are collected from shore and, traditionally, using ocean canoes made of redwood. These ocean canoes were primarily used to travel up and down the coast and to offshore rocks, such as *skey-kwo-na* (Redding Rock) so that resources may be harvested and/or other customary uses may occur. For example, ocean canoes were used to hunt sea lions and collect mussels at certain offshore rocks. Today there are few ocean canoes possessed by the Yurok Tribe and citizens rely on modern boats for ocean harvesting. Nonetheless, the knowledge of canoe building is retained by several Yurok and there are many river canoes used today for ceremonial, transportation, barter, dowry, and fishing purposes. Estuarine and lagoon resources are collected by boat or shore. Both ocean and river canoes are traditionally used in the Klamath, Little River, and Redwood Creek estuaries, although modern boats are primarily utilized today. A few examples of shore-based harvest methods may include gathering in the intertidal zone, harvesting beached whales, setting a basket, using a dip net, throw net, A-frame net, gill net, hook, spear, harpoon, seines, and angling.

Yurok Fish Wars of the Klamath River

As discussed, this continued connection and use of traditional resources for a variety of purposes since time immemorial provides for the cultural identity and lifeway for us as Yurok. Despite threats to our existence, including those stemming from federal and state policies, we have continued to be a strong and resilient people that will continue to protect the lands and ways of our ancestors. Nowhere is this more evident, perhaps, than in historic attempts by the State of California, and the Department of Fish and Game specifically, to regulate Tribal fishing on the Klamath River.

The attempted suppression and regulation of Yurok Tribal fishing on the Klamath River by the State of California began in 1934. During this time, Klamath River Indians were banned from commercial fishing and gill netting, however, Yurok continued to fish, despite the threat of being arrested and jailed. This desire by the state to assert jurisdiction over Yurok riverine and estuarine fishing in the Klamath River, coupled with



the continued contention by Yurok fishermen that the state was without such authority and the total refusal to halt a traditional Yurok activity, lead to several judicial findings, which affirmed the lack of State authority to regulate these activities (see *Elser v. Gill Net Number One* (1966); *Mattz v. Arnett* (1973); *Arnett v. Five Gill Nets* (1975)).

The substance of these cases culminated in 1978 when the U.S. Fish and Wildlife Service implemented a moratorium on commercial gill net fishing on the Klamath River, which incited what is commonly referred to as the "Fish Wars." Local and federal police came in force with full riot gear to attempt to halt traditional Yurok fishing, but we would not cease practicing our culture and providing for our families. Once it was realized that the expense and personnel costs for enforcement were unsustainable and that Yuroks were not going to stop fishing, a different approach was taken out of necessity. This approach has been codified in California Fish and Game Code 16500:

The Legislature finds:

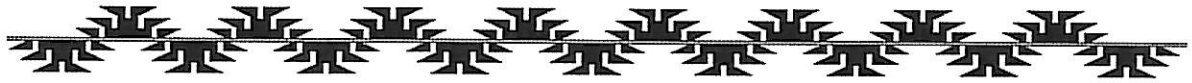
(a) Jurisdiction over the protection and development of natural resources, especially the fish resource, is of great importance to both the State of California and California Indian tribes.

(b) To California Indian tribes, control over their minerals, lands, water, wildlife, and other resources within Indian country is crucial to their economic self-sufficiency and the preservation of their heritage. On the other hand, the State of California is concerned about protecting and developing its resources; protecting, restoring, and developing its commercial and recreational salmon fisheries; ensuring public access to its waterways; and protecting the environment within its borders.

(c) More than any other issue confronting the State of California and California Indian tribes, the regulation of natural resources, especially fish, transcends political boundaries.

(d) In many cases, the State of California and California Indian tribes have differed in their respective views of the nature and extent of state versus tribal jurisdiction in areas where Indians have historically fished. Despite these frequent and often bitter disputes, both the state and the tribes seek, as their mutual goal, the protection and preservation of the fish resource. This division is an attempt to provide a legal mechanism, other than protracted and expensive litigation over unresolved legal issues, for achieving that mutual goal on the Klamath River.

A similar approach and recognition should be sought in the MLPA to avoid unsustainable enforcement and jurisdictional conflict as the similarities between what occurred on the Klamath River and what is being attempted in the MLPA are apparent. Rather, it should be acknowledged that both the state and tribes seeks a mutual goal of protecting the resource and focus on how the resources may be co-managed to meet this goal, while preserving Yurok culture and avoiding a confrontation based on cultural survival and dual exertion of jurisdiction.



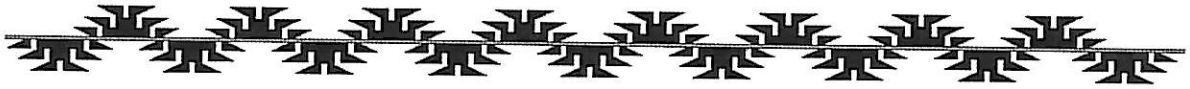
Yurok Tribe Natural Resources Management Capacity

The Yurok Tribe takes an active role in restoration, management, monitoring, and enforcement for the protection of cultural and natural resources within the entire Klamath Basin watershed, with an emphasis on Ancestral Territory. The significant scientific and management contribution and capacity of the Yurok Tribe is recognized by Tribes throughout the nation, the Department of the Interior, California state agencies, and local counties and non-profits. This recognition by the Department of the Interior is memorialized in a recent agreement with the Tribe in the areas of science, data collection, research, and analysis of the Klamath River and watershed in order to inform policy.

The capacity of the Yurok Tribe includes several robust natural and cultural resources programs with over 80 personnel in these fields alone. This includes Fisheries, Forestry, Environmental, Watershed Restoration, Water Quality, Pollution Prevention, Community & Ecosystems, Wildlife, Cultural Resources Protection, Heritage Preservation, Repatriation, Geographic Information Systems (GIS), Land Management Programs and/or Departments.

A specific example of this type of work conducted by the Tribe is from the Water Division of the Environmental Program, which monitors water quality, including discharge, turbidity, conductivity, and temperature in the lower Klamath River Watershed on a continual basis. This Division collects data at over 20 stations located in the Lower Klamath Watershed, including the mainstem, tributaries, estuary, and at the river mouth. The objectives for this long term monitoring project are to establish baseline conditions, assess long-term trends, to provide flow regimes as related to fisheries, and to monitor long term restoration projects. U.S. Environmental Protection Agency recognizes permit certification authority under the Clean Water Act to the Yurok Tribe for projects occurring within the Yurok Reservation. Furthermore, the Water Division is a leader in the Klamath Basin for sampling and reporting on the presence of *Microcystis aeruginosa*, a toxic blue green algae that has unknown impacts to animal species. The presence and levels of this algal toxin, as well as a host of other chemical toxins of concern identified in Yurok riverine and coastal species of interest is currently under study.

Another example is the restoration work of the Fisheries and Watershed Restoration Programs, which conduct large and small scale riparian and stream habitat restoration projects, including invasive plant species removal, in the lower tributaries of the Klamath River. These projects seek to restore lands within Ancestral Territory that have been severely impacted by private timber companies and other resource extraction activities. Assuming a stewardship role within Ancestral Territory, these Tribal departments work collaboratively on contract by agencies, such as Redwood National and State Parks, as well as Green Diamond Resource Company, a large private timber company. The purpose of these restoration projects are to increase channel and bank stability, increase sediment storage capacity, reduce sediment delivery, improve salmonid



spawning and rearing, increase habitat complexity, and improve spawning gravel quality (Yurok Tribe 2009) in an effort to restore fisheries populations of the Klamath Basin.

The Tribe is very active in cultural resources protection throughout Ancestral Territory and collaborates with federal, state, local, non-profit, and community organizations in order to protect these cultural places and resources. We were the first Tribe in California to have a Tribal Historic Preservation Officer, under the National Historic Preservation Act and have a very active repatriation program under the Native American Graves Protection and Repatriation Act. We are also the only Tribe to maintain a State Informational Center, which houses all cultural survey and report information for Humboldt and Del Norte Counties, on behalf of the State Office of Historic Preservation. Additionally, we have enacted our own ordinance, policies, procedures, and management strategies in order to proactively protect cultural resources throughout Ancestral Territory.

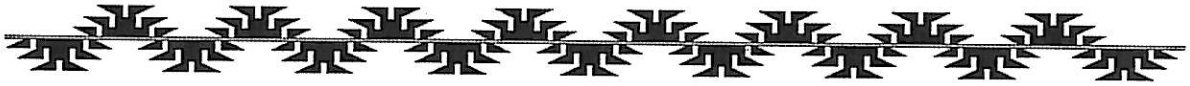
The Tribe has the regulatory and enforcement abilities to self-regulate. Enforcement of natural and cultural resources laws and/or values is provided by the Tribe's Public Safety Department. Officers are cross-deputized with both Humboldt and Del Norte Counties, as well as enforce the in-river fisheries. The Yurok Public Safety Department operates in accordance with established Department Policies and Procedures, appropriate Tribal Ordinances, applicable Federal Law, applicable Judicial Case Law, and applicable California Law. Additionally, the Yurok Tribe has an established Tribal Court that can hear various criminal, civil, and regulatory issues.

Socioeconomics

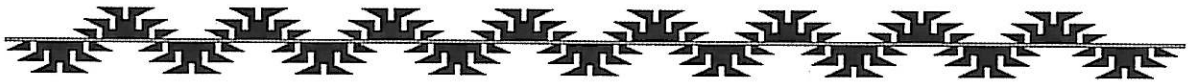
The Tribe and associated entities provide a wide variety of services to the community and employs over 300 people in Humboldt and Del Norte Counties. Although the Yurok Tribe is able to provide services and some employment, the income levels on the Reservation are staggering. In the 2000 U.S. Census, the per capita income for the portion of the Reservation in Del Norte County was $13,707 and for Humboldt County was $6,894. Similarly, unemployment levels are alarming as the unemployment rate for the entire Reservation is 75% (Bureau of Indian Affairs 2001). More recent data (Yurok Tribe 2006), suggest that 80% Tribal Members living within Ancestral Territory lack food security, as defined by Harrison *et al.* (2002). Thus, the need for traditional sustenance is required not only for cultural survival, but also critical for use as primary and secondary food sources.

Conclusion

The Yurok Tribe maintains an inherent responsibility to continue to manage and rely on these resources, as well as the management ability to do so. Continuous use and management of these places since time immemorial has allowed for an unbroken connection that may not be restricted in any way. The position of the Tribe is clearly articulated in Tribal Resolution, which states, "The Yurok Tribe has never ceded our traditional rights to access, fish, harvest, gather, enjoy, and steward the coastal and marine plant and animal communities, or the right to access and conduct subsistence,



ceremonial and other cultural uses within the lands and waters of the United States of America and States within." Moreover, "the Yurok Tribe utilizes and stewards coastal and marine areas and resources within Ancestral Lands in a sustainable manner and has done so since time immemorial...The inalienable aboriginal rights of Yurok People to access and use traditional coastal and marine areas predate and supercede all state and local laws and constitute a vital component of our ancestral and cultural inheritance...[T]he Yurok Tribe is aware of and supports the need to protect and restore marine and coastal plant and animal communities...The Yurok Tribe maintains a federally-reserved fishing right and the United States of America maintains a trust responsibility to protect our rights, including the right to take fish...Implementation of the MLPA, particularly no-take areas, poses an imminent threat to the cultural and religious freedom, the health and wellbeing, and the cultural identity of Yurok Tribal members who require access to and use of coastal and marine areas to harvest, gather, enjoy, and otherwise use these areas for the preservation and continuation of our traditional ways of living..."As such, "The Yurok Tribe does hereby support the recognition of the primacy of tribal subsistence, ceremonial, and cultural uses and rights of the Yurok Tribe and members. This body supports the amendment of the MLPA and/or its guiding document to ensure that Tribal aboriginal rights and traditional cultural ways, as well as federally-reserved fishing rights and the federal trust responsibilities are recognized and protected."



Bibliography

Bureau of Indian Affairs.
2001 Labor Statistics. Correspondence with F. Doka, Jr.

Harrison, G.G. and C.A. Disorgra, G. Manalo-Leclair, J. Aguayo, and W. Yen.
2002 "Over 2.2 Million Low-Income California Adults Are Food Insecure; 658,000 Suffer Hunger." Policy Brief. *UCLA Center for Health Policy Research*. November.

Jarvis, Destry and Thomas Gates.
2007 "The Yurok Tribe and the Marine Resources of the North Coast of California; Elder Interviews." Klamath, CA.

Kroeber, A. L.
1925 Handbook of the Indians of California. Reprinted 1976. Dover Publications, New York, NY.

McConnell, Sr., Robert.
2010 Personal Correspondence. Yurok Tribe Heritage Preservation Officer.

Pilling, Arnold R.
1978 Yurok. In, Handbook of North American Indians, Volume 8, California. Edited by, Robert F. Heizer, Smithsonian Institution, Washington, D.C.

Sherman, Dale Ann Frye.
2010 Personal Correspondence. Yurok Tribal Council. South District.

Sloan, Kathleen and Robert McConnell, Sr.
2004-2006 Yurok Coastal Resources Oral History Project. Klamath, CA.

Sloan, Kathleen and Robert McConnell, Sr.
2007-2009 Yurok Coastal Resources Inventory Project. Klamath, CA.

Warburton, Austen D., and Joseph F. Endert.
1966 Indian Lore of the North California Coast. Pacific Pueblo Press, Santa Clara, CA

Waterman, T.T.
1920 Yurok Geography. Reprint 1993, Trinidad Museum Society, Trinidad, CA.

Yurok Tribe
1993. Constitution of the Yurok Tribe. Klamath, CA.

2006 Healthy River, Healthy People, Traditional Foods Survey. unpublished data. Klamath, CA.

2009 Annual Report. Klamath, CA.

2009a Personal Correspondence. Yurok Tribal Heritage Preservation Officer.