N C T C A

Northern California Tribal Chairmen's Association

California Biodiversity Council:

It has recently come to the attention of the Northern California Tribal Chairman's Association (NCTCA) that the California Biodiversity Council is holding a meeting to evaluate the Marine Life Protection Act Initiative and the private/public funding relationship. We are disappointed that the meeting's invitation list appears not to have included invitations to the Tribal Governments of California. Similarly, it does not appear that Tribal representatives were appointed to any of the panels. Without making too fine a point, this seems to be a continual ongoing flaw of the California MLPA process. Ironically, the longer California goes in not recognizing Tribes the less the California MLPA process will be considered a model elsewhere.

We are pleased that many of the accomplishments of the Initiative and the private public partnership will be recounted and examined. There is much to celebrate. A lot of hard work has accomplished the designation of many Marine Protected Areas. The MLPA staff is to be commended for an unusually high level of dedication. The public participation process was vast, of many disciplines and skill sets, and attempts were made to represent local communities.

The Tribes continue to have a serious concern that under the Levels of Protection (LOP) risk assessment methodology endangered pelagic fin fish are found not to be in need of protection. The Tribe's position is that Coho, eulachon and other endangered species would benefit from a different risk assessment process that concludes no more than "incidental take" of endangered species be

allowed in MLPA designated Marine preserves. We believe that the scientific methodology and data driven approaches used by U.S. Fish and Wildlife and the California Fish and Game Commission in support of no take for COHO in the marine environment are the correct ones. The rejection of such approaches in the LOP assumptions was a serious mistake.

Both California and the Tribes have a significant interest in maintaining salmon species abundance and diversity. Salmon are part of the Native American way of life on the North Coast and of absolute importance to the Tribes of the North Coast Region. The LOP risk assessment methodology concludes that salmon were not in need of any special protection. The Tribal position is that salmon congregate in the ocean in complex patterns relating to season, food, and proximity to the river from which they were spawned. There are occasions when the use of marine sanctuaries would provide a valuable protective tool to maintain and enhance our salmon populations. Ironically, the only major marine reserve to protect salmon is the one mile square no take zone in front of the Klamath River wisely adopted by the California Fish and Game Commission long before the MLPA process began. The Tribes support the analytical and fact driven science used by the California Fish and Game Commission that concluded special protections for salmon in the marine environment are a valuable protective management tool. The Tribes reject the MLPA LOP risk assessment assumptions which deny the need to protect salmon in MLPA preserves.

The MLPA has been interpreted legally by the State of California to prevent the separation of Tribal from recreational uses. This has created a situation where there is no consideration of Native American religious, ceremonial, subsistence, cultural harvesting or tribal sovereignty. This lack of legal separation has prevented data and marine species surveys from showing no harm since time immemorial from traditional Native American harvesting. The LOP assumptions effectively mean Native American traditional harvesting can never qualify for any take. Worse still, popular Indo-

European species were often inconsistently judged by a lesser standard in order to allow take within a Marine Protected Zone.

The MLPA Science Advisory Team (SAT) process was one of modeling assumptions. The Tribal perspective is that data driven quantifiable science and traditional subsistence harvesting methods should have been given greater consideration. The Tribes were frankly never allowed to present quantifiable scientific evidence on the modeling assumptions. Our PhDs and consulting scientists were turned down from presenting their data. This was in addition to the lack of consideration of traditional harvesting practices which contain significant and time tested resource management skills. If the Tribes would have been given the opportunity to present, many of the above issues could have been addressed and successfully resolved to the benefit of the State of California, Native peoples and to our mutually beloved Marine Resources.

The Tribes hope that the evaluation process will address post-MLPA reforms that will better protect endangered species, salmon, and Native American harvesting. The Tribes intend to continue our marine resource management and traditional harvesting. We remain optimistic that the State of California will acknowledge Tribes' inherent right to gather and sovereignty as this State's first people. We are hopeful that our Tribal marine resource protection efforts and sovereignty of the Tribes will in the long run be acknowledged, appreciated, and supported by California.

The NCTCA wants to personally thank the Brown Administration and Secretary of Resources John Laird for making extraordinary efforts to maintain traditional subsistence, cultural, ceremonial and religious harvesting. The Administration is meeting with the Tribes on a regular basis as we attempt to work out a mutually agreeable approach. We are looking forward to working with the California Resources Agency solutions and greatly appreciate their efforts.

Sincerely,

Northern California Tribal Chairmen's Association Tribal Chairmen,

John Green, Vice Chairman

Elk Valley Rancheria

Leonard Masten, Chairman

Hoopa Valley Tribe

Arch Super Chairman

Karuk Tribe

Kara Miller, Chairwoman

Smith River Rancheria

Garth Sundberg Chairman

Trinidad Rancheria

Tommy O'Rourke, Chairman

Yurok Tribe

Issues to Consider:

Deadlines: One of the biggest benefits of the private public relationship was the establishment of deadlines to insure the process comes to conclusion.

One of the biggest challenges was that deadlines proved challenging

Complexity

Due Process

Burden of Proof Issues

Conflicts of Interest