Marine Life Protection Act Initiative

Public Comments Submitted through

January 12, 2010

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4 January, 2010

Ken Wiseman, Program Director
California marine Life Protection Act Initiative
1416 9th Street, Suite 1311
Sacramento, CA. 95814

Enclosed for your consideration is a copy of a paper I recently wrote on behalf of the men and women who earn their livelihood from the sea near the port of Crescent City. Their voices should be heard, their concerns addressed and consideration be given to interests which have a profound effect not only upon the fishermen, but also those dwelling ashore who derive a living from the sea.

Beyond question, there have been instances of overfishing which have reduced a species to a number below which a sustained population is impossible. It is strongly urged that such is not the case with respect to the proposed Marine Life Protected Area which concerns the Crescent City fishermen. Empirical observations made by the local fishermen, based upon their day to day catch, indicate a plentiful population of the ground fish which are the subject of their fishing efforts.

Somewhere between complete closure and totally unrestricted fishing lies a middle ground which will answer the needs of a sustainable fish population and allow sufficient catch to permit a sustainable fishing industry to serve the economic needs of the local community.

As one of the spokesmen for the local fishermen, it would be a privilege to meet with you in person and discuss a reasonable solution to this problem. If a personal meeting is not possible, then correspondence opening of lines of communication would be deeply appreciated.

I thank you in advance for your courtesy and cooperation.

Yours truly,

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Office of the Secretary
JAN 12 2010
RESOURCES AGENCY OF CALIFORNIA

HARRY LIDDICOTE, JR.
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MARINE LIFE PROTECTION AREAS
A BALANCED APPROACH

At first inspection, there appears to be a conflict in the interests between those who gain their livelihood from the sea and those in charge of the preservation of marine species. It is not necessarily so. Fishermen no more want to see the basis for their economic welfare disappear than do the conservationists who are devoted to the preservation of marine life. It is herein argued that the two interests are not mutually exclusive.

Some might advocate a complete closing of an area, a Draconian approach to the problem which has been applied under certain critical circumstances with justification due to the imminent extinction of a particular species.

On the other hand, some people might be in favor of unrestricted fishing "rights" harking back to the days of freedom of the seas and other expressions of personal freedom.

Neither approach is wholly satisfactory under any given set of established facts.

If consideration is given to the interests of fishermen, the conservation of a viable fish population, economic impacts upon the fishing community ashore, and safety, it is possible that a reasonable balance of divergent interests can be attained.

The first step in determining the necessity of a MLPA would be the study of the species of marine life to be protected and a current and accurate assessment of the population and its reproductive potential. The number of commercial fishermen involved, the method of fishing and the size of the catch would then be factored into an equation the result of which would permit fishing to an extent that would insure a sustainable fish population over time. It makes no sense to the fishermen to overfish an area to the extent that the very means of their livlihood is extinguished. But arbitrary restriction of fishing on the grounds that a population is endangered without hard evidence makes no sense either.

The sea offshore from Crescent City is turbulent, cold, stormy and often extremely dangerous. The farther out to sea one travels, the rougher and more dangerous it gets. Restricting inshore fishing would force fishermen to move farther out in the ocean. In the event of an accident, rescuers would be subjected to greater danger themselves, rescue attempts would be more costly and response time would be extended in a situation where often, minutes are the difference between success and failure of a rescue operation. The usual craft involved in local

fishing of the type addressed herein are generally smaller, under 30 feet, and not well suited to excursions in the outer waters found off Crescent City and the surrounding shoreline.

The County of Del Norte, where the waters in question are located has gone on record in support of the local fishing industry. (Resolution # 2008-035, 27 May, 2008.) The County's resolution cites the economic importance to the community of continued fishing the inshore waters and points out that Federal restrictions put in place in 1998 have apparently been sufficient to guarantee a sustainable fish population. Del Norte County has the highest level of poverty, 23.6%, in the State of California and an unemployment rate of 12%. It is a small county with a population of about 26,000. Any further diminution of economic gain would have serious consequences.

Morro Bay on the central coast of California faced the same issues and problems. In 2003, the Nature Conservancy, working together with local fishermen, devised the groundfish project to address the concerns of conservationists and the fishermen. While at first the fishermen were a bit unhappy with the Conservancy's intervention, they came to the understanding that the solution proposed was in everyone's best interest. Michael Bell, manager of the Conservancy's Central Coast groundfish project states: "Sustain the fishery and you sustain a livlihood. If our fisheries collapse, it's bad news for fish, it's bad news for people who make their living off fish, and it's bad news for people who eat fish." Perhaps a look at the Morro Bay groundfish project would provide some insight into a workable solution for the Crescent City fishery.

I am grateful to the local fishermen for affording me this opportunity to research and comment upon an issue that concerns all of us.

_____

Harry Liddicote, Jr.

From: Mark Nicks
Sent: Friday, January 08, 2010 9:00 AM
To: MLPAComments
Subject: individual fisheries evaluation

Dear sirs, As it appears a comprehensive evaluation must have been done on the salmon fisheries to allow for fishing between Caspar and Mendocino, where is the data on the other fisheries? What conclusions have been reached to warrant more closures for the sea urchin fisheries? What conclusions have been drawn about the health of all the already closed areas in and around Caspar? What has been the impact of the Laura Bennett-Rogers outplanting of diseased abalone in Van Damn and Tomales,etc., (we are well aware of the Southern cal impact)?

Has the Sierra Club submitted data to quantify their opinion, or is it just an agenda, and isn"t worth the paper it is written on? Why has the dept of fish and game abrogated their jurisdiction on marine issues to Julie Packard and her underlings?

At the SAT meetings in Santa Barbara alot of incorrect information about the economic impact along the North Coast was presented,(ie that a salmon fishing ban would have only a minor impact on the local economies, which after speaking to many of the local store owners , members of the chamber of commerce, explained in clear concise dollars and sense figures, that it was a major impact. that the fisheries had already been closed long enough to do a real evaluation of that particular closure had not even been taken into account. there dollar figures were not even 1/3 of the actual impact on the economy.

I , to the best of my abilities, have been civil and concise in my questions. After at least 6 or 7 attempts to ask pertinent questions at the SAT and BRT forums, I have been thanked profusely for asking questions, and , yet not one answer.

THANK YOU FOR LISTENING AND ANSWERING,
29 year sea urchin diver

From: SAL
Sent: Monday, December 28, 2009 11:53 AM
To: MLPAComments
Subject: CMLPAI

I feel that the united states government has played out a great roll of maintaining our beautiful California coast. Now that the damage is done we the first people of this great state of California "Native Americans" will have to endure once again the price of government neglect of our coastal waters. It's time to put a stop to commercial investment and only permit those who are willing to harvest what's needed for themselves or family, just as my ancestors have done for before 1692. Change is in the amount of what one can harvest. Who the hell needs 100lbs of seaweed, 32 abalone, 100lbs of kelp , and 60lbs of fish during open season. It should available in these amounts for native American tribes for ceremonial gatherings but not just one person. And do away with commercial investors. This is what will save our coast. We don't need break the bank scientist just some common sense. I wish my ancestors before me had the chance to have had their knowledge of stewardship documented and to be pass on for other generation to carry out. But instead we have scientist reinventing the wheel.

Native Pride
Potter Valley Tribe

From: Larry Knowles
Sent: Monday, December 28, 2009 12:23 PM
To: MLPAComments
Subject: Need for Fort Bragg SAT and BRTF meetings

To Whom it May Concern,

We notice that all the meetings for the BRTF and the SAT are in cities to the north. Please plan at least half of the meetings for Fort Bragg from now on. We are a large constituency and seem to be the ones to constantly travel to Crescent City and Eureka.

Thank you,

Regards, Larry Knowles
Owner, Rising Tide Sea Vegetables

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December 28, 2009

Ken Wiseman, Executive Director
California Resources Agency
MLPA Initiative
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

RE: Marine Life Protection Act

Dear Director Wiseman,

The Del Norte County Board of Supervisors is on record supporting government to government coordination through the adoption of a Coordination Resolution. By way of this letter, the Board of Supervisors expresses its support of the Smith River Rancheria regarding the MLPA Initiative. The Smith River Rancheria (SRR) recently outlined in a letter to you dated November 19, 2009, a number of comments and questions regarding the MLPA. The SRR letter included issues related to tribal sovereignty.

The Del Norte County Board of Supervisors has acknowledged the sovereignty of the Smith River Rancheria (SRR) in continuing partnership between our two governments and hopes the Resources Agency also understands the rights of the SRR in the implementation of the MLPA. Due to the limited timeframe and expedited schedule for implementing the MLPA this Board finds it important that you engage the SRR in discussions in order to address those issues that the SRR has outlined in the 11/19/09 letter asserting their status as a Sovereign Nation.

If you have any questions or concerns please contact the Board of Supervisors through the Office of Administration. Thank you for your attention to this matter.

Sincerely,

Gerry Hemmingsen, Chair
Del Norte County
Board of Supervisors

cc: Smith River Rancheria
Zack Larson & Associates

Patrick Higgins
Humboldt Bay Harbor, Recreation and Conservation District Commissioner
4649 Aster Avenue
McKinleyville, CA 95519
W (707) 822-9428
H (707) 839-4987

December 20, 2009

Jason Vasques, Associate Marine Biologist
MLPA Science Advisory Team Staff Support
350 Harbor Blvd.
Belmont, CA 94002

Re: North Coast Science Advisory Team Deliberations on Size and Spacing of Marine Protected Areas and Habitat Replication Requirements

Dear Mr. Vasques,

I am writing to you as an individual for expediency, but I assure you that the questions I am posing are on behalf of the governments and concerned community members of the North Coast. I request that this letter be circulated to all individuals on Marine Life Protection Act (MLPA) appointed North Coast Science Advisory Team (SAT) and that issues herein be specifically discussed at their next public meeting. The concerns I will address below are regarding larval drift theories and spacing requirements, size of MPAs and the need for following replication guidelines similar to those previously adopted in other regions.

Spacing Guidelines and Larval Drift

The lengthy theoretical discussion of larval drift at your Eureka December 17 SAT meeting had absolutely no foundation. As pointed out by one of the SAT members, the currents of the North Coast are strong and unique and the linear distance model has no basis here. Figure 1 is CenCOOS oceanographic data from between Shelter Cove and Point Arena showing a large circular current or gyre. Gyres are fairly stable features that oscillate and can shift somewhat seasonally. Longshore currents along much of the length of the North Coast reverse from southerly to northerly with seasons. Ekman spirals also develop seasonally that can cause larvae to be moved perpendicular to the coast (Hilborn et al. 2006).

I question other more fundamental assumptions regarding the larval drift model: 1) that larvae must land in an MPA to recruit or 2) that there must be an MPA for larvae to be generated; both assumptions are unmet. For the sake of discussion, let us consider a larvae drifting north linearly from an MPA sited south of the Mattole River. If it were to settle near Cape Mendocino and successfully recruit to the juvenile fish stage, under current fishing pressure it would not likely be harvested until after it spawned, possibly several times. Also, millions of larvae are currently generated along our wild coast without benefit of MPAs, which undermines the corollary assumption. We believe that the statement of Hilborn et al. (2006) that “there is now no evidence that current fishing practices upset the ‘natural’ biological diversity of the marine ecosystem” applies to the North Coast region.

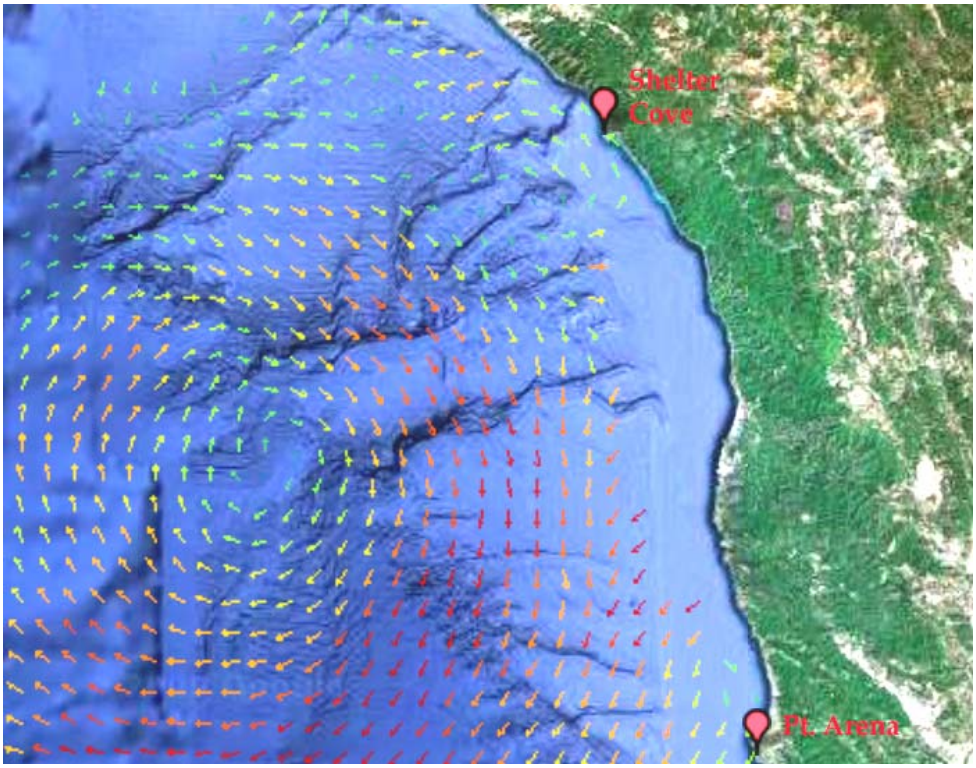

Figure 1. Surface current data (shown as arrows) from the Central Coast Ocean Observatory System (CenCOOS) between Pt. Arena and Shelter Cover show a large gyre or circular pattern in currents that tends to concentrate productivity.

MPA Size Guidelines Used Previously Not Appropriate for North Coast

I strongly favor the arguments of Dr. Ray Hilborn, Professor of Fisheries at the University of Washington, and Hilborn et al. (2006) provide the following insight regarding the size and spacing of MPAs under the California MLPAI:

> "The MLPA statute provided no explicit guidance to address the 'SLOSS' (single large or several small) MPA debate, but suggested that decisions on size and placement be made by a master plan team and regulatory agencies, with the involvement of stakeholders. The science guidance provided by the MLPA Initiative Science Advisory Team (SAT) clearly favored the SS (several small) approach in its interpretation of the law. The SAT advice produced a very extensive network of MPAs in each of the MPA network proposals, with a heavy emphasis on nearshore rocky habitat protected in marine reserves."

We in the North Coast region prefer fewer large MPAs and believe they are more likely to achieve the conservation objectives of the MLPA. Small preserves would not succeed in protecting fish populations because of migration of adults out of the MPA and fishing edge effects. Effort shift further complicates impact analysis and needs consideration. There may be a few North Coast areas of special biological significance that should be protected at a smaller scale, but a few well placed large preserves away from ports along remote sections of our coast will serve all aspects of the MLPA mission better than numerous small preserves; and it protects our economy and way of life.

Hilborn et al. (2006) noted that previous SATs had “failed to consider the ecosystem benefits of existing fishery management and failed to integrate existing fishery regulations and restrictions into its MPA size and spacing guidelines and analysis of MPA proposals.” North Coast MPAs need to be considered in conjunction with the Rockfish Conservation Area (RCA). That is, if large preserves run out to the 3 mile limit of State waters, conservation benefits of closure to rockfish take from the 120 foot contour depth line to the 200 mile limit of the U.S. waters protect needs to be considered. Therefore, all conservation needs for water depths greater than 120 feet are already covered by the existing RCA and there is no other activity that jeopardizes the natural balance in waters of those depths. We hope the North Coast SAT will be open to this argument because the RCA closure is based on species that have rebuilding programs that span several decades into the future. Future adaptive management studies could help decide whether more protection is needed after RCAs are discontinued.

Replication of Habitat Requirements

If North Coast residents come up with a workable strategy for fewer large conservation areas, then the area of habitat types protected should be the criteria for judgment of sufficiency, not that habitats have to be in numerous small preserves. The SAT seemed perplexed on December 17 about the possibility of allowing most significant protection to occur in fewer, larger MPAs. I do not think that the theoretical basis of the need for replication can be validated and hope the SAT will also reconsider this convention and its requirement for application on the North Coast.

The SAT process as manifest in your recent Eureka meeting gave me concern because of the pressure to adopt previously formulated guidelines rapidly, but I was relieved that size and spacing decision were delayed. The MLPA has been a major source of controversy and angst in our community, but it has caused us to focus on nearshore ocean conservation needs. We think we will meet these needs through the reserve design we will offer as an External MPA Array proposal. We will provide a scientific framework and a workable plan founded on local knowledge and data and hope the SAT will not constrain itself arbitrarily in judging it.

In the event that we feel there are fatal scientific flaws in the adopted North Coast SAT guidelines, and their imposition may create unknown biological consequences and potentially substantial economic harm, you can expect the North Coast region to challenge the outcome by every means possible.

Sincerely,

Patrick Higgins

Hilborn, R., R. Parrish, and C. Walters. 2006. Peer review of California Marine Life Protection Act (MLPA) Science Advice and MPA Network Proposals. May 25, 2006. Prepared for the California Fisheries Coalition, 1621 B Thirteenth Street, Sacramento, CA 95814. 65 p.

From: julielundback
Sent: Friday, December 18, 2009 11:07 AM
To: MLPAComments
Subject: Why Marine Parks

Maybe you should take your Marine Biology and scientific data you have to save the ocean by creating more sustainable marine plant life to help marine animals.
The ocean floor is always changing and what grows and supports life in one area , will not be as plentiful in five to ten years later. Fishermen should have the right to fish those areas while they are bountiful.

From: Bill Bernard
Sent: Friday, December 18, 2009 10:15 AM
To: MLPAComments
Cc: Jim Martin; ---Allen Jacobs; Diane Pleschner-Steele
Subject: LOP for abalone NC study area

Diane, please post.

At the NC SAT meeting yesterday in Eureka, the SAT moved to adopt the LOP for the NC study region. Abalone was down graded this time from the Moderate level of protection to moderated-low and reason for the reduction stated and characterized was: abalone in the NC study area tend to be more shallow in depth, occurring greater in concentrations less than the De Facto Reserve for the NC study area and do not receive the benefit from the de Facto reserve from human use. While it is some what true abalone, red abalone in particular tend to become more shallow in depth in the northern bio region as defined being north of the Mattole river, perhaps the moderate low level of protection is correct. However, red abalone populations south of Mattole river, the southern defined NC bio region, do tend to extend into greater depths beyond the De Facto reserve in fairly good numbers. Therefore, the adoption of the moderate low LOP for the red abalone fishery is incorrect for the NC bio region. The correct and more appropriate LOP for red abalone in particular for the southern region of the NC study area from the Mottle to Point Arena should be adopted at the moderated level of protection just as the level of protection for the red abalone fishery is for the NCC study area.

B.Bernard, AAG

From: Bill Baker
Sent: Monday, November 30, 2009 1:53 PM
To: MLPAComments
Subject: Retain appropriate sport angling access

Sport angling has historically been a vitally important component of responsible marine resource management. Sport anglers have been powerful and consistent advocates for fishery enhancement strategies of all types and have consistently supported appropriate seasonal, bag and size restrictions--even when those restrictions limited access to their favorite sport.

But the proposed system of sanctuaries is in large part based not on sound science, but instead is the result of intensive lobbying efforts by interests who have little real interest in the future of our marine resources. It is imperative that sport fishing remain a reasonable part of any plan that is adopted. Without the support of sport fishers, who are among the most reliable supporters of conservation efforts, any plan is doomed to fail. Please revise this proposal to include continued appropriate sport fishing access to our national marine resources.

Respectfully submitted by Bill Baker, a kayak fisher from Mendocino County.

Smith River Rancheria

140 Rowdy Creek Rd, Smith River, CA 95567-9525
Ph: (707) 487-9255 Fax: (707) 487-0930

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Russ Crabtree
Tribal Administrator

November 19, 2009

Mr. Ken Wiseman, Executive Director
MLPA Initiative
C/o California Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Re: Comments and Questions MLPA Initiative

Dear Mr. Wiseman:

Dv-laa-ha~, on November 18, 2009, the Smith River Rancheria staff and Tribal Council representatives attended the Blue Ribbon Task Force (BRTF) meeting in Eureka, California. Our first observation was the very limited timeframe provided to tribes and tribal leaders; which was not reflective of their unique status as leaders of Sovereign Nations. It was stated numerous times during the meeting that Tribes have a unique connection with the ecosystem and have been practicing stewardship of the aquatic environment and lands since time immemorial. These inherit responsibilities to the marine resources by tribal peoples are not being validated or given their justified consideration.

It is our strong held belief that if true voluntary government-to-government consultation is to take place without other state agencies forced to the table, then just consideration and time fo valid dialogue must be provided to tribal leaders and their representatives. Nowhere, should it be or the position taken that these **two minutes** of public comments is adequate or shows proper respect for tribal positions regarding a state mandated initiative on tribes. In addition, never should the BRTF continue to view tribal leaders as simply the "general public". The BRTF will find that North Coast Tribes are well organized and will stand together to protect our inalienable rights to gathering, subsistence, and ceremonial customary uses of offshore and near-shore marine resources.

With the above stated, the Smith River Rancheria has several questions that were not allowed due to the inadequate comment timeframes. Given the fact that questions were not allowed during the public comment period we have the following written questions:

1. How does the MLPA process work in conjunction with the CEQA process? Who will be the lead agency during the CEQA review process?

2. Is it the intent to expand the size of existing Marine Parks and Marine Conservation areas, or to establish other parks or conservation areas within the North Coast Region?

3. With respect to the preparation of the "preferred alternatives" in other regions (North Central, Central and Southern California), how were tribal interests addressed as to the protection of their cultural resources, which includes their traditional uses of the coastal lands? How will the protection of tribal interests in the North Coast Region be addressed?

4. On one of the maps created as part of the "North Coast Marine Information System" identifies "Areas of Water Quality Concern". The map identifies significant (as in size) areas within the sub-regions as "critical areas". Why are these large areas deemed"critical" with respect to the MLPA process? What is the intent or approach of the BRTF to address these critical areas as part of the MLPA process and the designation of marine protection areas? What is the scientific basis for the identification of these "critical areas?"

5. Towards the end of the BRTF's initial meeting, the initiative staff was directed for the next meeting to prepare a full briefing on impacted tribal interests and rights, and how those interests and rights can be addressed during this process. There was an expression of willingness to revise the draft Master Plan to address tribal interests. How will the BRTF and its staff prepare for this briefing? Will there be an opportunity for tribal interests to consult with the initiative staff and assist them in the preparation of this briefing? Will the BRTF receive a briefing on Indian Law from a well-respected source?

6. How does the BRTF intend to work in earnest develop agreements that do not infringe or compromise Tribal Sovereignty?

7. Will the BRFT be willing to consider extending the timeframe for submitting external arrays? The current time frame does not allow ample time to create a quality array. We are waiting on substantial scientific data to incorporate in these arrays and will not receive this information until mid-December 2009. This gives working groups creating array proposals only a month to pull together all information necessary and required in the external array proposal. This process of creating external arrays should not be resource driven.

8. Who is preparing the "draft regional profile" and why is it being prepared, and then submitted to the Scientific Advisory Team? Shouldn't the SAT be the entity preparing the profile?

9. During the October 30, 2009 meeting, the Science Advisory Team created a sub-group to address Native American issues. Will tribal leaders be able to participate in those meetings?

These reflect only the questions we currently have. I can assure you we will have additional questions as this process continues.

In closing, another area that emphasizes exactly the message tribal leaders provided to the BRTF during the public comment period is in your press release. Your announcement of the membership for the BRTF states, "The panel will work closely with scientists, fishermen, elected officials, conservationists, stakeholder and the public during this process". It is an oversight to not mention tribes in this press release. We are requesting that each tribal government directly affected by these regulations in the North Coast District have a position on the Regional Stakeholder Group (RSG).

We are acutely aware of this process and we will engage by any means available to us to ensure tribal rights are honored and protected.

Sincerely,

Kara Brundin Miller
Tribal Chair
On Behalf of Tribal Council

cc: Mr. Zack Larson, Del Norte County
Del Norte Board of Supervisors
North Coast Tribal Coalition
Assemblyman Wes Chesbro

Assembly Concurrent Resolution No. 185

RESOLUTION CHAPTER 150

Assembly Concurrent Resolution No. 185—Relative to Native American tribal rights.

[Filed with Secretary of State September 18, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

ACR 185, Battin. Native American tribal rights.

This measure would reaffirm state recognition of the sovereign status of federally recognized Indian tribes as separate and independent political communities within the United States, encourage all state agencies, when engaging in activities or developing policies affecting Native American tribal rights or trust resources, to do so in a knowledgeable, sensitive manner that is respectful of tribal sovereignty, and encourage all state agencies to continue to reevaluate and improve the implementation of laws affecting Native American tribal rights.

WHEREAS, The United States Constitution gives Congress the power "to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes" (Section 8, Article I, U.S. Const.) thus recognizing Native American tribes as separate and independent political communities within the territorial boundaries of the United States; and

WHEREAS, The United States Constitution has been construed to recognize Indian sovereignty by classifying Indian treaties as part of the "supreme law of the land," and to establish Indian affairs as a unique area of federal concern; and

WHEREAS, Congress and the President of the United States have enacted measures that promote tribal economic development, tribal self-sufficiency, and a strong tribal government, such as the federal Indian Gaming Regulatory Act (25 U.S.C. Sec. 2701 and following); and

WHEREAS, Previous presidents have consistently affirmed tribal sovereignty and, thus, the rights of Indian nations in the following ways: President Lyndon B. Johnson recognized "the right of the first Americans ... to freedom of choice and self-determination"; President Nixon strongly encouraged "self-determination" among the Indian people; President Reagan pledged "to pursue the policy of self-government" for Indian tribes and reaffirmed "the government-to-government basis" for dealing with Indian tribes; and President Bush recognized that the federal government's "efforts to increase tribal self-governance have brought a renewed

sense of pride and empowerment to this country's native peoples"; and

WHEREAS, The Legislature of the State of California is committed to strengthening and assisting Indian tribal governments in their development and to promoting Indian self-governance; and

WHEREAS, The Legislature supports and is committed to the enforcement of the Indian Civil Rights Act of 1968 (25 U.S.C. Sec. 1301 and following), which safeguards tribal sovereignty while simultaneously ensuring that the civil rights of Indian people are protected; and

WHEREAS, Because the Legislature recognizes and respects tribal customs and traditions, it is important that the state government work to preserve tribal cultures; and

WHEREAS, The Legislature acknowledges that tribal governments now are able to provide tribal members with better health care services, education, job training, employment opportunities, and other basic essentials; and

WHEREAS, The Legislature further recognizes that tribal governments have been generous benefactors—helping their neighbors in making California communities as good as they can be; and

WHEREAS, The people of the State of California overwhelmingly indicated their support for Indian sovereignty through the passage of Proposition 5, the Tribal Government Gaming and Self-Sufficiency Act of 1998, by a vote of 63 percent at the November 3, 1998, general election and Proposition 1A, the Gambling on Tribal Lands Initiative, by a vote of 64.5 percent at the March 20, 2000, primary election; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California reaffirms state recognition of the sovereign status of federally recognized Indian tribes as separate and independent political communities within the territorial boundaries of the United States, encourages all state agencies, when engaging in activities or developing policies affecting Native American tribal rights or trust resources, to do so in a knowledgeable, sensitive manner that is respectful of tribal sovereignty, and, in recognizing their tribal sovereignty, encourages all state agencies to continue to reevaluate and improve the implementation of laws that affect Native American tribal rights; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to all federally recognized tribes in California, Members of Congress, and the President of the United States.

O

Patrick Higgins
4649 Aster Road
McKinleyville, California 95519
(707) 822-9428

November 18, 2009

Ms. Cindy Gustafson, Chair
Marine Life Protection Act Blue Ribbon Task Force
C/O California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Re: North Coast Region Governmental and Tribal Concerns with Blue Ribbon Task Force and Marine Life Protection Act Implementation

Dear Ms. Gustafson,

Although I am a Humboldt Bay Harbor, Recreation and Conservation District Commissioner, I make my living as a consulting fisheries and watershed scientist. I was instrumental in the formation of a sub-committee dealing with Marine Life Protection Act (MLPA) issues and we are currently beginning work on production of an external Marine Protected Area array and look forward to working with you constructively. However, I felt it would be useful for me to inform you of reservations governments and tribes have regarding the MLPA Initiative on the North Coast. I am providing copies of a letter that went from 15 governments and tribes to Secretary Crisman and it clearly states our concerns, many of which have not been allayed.

Science Advisory Team Model Has Major Flaws

Designation of MPAs is based on sea floor topographic data under the assumption that there are known biological associations with rocky points, pinnacles and other recognizable features can lead to substantial problems with meeting intended conservation benefits. Specifically, there are no data on larval drift, where rockfish spawn and where juvenile rookeries are located. Assumptions on larval drift and juvenile recruitment have no basis. **Residents, governments and tribes of the North Coast Region are concerned that a conservation strategy lacking key biological data does not provide sufficient basis for selecting locations of MPAs.**

Dr. Ray Hilborn has also pointed out the MLPA SAT has been unduly biased towards numerous small conservation areas, whereas benefits from larger areas is likely to be accrued. **Unlike areas of much of the California coast, we may have the ability to locate substantially larger MPAs here that are both less economically constraining and more likely to serve the intended purpose of protecting biodiversity.** It would be most unfortunate if the BRTF and MLPAI were to force us to submit to MPA locations determined by flawed model outputs and you should not expect us to acquiesce to such a decision.

Difference in Fishing Effort and Stock Conditions from Other California Regions

Many areas of the California coast are near very large population centers and have very calm ocean conditions for months at a time. Over-fishing has occurred in places like the California Channel

Islands and has lead to reduced species diversity, abundance and harvests. Significant conservation steps are needed in these areas where over-fishing is pervasive and closures of some areas can trigger huge increases in biomass and significant increases in species diversity (Lubchencko et al. 2007), but the benefit of such actions in areas not over-fished (Worm et al. 2007) can be much different (Hilborn 2006).

Hilborn et al. (2006) assert that many areas of the California coast where MPA arrays have been previously implemented are not overfished and that MLPA implementation will not protect fish stocks nor lessen fish harvest, only shift its location.

> "Further, the perception that rocky bottom fishes are presently overfished is incorrect. The SAT apparently did not consider or seriously underestimated the conservation benefits afforded by areas protected by measures other than restrictive MPAs, or marine reserves. For many species, especially those with wide dispersal patterns, the other forms of protection (e.g. existing fishery management measures) are much more effective than MPA status. For example, the enactment of MPAs will have little effect on the annual take or abundance of most groundfishes because their management includes the use of annual quotas. Therefore, the annual take for these species will be the same with or without MPAs; but MPAs will determine where the fish are taken" (Hilborn et al. 2006).

If the effort shift away from MPAs is into important spawning or nursery areas, negative effects to fish populations and their abundance could occur.

Ecological and Economic Consequences of Poor MPA Site Selection

While the benefit of closing areas to fishing that are over-exploited is well recognized, results of establishing preserves in areas that are not over-fished do not necessarily increase biomass or diversity (Hilborn et al. 2006). In fact if areas included in MPAs are not essential for breeding or used extensively as a nursery, fishing effort no longer allowed there may shift to areas adjacent that may be spawning or juvenile fish recruitment areas. Furthermore, if the size of MPAs is insufficient, then benefits of additional recruitment into adjacent areas that remain open to fishing may not be accrued (Hilborn et al. 2006). Under this scenario one could decrease biomass, recruitment and catch.

We were concerned by the BRTF decision on the North Central Coast (NCC) region MLPAI "preferred alternative" that will lead to the closure of both Lighthouse Reef and Saunders Reef to the north and south of Pt. Arena. This is likely to result in loss of critical financial mass to support operation of the Point Arena Pier, which was built with a $10 million federal grant. The City of Point Arena has 1500 residents and a 25% unemployment rate and the closure is another critical blow to both the local economic vitality and the quality of life for local residents. **If MPAs are implemented near fishing communities such as Ft. Bragg, Shelter Cove, Trinidad and Crescent City, similar economic consequences are likely to ensue. If most MPAs are sited near ports and gas prices rise to $10 per gallon, then access to fish stocks could be cut off and citizens of the region deprived.**

North Coast has Indigenous People Inhabiting Aboriginal Territories

Native American harvest is not only an economic issue but also one of social justice. The North Coast has numerous Indian Tribes that inhabit their ancestral territories and have an unbroken

tradition of foraging and fishing on the North Coast that dates back thousands of years. Consequently, the loss of such rights disrupts their cultural traditions and abridges their right to traditional subsistence harvests guaranteed by Treaty Rights. The NCC MLPAI preferred alternative shuts access at Stewarts Point (within the Horseshoe Point SMR) to Pomo Indians and the residents, governments and tribes of the North Coast find this unacceptable and alarming. **We hope that the MLPAI will agree to a government to government consultation per the request of the National Congress of American Indians last month.**

Flaws in Economic Analysis

The current MLPAI doesn't consider sport fishing economic values, which are very high on the North Coast, and also does not take into account economic multipliers created by such things as processing, shipping and wholesale and retail seafood marketing. The lack of data and narrow focus of economic studies supporting the MLPAI means that the economic consequences of unjustified closure of commercial and sport fishing are grossly underestimated. In fact such closures would send ripple impacts through the retail sector, marinas and boat sales and maintenance as well as causing a major decline in tourism.

Blue Ribbon Task Force Authority

Governments and tribes of the North Coast have major reservations about your authority as previously stated in our letter to Secretary Crisman. Many of us are comforted that you have added our trusted governmental leader Supervisor Jimmie Smith and our former Assembly Person Virginia Strom-Martin. However, the original MOU that formed the BRTF states that up to 10 members can be seated. To really meet our regional comfort level you should have five North Coast residents. In the event that you override the concerns of those now seated to represent us capriciously, your decisions are not likely to be accepted without challenge.

Thanks again for the opportunity to address you and you or your staff should feel free to call me at any time.

Sincerely,

Patrick Higgins

References

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Hilborn, R., R. Parrish, and C. Walters. 2006. Peer review of California Marine Life Protection Act (MLPA) Science Advice and MPA Network Proposals. May 25, 2006. Prepared for the California Fisheries Coalition, 1621 B Thirteenth Street, Sacramento, CA 95814. 65 p.

Lubchenco, J. S. Gaines, K. Grorud-Colvert, S. Airame, S. Palumbi, R. Warner, and B.S. Smith. 2007. The Science of Marine Reserves. Performed as part of the Partnership for Interdisciplinary Studies of Coastal Oceans (PISCO) in collaboration with the Communication Partnership for Science and the Sea. 24 p.

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From: tom peters
Sent: Thursday, November 05, 2009 7:37 AM
To: MLPAComments
Subject: Illegal MLPA process

You are asking the public to nominate people whose job it will be to identify a totally unnecessary useless series of closure areas. There is NO management need for these closed areas. There is NO fisheries need for these closed areas. The only possible function is to gratify the needs of several environmental foundations for their fundraising efforts. You are wasting countless hours of work, both your own and the public's. The series of events that lead to the appointment of Mr. Benninghoven to the Fish and Game Commission followed by his tie-breaking vote on his own Blue Ribbon Task Force plan for North-Central, overriding the preferred stakeholders' plan, is clearly unethical if not downright illegal.
The North region process should be halted. There is NO need for it. The North-Central plan should be thoroughly investigated for wrongdoing.

Tom Peters