

California Marine Life Protection Act Initiative
MLPA Blue Ribbon Task Force Policy Guidance on Tribal Uses:
How to Incorporate into the Development of MPA Proposals
May 19, 2010

The Marine Life Protection Act (MLPA) Blue Ribbon Task Force (BRTF) has provided guidance to the MLPA North Coast Regional Stakeholder Group (NCRSG) for considering tribal uses during the development of marine protected area (MPA) proposals in Round 2 of the MPA planning process. The BRTF provided additional guidance in a motion adopted at the May 17, 2010 BRTF meeting (see attachment). Specific to traditional, non-commercial, tribal gathering, subsistence, harvesting, ceremonial and stewardship activities (hereafter referred to as “tribal uses”) that take place in state waters (mean high tide line out to three nautical miles), the guidance takes into account the requirements of the MLPA, the advisory role of the BRTF, the authority of the California Fish and Game Commission, requests from the NCRSG, as well as input from California’s north coast tribes and tribal communities.

The BRTF guidance for tribal uses is supplemental to, and does not replace or take priority over previous BRTF guidance. In particular, one of the primary charges of the NCRSG is to develop MPA proposals that meet MLPA guidelines, such as scientific guidelines detailed in the MLPA and the *California Marine Life Protection Act Master Plan for Marine Protected Areas*. NCRSG members should accommodate interests of north coast tribes and tribal communities, to the extent possible, while fulfilling this primary charge.

It is important to acknowledge the continued commitment of north coast tribes and tribal communities, the California Department of Fish and Game (DFG), and the MLPA Initiative to develop relationships and identify solutions to move the MPA planning process forward. Some of the broader issues related to jurisdiction and exclusive tribal uses cannot be addressed within the MLPA Initiative and are longer-term issues that should be pursued in parallel to the north coast MPA planning process. Recognizing that the current MPA planning process does not sufficiently address many tribal issues and concerns, interim steps have been established to incorporate north coast tribes’ and tribal communities’ interests into the MPA planning process; these include, but are not limited to:

- North coast tribes and tribal communities have invited MLPA Initiative groups to visit tribal and ancestral territories via field trips of the north coast study region.
- The *Regional Profile of the North Coast Study Region (California-Oregon Border to Alder Creek)* includes sections specific to north coast tribes and tribal communities and also contains a California tribes and tribal communities appendix to which tribes and tribal communities contributed unedited information.
- North coast tribes and tribal communities were invited to participate in a BRTF panel discussion to help inform the BRTF of the relationship tribes and tribal communities have with marine resources.
- The MLPA Master Plan Science Advisory Team (SAT) formed a work group to focus on tribal considerations and develop evaluation methods to consider tribal uses.
- DFG and the MLPA Initiative have invited north coast tribes and tribal communities to engage in conversations regarding Round 2 draft MPA proposals and identify any uses that the tribes and tribal communities would like to see allowed in proposed MPAs that overlap with their tribal use areas.
- DFG representatives have met with several California tribes and tribal communities in the north coast study region to gain a better understanding of traditional gathering and harvesting practices and continue to engage in meaningful dialogue to examine and address short- and long-term issues affecting tribal activities (e.g., cultural, subsistence, ceremonial, etc.) specific to traditional uses of marine resources.

These examples, together with BRTF guidance, provide a foundation to move forward in developing MPA proposals. This document outlines how the BRTF guidance regarding tribal uses will be incorporated during the north coast MPA planning process.

Overview of the MPA Planning Process

The MLPA Initiative is an iterative planning process that requires an ongoing dialogue between the NCRSG and north coast tribes and tribal communities to ensure information is readily available to the NCRSG for its deliberations. Throughout the MPA planning process, tribes and tribal communities can share information regarding tribal marine resource uses and provide feedback regarding proposed MPAs and how they may impact tribal use. Information and feedback are most useful when shared early in the MPA planning process so that core NCRSG MPA designs can thoughtfully reflect tribes' and tribal communities' interests and input. Both tribal and non-tribal NCRSG members must work together to meet the goals of the MLPA and accommodate tribal interests by crafting reasonable alternative MPA proposals that address MLPA guidelines, a commitment made in the ground rules for the NCRSG.

NCRSG Actions to Incorporate BRTF Guidance

The NCRSG should incorporate the BRTF guidance by taking the following actions:

1. Work with California tribes and tribal communities to learn more about tribal gathering and harvesting activities, and other non-commercial uses of marine resources:
 - a. Review tribal sections of the *Regional Profile for the North Coast Study Region (California-Oregon Border to Alder Creek)* and the tribal appendix.
 - b. Continue discussions among NCRSG members to learn more about specific tribal uses along the north coast. These discussions should also include tribes not represented on the NCRSG.
 - c. Utilize spatial information on California tribal use areas in the north coast, as available.
2. Avoid, where possible, placing MPAs in geographies where tribal uses occur, especially areas identified by north coast tribes and tribal communities as "high priority areas":
 - a. Consider high priority areas identified by both NCRSG tribal members, as well as tribes not represented on the NCRSG.
 - b. Consider proposed MPA ideas that are located outside of high priority tribal use areas. These areas may be appropriate for very high or high level of protection MPAs.
 - c. Consider proposed MPAs ideas that overlap with high priority use areas and assess whether an alternate geography can offer the same results for guidelines without overlapping with tribal use areas.
3. Where high priority tribal use areas cannot be avoided, design MPAs to accommodate known tribal uses that identify species and gear types, to the extent possible.
 - a. Propose MPA designation types consistent with proposed uses.
 - i. Do not propose a state marine reserve (SMR) where extractive activities are intended to be allowed. Note that some SMRs should be included in the backbone of any MPA proposal.

- ii. Propose to allow tribal uses in a state marine park (SMP), state marine conservation area (SMCA), or state marine recreational management area (SMRMA).
 - Propose an SMP if tribal uses and other recreational uses are the only proposed allowed activities and if the area is appropriate for SMP designation.
 - Propose an SMCA if commercial activities are proposed to be allowed, or if an SMP is not feasible or advisable.
 - Propose a SMRMA if waterfowl hunting is allowed.
- b. Design MPAs, if appropriate, to couple a nearshore MPA that allows for tribal uses with an offshore MPA of at least a moderate-high LOP. This approach allows for proposed MPAs to incorporate shore-based tribal uses. Note in cases where tribal uses extend into the offshore area, the entire MPA may need to allow tribal uses.
- c. Specify allowed uses, including species and gear type, for all tribal uses that the NCRSG intends to allow in proposed MPAs, as information becomes available. Where possible, avoid proposing unspecific tribal uses. Note that unless and until legal authority can be established for exclusive tribal gathering and harvesting activities in marine protected areas (MPAs), non-commercial gathering and harvesting activities identified in MPA proposals will be allowable for all recreational users.
 - i. Propose tribal uses in the “Additional Proposed Allowed Uses” field. Be as specific as possible for identifying the activity intended to be allowed in the proposed MPA. If applicable and desired, indicate seasonality.
 - ii. Indicate in the “Other Design Consideration” whether the intent is to prohibit all extraction except for tribal uses or whether the intent is to allow both tribal uses and some commercial and/or recreational uses.
 - If the intent is to allow for exclusive tribal use, include that statement, along with an acknowledgement that the legal authority for this does not currently exist.
- d. Consider recommendations for co-management with tribes or tribal communities located in proximity of proposed MPAs, where appropriate. The recommendation should be placed in the “Other Regulated Activities” field in MarineMap.

Tribal Uses in Round 2 MPA Proposal Evaluations

During Round 2 evaluations of draft MPA proposals, the following steps will be taken with regard to tribal uses:

1. SAT will include in the Round 2 evaluations MPAs allowing tribal uses using the best information and analysis tools readily available in the Round 2 evaluations:
 - a. MPAs that include tribal uses will be assigned an “undetermined” level of protection (LOP) until species and gear types are identified.
 - b. MPAs assigned an “undetermined” LOP will be included in Round 2 evaluations
2. DFG and California State Parks will review MPAs with proposed regulations that include tribal consumptive uses and provide feedback on the designation type and/or proposed allowed uses relative to each department’s criteria and analysis.
3. DFG and the MLPA Initiative will meet with affected tribes and tribal communities that are willing to participate in in-person conversations to discuss Round 2 draft MPA proposals and identify

any uses that the tribes and tribal communities would like to see allowed in proposed MPAs that overlap with their tribal use areas. The goal of the in-person conversations is to assemble information on the specific uses that take place in MPAs proposed to include tribal uses so that species and gear types for each use can be identified and an LOP determined.