



Tracking Number: (2023-20MPA)

To request a change to regulations under the authority of the California Fish and Game Commission (Commission), you are required to submit this completed form to: California Fish and Game Commission, (physical address) 1416 Ninth Street, Suite 1320, Sacramento, CA 95814, (mailing address) P.O. Box 944209, Sacramento, CA 94244-2090 or via email to FGC@fgc.ca.gov. Note: This form is not intended for listing petitions for threatened or endangered species (see Section 670.1 of Title 14).

Incomplete forms will not be accepted. A petition is incomplete if it is not submitted on this form or fails to contain necessary information in each of the required categories listed on this form (Section I). A petition will be rejected if it does not pertain to issues under the Commission's authority. A petition may be denied if any petition requesting a functionally equivalent regulation change was considered within the previous 12 months and no information or data is being submitted beyond what was previously submitted. If you need help with this form, please contact Commission staff at (916) 653-4899 or FGC@fgc.ca.gov.

### **SECTION I: Required Information.**

*Please be succinct. Responses for Section I should not exceed five pages*

**1. Person or organization requesting the change (Required)**

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**2. Rulemaking Authority (Required)** - Authority cited: Sections 200, 205(c), 265, 399, 1590, 1591, 2860, 2861 and 6750, Fish and Game Code; and Sections 36725(a) and 36725(e), Public Resources Code.

**3. Overview (Required)** - To ensure 30% of California waters are fully protected by 2030 and to foster Tribal engagement and co-management of MPAs, this Petition submitted by the Santa Ynez Band of Chumash Indians (SYBCI) recommends that the Point Buchon SMCA be designated as a Chumash SMCA that will support Tribal engagement and co-management of the SMCA within the Central Coast Region network. Regulatory changes are also described in the attached Summary for this Petition. The SYBCI also supports the MPA Collaborative Network's Regulatory Recommendation (Row 104, Column E) to adjust the boundary of the Point Buchon SMR to the north to better capture the offshore marine area of the Point and to clarify the boundary of the SMR. The attached Summary for this Petition describes these proposed actions further. The proposed new regulations are as follows:

(B) Area restrictions defined in subsection 632(a)(1)(C) apply, with the following specified exceptions:

1. The recreational take of finfish [subsection 632(a)(2)], invertebrates except rock scallops and mussels by hand harvest is allowed.
2. Take pursuant to activities authorized under subsection 632(b)(97)(C) is allowed.



3. The following federally recognized tribe is exempt from the area and take regulations found in subsection 632(b)(97) of these regulations and shall comply with all other existing regulations and statutes: Santa Ynez Band of Chumash Indians. |

4. **Rationale (Required)** – There are no Tribal MPAs designated within the Central Coast Region network. The proposed Chumash Heritage National Marine Sanctuary (CHNMS) is currently under review by the Federal government for potential designation. The marine area of the Point Buchon SMCA may be included in the designated CHNMS. Therefore, the SYBCI recommends that the Commission consider a new designation of this SMCA as a Chumash co-managed SMCA.

This would be the fifth Chumash-California SMCA. In addition, in light of management and enforcement considerations associated with the Point Buchon SMR, the SYBCI supports the regulatory and boundary changes recommended by the MPA Collaborative Network’s Regulatory Recommendation (Row 104, Column E) to move the SMR’s boundary to the north to better capture the marine area offshore the Point and to improve enforcement of the marine reserve area.

SECTION II: Optional Information

5. **Date of Petition:**

6. **Category of Proposed Change**

- Sport Fishing
- Commercial Fishing
- Hunting
- Other, please specify:

7. **The proposal is to:** *(To determine section number(s), see current year regulation booklet or <https://govt.westlaw.com/calregs>)*

- Amend Title 14 Section(s):
- Add New Title 14 Section(s):
- Repeal Title 14 Section(s):

8. **If the proposal is related to a previously submitted petition that was rejected, specify the tracking number of the previously submitted petition**

Or  Not applicable.

9. **Effective date:** If applicable, identify the desired effective date of the regulation. If the proposed change requires immediate implementation, explain the nature of the emergency:

10. **Supporting documentation:** Identify and attach to the petition any information supporting the proposal including data, reports and other documents:

11. **Economic or Fiscal Impacts:** Identify any known impacts of the proposed regulation change on revenues to the California Department of Fish and Wildlife, individuals, businesses, jobs, other state agencies, local agencies, schools, or housing:



**12. Forms:** If applicable, list any forms to be created, amended or repealed:

| Please see attached. |

**SECTION 3: FGC Staff Only**

Date received: | Click here to enter text. |

FGC staff action:

- Accept - complete
- Reject - incomplete
- Reject - outside scope of FGC authority

Tracking Number

Date petitioner was notified of receipt of petition and pending action: | \_\_\_\_\_ |

Meeting date for FGC consideration: | \_\_\_\_\_ |

FGC action:

- Denied by FGC
- Denied - same as petition | \_\_\_\_\_ |
- Granted for consideration of regulation change

Tracking Number

**SUMMARY INFORMATION FOR PETITION TO THE CALIFORNIA FISH AND  
GAME COMMISSION FOR REGULATORY CHANGE**

**A Petition to Amend the Point Buchon SMCA and Point Buchon SMR**

**Submitted By**

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Date: November 11, 2023

**Overview.** California has begun its first 10-year review of the state’s marine protected areas (MPAs) network. The State’s first decadal management review of the MLPA will be used to inform the future of marine life protection in California waters.

Since the adoption of State MPAs, Governor Gavin Newsom laid out a goal to protect 30% of the land, water, and marine area over the decade. The current level of marine area designated in some type of MPA in each region is far less than the goal to protect 30% of California marine waters. Improvements to the existing MPA network are warranted.

There currently exists no Tribal MPA within the Central Coast Network. California should change designation of existing areas within the MPA Network to ensure that Tribal and Indigenous communities can engage, collaborate, and co-manage marine areas associated with coastal areas they have inhabited for thousands of years.<sup>1</sup> To strengthen the role of the Tribes in co-management and monitoring efforts and marine education activities throughout the marine region, the Santa Ynez Band of Chumash Indians (SYBCI) recommends amendment to the existing Point Buchon SMCA and SMR. The Tribe recommends that the Commission consider a new designation at the Point Buchon Chumash-California SMCA.

The proposed Chumash Heritage National Marine Sanctuary is currently under review by the Federal government for potential designation. NOAA identified an Agency-Preferred Alternative consisting of Alternative 2, Cropped Bank to Coast, and Sub-Alternative 5b, Gaviota Coast Extension that includes the marine areas of Point Buchon SMCA and SMR.<sup>2</sup> The marine area of the Point Buchon SMCA may be included in the designated CHNMS. To foster co-management and Tribal engagement, the SYBCI recommends that the Commission consider a new designation of this SMCA as a Chumash co-managed SMCA.<sup>3</sup> This Petition emphasizes the need to designate an additional Tribal SMCA for the Central Coast Region. This Petition recommends that the Central Coast Region MPA network should reflect the type of co-management of marine resources that is envisioned by State and Federal Tribal engagement and collaborative management guidelines. There is currently no Tribal MPA for co-management within this regional network. This Petition includes a general characterization of the proposed new Tribal co-management Point Buchon SMCA and includes recommendations for a minor change to the northern boundary of the Point Buchon SMR.

**Rationale.** MPAs were established pursuant to the Marine Life Protection Act (MLPA) of 1999. Environmental Impact Reports were prepared for four study areas, including the Central Coast Region (Pigeon Point to Point Conception). The MPA network for the Central Coast Region was approved by the Commission in 2007.

California’s first decadal management review of the MLPA began in 2022. One goal of the decadal management review is for the California Department of Fish and Wildlife (CDFW) to

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<sup>1</sup> Berkey, C.G. and S.W. Williams (2019). California Indian Tribes and the Marine Life Protection Act: The Seeds of a Partnership to Preserve Natural Resources, *Am. Indian L. Rev.* 43: 307.

<sup>2</sup> See: NOAA (2023) *Proposed Chumash Heritage National Marine Sanctuary. Draft Environmental Impact Statement.* Section 5.4.

<sup>3</sup> Please note that under a separate Petition submitted by the SYBCI also recommend that the Commission accept our recommendation to create a new Chumash-California SMCA that we refer to as *Chitqawi* near the mouth of the Morro Bay estuary along the coast toward Cambria.

evaluate and adaptively manage the established MPA Network. The regional networks that were established by the State included input from participants in collaborative planning efforts including members of the scientific community, conservationists, and marine resource users. Scientific input on the benefits of MPAs to marine ecosystems contributed to these early MPA planning processes.

Point Buchon State Marine Reserve (SMR) and Point Buchon State Marine Conservation Area (SMCA) are located eight miles south of Morro Bay in San Luis Obispo County. The onshore-offshore pair of adjoining MPAs covers almost nineteen square miles of rocky reefs, sandy seafloor and beaches, kelp forests, rocky intertidal areas, and offshore pinnacles. The MPAs also contain some of the shallowest cold-water corals in California. Point Buchon SMR encompasses more than 6½ square miles of ocean waters and spans 2½ miles of coastline between Coon Creek and the Diablo Canyon nuclear power plant. Point Buchon SMCA sits offshore of the SMR and encompasses more than 12 square miles of water that range from about 200 to 400 feet deep.

Changes to the existing MPA Network are based on the statutory authority of the Fish and Game Commission to take the action requested (Sections 200, 205(c), 265, 399, 1590, 1591, 2860, 2861 and 6750, Fish and Game Code; and Sections 36725(a) and 36725(e), Public Resources Code).

**The Need for Additional Tribal MPAs.** There was very little effort by California resource agencies during the early period of the implementation of the MLPA to consider Tribal MPAs in the network design. Since the adoption of the MPA Network, there has been considerable evidence on the benefits of traditional ecological knowledge and other indigenous experience in marine life protection.<sup>4</sup> The Ocean Protection Council Science Advisory Team Working Group and California Ocean Science Trust (June 2021) note the important role of the Tribes in the management of MPAs.<sup>5</sup> Moreover, based on this recognition, the SYBCI are co-managers of four existing SMCAs. Following adoption of MPAs in the North Coast MPA Planning Process, a regulatory provision was adopted by the California Department of Fish and Game Commission (hereafter “Commission”) to provide exemptions from MPA-specific area and take regulations for individual federally recognized California Tribes (i.e., tribal exemptions), through a petition process by the Commission. Tribal take can be authorized in MPAs that overlap with areas of historic and/or current uses for gathering, ceremony, or harvest as reflected in a factual record of use provided by the Tribe. Amendments to MPA regulations were approved by the Commission for two different tribes: the Kashia Band of Pomo Indians (the Kashia) and the Santa Ynez Band of Chumash Indians (hereafter “SYBCI”). The SYBCI is the only federally recognized Chumash Tribe. The Chumash-California MPAs are Naples SMCA, *Kashtayit* SMCA, Point Dume SMCA, and Anacapa Island SMCA that provide Tribal exemptions.

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<sup>4</sup> To support this general claim, we have attached *Co-Management of California-Chumash Marine Conservation Areas*. A White Paper produced for the Santa Ynez Band of Chumash Indians with funding provided by the 7th Generation Advisors. November. 2021.

<sup>5</sup> *Scientific Guidance for Evaluating California’s Marine Protected Area Network*. A Report by the Ocean Protection Council Science Advisory Team Working Group and California Ocean Science Trust (June 2021).

The SYBCI recommends that the Commission adopt similar amendments to the Point Buchon SMCA so that co-management efforts can begin for these important cultural and ecological areas within the Central Coast Region. Buchon is a Chumash ethnohistorical village site (referred to by an early Spanish colonialist in the 18<sup>th</sup> Century who after meeting the leader of the village referred to the area as El Buchon [translated in Spanish as “the goiter”]).<sup>6</sup> It is an area of special spiritual significance to the Chumash maritime peoples.

The Point Buchon SMCA warrants careful consideration by the Commission as an additional co-managed Tribal MPA. There are benefits to co-management of MPAs.<sup>7</sup> The benefits include:

- more appropriate rules and regulations that can respond rapidly to changing socio-ecological conditions.
- more effective and efficient enforcement due to increased legitimacy of the management structures.
- can increase equitable and fair use of resources; and
- can contribute to the empowerment and development of marginalized communities.

Regulations: The Chumash requested the Commission to apply tribal take provisions in four SMCAs in Southern California that are within their areas of historic and/or current tribal use. With the proposed amendments to the regulations associated with the Point Buchon SMCA, the Chumash would be allowed to fish with the use of hand-based equipment. The proposed exemptions would be consistent with allowing tribal take exemptions as currently defined in Title 14, §632(a)(11), which identify how a member of a federally recognized tribe may be authorized to take living marine resources from an MPA with site-specific take restrictions. Members taking living marine resources under this provision are subject to current seasonal, bag, possession, gear and size limits in existing Fish and Game Code statutes and regulations of the Commission, except otherwise provided for in Title 14, §632(b). No member, while taking living marine resources pursuant to this section, may be assisted by any person who does not possess a valid tribal identification card and is not properly licensed to take living marine resources. Nothing in the proposed regulation is intended to conflict with, or supersede, any state or federal law regarding the take of protected, threatened, or endangered species. The box below includes language for the new regulations associated with the proposed Point Buchon SMCA:

(B) Area restrictions defined in subsection 632(a)(1)(C) apply, with the following specified exceptions:  
1. The recreational take of finfish [subsection 632(a)(2)], invertebrates except rock scallops and mussels by hand harvest is allowed.

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<sup>6</sup> Bryne, S. (2004). Historical and Archaeological Evidence Regarding the Location of the Chumash Village of El Buchon in Price Canyon, San Luis Obispo County, CA. Society for California Archaeology Southern California CA Data Sharing Meetings. Fort Hunter-Liggett.

<sup>7</sup> *Moving toward Co-Management of the Proposed Chumash Heritage National Marine Sanctuary*. A Paper Prepared for the Santa Ynez Band of Chumash Indians. Michael Vincent McGinnis. Bioregional Planning Associates. (March 2022). The paper includes a review of the literature and technical reports on co-management marine life protection.



2. Take pursuant to activities authorized under subsection 632(b)(97)(C) is allowed.
3. The following federally recognized tribe is exempt from the area and take regulations found in subsection 632(b)(97) of these regulations and shall comply with all other existing regulations and statutes:  
Santa Ynez Band of Chumash Indians.

The SYBCI appreciates the opportunity to recommend the adoption of this new co-management MPA within the Central Coast Region network. We would welcome the opportunity to discuss this proposal in more detail with State partners during the planning effort that is currently underway for the State's first decadal management review of the MLPA and MPA Network.

**Change to the northern boundary of the Point Buchon SMR.** The SYBCI also supports the MPA Collaborative Network's Regulatory Recommendation (noted in Row 104, Column E of their Worksheet) to adjust the boundary of the Point Buchon SMR to the north so that the reserve can better capture the offshore marine area of the Point and to clarify the boundary of the SMR.

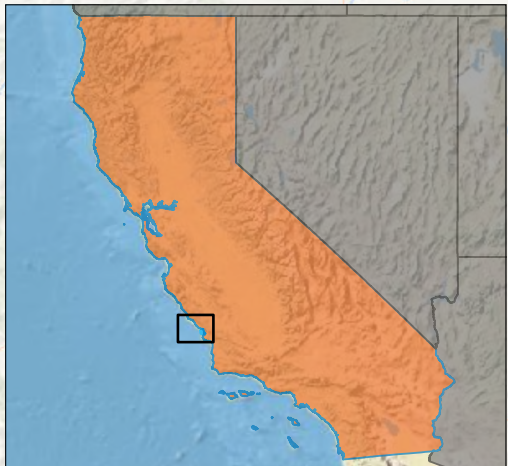


# Proposed Chitqawi State Marine Conservation Area Santa Ynez Band of Chumash Indians

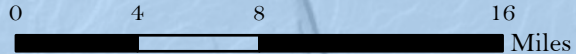


**Legend**

-  Proposed Chitqawi SMCA
-  State Marine Reserve
-  State Marine Conservation Area
-  State Marine Park
-  State Marine Recreational Management Area
-  Coast Line



- 1 **Piedras Blancas State Marine Reserve**
- 2 **Piedras Blancas State Marine Conservation Area**
- 3 **Cambria State Marine Conservation Area**
- 4 **White Rock (Cambria) State Marine Conservation Area**
- 5 **Morro Bay State Marine Reserve**
- 6 **Morro Bay State Marine Recreational Management Area**
- 7 **Point Buchon State Marine Reserve**
- 8 **Point Buchon State Marine Conservation Area**



# CO-MANAGEMENT OF CALIFORNIA-CHUMASH MARINE CONSERVATION AREAS

**A White Paper Produced for The Santa Ynez Band of Chumash Indians  
with Funding Provided by the 7<sup>th</sup> Generation Advisors**



**MICHAEL VINCENT MCGINNIS, PhD**

Bioregional Planning Associates Sacramento California



## EXECUTIVE SUMMARY




Malibu's Paradise Cove August 19, 2011. Chumash paddle their tomol to meet the sailors in seven vaka moanas or sailing canoes from the Pacific Voyage. *Photo: M.V. McGinnis.*

ACROSS THE PACIFIC RIM, Tribal and Indigenous peoples are participating and co-managing marine protected areas. These co-management experiences provide opportunities and challenges to sustain Indigenous maritime practices. Co-management of marine protected areas can foster the integration of scientific and traditional ecological knowledge systems.

The planning effort under the Marine Life Protection Act (MLPA) of 1999 currently involves federally recognized Tribes. The goal of this report is to strengthen the opportunities to implement co-management of designated California-Chumash marine conservation areas located at Anacapa Island, Naples, Point Dume, and Kashtayit in southern California.

The implementation of the existing California-Chumash marine conservation areas is ongoing, and the State plans to review the progress of the MLPA in 2022. At that time changes may be made to the existing legislative framework, and other planning and decision-making changes



may be developed to foster further cooperation with Tribes and the State in the implementation of the MLPA and the co-management of designated marine conservation areas.

Based on a review of case study materials and the literature on co-management of protective areas, there are three major recommendations described in this report. First, a move from consultative co-management to collaborative management of designated California-Chumash marine conservation areas is warranted. Second, the following factors contribute to successful implementation of co-management of State-Tribal protected areas: public access to Tribal members to the protected area; the proximity to use of the marine area; the scientific baseline information on the ecology of the marine area; the historical level of customary marine resource use; the institutional capacity to monitor the designated MPA; the enforcement capacity and capability of partnering agencies and the Tribe of the MPA; and the available customary values and ecosystem goods and services provided by the MPA. These factors are used to analyze the four alternative California-Chumash marine conservation areas. Third, the Chumash should consider joining the Tribal Marine Stewards Network pilot program as the fifth partner in the collaborative network effort. There is currently no southern California Tribal partner in the pilot program. Two California-Chumash marine conservation areas may be appropriate to consider by the Chumash members given the analysis in this report -- the *Kashtayit* or Point Dume marine conservation areas. This recommendation is based on the historical use of customary practice by the Chumash of these areas; the proximity of use to these areas; the availability of public access to the sites; and other factors. Furthermore, the Chumash should consider ways to contribute as co-managers to the enforcement, education, information exchange, and the monitoring efforts to further the implementation of existing California-Chumash marine conservation areas.

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## INTRODUCTION

Me'pshumawish. Together we are making health, harmony, peace.

This study builds on a previous report entitled *Tribal Marine Protected Areas: Protecting Maritime Ways and Cultural Practices* (McGinnis 2004) produced for the *Wishtoyo Foundation*. At the time of publication of that report, the Marine Life Protection Act (MLPA) of 1999 did not include a statutory role for the Tribes in the collaborative network process (Sagkof et al. 2021). In their legal analysis of the changing role of the Tribes in the MLPA Berkeley and Williams (2019: 307) write:

Like the vast majority of California laws, the MLPA did not specifically address the rights and concerns of Indian tribes even though the California coast is Indian Country for many tribes. The failure of the legislature to acknowledge the centuries-long stewardship of coastal resources by Indian people, and the commencement of a resources-protection process that did not include tribes, resulted in initial opposition from Indian tribes. Many tribes feared the process would simply be the latest in a long history of state actions that risked the extinguishment of cultural practices. Instead, despite initial misunderstandings, the [marine protected area] MPA designation process elevated tribal engagement in state natural resource management and may be the catalyst for a fundamental shift in California's approach to tribal nations.

Requests to amend MPA regulations were submitted to the FGC by two different tribes: the Kashia Band of Pomo Indians and the Santa Ynez Band of Chumash Indians (hereafter, the Chumash). Tribal take was authorized in marine conservation areas that overlap with areas of historic and/or current uses for gathering, ceremony, or harvest as reflected in a factual record of use provided by a Tribe. There are four California-Chumash marine conservation areas that are located at sites in state waters at Anacapa Island, Naples, Point Dume, and *Kashtayit*.

The implementation of the existing California-Tribal marine conservation areas is ongoing. The first Decadal Management Review of the MLPA will take place in 2022, and will serve to review and potentially update four primary objectives of the MPA Management Program:

- Outreach and Education,
- Research and Monitoring,
- Enforcement and Compliance, and
- Policy and Permitting

The FWC will receive this review at their December 2022 meeting and decide whether to direct CDFW and its partners to pursue recommendations and identified next steps. At that time changes may be made to the existing legislative framework, and other planning and decision-making changes may be developed in cooperation with Tribes and California resource agencies to strengthen the co-management of designated marine conservation areas.

This paper begins with a description of the importance of traditional ecological knowledge or TEK and the Southern California Bight. Second, the paper characterizes the preliminary stages of implementation of the MLPA, and the changing role Tribes have in the collaborative network and decision-making. The paper reviews the co-management literature to suggest the need to move from *consultative* co-management to *collaborative* management of designated California-Chumash marine conservation areas.

In the last section, an analysis of the four alternative California-Chumash marine conservation areas is described. The alternative analysis is based on the following factors that contribute to successful co-management implementation:

- public access to Tribal members.
- the proximity to use of the marine area.
- the scientific baseline information on the ecology of the marine area.
- the historical level of customary marine resource use.
- the institutional capacity to monitor the designated MPA; and,
- the enforcement capacity and capability of partnering agencies and the Tribe of the MPA.

## CHUMASH TEK AND THE SOUTHERN CALIFORNIA BIGHT

Federally recognized tribes are not mere stakeholders in the MLPA decision-making and collaborative process. As co-managers of marine life protection and management, Tribes are sovereign nations. Traditional ecological knowledge (TEK) is essential to the maintenance of Tribal maritime culture and should be considered a key facet of the co-management process for California-Chumash marine conservation areas. Moreover, the public and resource agencies can learn from TEK.

TEK is based on the interaction between traditional or Indigenous culture and the ecosystems that Tribal peoples are irrevocably connected to. In *Sacred Ecology*, Fikret Berkes (2008) describes two primary aspects of TEK that are important to consider as California and the Tribes move forward in the implementation of the MLPA. First, TEK should be considered a “process” rather than a “content.” TEK is a process insofar as it changes and adapts to changes with ecosystems and cultural values. Second, there are benefits from a stronger integration and partnership between those who have TEK and scientific knowledge.

One hundred and forty-eight historic Chumash village sites have been identified from Malibu to San Luis Obispo, including eleven on Santa Cruz Island, eight on Santa Rosa Island, and two on San Miguel Island (Glassow 1995). The archaeological record shows that traditional Chumash maritime practices changed with a changing socio-ecological context. Mussel shells uncovered at excavated historical Chumash village sites indicate cyclical periods of species decline and rebound. These cyclical periods reflect changes in oceanographic setting of the California Current and the Southern California Bight, including short-term and longer-term (e.g., interdecadal oceanographic regime shifts) changes in sea surface temperature and associated changes in biogeography of fishes and invertebrates (Kennett 2005).




Moreover, archaeological and ethnographic evidence suggest that the periodic movement of Chumash village areas helped mediate socio-ecological changes in food security (Rick 2007). As in other traditional societies such as the Māori and other Pacific Islanders, Tribal peoples monitored and temporarily banned fishing certain species in order for their respective populations to reach a more stable abundance. Chumash coastal inhabitants would change their diet to reflect changes in their food availability. Seaweeds, kelps, and other marine plants helped sustain Chumash populations; marine plants were often an essential food source during times of food insecurity.

Chumash TEK served the needs of cultural adaptation to changes in the socio-ecology of the Southern California Bight. The northern Channel Islands area were one connected island called *Santarosae* that was located nine kilometers from the coastal mainland (depicted in Map 1). Large-scale sea-level rise during the late Pleistocene and early Holocene periods inundated nearshore areas in many parts of the world, producing drastic changes in local ecosystems and obscuring significant portions of the archeological record (Reeder-Myers et al. 2015). Sea level was about 80–85 meters lower than present at the time of the first known human Chumash occupation.

**Map 1. Santarosae Island before Sea-Level Rise**



Source: KCET, *California's Atlantis: The Lost Superisland of Santarosae*, available at: <https://www.kcet.org/shows/lost-la/californias-atlantis-the-lost-superisland-of-santarosae>



There were major consequences from sea level rise on traditional cultures and customary practices of coastal southern California (Kennett 2005). At the close of the Pleistocene and start of the Holocene, people in coastal California faced shrinking land, intertidal, and subtidal zones that were used for food gathering and other customary uses. This led to a decline in food security and migration of traditional cultures. Second, as a consequence of sea-level rise in the Southern California Bight, including the Channel Islands and the coastal mainland areas, the archaeological and cultural areas used near river and creek mouths, coastal beach areas, and other areas historically inhabited by the Chumash are submerged today (Glassow 1995).

In addition, European colonialization of [Alta] California significantly impacted Chumash society (Dartt-Newton and Erlandson 2006). As Dartt-Newton and Erlandson (2006: 419):

While natural environmental fluctuations may have played a role in the movement of Chumash people to the missions (particularly in the abandonment of Channel Island villages after AD 1810), we contend that colonial oppression and Spanish-induced environmental degradation were the chief culprits. No amount of scientific data can blunt the harsh realities of the mission period, when the Chumash and other California Indians died by the tens of thousands and most survivors were reduced to a humiliating slavery-like condition.

Overall, the socio-ecology of the islands and coastal mainland changed and so did the traditional and customary practices of the Chumash (Holmes and Johnson 1998). Chumash knowledge evolves with changes in living conditions. Chumash TEK sustained the diverse communities for thousands of years.

Tribes have a substantive role in the co-management of California-Tribal marine conservation areas. One hope is that Tribal TEK can contribute to the strengthening of the public's awareness of the sacred and customary values of coastal and marine ecosystems in California. These coastal and marine ecosystems have long been influenced by human activities and customary practices.

## **PRINCIPLES OF CO-MANAGEMENT**

Definitions of co-management focus on sharing management responsibility between government and stakeholders (Brown and Pomeroy 1998; Pomeroy 2001; Berkes et al. 2001). Borrini-Feyerabend et al. (2000) note that co-management is a situation in which two or more social actors negotiate, define, and guarantee amongst themselves an equitable sharing of the management functions, entitlements, and responsibilities for a marine area. In this case, the sharing of responsibility under the MLPA is between State agencies and the Chumash.

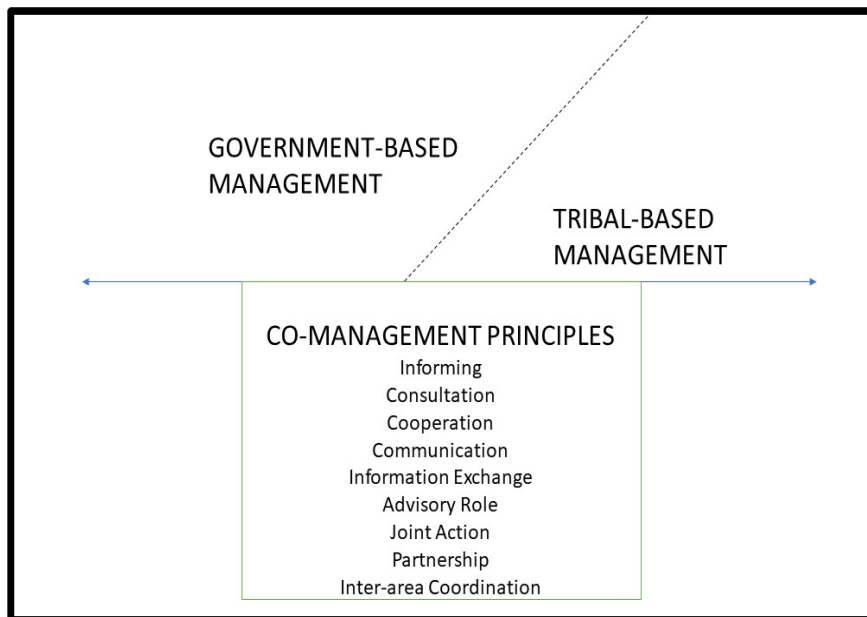
There are many benefits to co-management. The benefits include:

- improved management due to incorporation of better scientific evidence and TEK (Pinkerton 1989).
- more appropriate rules and regulations that can respond rapidly to changing socio-ecological conditions (Berkes et al. 2001; Ebbin 2002; Hernes et al. 2005).

- more effective and efficient enforcement due to increased legitimacy of the management structures (Berkes et al. 2001; Hanna 2003; Pinkerton and John 2008).
- can increase equitable and fair use of resources (Beierle and Cayford 2002; Borrini-Feyerabend et al. 2004; Coffey 2005); and
- can contribute to the empowerment and development of marginalized communities (Birner and Wittmer 2003; Hara and Nielsen 2003; Jentoft 2003; Pomeroy and Viswanathan 2003).

Figure 1 includes a general characterization of principles of co-management.

**Figure 1. Co-Management Principles**



There are three forms of co-management (depicted in Figure 2 below). The most common arrangement is described as “consultative co-management” whereby the resource agencies often consult with stakeholders or, in this case, Tribes (Brown and Pomeroy 1999). The term “collaborative co-management” connotes a stronger partnership where there is a sharing of authority and responsibility (Kurien 1988; McConney et al.1998). Third is “delegated co-management” that includes, but is not limited to, community-based management since national or state co-management structures are especially common in fisheries management (Jacobs 1998; McConney and Mahon 1998). Establishing successful co-management is seldom immediate. Like most participatory processes it takes time and careful attention to partnership building and strategic planning.

**Figure 2. Types of Co-Management**

<b>TRADITIONAL RESOURCE MANAGEMENT</b>	<b>TYPES OF CO-MANAGEMENT</b>
Government has the most control	<u>Consultative Co-Management</u> Government interacts with partners But makes all decision
	<u>Collaborative Co-Management</u> Government and the tribes work closely and share decisions
	<u>Delegated Co-Management</u> Government lets formally organized tribes make decisions

A collaborative co-management approach to marine life protection requires the integration of two systems of governance and management. Tribal and customary management and marine ecosystem-based management systems have contrasting goals, inferred social and ecological benefits, and spatial scales. A general comparison of the diverse systems of management is found in Table 1.

**Table 1. A Comparison of California and Tribal Management Systems**

<b>Management and Planning in the California MLPA</b>	<b>Tribal and Customary Management</b>
Use of Ecosystem-based Principles in Planning	Cyclical processes and periodic benefits
Science-based Decision-making	Emphasis on the cultivation of TEK
Collaborative & Stakeholder based Planning	Utilitarian goals
Often dominated by Biological Conservation Goals	Sensitive to Socio-economic and Socio-ecological transformation
Operates on larger scales (e.g., networks of small reserves)	Complex tenure systems may hinder larger-scale conditions

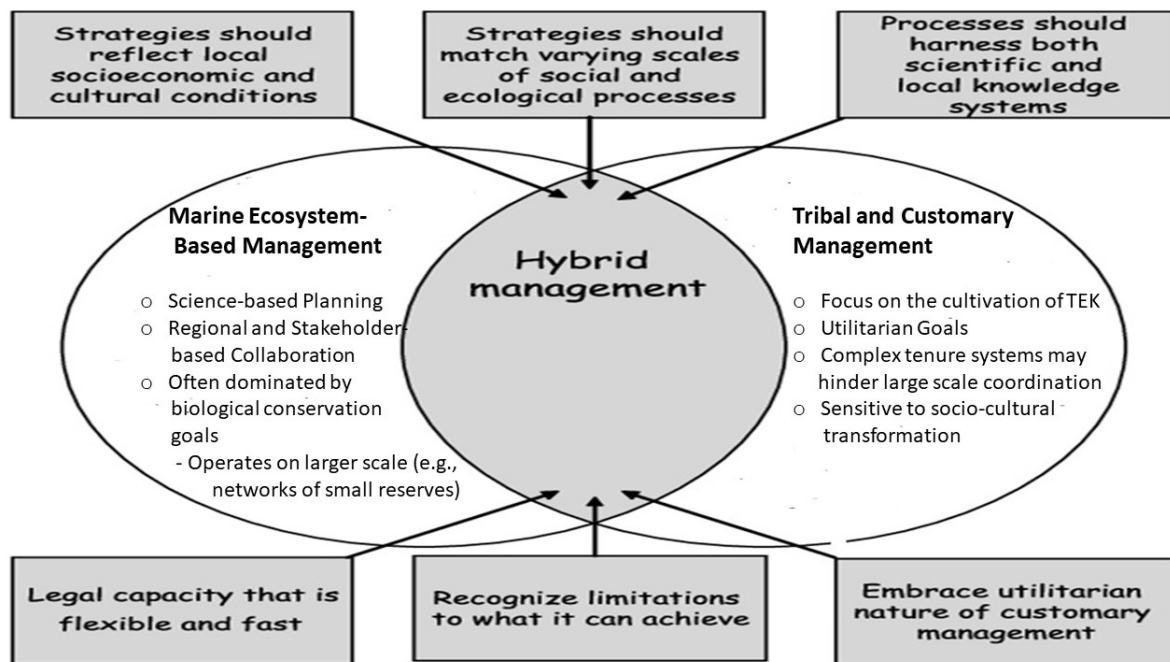
In collaborative co-management, there are three institutional factors that can contribute to the successful integration of authority and responsibility:

- Planning processes, including the monitoring and enforcement of marine protected areas, should harness both scientific and TEK systems.

- Program strategies should match varying scales of social, economic, and ecological processes.
- Program strategies should reflect local or regional socio-cultural conditions as they change overtime and as new information is gathered, e.g., strategic management should support adaptive approaches to planning in the future.

A hybridized co-management approach to marine life protection is depicted in Figure 3.

**Figure 3. Hybrid Management**



(After Pomeroy and Berkes 1997: 466)

Since the adoption of the MLPA in 1999, a number of steps have been taken by policymakers, resource agencies and members of Tribes to establish and encourage co-management of California-Tribal MPAs. Initial Studies, as required by CEQA, have been submitted and regulatory provisions have been approved by the California Department of Fish and Wildlife Commission (FGC). Governor Brown and Governor Newsome have signed Executive Orders to encourage co-management of marine resources with Tribes. California resource agencies have approved strategic goals and objectives in support of co-management principles to encourage co-management of California-Tribal marine conservation areas. Collaborative networks have been established that include formal Tribal membership. Pilot programs between California and the Tribes to develop monitoring programs and the deployment of data gathering to strengthen monitoring of existing MPAs have been developed.

## CO-MANAGEMENT OF CALIFORNIA-CHUMASH MPAS

This section provides a general description of the early implementation of co-management of the California-Chumash marine conservation areas. A detailed overview of the early implementation of the MLPA and the role of the Tribes in the process is available at Sofka and colleagues (2021: 80-113) and Berkey and Williams (2019). These studies describe the collaborative, legal and historical role of the Tribes during the implementation of the MLPA.

### *The Move toward Tribal Exemption*

Following adoption of MPAs in the North Coast MLPA planning process, a regulatory provision was adopted by the California Fish and Game Commission (FGC) to provide exemptions from MPA-specific area and take regulations for individual federally recognized California Tribes (i.e., tribal exemptions), through a petition process by the Commission. Requests to amend MPA regulations were submitted to the FGC by two different tribes: the Kashia Band of Pomo Indians (the Kashia) and the Chumash (Berkey and Williams 2019; Dudek 2018).

### *Tribal Take*

“Federally recognized tribe” means any tribe on the List of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, published annually in the Federal Register. Any member of a federally recognized tribe authorized to take living marine resources from an area with area-specific take restrictions in subsection 632(b), when engaging in take within an authorized area shall possess on his person, in his immediate possession, or where otherwise specifically required by law to be kept, any valid license, report card, tag, stamp, validation, permit, or any other entitlement that is required in the Fish and Game Code, or required by other state, federal, or local entities, in order to take living marine resources. Members shall possess a valid photo identification card issued by a federally recognized tribe that contains expiration date, tribal name, tribal member number, name, signature, date of birth, height, color of eyes, color of hair, weight, and sex; and display any of the items listed above upon demand to any peace officer. Members taking living marine resources under this provision are subject to current seasonal, bag, possession, gear and size limits in existing Fish and Game Code statutes and regulations of the commission, except as otherwise provided for in subsection 632(b). No member, while taking living marine resources pursuant to this section, may be assisted by any person who does not possess a valid tribal identification card and is not properly licensed to take living marine resources. Nothing in the regulation is intended to conflict with, or supersede, any state or federal law regarding the take of protected, threatened or endangered species [Title 14, 632(a)(11)].

The Chumash requested the Commission to apply tribal take provisions in four SMCAs in southern California that are within their areas of historic and/or current tribal use. The regulations for the State Marine Conservation Areas (as January 1, 2019) are taken from California Code of Regulations (CCR) Title 14, Section 632, and are as follows:



The exemptions are consistent with allowing tribal take exemptions as currently defined in Title 14, §632(a)(11) (noted above), which identify how a member of a federally recognized tribe may be authorized to take living marine resources from an MPA with site-specific take restrictions.

A description of each California-Chumash marine conservation area is below (Dudek 2018):

**1) Kashtayit State Marine Conservation Area Permitted/Prohibited Uses:**

- a) It is unlawful to injure, damage, take, or possess any living, geological, or cultural marine resource for recreational and/or commercial purposes, with the following specified exceptions:
  - i) The recreational take of finfish, invertebrates except rock scallops and mussels, and giant kelp (*Macrocystis pyrifera*) by hand harvest is allowed.
  - ii) Take pursuant to the maintenance of artificial structures and operation and maintenance of existing facilities is allowed inside the conservation area pursuant to any required federal, state and local permits, or as otherwise authorized by the Department
- b) The following federally recognized tribe is exempt from the area and take regulations found in subsection 632(b)(97) and shall comply with all other existing regulations and statutes: Santa Ynez Band of Chumash Indians.

**2) Naples State Marine Conservation Area Permitted/Prohibited Uses:**

- a) It is unlawful to injure, damage, take, or possess any living, geological, or cultural marine resource for recreational and/or commercial purposes, with the following specified exceptions:
  - i) The recreational take by spearfishing of white seabass and pelagic finfish is allowed.
  - ii) The commercial take of giant kelp (*Macrocystis pyrifera*) by hand harvest or by mechanical harvest is allowed.
- b) Take pursuant to operation and maintenance of artificial structures inside the conservation area is allowed pursuant to any required federal, state and local permits, or as otherwise authorized by the Department.
- c) The following federally recognized tribe is exempt from the area and take regulations found in subsection 632(b)(98) and shall comply with all other existing regulations and statutes: Santa Ynez Band of Chumash Indians

**3) Point Dume State Marine Conservation Area Permitted/Prohibited Uses:**

- a) It is unlawful to injure, damage, take, or possess any living, geological, or cultural marine resource for recreational and/or commercial purposes, with the following specified exceptions:
  - i) The recreational take by spearfishing of white seabass and pelagic finfish is allowed.
  - ii) The commercial take of swordfish by harpoon; and coastal pelagic species by round haul net, brail gear, and light boat is allowed. Not more than five percent by weight of any commercial coastal pelagic species catch landed or possessed shall be other incidentally taken species.
- b) Take pursuant to beach nourishment and other sediment management activities is allowed inside the conservation area pursuant to any required federal, state and local permits, or as otherwise authorized by the Department.
- c) The following federally recognized tribe is exempt from the area and take regulations found in subsection 632(b) (117) and shall comply with all other existing regulations and statutes: Santa Ynez Band of Chumash Indians



#### 4) **Anacapa Island State and Federal Marine Conservation Area Permitted/Prohibited Uses:**

- a) It is unlawful to injure, damage, take, or possess any living, geological, or cultural marine resource for commercial and/or recreational purposes, with the following specified exceptions:
  - i) The recreational take of spiny lobster and pelagic finfish and the commercial take of spiny lobster is allowed.
- b) The following federally recognized tribe is exempt from the area and take regulations found in subsection 632(b) (112) and shall comply with all other existing regulations and statutes: Santa Ynez Band of Chumash Indians

The Chumash remain subject to the Anacapa Island Special Closure regulations where it overlaps with the Anacapa Island SMCA and are not exempt from the Anacapa Island Federal Marine Conservation Area take restrictions. Fishing with use of hand-based equipment and intertidal collection is allowed in this area, for which there is no pelican fledging area closure. Therefore, there are currently no exemptions in federal waters of the Channel Islands National Marine Sanctuary.

With respect to the role of the Tribes in the MLPA process Berkey and Williams (2019: 349-350) note that Governor Brown in Executive Order B-10-11 moved forward with formally recognizing the role of federally recognized tribes in marine governance:

The perceptions of tribal representatives who participated in the late stages of the MLPA process bears out the truth of the Governor’s observation. One tribal advocate said that, though there is a great deal of work yet to be done to fully recognize tribal rights to marine resources, the “space created by the MLPA is a promising first step.”

Both the State and some tribal representatives see a trend toward a marked increase in tribal participation in the development of state policy beyond that of marine resources. While not every tribe has the resources to respond to state agency invitations, at least they have a greater opportunity.

In Executive Order N-82-20 Governor Newsome also recognized the role of the Tribes in marine resource protection and supported further development and movement toward co-management of MPAs.

#### ***Co-management and the California Department of Fish and Wildlife***

The Tribal Communication and Consultation Policy provides the foundation for the CDFW to work cooperatively, communicate effectively, and consult with Tribes. This policy also serves as the CDFW’s primary means to implement Executive Order B-10-11 and the California Natural Resource Agency’s Tribal Consultation Policy.

The *Master Plan for Marine Protected Areas – Appendix B* from the CDFW (2016: B-10) describes the existing co-management policy with respect to Tribes as follows:

The purpose of this policy is to create a means by which tribes and Fish and Game Commission can effectively work together to realize sustainably managed natural resources of mutual interest.

This CDFW (2016) identifies the following priorities:

1. Communication. Both FWC and the Tribes are faced with innumerable demands on their limited time and resources. In the interest of efficiency, FWC will annually host a Tribal planning meeting to coordinate the upcoming regulatory and policy activities before FWC. The meeting will provide a venue for education about process, identifying regulatory and policy needs, and developing collaborative interests; this will include inviting sister agencies to participate.
2. Collaboration. In areas or subjects of mutual interest, FWC will pursue partnerships with tribes to collaborate on solutions tailored to each tribe's unique needs and capacity. The structure of these collaborative efforts can range from informal information sharing to Memorandum of Understanding (MOU) with more specific agreements regarding working relationships and desired outcomes, to co-management agreements with specific responsibilities and authorities.
3. Record-keeping. FWC will maintain a record of all comments provided by Tribes and will include them in administrative records where appropriate.
4. Training. FWC will provide training to interested Tribes on its processes for regulation and policy development.

The FWC *Co-Management Vision Statement and Definition* (February 2020) states:

The vision of tribes, the California Fish and Wildlife Commission, and the California Department of Fish and Wildlife is to engage in a collaborative effort between sovereigns to jointly achieve and implement mutually agreed upon and compatible governance and management objectives to ensure the health and sustainable use of fish and wildlife [*my emphasis*].

Definition: A collaborative effort established through an agreement in which two or more sovereigns mutually negotiate, define, and allocate amongst themselves the sharing of management functions and responsibilities for a given territory, area or set of natural resources [*my emphasis*].

The above strategy adopted by the CDFW clearly suggests the value of *collaborative* co-management with the Chumash to implement marine conservation areas.

### ***The Tribal Marine Stewards Pilot Program***

Esgro (2020) notes that Tribes are engaged with California resource managers in multiple forums for MPA management through participation in multiple decision-making bodies, notably the CDFW Tribal Subcommittee and representatives at the MPA Statewide Leadership Team (MSLT). California's MSLT includes four regional Tribal representatives to ensure that Tribes

are directly involved in the development of MPA policy. Tribal participation in the collaboratives has given way to funded Tribal-specific projects and initiatives.

In 2020, a Tribal Marine Stewards Network Pilot Program was approved by the Ocean Protected Council (OPC) that included a disbursement of \$1,000,000 to the California Indian Environmental Alliance (CIEA) to support the development of a Tribal Marine Stewards Network pilot program. The objective of the program is to enhance engagement with Tribes and protect and restore coastal and marine ecosystems. According to OPC, this program is a mechanism to “advance California’s efforts to support [I]ndigenous stewardship and adopt meaningful co-management measures.”

The program is composed of four partner Tribes (Tolowa Dee-ni’ Nation, Resighini Rancheria, Kashia Band of Pomo Indians, and the Amah Mutsun Tribal Band), and is supported by two non-governmental organizations (CIEA and Ecotrust). The program focuses on MPA monitoring and notes that Tribes will work to identify a fifth Tribe, ideally in southern California, who is interested in participating in the network. At the time of the writing of this report, the Chumash are not formally involved in this pilot program.

A timeline that includes a general summary of development in the co-management approach in California is below:

- Executive Order (“EO”) B-10-11 started state agency tribal consultation under Gov. Brown
- 2012 Natural Resources Agency adopts Tribal Consultation policy
- 2014 CDFW adopts tribal Communication and Consultation Policy
- 2015 FGC Adopts Tribal Consultation Policy
- 2019 EO N-15-19 reaffirms Tribal Consultation by Gov. Newsom
- 2020 Tribal Subcommittee of FGC Adopts Co-Management Vision & definition
- 2020 Gov. 2d Annual Tribal nations Conference, Christina Snider, Gov. Tribal Advisor requests each tribe apply for co-management opportunities
- 2020 - Sept. 25: Gov. Newsom issues Statement of Administration Policy, Native American Ancestral Lands, “to facilitate tribal access, use and co-management of state owned or controlled natural lands.”
- 2020 - Oct. 7: EO N-82-20 “to conserve 30% of California’s land and coastal waters by 2030” and “to incorporate Tribal expertise and traditional ecological knowledge.”

### ***Moving from Consultation Co-Management to Collaborative Co-Management***

In an evaluation of the MLPA collaborative network process, Sofka et al. (2021) describe a number of recommendations that can strengthen the collaborative co-management of California-Chumash marine conservation areas. Sofka et al. (2021) recommend the following:

- *Improve Tribal Engagement, Protocols, and Initiatives*
  - Provide cross-cultural training by establishing periodic cross-cultural training opportunities. Trainings should foster cultural awareness around interactions with Tribal groups. Allocate time and funding for ongoing collaborative, network, and

state cross-cultural training that reflects local Tribal culture, histories, and connection to place.

- Protocols to prioritize respect, reciprocity, and free, prior, and informed consent in all interactions that acknowledge historical and current injustices related to Tribal sovereignty. Sofka et al. (2021) recommend that California should evaluate how Tribal consent, respect, or reciprocity may have been violated with respect to resource management issues in general, and marine conservation specifically. California should review ways to redress these past violations, with an emphasis on transparency and accountability.
- Establish and abide by anti-discrimination policies approved and/or developed by Tribes. Sofka et al. (2021) recommend that California should determine which forms of discrimination, biases, or stereotypes Tribes have encountered through their participation in the collaboratives and MPA management. The State should review existing agency policies and interpretations that constrain Tribal participation, including but limited to considerations of inclusivity and accessibility.
- Consider the utility of developing a statewide MPA tribal committee and/or statewide Tribal collaborative.
- Engaging Tribes as partners in co-management, not stakeholders. The State should involve Tribal participants in decision-making bodies, forums, and protocols surrounding the control and co-management of MPAs. They also recommend that the State review how principles of Tribal co-management have been violated with respect to resource management issues in general, and ocean/MPA conservation specifically.
- Ensure Tribal co-authorship of language in all formal agreements. Sofka et al. (2021) recommend that Tribal authorship should take place in future planning and policymaking to ensure that Tribal perspectives, preferences, and confidentiality are appropriately captured.
- Establish protocols for integrating aspects of Tribal stewardship. Sofka et al. (2021) recommend that California establish and codify appropriate policies, best practices, and protocols at the collaborative and State levels of governance that emphasize the integration and acknowledgement of Tribal stewardship at all levels of MPA management. They also recommend that the State prioritize Tribally led and managed stewardship projects, such as the Tribal Marine Stewards Network.
- Prioritize the inclusion of all forms of Tribal and indigenous communities and recognize that Tribal communities exist far beyond federal recognition. Sofka et al. (2021) recommend that California prioritize the involvement of diverse forms of Tribal arrangements including but not limited to federally recognized Tribes, State recognized Tribes, unrecognized Tribes, consortiums, etc. The State should review with Tribal participants what groups have been excluded from this MPA management in the past, and the procedures which facilitated that exclusion. Sofka et al. (2021) also recommend that the Tribes and California determine how

management and planning approaches can be modified to engage a variety of formal and informal Tribal arrangements.

- *Establish Protections and Protocols for Tribal Decision-Making and Authority Around Knowledge and Data. This should include the establishment of policies with Tribal participants for knowledge requests, use, sharing, and mobilization within the collaboratives.*
  - Anticipate and honor diverse Tribal preferences for data management, collection, analysis, and use. These protocols should facilitate Tribal participation and information sharing in collaboratives and beyond, creating an atmosphere of consent.
  - Understand that Tribes may not consent to the sharing of their knowledge and data that has been passed down and safeguarded for generations. Similarly, acknowledge the diversity of Tribal science and knowledge, how it differs from non-Tribal science, and the ways in which TEK can be better protected.
  - Consider the integration of Tribally selected models of Indigenous data governance and data protection at all levels of MPA collaborative management. Sofka et al. (2021) recommend that California and the Tribes carefully review Tribal decision-making authority and consider if there have been instances where Tribes felt as though they did not have control over their data, and if so, what policies could be established to mitigate these scenarios going forward.

Careful consideration of these recommendations is warranted to strengthen the collaborative co-management approach to California-Chumash marine conservation areas.

## CASE STUDIES OF CO-MANAGEMENT

This section includes a brief characterization of case studies on implementation of co-managed State-Tribal or Indigenous protected areas.

### ***Fiji Locally Managed Marine Area (LMMA) Network***

A locally managed marine area (LMMA) differs from a typical MPA in that LMMAs “are characterized by local ownership and/or control,” whereas other forms of MPA are usually “designated by levels of management via a top-down approach” (Govan et al. 2006). The LMMA Network supports a collaborative co-management approach to manage coastal and marine resources. LMMA supports networks in Indonesia, the Philippines, Papua New Guinea, Palau, Pohnpei, Fiji and the Solomon Islands, and engages with more than fifteen other countries in the Indo Pacific. Case studies of member organizations within the LMMA are found in Rocliffe et al. (2014), Jupiter et al. (2014), and Robertson et al. (2020).

Increasingly, the LMMA Network is sharing its lessons globally, with increased interest not only in improved conservation outcomes, but also with an increased focus on social justice and the rights of traditional resource owners. Robertson et al. (2020) note that a LMMA, in the South Pacific context, is rooted in traditional and customary fisheries management and is designed to

gain support and active engagement from the local community, with the latter being a key condition for the successful and lasting implementation of MPAs.

The Fiji Locally Managed Marine Area (FLMMA) Network supports traditional communities who have observed declines in marine resources and their customary use of marine resources and want to act. The FLMMA Network is a non-profit and charitable association of resource conservation NGOs, government departments, academic institutions and over four hundred communities working together as co-managers to promote and encourage the preservation, protection and sustainable use of marine resources in Fiji.

The goals of the FLMMA are to:

- Provide practical capacity building, cost-effective and culturally appropriate engagement tools to promote locally led dialogues and management.
- Assist communities in managing their resources, often utilizing a revival of cultural traditions strengthened by contemporary science.
- Build trust, resiliency, confidence, and innovation through lesson sharing between practitioners.
- Follow a code of conduct that ensures community interests are the heart of any conservation effort.
- Advocate for communities at the national, regional, and international levels, for fair partnerships, policies, and support.

### ***The Challenge of MPA governance in New Zealand and the Role of Māori***

When New Zealand was settled by Europeans, a treaty was signed between Māori and the British Crown, called the Treaty of Waitangi. The Treaty gave guarantees that Māori would retain ownership and sovereignty over their customary resources. However subsequent government action deprived Māori of rights and land. It was only in the 1970s that the New Zealand government began to recognize the importance of partnership with the diverse Māori peoples. Today, much of the policy and legislation in relation to oceans governance requires consultation with local Māori (*tangata whenua*) and tribes (*iwi*) (McGinnis 2012).

The New Zealand government, as part of its obligations to Māori under the Treaty of Waitangi, has provided for some coastal and marine areas to be subject to the control of local Māori. Two types of protection can be granted over areas: *mātaitai* and *taiāpure*. *Mātaitai* reserves are established to protect traditional fishing grounds in internal waters or coastal waters. Within a *mātaitai*, commercial fishing is prohibited, but recreational fishing can continue. The *tangata whenua* can also request the Minister of Fisheries to create bylaws that restrict or prohibit recreational fishing. Other customary reserves are *taiāpure*-local fisheries. Consultation is required and an appeal against a decision by the Minister of Fisheries to establish a *taiāpure*-local fishery can be heard by a tribunal. Due to this process, they are harder to establish than *mātaitai*. The national government of New Zealand can deny designation of *taiāpure*-local fisheries.

There are several problems regarding Māori rights with respect to marine protection, and co-management has failed (McGinnis 2012). Application for marine reserve designation is



dependent on approval from other interested parties and government agencies. Current co-management legislation requires the Crown acting through the Department of Conservation have the final say regarding marine reserve management (Dodson, 2014). Co-management in New Zealand has not empowered local iwi or tribes in co-governance – there remains unequal authority between cultural groups and governmental organizations. Collaborative co-management could potentially minimize marginalization of Māori communities and increase successful marine reserve implementation (Carlsson and Berkes 2005; Berkes 2009; Mossop 2020). Fragmented government authority and inter-agency conflict also contribute to failure to live up to international best practice in protected area management in New Zealand.

### ***Co-management between Australia and the Miriuwung-Gajerrong People of Western Australia***

Collaborative co-management involves Australia and the Miriuwung-Gajerrong people of Western Australia, and the partnership that has evolved shows co-management can provide equity in managing a protected area (Hill, 2011). In this case, collaborative co-management established a balance between Indigenous values and State conservation values.

Co-management is central to the Australian government's approach to this conservation/Indigenous nexus, and to delivering the enhanced equity with Indigenous people in protected areas. Indigenous people favor community-controlled approaches to protected areas in this region of Australia. Hill (2011) describes a number of reasons for the success of the Australia-Miriuwung-Gajerrong co-management model:

- Respect the rights of traditional owners, custodians, or users to lands, territories and resources Indigenous land ownership
- Free, prior and informed consent of the Traditional Owners
- Legal protection for rights and interests of parties
- Respect and strengthen Indigenous peoples' institutions and customary laws
- Coherent and effective Indigenous representative party with legitimacy
- Sufficient resources to enable Indigenous participation
- Conflict management
- Respect and strengthen Indigenous peoples' exercising of authority and control
- Commitment of Indigenous people to assume the opportunities
- Appropriate technical and other advice
- Clear understanding of Indigenous ideas about success
- Traditional Owners in driving role

As a general summary, Hill (2011) identified three factors of significance for the establishment of a successful co-management of a protected area: (1) a foundation platform of recognition of rights and interests; (2) a set of effective organizations to support the roles of the key actors; and (3) effective mechanisms for working together.

A number of factors contribute to unsuccessful co-management, such as: unclear law with vague strategic and programmatic development; failure to uphold treaty rights and obligations for



Indigenous or Tribal peoples regarding their use or right to access protected areas; lack of resources granted to Indigenous or Tribal peoples to participate as partners in co-management planning and decision-making; lack of funding granted to implement and enforce co-management plans; lack of leadership; and, the lack of institutional capacity to address conflicts between partners in co-management planning efforts.

[An *Addendum* describes the co-management framework that has been adopted and implemented for the Olympic National Marine Sanctuary.]

## AN ANALYSIS OF FOUR CALIFORNIA-CHUMASH MARINE CONSERVATION AREAS

Based on an analysis of the scholarly literature and case study material published on co-management of protected areas, this section provides an alternative analysis based on a sample of factors that often contribute to successful State-Tribal partnerships. The primary factors used in the analysis are:


- Public access of a marine area by Tribal members.
- The proximity to use of the marine area by Tribal members.
- The scientific baseline information on the ecology of the marine area.
- The historical level of customary marine resource use.
- The institutional capacity to monitor the designated MPA and enforce rules and regulations.

Table 2 depicts a general summary of the findings from this analysis. A characterization of the institutional capacity and capability of partnering organizations to monitor and enforce the rules and regulations of MPAs is described as well in the sections below the table.

[insert Table 2]

### *Institutional Capacity and Capability to Monitor and Enforce*

A comprehensive evaluation of the institutional capacity and capability to monitor and enforce the existing MPA network is beyond the scope of this project. Starting in 2007, California Sea Grant partnered with the California Ocean Protection Council (OPC) and CDFW to administer research project funding for baseline monitoring of MPA's. These projects aimed to establish a snapshot of marine ecosystems and human activities around the time of the establishment of the new MPAs, and to document initial socioeconomic and ecological changes after the MPAs take effect. The South Coast was the third region to be studied as part of the MPA Baseline Monitoring Program. The projects ran from 2011 to 2017.



The MPA monitoring framework explicitly mentions the potential role of citizen science programs in MPA monitoring (CDFG 2008). Recently, many citizen-based science programs have endeavored to help provide these much-needed data (Freinwald et al., 2018).

Implementation of MPAs under the MLPA Initiative in Southern California was followed by a monitoring program to establish a comprehensive baseline of the ecological conditions of several marine ecosystems at the time of MPA implementation. This baseline monitoring consortium involved several citizen science monitoring programs alongside more traditional academic monitoring programs, creating an opportunity to evaluate the potential for citizen scientists to become more involved in future long-term monitoring efforts.

Enforcement of existing CDFW regulations is based on education, public outreach, and a number of other factors, including the number of marine wardens. In an undercover operation and subsequent boarding by officers in 2013, CDFW wildlife officers observed eighteen violations including poaching within California's MPA network, exceeding the possession limits of several fish species, using illegal methods to take fish, and failing to report accurate counts on logbooks. Monitoring and enforcement of MPA regulations will depend on the resources available to citizens, resource agencies and the Tribes to co-management designated areas. One obstacle often recognized in marine life protection is an "implementation deficit" whereby deficits occur during the implementation phase of policy development when there is a mismatch between fields of regulatory action. This can occur immediately or across a longer-term implementation phase. Immediate implementation deficits are caused by an excessively general definition of regulations or when policy goals are not operationalized in this field.

### ***Recommendation***

Based on the alternative analysis, the Chumash should consider joining the Tribal Marine Stewards Network pilot program as the fifth partner in the collaborative network effort. There is currently no southern California Tribal partner in the pilot program.

Two California-Chumash marine conservation areas may be appropriate to consider by the Chumash members given the analysis above: the *Kashtayit* or Point Dume marine conservation areas. This recommendation is based on the historical use of customary practice by the Chumash of these areas; the proximity of use to these areas; and the availability of public access to the sites.

Furthermore, the Chumash should consider ways to contribute as co-managers to the enforcement and monitoring efforts to further the implementation of existing California-Chumash marine conservation areas.

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November 28, 2023

California Fish and Game Commission  
1416 Ninth Street, Suite 1320  
Sacramento, CA 95814

## **Re: Petitions to the California Fish and Game Commission Regulation Change submitted by the Santa Ynez Band of Chumash Indians**

Dear Commissioners,

The Santa Ynez Band of Chumash Indians welcomes the opportunity to submit the required forms (FGC 1) and summary narratives to the California Department of Fish and Game Commission to revise and amend existing regulations for marine protected areas within the Central Coast MLPA Region. Please find attached the following forms and documentation:

- 1) Petition to the California Fish and Game Commission for Regulation Change (FGC 1) for a new Chitqawi SMCA with a Summary Narrative and Map for consideration in the Central Coast Region.
- 2) Petition to the California Fish and Game Commission for Regulation Change (FGC 1) for amendments to the existing Point Buchon SMCA and SMR in the Central Coast Region with a Summary Narrative and White Paper produced by the Santa Ynez Band of Chumash Indians.

If you have any questions, please contact Sam Cohen, at 805-245-9083.

Thank you,

*Sam Cohen*

Sam Cohen, Esq.  
Government Affairs and Legal Specialist