

- The proposed activity is occurring in isolation from other activities (i.e. without cumulative effects of multiple allowed activities). This assumption is based upon limitations in the SAT's ability to assess the cumulative impacts of multiple activities, not a belief that cumulative impacts do not occur.

Because proposed non-commercial uses in MPAs are available to all non-commercial users according to the state of California, the SAT did not assess levels of protection for take of one particular group of non-commercial users (e.g., traditional tribal use).

Further, the SAT is not able to assign levels of protection without information about the species and methods of take for proposed uses in MPAs. MPAs that allow extractive activities are assigned levels of protection ranging from "high" for low-impact activities, to "low" for activities that alter habitat and thus are likely to have a large impact on the ecosystem. Both direct impacts (those resulting directly from the gear used or removal of target or non-target species) and indirect impacts (ecosystem-level effects of species removal) are considered in the levels of protection analysis.

**10. Why should proposed dredge spoil sites influence the location of MPAs when the location of the spoil sites has not yet been finalized?**

**Draft Response:** In Question 9 found in the document "Draft Responses to Science Questions Posed during MLPA Public Meetings and via email from May 3–20, 2010", the SAT generally advised the NCRSG to avoid, when possible, placing an MPA adjacent to dredge disposal sites. Specifically with regard to the potential dredge spoil disposal sites near Noyo Harbor, the SAT recommended using caution when placing MPAs near those areas but did not make a firm recommendation to the NCRSG on whether to avoid the proposed site or not. The information provided for the proposed dredge disposal site near Noyo Harbor was intended to inform the NCRSG and the public on how dredge disposal sites should be considered during MPA planning. The NCRSG should be made aware of existing and proposed sites, but other established SAT guidance, including bioregions, habitat representation and habitat replication, and MPA size and MPA spacing, should be used as the primary mechanisms to drive the design of alternative MPA proposals.

**11. Did the SAT consider water quality in the Klamath River and the associated impacts to False Klamath Cove?**

**Draft Response:** During winter rain events, the Klamath River plume may extend past False Klamath Cove (located just over 4 miles north of the river outlet) and as far north as Point St. George. It is unclear if there are any toxicity concerns in this plume as no studies have been performed to assess this. However, by evaluating a combination of data on mussel bioaccumulation at the mouth of the Klamath River, and water quality sample results at False Klamath Cove, the SAT can provide a general response.



For instance:

# READING ROCK

According to the SAT:



“Any activity can occur locally to the maximum extent allowable under current state and federal regulations.”

**Shaded Area:**  
**2.5 Hours Driving Each Way**

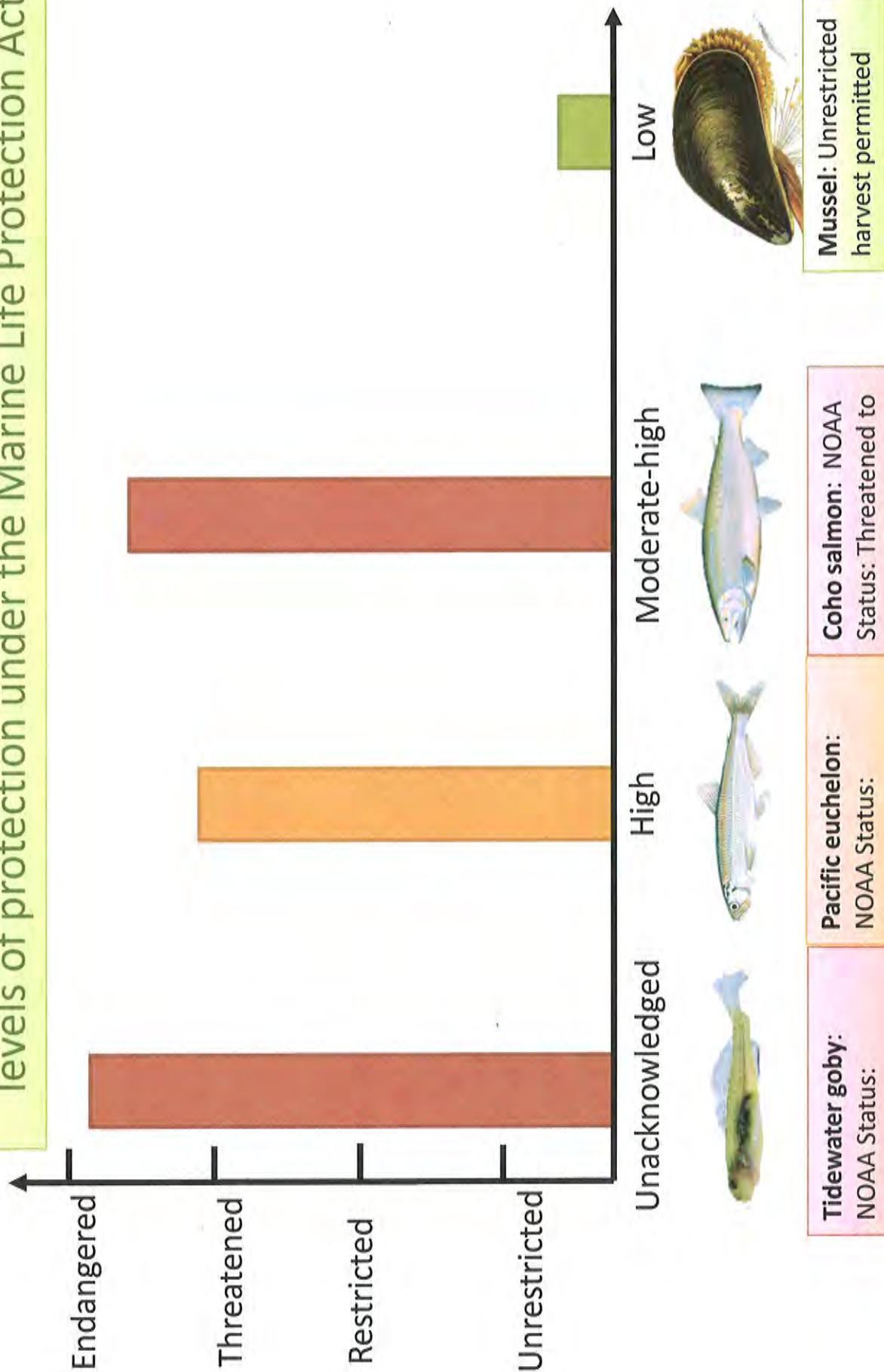
In Reality:



**Limitations on access time:**

- ✓ 8 Hours Sleep
  - ✓ 8 Hours Work
  - ✓ 2 Hours to eat, shop, family
  - ✓ 5 Hours Driving
  - ✓ 1 Hour to Harvest
- = 24 Hours.

# Reverse correlation: Threat to species versus levels of protection under the Marine Life Protection Act



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## Comment Letter G – Supplemental Hand-Out for Commenter F1 (Corbett, John)

### Response to Comment G-1

The document provided by the commenter is referred to in Comment F1-4 oral testimony.  
See *Response to Comment F1-4*.

### Response to Comment G-2

The document provided by the commenter is referred to in Comment F1-4 oral testimony.  
See *Response to Comment F1-6*.

### Response to Comment G-3

See *Response to Comment G-2*, above.

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Comments of Michael Belchik on MLPA DEIR

Pg 1-1 and 1-2 The proposed action fails to meet several of the MLPA goals and objectives listed.

The goals of the MLPA as stated here do not explain the sole emphasis on harvest in the designation and regulation of the MPA's in all their forms. Nothing in the MLPA legislation itself limits regulation to harvest regulation only, and yet, this is the only prohibition in any of the MLPA's as offered in the alternatives. In fact, the MLPA legislation itself only mentions harvest once (need reference).

Because the DEIR improperly and inexplicably focuses solely on harvest prohibition and area closures, while ignoring other threats to the marine environment, the alternatives in this DEIS fall short of meeting the goals and objectives of the MLPA. For example, under the MLPA proposal, Indian Tribes will be prohibited (or substantially restricted) from practicing traditional hand gathering for sustenance and ceremonial purposes, yet other potentially devastating activities such as oil drilling would be permitted. Thus, the MLPA proposed action fails to meet the goals of the MLPA, and specifically it fails to meet the following goals stated on pages 1-1 and 1-2.

1. to protect the natural diversity and abundance of marine life, and the structure, function, and integrity of marine ecosystems;
2. to help sustain, conserve, and protect marine life populations, including those of economic value, and rebuild those that are depleted; and
4. to protect marine natural heritage, including protection of representative and unique marine life habitats in California waters for their intrinsic value;

Pg 1-7: *"Take is not limited to fishing activities. For example, coastal power-generating stations impinge fishes and invertebrates and entrain their larvae in the process of drawing ocean water for cooling systems. Likewise, many minor seawater intakes and sewage outfalls occur along the coast. The impacts of seawater intakes and sewage outfalls can be diffuse in nature, and can affect ecosystems both locally and regionally (CDFG 2008). Despite this, levels of protection are only assigned to MPAs based on directed take, depending on the allowed uses specified for the MPA."*

Here, the DEIS acknowledges directly the lack of breadth of alternatives and the shortcomings of their evaluation of the level of protection. The problem with the simple Level Of Protection (LOP) conceptual model applied by the SAT is that it:

1. Fails to take into account other continued or future activities that are not expressly prohibited by the SMCA regulation. So, for example, if take of a certain species (e.g. mussels) is allowed, it is assumed that it will occur at a much higher level in the future, thus the SMCA is only given a "low" rating for protection. However, other activities (oil

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## Comment Letter H – Supplemental Hand-Out for Commenter F3 (Belchik, Michael)

### Response to Comment H-1

The document was provided by the commenter during Comment F3 oral testimony.

Not all MPAs developed through the MLPA planning process are designed or required to meet every goal of the MLPA. Individual MPAs are designed to meet specific goals and objectives, are designed with those goals in mind, and are a matter of record and can be viewed at [www.dfg.ca.gov](http://www.dfg.ca.gov). It is when all statewide MPAs are linked in a network that they meet all goals and objectives as set forth in the MLPA. Therefore the Proposed Project does not fail to meet the goals of the MLPA.

In addition, note that the Proposed Project does not include regulations on oil exploration or drilling – see *Master Response 1: Scope of the MLPA and Regulatory Authority*.

### Response to Comment H-2

The document was provided by the commenter during Comment F3 oral testimony. See *Master Response 3: Inadequacy or Application of Data Gathered During the MLPA Initiative Planning Process, and Adequacy of the Science Standard* and *Master Response 6: Levels of Protection (LOP)*.

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COMMISSIONERS  
 1st Division  
     Aaron Newman  
 2nd Division  
     Greg Dale  
 3rd Division  
     Mike Wilson  
 4th Division  
     Richard Marks  
 5th Division  
     Patrick Higgins

**HUMBOLDT BAY  
 HARBOR, RECREATION, AND CONSERVATION  
 DISTRICT**  
 (707) 443-0801  
 P.O. Box 1030  
 Eureka, California 95502-1030



March 29, 2012

Marija Vojkovich  
 Regional Manager  
 Marine Region  
 California Department of Fish and Game

MLPA North Coast CEQA  
 California Department of Fish and Game  
 c/o Horizon Water and Environment  
 P.O. Box 2727  
 Oakland, CA 94602

Dear Regional Manager Vojkovich,

Thank you for the opportunity to comment on the draft Environmental Impact Report (DEIR) regarding the establishment of a network of Marine Protected Areas on the North Coast of California.

The Humboldt Bay Harbor, Recreation and Conservation District (District) has been an active participant throughout the North Coast MLPA process. Two of our current Harbor Commissioners were members of the North Coast Regional Stakeholder Group, and District staff was heavily involved in coordinating local stakeholders. The District strongly recommends that the Fish and Game Commission adopt the DEIR and approve the Revised North Coast Regional Stakeholder Group MPA Proposal (RNCP), without modifications.

Local stakeholders worked tirelessly to develop the marine protected area (MPA) design now referred to as the RNCP. This Proposal represents numerous compromises and considerations regarding ecological, socio-economic and enforcement issues. The substantial effort of the NCRSG to achieve consensus on a single MPA design was a major accomplishment. It is gratifying to see that the Department and the Commission have honored this effort by making it the Preferred Alternative in the DEIR.

I-1



The DEIR presents a number of 'options' or other modifications to the Preferred Alternative, many of which are based on perceived ease of enforcement. The differences between the Preferred Alternative and the other options are not trivial. Each MPA boundary and regulation in the Preferred Alternative was carefully considered and what may appear as minor differences on a map represent a delicate compromise between many stakeholders. Adjusting MPA boundaries to enhance enforcement would foster the perception that the local stakeholder's hard work is being disregarded and boundaries are being changed at the 11<sup>th</sup> hour. Community support will be critical to the education and voluntary cooperation needed for the MPA's to be effective. Respecting the proposal developed by the NCRSG is critical towards maintaining that community support.

I-1

The District strongly urges you to adopt the RNCP and take advantage of this significant opportunity to work with North Coast communities to implement the MLPA. The District reiterates our earlier offers to assist in MLPA implementation, especially with regard to the South Humboldt Bay SMRMA. Partnering with local agencies and stakeholders to assist with education and implementation of the MLPA may be an effective way to partially address the limited resources available for enforcement.

The District also supports the continuing efforts of the California tribes and tribal communities, and the California Department of Fish and Game, to work together to find solutions that ensure that the Project does not impact the diverse and culturally important traditional tribal gathering practices found throughout the North Coast Region.

Thank you for taking these comments into consideration,

Respectfully,



Aaron Newman  
Commissioner  
Humboldt Bay Harbor, Recreation and Conservation District

## Comment Letter I – Newman, Aaron

### Response to Comment I-1

Comment noted. The DEIR, including a description of the proposed regulations, was circulated to solicit public comments regarding the sufficiency of the related environmental analysis. Comments expressing a policy preference are noted and will be considered by the Department and Commission as they contemplate final action.

No changes to the DEIR are necessary.

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**MLPA CEQA Comments**

1 message

**Shawn Cherry** <scherry1981@yahoo.com>

Tue, Mar 20, 2012 at 11:19 PM

Reply-To: Shawn Cherry &lt;scherry1981@yahoo.com&gt;

To: "MLPAcomments@HorizonWater.com" &lt;MLPAcomments@horizonwater.com&gt;

In my opinion if the MLPA goes through it would be devastating. I personally fish out of Shelter Cove, and have for many years. It is something I enjoy very much and I am starting to teach my children. I'm remembering the closer that was put in place a few years on bottom fish. In the short time that it was closed amazing things happened. Apparently fish numbers grew so quickly that it was very common to catch a 12to15lb. Lingcod that had a 8to10pounder halfway down it's stomach. This is a fish that is still eating if it's biting a bait. Coming from an avid outdoors man and life long fisherman, there is a happy medium. A permanent closer is not the answer nor is the catch limits that are in place now or this wouldn't be an issue. I think that a couple different proposals of seasons and catch limits should be drawn up and tested. Give the fishing public a chance to try on a new fit, Not close our fishery for good. I would also like to say, DRAG BOATS ARE KILLING OUR OCEANS, NOT SPORT FISHERMAN. Drag boat captains and deck hands will both tell you the amount of wasted sealife that comes aboard dead and is pushed back out to sea to rot is absolutely sickening. Restrict drag boats and watch fish populations rise!!

J-1

J-2

Shawn Cherry  
[\(707\) 978-8302](tel:7079788302)

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## Comment Letter J – Cherry, Shawn

### Response to Comment J-1

Comment noted. Please refer to DEIR Chapter 6, Section 6.6 *Environmental Justice and Impact EJ-2: Reduced Subsistence Fishing Opportunities for Non-Tribal Minority and Low-income Groups, and Isolated Communities*, specifically the discussion of the Shelter Cove community on page 6.6-20.

As stated in that discussion:

#### *Isolated Communities*

The isolated communities of Petrolia and Shelter Cove were involved throughout the MLPA planning process. Community members worked with the NCRSG to develop MPA alternatives that considered their recreational take activities. The nearest MPA (Sea Lion Gulch SMCA) is approximately 5 mi south along the coastline from Petrolia. Although no species take would be allowed within this proposed MPA, abundant areas would remain along the shoreline and the Mattole River for subsistence fishing and gathering activities. Thus, under the Proposed Project, the Petrolia community would not be significantly affected. There are no MPAs proposed near the community of Shelter Cove. As a result of community involvement, subsistence fishing activities conducted along the shoreline nearest to isolated communities would generally not be restricted by the Proposed Project. A disproportionate impact on isolated communities adjacent to the Study Region would not be likely to occur, and impacts would be less than significant. Refer to the Petrolia and Shelter Cove Communities discussion in Section 6.6.3 “Environmental Setting” for additional details.

Also, as shown in the maps included in DEIR Chapter 2 *Project Description*, the nearest proposed MPA to Shelter Cove is the Big Flat SMCA. This area would be located approximate 9.5 miles northwest of Shelter Cove. Within the boundaries of this MPA, take of all living marine resources would be prohibited except: recreational take of salmon by TROLLING, and Dungeness crab by TRAP, HOOP NET, and HAND; and commercial take of salmon by TROLL FISHING GEAR, and Dungeness crab by TRAP.

### Response to Comment J-2

Comment noted. See *Response to Comment A1-6*.



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**NC MPAs**

1 message

**bryan scilacci** <bryanscilacci@gmail.com>  
To: MLPAComments@horizonwater.com

Thu, Mar 29, 2012 at 10:27 AM

In regards to the NC MPAs,

Bryan Scilacci, born and raised in Fortuna Ca. I've sport fished out of Humboldt Bay since I was a small child, and I support the Preferred Alternative with no boundary changes. My first time fishing for rockfish was with my now deceased Grandfather at a place that will soon be known as The South Cape Mendocino SMR. So I will personally be affected by many of the proposed MPAs and Special closures. Even with not wanting to lose fishing areas that hold special memories, I still joined with my community and supported the Preferred Alternative. To expand the boundaries that were set in the Preferred Alternative would diminish all the time, effort, sacrifice and compromise that was given by our communities and stakeholders. Please adopt the Preferred Alternative with no boundary changes.

K-1

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## Comment Letter K – Scilacci, Bryan

### Response to Comment K-1

Comment noted. The DEIR, including a description of the proposed regulations, was circulated to solicit public comments regarding the sufficiency of the related environmental analysis. Comments expressing a policy preference are noted and will be considered by the Commission as they contemplate final action.

No changes to the DEIR are necessary.

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# Smith River Rancheria

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

Kara Brundin Miller  
Chairperson

March 21, 2012

Denise Padgett  
Vice Chairperson

California Department of Fish and Game  
c/o Horizon Water and Environment  
P.O. Box 2727  
Oakland, CA 94602

Loren Bommelyn  
Council Secretary

Re: MLPA North Coast CEQA Comments

Joel Bravo  
Treasurer

Dear Horizon:

Marian Lopez  
Council Member

The Smith River Rancheria has a long tradition of gathering and harvesting marine resources for cultural and religious purposes and for subsistence. We have always emphasized that Smith River Rancheria inherited and still today possess strong values about the stewardship and conservation of marine resources. The Tolowa Dee-ni' (people) have a strong held belief that they have an ongoing responsibility to be the stewards of their ancestral lands. The use of traditional cultural knowledge empowered tribes to thrive for thousands of years. It is a tribal practice to take only those resources needed in the spirit of respect and reciprocity.

L-1

Lenora Hall  
Council Member

Pyramid Point and Prince Island proposed boundary is a California Coastal National Monument and the jurisdiction is under the Smith River Rancheria Tribal Government. The question of the waters and marine resources has never been fully vetted throughout this MPA process. Rather it has been discarded as one of those unanswered questions to be avoided and continues to be not addressed. Again, in the draft EIR we do not see adequate reference made to this question.

Russ Crabtree  
Tribal  
Administrator

The Smith River Rancheria's position is they have full jurisdiction over Prince Island and the surrounding seascape. As stated in the Smith River Rancheria Factual Based Record, that we were given 60 days to complete. As stated in the several Tribal Factual Based Records, "there would be areas of geographical overlap identified among Tribes. Any assertion and claims made by each tribe of their respective ancestral and or aboriginal lands and waters is a matter for tribes to resolve amongst themselves. It is not something for the State to attempt to mandate for tribes". Pyramid Point and Point Saint George is a very valid case and point.

L-2

The Department of Fish and Game has placed in several public records that other tribes are authorized to practice customary uses in the ancestral lands and seascape of the Smith River Rancheria. The Smith River Rancheria could certainly make this same point in other North Coast MPA's. As we have stated numerous times, it our strong held belief that this is a question to be decided only by tribes, and should not be broached in any manner by the State of California.

L-3

*Waa-saa-ghitlh-'a~ Wee-ni Naa-ch'aa-ghitlh-ni*  
*Our Heritage Is Why We Are Strong*

The EIR should be revised to reflect this fact along with any other documents that in our view attempts to undermine the rights of tribes over their ancestral lands and water. Until an Inter-Tribal Agreement is negotiated with Smith River Rancheria and any other federally recognized tribes, it would be premature for the proposed regulations to identify any other tribes as being authorized to fish and gather within the Pyramid Point and Point Saint George proposed SMCAs.

L-3

It has been and will continue to be, the position of the Smith River Rancheria that the California Fish and Game has no authority to assert regulatory jurisdiction within the Smith River Rancheria boundaries, including the seascape surrounding Pyramid Point and Point Saint George. The Commission should adhere to the policy of avoidance adopted by the North Coast Regional Stakeholders Group and the Blue Ribbon Taskforce and not make these attempts to circumvent the traditional, historical and sovereign authority of the Smith River Rancheria.

Additional, there should be expanded discussion in the EIR on:

- The Federal nexus and compliance with the National Environment Policy Act;
- The positive impacts of co-management between federally recognized tribes and the Department of Fish and Game;
- Tribal Cultural Impacts;
- Ensure adequate Tribal Consultation and the development of a binding MOU.

L-4

Furthermore, it should be noted that the entire North Coast is effectively a traditional cultural property for tribes whom have inhabited this region for millenniums. This proposed project should ensure that it does not set the stage for impacts to the diverse and culturally important traditional tribal uses. The State of California needs tribal support and local buy-in to sustain successful implementation of the Marine Life Protection Act.

L-5

Failure to do will only result in adverse effects on the marine environment, which will be coupled with insufficient enforcement capabilities. Such protection capacity can only be provide by the tribes and the local communities.

Sincerely,



Russ Crabtree

Tribal Administrator

Submitted on behalf of the SRR Tribal Council

Attachments:

SRR, Fish and Game Commission

Cher-Ae Heights Indian Community of the Trinidad Rancheria

Yurok Tribe Correspondence





# YUROK TRIBE

190 Klamath Boulevard • Post Office Box 1027 • Klamath, CA 95548

Phone: 707-482-1350 • Fax: 707-482-1377



February 14, 2012

Russ Crabtree, Tribal Administrator  
Smith River Rancheria  
140 Rowdy Creek Rd  
Smith River, CA 95567-9525

Dear Mr. Crabtree,

It has come to our attention that there is some confusion regarding the Yurok Tribe's intentions in including Pyramid Point and Point St. George State Marine Conservation Areas (SMCAs) in the *Yurok MLPA Marine Plan Factual Record of Use* presented to the Fish and Game Commission September 15, 2011.

The Yurok Tribe in no way intended to assert authority or regulatory jurisdiction over the Pyramid Point or Point St. George State Marine Conservation Areas in our inclusion of information on those sites in our Factual Record. The inclusion of these sites was merely to acknowledge historic Yurok use under traditional, Tolowa authorized inter-Tribal use agreements and allow flexibility for formal Inter-tribal use agreements to be negotiated and authorized by the Smith River Rancheria. The Yurok Tribe respects and defers to the sovereign, federally recognized authority of the Smith River Rancheria to manage use at Pyramid Point and Point St. George State Marine Conservation areas.

As we have discussed throughout the MLPA process it is imperative for us to reach agreement between Tribes regarding traditionally shared or permitted use areas without the State of California's influence or dictation.

The Yurok Tribe appreciates the good working relationship we have with Smith River Rancheria and hopes to continue to work together in order to protect our inalienable sovereign right to traditionally fishing and gathering for generations to come.

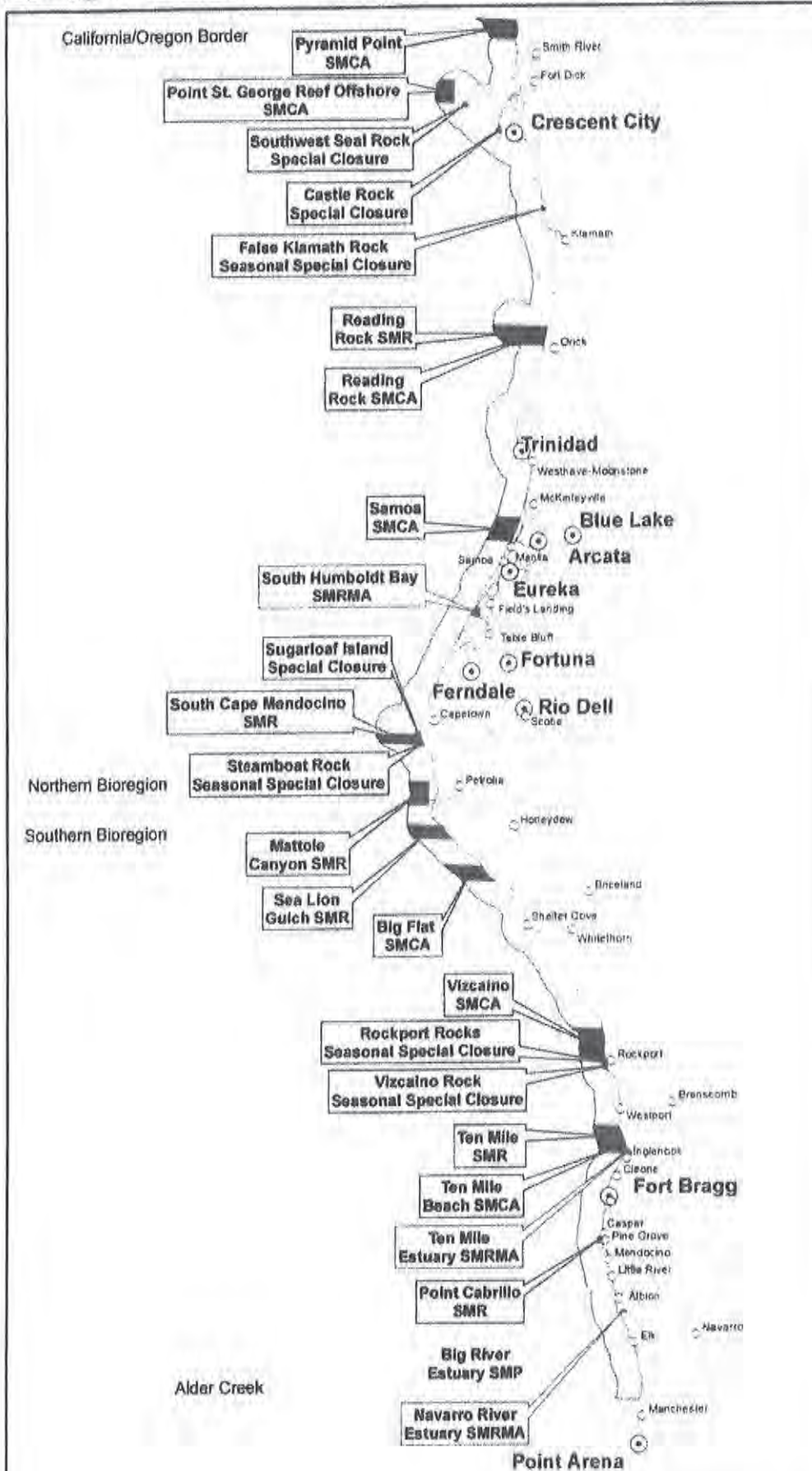
Sincerely,

A handwritten signature in dark ink, appearing to read "T. O'Rourke".  
2-14-12

Thomas O'Rourke  
Chairman Yurok Tribe

CC: Sonke Mastrup, Director Fish and Game Commission

L-6

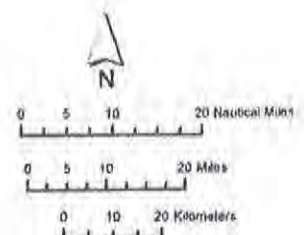


### California Marine Life Protection Act (MLPA) Initiative



#### Legend

- Proposed State Marine Conservation Area (SMCA)
- Proposed State Marine Park (SMP)
- Proposed State Marine Reserve (SMR)
- Proposed State Marine Recreational Management Area (SMRMA)
- Proposed Special Closure  
*See additional maps and materials.*
- North Coast Study Region Boundary



Created by Marine Map Cartographic Division, UCSB.

Date: 22 September 2010

For more information, visit:  
<http://www.northcoast.marinemap.org>

#### Disclaimer

This map represents the Round 3 marine protected area (MPA) proposal developed by the MLPA North Coast Regional Stakeholder Group (NCRSG) for consideration by the MLPA Blue Ribbon Task Force. The NCRSG also developed a list of proposed special closures; the special closures are a separate recommendation from the Round 3 NCRSG MPA Proposal, but are displayed on this map for reference. The Round 3 NCRSG MPA Proposal is under review; it is not a recommendation to the California Fish and Game Commission.





## Cher-Ae Heights Indian Community of the Trinidad Rancheria



November 28, 2011

Russ Crabtree, Tribal Administrator  
Smith River Rancheria  
140 Rowdy Creek Road  
Smith River, CA 95567

Mr. Crabtree,

It has come to my attention that there is some concern regarding the content of the factual record the Trinidad Rancheria submitted to the Department of Fish and Game concerning the proposed Marine Conservation Areas within the North Coast Region, specifically in relation to Point St. George and Pyramid Point.

The Trinidad Rancheria in no way intended to indicate that it asserts any authority or jurisdiction over Tolowa ancestral territory and respectfully apologizes for any misunderstanding pertaining to our factual record. The Trinidad Rancheria included the map, "Fig 4. Proposed Marine Protected Areas (MPAs) within Yurok Ancestral Territory and Traditional Fishing Grounds", to illustrate the Proposed Marine Protected Areas within the North Coast Study Region. We in no way intended this map to illustrate cultural jurisdiction over the area or to imply that Trinidad Rancheria members would have fishing and gathering rights at Pyramid Point and Point St. George without explicit authorization from the Smith River Rancheria.

The authority to regulate gathering at traditional places within Tolowa ancestral territory naturally rests with the Smith River Rancheria. The Trinidad Rancheria does not claim Pyramid Point or Point St. George to fall within Yurok ancestral territory and want to ensure that the Department of Fish and Game Regulations are clear regarding fishing and gather at these locations. If in fact, the situation arises where inter-tribal use agreements are created and negotiated on a government to government basis, between our two sovereign nations, it will be with the absolute acknowledgement of the Smith River Rancheria's right of jurisdiction over its ancestral territory.

L-7

[www.trinidadrancheria.com](http://www.trinidadrancheria.com)

1 Cher-Ae Lane • PO Box 630 • Trinidad, California • 95570 • 707.677.0211 • 707.677.3921 (fax)

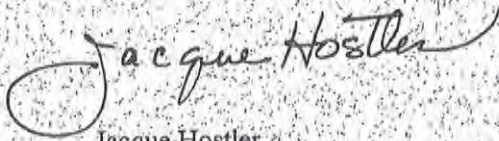


The Trinidad Rancheria is confident that we will be able to create inter-tribal agreements to address individual fishing and gathering rights within the proposed MPA's and recognize that fishing and gathering within the ancestral territory of the Tolowa Dee-ni' will only occur with the permission of the Smith River Rancheria. It was never our intention to insinuate otherwise, nor would we attempt to circumvent the sovereign rights of the Smith River Rancheria.

L-7

I hope that this clarifies the Trinidad Rancheria's position regarding Pyramid Point and Point St. George. Please accept my sincere apologies for any confusion that has occurred.

Thank You,



Jacque Hostler  
Chief Executive Officer  
Trinidad Rancheria

CC: *Anna Kimber, Attorney*  
*Law Office of Anna Kimber*

*Sonke Mastrup, Executive Director*  
*Fish and Game Commission*





# Smith River Rancheria

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

Kara Brundin Miller  
Chairperson

Denise Padgett  
Vice Chairperson

Loren Bommelyn  
Council Secretary

Joel Bravo  
Treasurer

Marian Lopez  
Council Member

Dr. Joseph  
Giovannetti  
Council Member

Lenora Hall  
Council Member

Russ Crabtree  
Tribal  
Administrator

November 30, 2011

Mr. Sonke Mastrup, Director  
California Fish & Game Commission  
1416 Ninth Street, Suite 1320  
Sacramento, CA 95814  
[SMastrup@fgc.ca.gov](mailto:SMastrup@fgc.ca.gov)

## RE: Addressing State Marine Conservation Areas Pyramid Point and Point St. George

Dear Mr. Mastrup:

I am following up on our earlier conversation regarding the concerns of the Smith River Rancheria with respect to the proposed regulations addressing the State Marine Conservation Areas Pyramid Point and Point St. George.

In the September 27, 2011 report to the Fish & Game Commission, both the Cher-Ae Heights Indian Community of the Trinidad Rancheria and the Yurok Tribe were identified as being authorized to take marine resources within both Pyramid Point and Point St. George. This report is contrary to the factual record submitted by both Tribes, which included a map, which clearly indicated both these SMCAs fall within the aboriginal and ancestral territory of the Tolowa people.

Although there may be individuals of Yurok descent who have fished and gathered within the ancestral territories of the Tolowa people, those practices have occurred pursuant to the authorization of the Smith River Rancheria, the federally recognized Tribe that has exerted jurisdiction over individuals within these areas since time immemorial. The factual record submitted by both Trinidad Rancheria and the Yurok Tribe made it clear that any individual's right to fish and gather within those MPAs would be conducted pursuant to an "inter-tribal use agreement;" an agreement which has not been negotiated.

Until such an agreement is negotiated between the Smith River Rancheria and any other federally recognized tribe, it would be premature for the proposed regulations to identify any other tribe as being authorized to fish and gather within the Pyramid Point and Point St. George proposed SMCAs.

*Waa-saa-ghitlh-'a~ Wee-ni Naa-ch'aa-ghitlh-ni  
Our Heritage Is Why We Are Strong*

When this issue was brought to the attention of the Cher-Ae Heights Indian Community of the Trinidad Rancheria, they were quick to correct the record by sending a letter to me, a copy of which is enclosed.

Any individual tribal member's fishing and gathering activities within these MPAs can only occur with the permission of the Smith River Rancheria. Until such time as an inter-tribal use agreement can be negotiated between the Smith River Rancheria and other federally recognized tribes, the regulations prepared by the Department of Fish & Game must be corrected to reflect the factual record: that the Pyramid Point and Point St. George SMCAs are not within their ancestral territory of the Cher-Ae Heights Indian Community of the Trinidad Rancheria and the Yurok Tribe, but instead fall within the territory of the Tolowa Dee-ni of the Smith River Rancheria.

L-8

Please feel free to call if you have any questions.

Sincerely,



Russ Crabtree  
Tribal Administrator  
Smith River Rancheria

Enclosure

cc: Becky Ota  
California Department of Fish & Game

*Waa-saa-ghitlh-'a~ Wee-ni Naa-ch'aa-ghitlh-ni*  
*Our Heritage Is Why We Are Strong*

## Comment Letter L – Crabtree, Russ

### Response to Comment L-1

Comment noted.

### Response to Comment L-2

These comments raise complex issues of law and policy and do not address the sufficiency of the EIR. As a matter of law, the MLPA cannot interfere with any tribal right that has been conferred by the federal government. No further response on this topic is warranted.

In addition, this comment contains statements related to proposed MPA regulations and/or regulatory sub-options under consideration by the Commission as part of its current rulemaking process conducted pursuant to the APA. See *Response to Comment A1-6*.

### Response to Comment L-3

These comments raise complex issues of law and policy and do not address the sufficiency of the EIR. No further response on this topic is warranted.

In addition, this comment contains statements related to proposed MPA regulations and/or regulatory sub-options under consideration by the Commission as part of its current rulemaking process conducted pursuant to the APA. See *Response to Comment A1-6*.

### Response to Comment L-4

Regarding your comment in the first bullet point about a Federal nexus: there is not a federal nexus for the Proposed Project. The National Environmental Policy Act requires federal agencies to integrate environmental values into their decision making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. If the Proposed Project or improvements implemented as a part of this Proposed Project were funded by the federal government or were part of a federal action such as a permit, then this statute would apply. No change to the EIR is warranted.

Regarding your comment in the second bullet point about co-management between federally recognized tribes and the Department, this comment does not address the adequacy of the EIR and therefore no change is warranted.

Regarding your comment in the third bullet point about tribal cultural impacts, the issue of cultural resources and consideration of impacts based on the State CEQA Guidelines are adequately discussed in DEIR Chapter 5, *Cultural Resources*.

Regarding the fourth bullet point about ensuring tribal consultations and development of a binding Memorandum of Understanding (MOU), the comment raises complex issues of law and policy and does not address the sufficiency of the EIR. Therefore, no change to the EIR is warranted.

Response to Comment L-5

These comments raise complex issues of law and policy and do not address the sufficiency of the EIR. As a matter of law, the MLPA cannot interfere with any tribal right that has been conferred by the federal government.

Regarding the comment that the entire north coast is essentially a TCP, please see *Response to Comment A1-4*.

Response to Comment L-6 through L-8

These comments contain statements not related to the environmental review published in the DEIR, but rather related to proposed MPA regulations and/or regulatory sub-options under consideration by the Commission as part of its current rulemaking process conducted pursuant to the APA. See *Response to Comment A1-6*.