



Delivered by electronic mail to: MLPAComments@HorizonWater.com

April 13, 2012

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

Re: Comments on Draft Environmental Impact Report for North Coast Marine Protected Areas

Dear Department of Fish and Game:

Please accept the following comments on behalf of Ocean Conservancy, the Natural Resources Defense Council (NRDC) and Humboldt Baykeeper. As you know, Ocean Conservancy and NRDC have been deeply involved in the implementation of the Marine Life Protection Act (MLPA) throughout its history. Our organizations have participated throughout the entire span of the North Coast MLPA process. Along with Humboldt Baykeeper, we served on the Regional Stakeholder Group (RSG), helped design the region's proposed marine protected areas (MPAs) and special closures and have attended all meetings related to the implementation of the MLPA on the North Coast. As a result, we are intimately familiar with the details of the Fish and Game Commission's North Coast Proposed Project (Proposed Project).

We are writing today to comment on the Draft Environmental Impact Report (DEIR) for the proposed North Coast MPA network alternatives. Given that the MLPA is designed to achieve conservation goals and advance environmental protection, we do not expect any of the proposed MPA networks to result in potentially significant adverse environmental impacts under the California Environmental Quality Act (CEQA). The CEQA analysis contained in the DEIR confirms this expectation, finding that potential adverse impacts are less than significant for all resource topics.¹ The analysis further finds that the Proposed Project will provide the most substantial benefits to the state of California by protecting marine life and underwater habitats, while also balancing the interests of a wide variety of stakeholders.

In our view, the DEIR provides a legally sufficient and fundamentally sound foundation for the state's decision and fulfills the purposes of CEQA to "prevent the elimination of fish or wildlife species due to man's activities [and] ensure that fish and wildlife populations do not drop below self-perpetuating levels,"² as well as to "inform governmental decisionmakers and the public about the potential, significant environmental effects of proposed activities."³ We have suggestions for improving the accuracy, completeness and logical consistency of some portions of the document and have organized our specific comments by chapter.

AN-1

¹ Marine Life Protection Act North Coast Study Region Draft Environmental Impact Report (DEIR), March 2012, at ES-9.

² Public Resources Code §21001(c).

³ CEQA Guidelines §15002(a)1.

Executive Summary

Overall, the Executive Summary provides a useful overview of the background and need for the Proposed Project, including areas of controversy and key issues. Additionally, this chapter correctly concludes that neither the Proposed Project nor its alternatives would result in significant adverse impacts on the environment.⁴

However, in the brief sections titled, “Alternatives Considered” and “Comparison of Alternatives and the Environmentally Superior Alternative,” we recommend correction and further clarification in the Final Environmental Impact Report (FEIR). Without discussion, page ES-9 (along with page 8-5) states that the No-Project Alternative (Alternative 1) and the Blue Ribbon Task Force (BRTF) Enhanced Compliance Alternative (Alternative 2) are both potentially feasible and “would generally meet the Proposed Project’s objectives.” We disagree.

We recommend the FEIR remove any language that states that Alternative 1 meets the regional objectives of the Proposed Project. This finding is inconsistent with the conclusions on page 8-8 that “benefits associated with the Proposed Project would not be realized” by Alternative 1 and “benefits to fisheries and habitats would not occur.” It is also inconsistent with CEQA findings of the No-Project Alternative for the Central, North Central and South Coast study regions, which found that declining populations and less resilient ecosystems would result from the status quo. Alternative 1 covers only three square miles (1%) of the North Coast study region and would generally provide a low level of protection.⁵ It is therefore impossible for Alternative 1 to meet the project objectives laid out on pages ES-5 to ES-7, which call for the protection and maintenance of species diversity, protection of diverse habitat types in close proximity to each other and sustained or increased reproduction by species likely to benefit from MPAs, among many other conservation-oriented regional objectives. Horizon Water and Environment, the preparers of the DEIR, specifically acknowledged at the April 11th, 2012 Fish and Game Commission meeting that the No-Project Alternative will not meet the goals of the MLPA project. For all of these reasons, the Final EIR should correct this error in both the Executive Summary and Chapter Eight.

AN-2

Page ES-11 of the Executive Summary and page 8-22 of Chapter Eight should identify the Proposed Project as the “Environmentally Superior Alternative” (ESA). There is nothing in the California Environmental Quality Act (CEQA) or its guidelines that prohibits the Commission from identifying the Proposed Project itself as the ESA. Page ES-11 and 8-21 acknowledge that “[n]either of the alternatives, nor the Proposed Project, would result in significant impacts on the environment,” therefore identification of the Environmentally Superior Alternative focuses on the “relative degree of less-than-significant impacts, as well as the relative degree of potential environmental benefit.” Page ES-10 explicitly says Alternative 2 would “result in reduced long-term contribution to improved habitats or marine species” and page 8-10 says that Alternative 2 would not realize the benefits associated with protection of marine resources in the Proposed Project, due to fewer MPAs. As acknowledged on the bottom of page 4-56 of the DEIR, the Proposed Project does the best job of protecting marine biodiversity. It should therefore be identified in the FEIR as the Environmentally Superior Alternative.

AN-3

Special Closures in Alternative 2

It is our understanding that Alternative 2 includes the same special closures as those found in the Proposed Project. However, the DEIR mistakenly says that Alternative 2 has no special closures on the following pages:

AN-4

- ☒ ES-10 (twice),
- ☒ ES-11,
- ☒ Table 8-1 on pages 8-5 and 8-6,

⁴ DEIR at ES-11.

⁵ DEIR at ES-10.

- ☒ 8-9,
- ☒ 8-10 (twice),
- ☒ 8-19, and
- ☒ 8-20 (twice).

Page 2-39 and Table 2-11 on page 2-40 also exclude the special closures from the description of Alternative 2.

This repeated oversight is inconsistent with Figure 8-1 on page 8-11, which shows the special closures included in Alternative 2 in a map, with the disclaimer that although special closures are a “separate recommendation from” the Enhanced Compliance Alternative, the BRTF also adopted the special closures recommendation, as proposed by the North Coast RSG, in its alternative.

AN-4

We recommend the FEIR correct the omission of Alternative 2’s special closures on all of the pages and tables above. Additionally, Section 8.3.2 will need to be revised throughout to address this oversight in its Impact Analysis of Alternative 2.

Chapter One: Introduction

Chapter 1.1 – Background

We appreciate the discussion in Section 1.1.2, which provides a comparison on how MPA designations generate different levels of ecological benefits based on their allowed uses, as well as the biological implications of the various levels of protection within MPAs. We also appreciate that the DEIR explicitly states that “take” is not limited to fishing activities and includes, for example, outfalls and coastal power-generating stations that “impinge fishes and invertebrates and entrain their larvae in the process of drawing ocean water for cooling systems.”⁶

As mentioned in our letter to the California Department of Fish and Game (DFG) dated October 13, 2011, Section 1.1.3 of the FEIR should contain a brief background and explanation of the modified North Coast process, which was ultimately used to achieve a single unified stakeholder proposal. The ecological trends, oceanographic patterns and significant tribal population on the North Coast are major reasons for the modifications made to the MLPA process for the North Coast, and contributed greatly to the development of a single MPA network proposal and the unique approach to tribal use inside proposed MPAs. As a result, these factors and the North Coast-specific MLPA process should be acknowledged explicitly in this section.

AN-5

Similarly, as stated in our October 2011 letter, Section 1.1.5, especially pages 1-17 to 1-18, should identify additional unique characteristics of the North Coast (NC) study region. Omitted key characteristics include, but are not limited to:

- ☒ The relative inaccessibility of the North Coast’s coastline due to geography, oceanography, harsh weather and a lack of roads or publicly accessible paths.
- ☒ North Coast wind speeds that exceed 20 knots and/or wave heights exceed two meters more than 50% of the time.⁷
- ☒ The sparse population in the NCSR, especially compared to the rest of the state, where the North Coast’s population is 1% that of the South Coast.⁸

AN-6

⁶ *Id.* at 1-7.

⁷ http://www.ndbc.noaa.gov/station_page.php?station=46022

⁸ South Coast Regional Profile (June 2009) at 84.

- ☒ The largest population of indigenous peoples and the greatest number of Native American tribes of any of the MLPA study regions. Unlike other parts of the California coastline, several North Coast tribes own land along the coastline or along the study region boundary.⁹

AN-6

The second line on page 1-17 should state that actual shoreline of the North Coast study region is 517 miles, not 17 miles.

AN-7

Additionally, Chapter One of the FEIR should include a background discussion of economic trends in the NCSR in the absence of significant MPAs. It is misleading to simply state that the North Coast has “productive commercial fisheries, targeting a wide diversity of species that help support economies of coastal communities”¹⁰ without further explanation. It should include, for example, that from 1999 to 2008, North Coast commercial fishermen have dwindled from around 820 to 350 individuals, and fishing vessels have declined by 50 percent from 600 to just over 300 vessels.¹¹ Value of commercial landings across all North Coast fisheries and ports has varied from \$30 million in 1999, up to \$50 million in 2003 and back down to \$16 million in 2008.¹² In 2006, a federal socioeconomic study listed some ports in the North Coast study region as “most vulnerable” with high levels of dependence on commercial fishing and low levels of resilience.¹³ In other words, Chapter One should discuss the baseline condition of fisheries in the North Coast, which includes a history of declining participation and declining landings. The MPAs proposed for the North Coast under the MLPA are intended to help maintain and restore ocean health in this region.

AN-8

Chapter One should generally discuss the science of marine reserves and MPA network design and acknowledge the benefits of MPAs. These include: restoring and maintaining a more natural size range of depleted species, increasing productivity, species diversity and biomass relative to fished areas, protecting habitats and natural heritage, and providing insurance in the face of uncertainty. This chapter should also specifically identify special status and other species that will benefit from MPAs on the North Coast. For example, overfished species such as bocaccio and yelloweye rockfishes commonly occur in the North Coast study region¹⁴ and can lend relevant context to the need for and potential capabilities of a regional MPA network.

AN-9

Chapter 1.4 – Topics Dismissed from Detailed Analysis

We agree with the finding on page 1-29 that the Proposed Project will have no potential for impact on mineral resources, such as oil and gas, since state law already precludes new oil development in California waters. The Final EIR should also acknowledge that future oil and gas exploration would be an incompatible use within MPAs designated under the Proposed Project.

AN-10

Chapter 1.5 – Consumptive Uses and Associated Socioeconomic Considerations

This section correctly states that State CEQA Guidelines instruct “economic or social effects shall not be treated as significant effects on the environment.”¹⁵ It also notes that the choices individual fishermen make following

AN-11

⁹ North Coast Regional Profile (April 2010) at 72.

¹⁰ DEIR at 1-17.

¹¹ North Coast Regional Profile at 82.

¹² *Id* at 88.

¹³ *Id* at 80.

¹⁴ *Id.* at 70.

¹⁵ DEIR at 1-30.

implementation of an MPA network cannot be predetermined¹⁶ and page 1-30 says that increased vessel traffic is not anticipated. For these reasons and because the Proposed Project has built-in “safety zones” where there are no MPAs proposed within ten miles of any North Coast port, any mention of “displacement-related” impacts in Chapter One should be removed. See our comments on Chapters 3.2 and 4.4 for a detailed discussion of displacement.

AN-11

We appreciate that the main discussion of potential socioeconomic effects of the Proposed Project and Alternative 2 is appropriately included as a reference only in Appendix B and is not analyzed in its own socioeconomics chapter as a possible significant effect in the DEIR. Page 1-30 correctly points out that the State CEQA Guidelines state that, “economic or social effects shall not be treated as significant effects on the environment” and that “CEQA does not require the determination or presentation of dollar amounts associated with the costs or benefits of a policy change or project implementation.” Furthermore, we’d remind DFG that the CEQA Guidelines also say an EIR,

may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes. The intermediate economic or social changes *need not be analyzed in any detail greater than necessary to trace the chain of cause and effect*. The focus of the analysis shall be on the physical changes.¹⁷

For these reasons, the direct discussion of socioeconomics is appropriately included in Appendix B.

Chapter Two: Project Description

As stated above, page 2-39 and Table 2-11 on page 2-40 exclude the special closures from the description of Alternative 2. This should be corrected in the Final EIR.

AN-12

Page 2-43 of Chapter 2.5, titled “Management, Enforcement, and Monitoring of MPAs” should specifically mention tribes as entities with whom DFG should collaborate and co-manage in order to enhance North Coast MPA implementation activities.

AN-13

Page 2-44 should also mention that siting MPAs adjacent to existing onshore state and national parks, marine labs or similar institutions was also a design consideration used by the North Coast RSG to better facilitate enforcement of MPAs.

AN-14

Section 2.5.3, titled “Monitoring and Adaptive Management” discusses the development of a monitoring plan for the North Coast MPA network. In addition to volunteers, fishermen, research scientists, and federal and state biologists, the FEIR should also recognize the potential for collaboration with North Coast tribes.

AN-15

Chapter Three: Physical Resources

Chapter 3.2 – Air Quality

Section 3.2.4 mistakenly assumes that the creation of an MPA network in the North Coast would result in increased transit times and distances of fishing vessels as a result of displacement. It assumes that the “increased time required to travel longer distances would increase the duration of combustion activities and increase associated

AN-16

¹⁶ *Id.* at 1-31.

¹⁷ California Environmental Quality Act Guidelines, § 15131(a), emphasis added.

emission of criteria air pollutants, compared with existing conditions.”¹⁸

This assumption does not acknowledge that a broad suite of factors external to the MPA process will almost certainly impact how close or far fishermen travel on any given day. Especially on the North Coast, factors such as weather, geography and oceanography all influence the decision to go to sea. Distances equal to the along-shore span of an MPA or just beyond MPA boundaries are not good indicators for speculating time on the water and distance traveled. Thus, it is nearly impossible to separate these inextricably linked factors to calculate a rise or reduction in air quality and link to any single factor, including MPA implementation.

This assumption also fails to recognize the guidance provided by the BRTF and significant efforts that were made by the RSG to avoid popular fishing grounds near ports and harbors, thereby leaving open areas accessible through short travel distances. As mentioned above in the comments on Chapter One, planning efforts specifically avoided creating MPAs within ten miles of North Coast ports. For example, Wilson Rock, False Cape and Albion were all left open to fishing in every proposal, in part due to the proximity of these popular fishing grounds to ports and harbors. Furthermore, the DEIR does not acknowledge that some of the fishermen’s stated favorite fishing grounds (including the Mendocino Headlands, Elk Cove and Rogers Break) are *already* far from ports and were intentionally excluded from MPA proposals per the request of fishermen.

AN-16

The FEIR should state that the RSG explicitly designed MPA networks to leave open fishing opportunities close to ports and harbors, and should clarify that there are a variety of factors that influence where fishermen choose to fish. The assumption that the Proposed Project may result in vessels having to travel farther to reach open fishing grounds should be deleted, since it is equally or more likely that fishermen will redirect their effort to areas closer to port.

It is impossible to accurately model project-induced commercial fishing vessel emission scenarios because it is not possible to predict the entire range of responses by individual fishermen to an MPA network. For this reason, we reject the methodology in Section 3.2.4 that assumes “on average, each vessel would transit an additional distance equal to the along-shore distance of an MPA” for both commercial and recreational vessels.

Impact AIR-1: Increased Emissions of NO_x, PM₁₀, and PM₅ from Vessel Displacement

Page 3.2-13 states that “displacement of recreational fishing vessels used for consumptive and non- consumptive activities could increase the distance and duration of vessel transit, resulting in increased criteria air pollutant emissions.” However, there is no discussion in Chapter 3.2 explaining how non-consumptive activities would result in increased travel distances and times. In fact, page 3.2-10 explicitly states that detailed data on recreational vessel use, such as number of trips, purpose of trips, and types of fuel and engines used, is not available and that “any attempt to produce an emissions estimate would require a number of speculative assumptions.” It goes on to state that using existing data collected by the Department on commercial passenger fishing vessels to estimate the overall level of recreational vessel activity would be inaccurate. For these reasons, references to air quality impacts as a result of non-consumptive activities are unsubstantiated and should be deleted from the FEIR.

AN-17

Despite the discussion on displacement, the environmental impact analyses on pages 3.2-12 through 3.2-15 correctly determine that the Proposed Project would have less than significant impacts on air quality standards. In fact, even under the worst-case speculative model used by the DEIR, “the increase in emissions would need to be several orders of magnitude larger than has been estimated for each constituent before the threshold would be exceeded.”¹⁹

¹⁸ DEIR at 3.2-8.

¹⁹ *Id.* at 3.2-14.

Chapter 3.3 – Global Climate Change and Greenhouse Gas Emissions

The environmental impact analyses on pages 3.3-8 through 3.3-10 correctly acknowledge that impacts from the Proposed Project would have less than significant impacts for the evaluation criteria on greenhouse gas emissions. However, as discussed in comments on the previous section, these analyses again reference the potential of increased travel distances of displaced commercial and recreational fishing vessels, despite the fact that ten-mile zones within each port were left open and some of the fishermen's stated favorite fishing grounds are *already* far from ports. We recommend that this assumption be removed in the FEIR.

AN-18

Impact GHG-1: Increased Emissions of Greenhouse Gases

Similar to Chapter 3.2, Page 3.3-9 states that "displacement of recreational fishing vessels used for consumptive and non-consumptive activities could increase the distance and duration of vessel transit, resulting in increased GHG emissions." Again, there is no discussion in Chapter 3.3 explaining how non-consumptive activities would result in increased travel distances and times. In fact, page 3.3-7 explicitly states that detailed data on recreational vessel use, such as number of trips, purpose of trips, and types of fuel and engines used, is not available and that "any attempt to produce an emissions estimate would require a number of speculative assumptions." It goes on to state that using existing data collected by the Department on commercial passenger fishing vessels to estimate the overall level of recreational vessel activity would be inaccurate. For these reasons, references to increases in greenhouse gas emissions as a result of non-consumptive activities are unjustified and should be deleted from the FEIR.

AN-19

Finally, we recommend that the FEIR acknowledge that the Proposed Project may actually contribute to potential global climate change *benefits* by increasing the abundance and distribution of kelp forest habitat within MPAs. It is expected that increased sequestration of carbon dioxide would occur through photosynthesis in expanded kelp forest canopies.

AN-20

Chapter 3.4 – Water Quality

The following Pollutant Point Sources in the North Coast Study Region are missing in the DEIR and should be included in the FEIR: Westport Community Services District, near Ten Mile SMR and Double Cone Rock SMCA, and Albion Flat Campground, near Little River Estuary SMCA and Navarro River Estuary SMCA.

AN-21

Impact HYD-1: Effects on Water Quality Standards and Waste Discharge Requirements

Impact HYD-1 in Section 3.4.4 correctly recognizes the potential *beneficial impact* of MPAs on water quality as a result of natural coastal processes promoting the breakdown of contaminants. It finds that the "[c]reation of a network of MPAs within the study region would not conflict with any aspect of the established water quality standards for the study region's coast, bays, lagoons and estuarine waters."²⁰

We recommend that this section of the FEIR acknowledge that water quality benefits may also occur from the Proposed Project as a result of siting MPAs adjacent to existing ASBSs. The SAT's recommendations for considering water quality during the North Coast MLPA process state that co-locating MPAs with ASBSs may offer a "more complete package of protection" as ASBSs are more highly regulated, affording better and more natural water quality and associated ecological benefits.²¹

AN-22

²⁰ *Id.* at 3.4-17.

²¹ California MLPA Master Plan Science Advisory Team Draft Recommendations for Considering Water Quality and Marine Protected Areas in the MLPA North Coast Study Region, Draft revised March 16, 2010. Available at: <http://nrm.dfg.ca.gov/FileHandler.ashx?DocumentVersionID=73659>

Table 3.4-1 states that Jughandle Cove is an ASBS and erroneously describes the MacKerricker SMCA as nearby. The closest MPA to Jughandle Cove is at Point Cabrillo, 1.4 miles to the south. MacKerricker SMCA is over 5 miles north of Jughandle Cove. These facts should be corrected in the FEIR.

AN-23

Despite the fact that there is no published data on existing MPAs showing negative environmental impacts due to displacement and compaction of fishing effort, Impact HYD-2 again asserts that displacement of fishing activities may occur as a result of the Proposed Project and that such displacement could create overcrowding and increased potential for spills of contaminants.²² As stated above in the comments for Chapters 3.2 and 3.3, we reject the assumption that the Proposed Project would result in increased travel distances due to displacement and recommend that this text be removed in the FEIR. The DEIR correctly concludes that “[i]ncreased fishing in areas near MPAs or increased vessel transit is not anticipated to result in impacts to water quality beyond baseline conditions or to impair beneficial uses of coastal waters.”²³

AN-24

Impact HYD-2: Effects of Potential Shifts in Consumptive Uses and Vessel Abandonment on Water Quality

Impact HYD-2 also states that vessel abandonment may occur in response to economic hardship as a result of fishing restrictions in the Proposed Project. Any potential vessel abandonment by fishermen due to MPA creation is highly speculative and unlikely. This scenario should not be included in the DEIR. Although the conclusion of this section ultimately determines that it is “reasonable to assume that vessel owners would generally not abandon their boats in response to the formation of MPAs,”²⁴ we believe text related to potential vessel abandonment should be removed in the FEIR.

AN-25

Impact HYD-3: Effects of Potential Shifts in Non-Consumptive Recreational Uses on Water Quality

One of the goals of the MLPA is to “improve recreational, educational and study opportunities provided by marine ecosystems that are subject to minimal human disturbance, and to manage these uses in a manner consistent with protecting biodiversity.”²⁵ Therefore, increased use of MPAs for non-consumptive activities is a desired outcome of the Proposed Project. However, there is no justification for assuming that increased use would result in adverse impacts to water quality within the study region. We do not agree with the statement in Impact HYD-3 that non-consumptive recreational use could “affect water quality through accelerated erosion from increased amounts of foot or off-highway vehicle traffic, increased trash, nutrients and bacteria from human and animal waste, and vessel fuel and exhaust spills”²⁶ and recommend that this text be deleted from the FEIR.

AN-26

Despite this statement, Impact HYD-3 correctly determines that the Proposed Project would not result in significant shifts in recreations uses nor would non-consumptive activities significantly degrade water quality in the North Coast.

Finally, although we disagree with the assumptions about displacement and extended travel distances and times as a result of MPA network implementation in the context of water quality, we concur with the findings of Section 3.4.4. This section finds that the Proposed Project has no impact or less than significant negative impact for all of the evaluation criteria on water quality.

²² DEIR at 3.4-17.

²³ *Id.*

²⁴ *Id.* at 3.4-17 & 3.4-18

²⁵ Marine Life Protection Act, Fish and Game Code § 2853(c)3.

²⁶ DEIR at 3.4-18

Chapter Four: Biological Resources

We appreciate the discussion special-status, protected and locally important marine species found in the North Coast study region, such as black abalone, bocaccio, yelloweye rockfish and salmonids.

Additionally, we appreciate the discussion of locally important and rare habitat types, such as coastal marshes and tidal flats, estuaries and lagoons, seagrass beds, kelp forests and rocky reefs, as well as their ecological linkages.

Chapter 4.4 – Impact Analysis

Section 4.4.1 attempts to quantify the intensity of fishing that would occur as a result of displacement (and the associated impacts to fish and invertebrate populations) by assuming that fishing activity that used to occur within an MPA would then be redistributed to areas outside in proportion to the size of the MPA. The impact calculation incorrectly assumes that fishing activity is uniform throughout the North Coast and that 13% MPA protection necessarily translates to a 13% redistribution of effort. This calculation fails to account for variation in habitats, weather and oceanographic conditions, and accessibility that give rise to desirable fishing grounds in the North Coast study region. It provides an oversimplified and inaccurate projection of changes in fishing behavior as a result of the Proposed Project.

AN-27

For this reason and the reasons discussed below, the calculation and methodology in the “Evaluation of Displacement” section on page 4-54 should be deleted in the Final EIR.

Additionally, the penultimate sentence in the first full paragraph on page 4-54 mistakenly abbreviates the Marine Life Protection Act as “MPLA.” The Final EIR should correct this error.

AN-28

Impact BIO-1: Adverse Impacts on Marine Species Populations and Habitats Outside MPAs from Displacement and/or Congestion

Impact BIO-1 correctly determines that the Proposed Project would have less than significant adverse impacts on the marine species populations and habitats outside of MPAs as a result of displacement and/or congestion of fishing effort. Despite this conclusion, Section 4.4.3 includes a discussion of fishing displacement and its potential negative effects on marine resources outside the boundaries of MPAs.

The methodology from Section 4.4.1 and the discussion that follows fails to account for the reality that the RSG, working with other local community members, sited MPAs to minimize impacts to favorite fishing grounds. This oversight is surprising given the fact that Section 4.4.3 acknowledges: “the MLPA process involved extensive input from stakeholders to avoid placing protected areas near the most popular fishing sites and access points and carefully placing them in such a way that would not lead to congestion of displaced fishing effort.”²⁷ Furthermore, the DEIR recognizes that, “through the 3 years of MPA network design from 2009 to 2011, local communities were able to provide extensive input concerning the placement of MPAs in relation to popular fishing grounds.”²⁸ It also notes that there are many important fisheries in federal waters and that if “one considers the greater extent of fisheries out to 50 miles, then the proportion affected by the MPAs is much less.”²⁹

AN-29

The DEIR itself states on page 4-55 that: “comprehensive review of over 100 no- take reserves worldwide shows

²⁷ *Id.* at 4-55.

²⁸ *Id.*

²⁹ *Id.* at 4-56.

that average production³⁰ inside reserves increases by 400%” and that “as quantity and size of individuals inside reserves increase, spillover leads to enhanced stocks outside of protected areas” and that “[a]dult spillover and/or larval export to neighboring fished areas could potentially lead to economic benefits to fisheries adjacent to reserve areas.” It also recognizes that any decrease in biomass and density that occurred outside of MPA boundaries as a result of increased fishing effort would be “short- term effect because a gradual and continuous increase in production would be likely.”³¹ And the DEIR even contemplates that the great emphasis placed on size and spacing of protected areas “could result in benefits not yet realized in other protected areas because many existing MPAs are small and isolated.”³² Therefore, empirical data on a network as comprehensive as the Proposed Project “does not yet exist.”³³

AN-29

For all of these reasons, pervasive assumptions on displacement impacts that are repeatedly used throughout Section 4.4.3 to speculate on issues like bycatch and modification of habitat should be removed in the Final EIR.

Page 4-56 references Appendix B of the DEIR, stating that this document provides a quantitative analysis of the socioeconomic impacts of the Proposed Project. The purported economic impacts described are based on an analysis conducted by Ecotrust for the North Coast.³⁴ However, the brief discussion of socioeconomic impacts in Chapter Four of the DEIR fails to explicitly describe the fundamental assumptions and limitations of the Ecotrust data.

The FEIR should be revised to include the following methodology and assumptions associated with the Ecotrust analysis and reliance on these data as an estimate of potential economic impacts of the Proposed Project should be removed from the document:

Stated Importance of Fishing Grounds: The Ecotrust surveys asked commercial fishermen throughout the North Coast to express the relative importance of ocean areas to their specific fisheries. However, these data were collected based on the stated importance of fishing grounds *over a lifetime of fishing* and not based on areas currently available or valued for fishing. Therefore, the analysis inappropriately assigns a value to areas that have been closed to fishing as a result of previous management actions or areas that are no longer fished due to depletion. In such cases, the Ecotrust methodology overstates the cost of putting an MPA at a particular site, because the costs were actually incurred earlier by factors other than the MPA. Given continuous changes in fishing regulations from year to year, as well as the downward trends in catch, the Ecotrust estimates show the stated importance over *cumulative experience* but do not necessarily say anything about where fishing will occur over the short term and therefore cannot be used to predict responses to MPA placement.

AN-30

Worst-case Scenario: The Ecotrust analysis assumes that MPAs will completely eliminate fishing opportunities and that fishermen will not relocate efforts to areas outside of MPAs. Recognizing the fundamentally unrealistic nature of this assumption, Ecotrust includes the following caveat in all of their written evaluation materials:

A key assumption of this analysis is that each of the MPA proposals completely eliminates fishing

³⁰ This study actually says that average *biomass* (not production) inside reserves increases by 400%.

³¹ DEIR at 4-55.

³² *Id.* at 4-56.

³³ *Id.*

³⁴ Summary of Potential Impacts of the North Coast Enhanced Compliance Alternative and Revised Round 3 North Coast Regional Stakeholder Group Marine Protected Area Proposals on Commercial and Recreational Fisheries in the North Coast Study Region. January 6, 2011. Available at: http://www.dfg.ca.gov/mlpa/pdfs/northcoastproposals/potentialimpacts_document.pdf

opportunities in areas closed to specific fisheries and that fishermen are unable to adjust or mitigate in any way. In other words, the analysis assumes that all commercial fishing in an area affected by an MPA would be lost completely, when **in reality it is more likely that effort would shift to areas outside the MPA. The effect of such an assumption is most likely an overestimation of the impacts, or a “worst case scenario.”**³⁵ (emphasis added)

This section of the FEIR should be revised to acknowledge this assumption, as it is not currently mentioned anywhere in this section.

It is important to note that Ecotrust’s “worst case” assumption that all displaced effort will discontinue is in *direct conflict* with the DEIR’s pervasive “displacement” assumptions that fishermen will shift effort to areas outside MPAs. This discrepancy should be acknowledged in the FEIR if it must reference the Ecotrust analysis.

The conclusion of the discussion on Impact BIO-1 states that,

the Proposed Project could increase biomass, individual size, and reproductive potential of marine species, particularly for species with low dispersal and high reproduction. The broad- scale ecosystem protection afforded to habitats within the proposed MPAs can also lead to increased resilience, further protecting biodiversity and associated ecosystem services... The Proposed Project could help sustain various fished populations and provide areas of significantly higher reproductive capacity. Increased reproduction within the proposed MPAs may lead to long- term fisheries benefits outside their boundaries... Over the long term, the negative impacts of the displacement of fishing effort, if they were to occur, would be outweighed by the positive benefits of MPAs.³⁶

Given this recognition of net benefits and the finding that adverse impacts as a result of displacement or concentration of fishing effort outside of MPAs will be “less than significant,” we again find that any assumptions of impacts associated with displacement, which are pervasive throughout the DEIR, are unfounded and should be removed in the FEIR.

Impact BIO-2: Adverse Impacts of Marine Species Through the Introduction or Spreading of Aquatic Invasive Species

We appreciate that the DEIR acknowledges that “[t]he proposed MPAs are expected to reduce the forces that impair the functioning of naturally balanced ecosystems”³⁷ and correctly concludes that the Proposed Project would not have any adverse impacts on marine species as a result of invasive species.

Impact BIO-3: Adverse Impacts on Marine Species Populations and Habitats Inside MPAs from the Removal of a Human Predator

We agree that because of natural predators such as the wolf eel and sunflower sea star, “little evidence suggests that unfished urchin populations would create urchin barrens in the study region”³⁸ and that “it is expected that the proposed MPAs would become more naturally balanced ecosystems that could be more resilient to urchin barrens.”³⁹

³⁵ California Marine Life Protection Act Initiative. December 24, 2010. *Draft Methods Used to Evaluate Marine Protected Area Proposals in the MLPA North Coast Study Region*, Commercial and Recreational Fishery Impacts, at 97.

³⁶ DEIR at 4-56 to 4-57.

³⁷ *Id.* at 4-58

³⁸ *Id.* at 4-60.

³⁹ *Id.* at 4-59.

BIO-4: Adverse Impacts Causing Loss or Degradation to Wetlands or Other Sensitive Habitats

We agree that the Proposed Project would support and add additional protection to wetland areas in the North Coast.

BIO-5: Impacts on Marine Species Populations and Habitats

We agree that the Proposed Project would “protect a significant amount of key habitat types for a diversity of species in the Study Region” and “protect a significant amount of key habitat types for a diversity of species in the Study Region” and “result in beneficial effects on species populations, habitats, movement corridors, and nursery/nesting sites inside MPAs.”⁴⁰

The goals of the Proposed Project are to conserve and restore marine life populations and habitats and protect the structure, function and integrity of marine ecosystems; therefore, the DEIR correctly concludes the new MPA network will have no adverse impacts on species populations and habitat within MPAs.

Impact BIO-6: Impacts on an Adopted Natural Communities Conservation Plan

The first sentence in the first paragraph on page 4-69 mistakenly abbreviates the Marine Life Protection Act as “MPLA.” The Final EIR should amend this sentence to read “MLPA.”

AN-31

Chapter Five: Cultural Resources

The first sentence of the last paragraph on page 5-8 should say, “Russian” instead of “Russia.”

AN-32

We appreciate the thoughtful discussion of tribes and tribal communities throughout Section 5.3.2.

Impact CR-1: Adverse Effects to Underwater Maritime-related Historical Resources

As a conservation-oriented project aimed at protecting resources, the DEIR correctly points out that the Proposed Project and its alternatives would not result in construction or disturbance of the seafloor, or bottoms of bays or estuaries. Therefore, it would not directly disturb any historical resources, would actually minimize fishing activity inside MPAs and would protect submerged historical maritime resources.⁴¹

We disagree with the logic that increased activity outside MPAs or non-consumptive use inside MPAs could create *more* disturbance to historical resources. Indeed, one of the goals of the MLPA itself is to “improve recreational, educational and study opportunities provided by marine ecosystems that are subject to minimal human disturbance, and to manage these uses in a manner consistent with protecting biodiversity.”⁴² Therefore, increased use of MPAs for non-consumptive activities is a desired outcome of the Proposed Project. However, there is no justification for assuming that increased use would result in adverse impacts to historical resources and we recommend this speculation be deleted from the Final EIR.

AN-33

We agree with the ultimate conclusion that that the Proposed Project will have less than significant adverse impacts on Underwater Historical Resources.

⁴⁰ *Id.* at 4-66

⁴¹ *Id.* at 5-20.

⁴² Marine Life Protection Act, Fish and Game Code § 2853(c)3.

Impact CR-2: Indirect Adverse Effects to Land-based Maritime Historical Resources

We strongly disagree with any assertion that the Proposed Project could lead to the decay of buildings related to the maritime history of coastal communities.

As discussed above in our review of Chapter 4.4, the RSG, along with other local community members, sited MPAs to minimize impacts to favorite fishing grounds. Section 4.4.3 acknowledges: “the MLPA process involved extensive input from stakeholders to avoid placing protected areas near the most popular fishing sites.”⁴³ It further states that there are many important fisheries in federal waters and that if “one considers the greater extent of fisheries out to 50 miles, then the proportion affected by the MPAs is much less.”⁴⁴ Page 5-21 correctly acknowledges that it is “not likely that the fishing industry would suffer from a widespread collapse” or that the Proposed Project would cause “community-wide economic failure and decay” because of the ten-mile safety zones and other RSG considerations.⁴⁵

AN-34

We agree with the ultimate conclusion that the impact on land-based maritime historical resources would be less than significant, but recommend that Final EIR delete any allusion to “substantial business failure,” “widespread collapse” of the fishing industry or “community-wide economic failure.”

Impact CR-6: Adverse Effects on Unique Archaeological Resources

Though archaeological survey information for offshore rocks and islands is extremely limited, we agree with the DEIR’s assertion that the special closures of the Proposed Project would enhance protection of any potential archaeological resources at these sites.⁴⁶ Similarly, we agree that any unidentified submerged archaeological resources will be further protected by MPAs.

We agree with the ultimate conclusion that the Proposed Project would have less than significant impacts for submerged archaeological resources. But for the reasons articulated in response to CR-1 above, we do not agree with the speculation on page 5-25 that displaced effort outside MPAs or increased non-consumptive recreation inside MPAs could increase disturbance to these resources.

In the case of sub-options, less damage would occur from boat anchors or gear if Option A is adopted in both Big River Estuary and Navarro River Estuary; therefore, Option A is more likely to advance the goals of the MLPA and is preferred in both cases.

AN-35

Chapter Six: Social Resources

Chapter 6.1 – Land Use and Utilities

We appreciate the inclusion of Table 6.1-1, which provides a list of the existing land uses adjacent to the Proposed Project and context for potential collaborative partnerships at local, state and federal beaches, and parks and tribal lands.

The last sentence on page 6.1-10 should say the lands adjacent to the study region “are” sparsely populated.

AN-36

⁴³ DEIR at 4-55.

⁴⁴ *Id.* at 4-56.

⁴⁵ *Id.* at 5-21.

⁴⁶ *Id.* at 5-25.

Section 6.1.4 – Impact Analysis

We agree with the findings in Section 6.1.4 that the Proposed Project will have no impact or less than significant adverse impacts for all of the evaluation criteria on land use and utilities.

Impact LU-3: Conflict with California State Lands Commission Leases

Impact LU-3 correctly concludes that the Proposed Project would not preclude the issuance of future State Lands Commission leases. It further states that “[s]ince no future leases are planned within a proposed MPA at this time, the land uses for which such a lease would be issued are currently unknown, and thus it would be speculation to make conclusions regarding the potential for conflicts or inconsistencies between future land uses and the allowed uses of the MPA.”⁴⁷ Impact LU-3 correctly determines that the Proposed Project will have a less than significant impact State Lands Commission leases.

The penultimate sentence in the first paragraph at the top of page 6.1-17 should say “complementary” instead of “complimentary.”

AN-37

Impact LU-5: Conflict with Adjacent Land Uses

Impact LU-5 correctly determines that the Proposed Project will have a less than significant impact on existing adjacent land uses in the North Coast. The DEIR recognizes that Proposed Project would not significantly impact future land use development. As MPAs do not regulate land use development, we agree. Furthermore, we appreciate that this section of the DEIR accurately states that the Proposed Project would “provide resource protection and conservation consistent with the natural resource protection goals of the majority of the relevant regulating entities (e.g., CCC, SLC, State Parks).”⁴⁸ Furthermore, we appreciate that this section of the DEIR accurately states that the Proposed Project would “provide resource protection and conservation consistent with the natural resource protection goals of the majority of the relevant regulating entities (e.g., CCC, SLC, State Parks).”⁴⁸

Impact LU-5 also includes a discussion on the impact of the proposed MPAs on consumptive activities in areas adjacent to land uses dedicated to fishing activities, such as boat launch sites. It concludes: “even if certain consumptive activities were not permitted in the immediate vicinity of an existing land use operating for that purpose, users would still be able to use the sites and traverse MPA boundaries to adjacent locations to conduct their activities.”⁴⁹ We agree with this conclusion; however, this section of the Final EIR should be revised to acknowledge that impacts to consumptive activities adjacent to popular fishing access points will also be insignificant due to the specific efforts made by the North Coast RSG to minimize such impacts by creating ten-mile buffer areas around all ports in the study region (as stated on Page 6.1-10 of the DEIR and above in response to Chapters 3.2, 3.4 and 4.4).

AN-38

The discussion in Impact LU-5 further recognizes that the total area proposed for protection in MPAs is limited in comparison to the area that will remain open for fishing activities. Given that MPA designations will not restrict the transit of recreational and commercial vessels and that the majority of the study region will remain open for fishing (including areas within ten miles of all North Coast ports), Impact LU-5 accurately determines that the Proposed Project will not have significant impacts on consumptive activities in areas adjacent to land uses dedicated to fishing activities.

⁴⁷ *Id.* at 6.1-16

⁴⁸ *Id.* at 6.1-17

⁴⁹ *Id.*

Finally, page 6.1-17 of the DEIR states that [p]otential socioeconomic effects due to displaced recreational fishing as a result of the Proposed Project are discussed in Appendix B.” For all the reasons articulated above in our response to Chapter Four, any reference to purported socioeconomic impacts based on Ecotrust’s analysis in Appendix B should be removed from the FEIR.

AN-39

We appreciate the acknowledgement in Sections LU-6 and LU-7 that MPAs designated under the Proposed Project will protect against the construction or installation of new outfalls, discharges, lines of cable, desalination plants and hydrokinetic plants inside the boundaries of MPAs. While this additional protection offered by MPAs is important in that it protects against future non-conforming uses, the impact to public utility infrastructure and renewable energy development is less than significant because 87% of the study region would still be potentially available for these uses (none of which are currently planned).

Chapter 6.2 – Public Service and Law Enforcement

The DEIR correctly notes that the “Department’s enforcement program also works closely with the enforcement of many other agencies...on matters of mutual enforcement interest.”⁵⁰ This paragraph should also note the potential to collaborate on enforcement with tribes, since page 6.1-11 correctly states, and Table 6.1-1 shows, that many of the proposed MPAs abut state parks, wildlife refuges and other undeveloped areas and tribal lands.

AN-40

We disagree with the DEIR’s statement on page 6.2-2 that, “Although these programs often provide financial or logistical support, they do not provide significant staff resources statewide.” For example, in the North Central Coast, the RSG purposefully sited MPAs adjacent to existing protected lands to enhance enforcement activities. As a result, agencies like the Bureau of Land Management (BLM), the National Park Service at Point Reyes National Seashore and California State Parks have, indeed, contributed significant staff resources to implementing and enforcing the adjacent MPAs in that study region. Similar partnerships on management and enforcement are underway throughout the state and will be an important component to the MLPA in the future.

AN-41

Section 6.2.4 – Impact Analysis

Although we do not agree with the assumptions about displacement and extended travel distances, we concur with the findings in Section 6.2.4 that the Proposed Project will not result in the need for new or expanded enforcement facilities and will have a less than significant negative impact on public services or law enforcement.

Impact PSU-1: Increased Demand for Law Enforcement Facilities

The DEIR correctly concludes that the Proposed Project would not result in a significant increase in recreation, tourism, research, or fishing activities and “would not be expected to create a substantial increase, compared to existing conditions, in the demand for law enforcement or emergency services...”⁵¹ Despite this conclusion, Impact PSU-1 assumes that fishermen will travel longer distances as a result of the proposed MPA network and that this increase in travel distance could “affect the demand for or provision of emergency or law enforcement services overall within the North Coast study region by causing response to more remote areas of the coast.” As stated above in our comments on Chapters 3.2 and 4.4, assumptions of displacement as a result of MPA implementation fail to account for several factors including: the efforts by the RSG to site protected areas away from popular fishing grounds close to ports; the reality that some preferred fishing grounds are far from ports; and the myriad variables that contribute to a fisherman’s choice on where and when to fish. We reject the assumption that the

AN-42

⁵⁰ *Id.* at 6.2-2.

⁵¹ *Id.* at 6.2-6

Proposed Project will cause displacement and increased travel distances that would result in increased demand for law enforcement and recommend that it be deleted from the FEIR.

Impact PSU-1 goes on to assert that the Proposed Project would increase demand for enforcement within the study region, causing delays in service and response time and diverting enforcement efforts away from existing programs. This discussion fails to note that enforcement problems are not unique to the MPA context and that enforcement capacity issues influence all marine management activities in California. The MLPA Master Plan specifically addresses this issue and includes recommendations to improve the effectiveness of enforcement, such as bolstering collaboration among tribes and local, state and federal agencies.⁵²

AN-42

This section of the FEIR should be revised to explicitly acknowledge the tribes and tribal communities, and federal, state, and local agencies that have offered to contribute resources to enforcement and monitoring of MPAs in the North Coast. The FEIR should also recognize the efforts made by the North Coast RSG to site MPAs to maximize these partnerships for collaborative enforcement.

AN-43

Additionally, the MPA boundaries in the Proposed Project were designed in such a way as to improve public understanding and compliance based on recommendations provided by the Department to the RSG. These design criteria are described in Section 2.5.2 and should be referenced in Chapter 6.2 of the FEIR to provide context for the prioritization of enforcement considerations in the planning process.

AN-44

Page 6.2-7 of the DEIR states that, [t]he effectiveness of the Proposed Project in reaching its objectives is certainly related to the degree of compliance with the MPA regulations.” We agree. And because the North Coast RSG and BRTF made painstaking efforts to ensure the entire North Coast community was included in the design process, the Proposed Project is now supported by nearly every regional constituency including all three county boards of supervisors, regional fishing organizations and area conservation groups. This degree of local community buy-in will certainly be beneficial in ensuring enforcement and effectiveness of the Proposed Project.

Finally, the FEIR should explicitly acknowledge the enforcement, monitoring, management, education and biological benefits of siting MPAs adjacent to existing onshore protected areas, research institutions or similar public education facilities.

AN-45

Chapter 6.3 – Recreation

We appreciate that the discussion in Chapter 6.3 is focused on non-consumptive recreational activities, with the main discussion of consumptive activities included as a reference only in Appendix B (see further discussion of the limitations of Appendix B in response to Chapter 4.4). We are pleased to see the DEIR acknowledge that “non-consumptive uses generate revenue and jobs for local communities” and “the community as a whole benefits from the tax revenue that is generated by tourists.”⁵³

Furthermore, we appreciate the disclosure on page 6.3-13 that the Department’s California Recreational Fisheries Survey may underestimate the percentage of non-consumptive boat users in the North Coast because “it focuses on public launch ramps where the majority of managed species are landed rather than a random sampling of public launch ramps.”

We agree with the conclusion that the Proposed Project will have a less than significant impact on recreational opportunities in the study region.

⁵² California Marine Life Protection Act Master Plan for Protected Areas. California Department of Fish and Game. Revised Draft January 2008. Pages 68-72. Available at: <http://www.dfg.ca.gov/mlpa/masterplan.asp>

⁵³ DEIR at 6.3-9

Impact REC-1: Physical Deterioration of Coastal Beaches/Waters and Recreational Facilities

We disagree that the Proposed Project could result in a substantial shift of new users to locations that lack sufficient recreational facilities and that this shift could cause impacts such as trampling, overcrowding of beaches and overuse of associated facilities.

It is important to recognize that improving recreational activities in marine ecosystems subject to minimal human disturbance is one of the goals of the MLPA.⁵⁴ Therefore, increased use of MPAs for non-consumptive activities is a desired outcome of the Proposed Project. However, there is no justification for assuming that increased use would result in adverse impacts to resources in the North Coast. The DEIR correctly concludes that improved recreational activities resulting from the Proposed Project are anticipated to have less than significant impacts on coastal beaches and waters and recreational facilities.

AN-46

This section of the DEIR also includes a statement that the Proposed Project is expected to result in minor displacement of recreational users. As indicated in previous comments on Chapter Six and in response to Chapters 3.2, 3.4 and 4.4, we wholly reject the assumption that the new network of MPAs would result in displacement and recommend this text be removed in the FEIR.

Impact REC-2: Decreased Recreational Opportunities

As mentioned above, page 6.3-9 explicitly states that Chapter 6.3 primarily focuses on non-consumptive recreational activities and information on consumptive activities are appropriately included in Appendix B. It is therefore unclear why Impact REC-2 begins with a discussion of potential impacts from the Proposed Project on consumptive recreational activities. Again, this discussion refers to potential displacement of recreational fishing effort as a result of the Proposed Project. Reference to displacement is speculative and should be removed from the FEIR (see previous discussions on displacement above and in Chapters 3.2, 3.4 and 4.4).

AN-47

Given that one of the goals of the MLPA is to improve recreational activities for non-consumptive users, we appreciate the DEIR acknowledging that the Proposed Project would “lead to an enhanced recreational experience because of the increase in diversity of wildlife and abundance of fish and invertebrates in the study region.”⁵⁵

Chapter 6.4 – Research and Education

We appreciate the detailed discussion of education, monitoring and research opportunities, and partnerships in Chapter 6.4 and agree that the Proposed Project will have a less than significant impact on research and educational facilities and opportunities. We also agree that existing structures and facilities will adequately support future research and education opportunities resulting from the Proposed Project.

Chapter 6.5 – Vessel Traffic and Hazards

The impact analysis in Section 6.5.4 evaluates the impacts of the Proposed Project on vessel traffic using the same flawed impact calculation that was used to quantify the intensity of fishing in Chapter 4.4. It assumes that vessel densities will increase as a result of displacement and calculates displacement based on the spatial distribution of MPAs. As stated in our comments on Chapter 4.4, this impact calculation incorrectly assumes that fishing activity is uniform throughout the North Coast (despite the fact that text on page 6.3-15 states that “[f]ishing vessel activity is not uniformly distributed”) and fails to account for variation in habitats, weather and oceanographic conditions,

AN-48

⁵⁴ Marine Life Protection Act, Fish and Game Code § 2853(c)3

⁵⁵ DEIR at 6.3-21

and accessibility that give rise to popular fishing grounds in the North Coast study region. In other words, it does not acknowledge that areas inside of MPAs may not be as desirable to fishermen or that the most desirable fishing grounds were not protected within MPAs, yet still experience high vessel densities. It provides an oversimplified and inaccurate projection of changes in fishing behavior as a result of the Proposed Project.

For these reasons and the reasons discussed in our comments on Chapters 3.2 and 4.4, the calculation and discussion in the “Methodology” section on page 6.5-13 should be deleted in the Final EIR.

Impact VT-1: Increase in Oceanic Hazards from Increased Vessel Density

Inappropriate discussions of displacement, which are pervasive throughout the DEIR, are also found in Impact VT-1. We reject the assumptions that the Proposed Project could result in changes in vessel densities within and adjacent to MPA boundaries and that vessel traffic could increase as a result of displaced effort by commercial and recreational fishermen. As stated in the paragraph above, the impact calculation in Impact VT-1 provides an oversimplified and inaccurate projection of changes in fishing behavior as a result of the Proposed Project and our comments on Chapter Four highlight the additional errors in this methodology, including the failure to acknowledge RSG efforts to minimize impacts to favorite fishing grounds. (This particular omission in the methodology is especially surprising given that page 6.5-15 of the DEIR states that “the Proposed Project MPAs were intentionally designed to be located away from port entry/exit points, through application of the following stakeholder priority during the design process...[i]ncreased concentrations of vessels would therefore be minimized, or avoided altogether, at port entry/exit transit routes.”) For these reasons and the reasons discussed in our comments Chapters 3.2 and 4.4, the calculation and associated discussion on displacement in Impact VT-1 should be deleted in the FEIR.

AN-48

Furthermore, we disagree with the statement that increased density of vessel traffic could potentially lead to increased oceanic hazards, including collisions, due to more boats operating in a smaller area.

Because the MPAs would not allow new future uses such as oil and gas exploration, hydrokinetic energy uses or desalination plants within their boundaries, we argue that the Proposed Project actually *decreases* the risk of oceanic hazards such as collisions and spills.

We agree that “[n]onconsumptive users may be drawn to newly protected resources within MPA boundaries (i.e., scientific researchers, divers).” As mentioned above in Chapter 6.3, improving recreational experiences for non-consumptive users is a specific goal of the MLPA. However, we disagree with the statement on page 6.5-14 of DEIR that increased recreational use would result in “increased density of nonfishing vessel traffic.”

Finally, although we do not agree with the assumptions regarding displacement and vessel congestion, we concur with the DEIR’s conclusion that the Proposed Project would not result in substantial increases in vessel density and would have a less than significant impact on ocean hazards.

Impact VT-2: Disruption of Existing Vessel Traffic Patterns and Marine Navigation

We agree with the conclusion that the impact on existing marine routes, vessel traffic patterns, and navigation resulting from the Proposed Project would be less than significant. However, this section of the DEIR repeats the unjustified claim that the new MPAs would likely result in increased vessel densities as a result of displacement. For the reasons stated above and in our comments on Chapters 3.2 and 4.4, this text should be deleted from the FEIR.

Additionally, the discussion in Impact VT-2 includes several statements regarding the transit distance of fishing boats that seem to directly contradict statements made in the air quality discussion in Chapter 3.2. Impact VT-2

AN-49

states that effects from the Proposed Project on travel distances are “expected to be minimal” and “expected to be limited because the Proposed Regulations would not restrict access for transiting through MPA boundaries.”⁵⁶ We agree with these conclusions and recommend that Chapter 3.2 be revised to delete the assumption that the Proposed Project would result in increased transit distances of fishing vessels as a result of displacement.

AN-49

Impact VT-3: Create a Significant Risk to the Public or the Environment from Increased Spills of Hazardous Materials

For all the reasons described above in Chapter Six and in our comments on Chapters 3.2, 3.4 and 4.4, we reject the claims that the Proposed Project will result in increased travel times and vessel densities, and vessel abandonment due to economic hardship and disagree that impacts resulting from displacement of fishing effort “could indirectly result in greater exposure to hazardous materials caused by an increased use of petroleum and other materials for vessels transiting longer distances to unrestricted fishing areas, spills associated with collisions in crowded areas, and leaked petroleum and other hazardous materials from vessel abandonment.”⁵⁷

AN-50

As stated in response to VT-1, because the MPAs would not allow new future uses such as oil and gas exploration, hydrokinetic energy uses, or desalination plants within their boundaries, we argue that the Proposed Project actually *decreases* the risk of oceanic hazards such as hazardous material disposal or spills.

Despite the discussion on displacement in Impact VT-3, we agree with the conclusion that the Proposed Project will have a less than significant impact on hazardous material exposure.

Chapter 6.6 – Environmental Justice

We appreciate the inclusion of Table 6.6-4, which lists the public meetings, workshops, tribal outreach meetings, and trainings and highlights the inclusiveness of the MLPA planning process.

Chapter Seven: Other Statutory Considerations

Chapter 7.2 – Irreversible Impacts

We agree with the assessment in Chapter 7.2 that the establishment of MPAs “would not directly commit the Department or other agencies to future usage of fossil fuels or other types of nonrenewable resources.”⁵⁸

Because of the ten-mile safety zones around ports and for all of the reasons articulated above in response to Chapters 3.2, 3.4 and 4.4, we disagree that increased transit as the result of displacement would mean an indirect increased usage of fossil fuels, more boating accidents, or vessel abandonment. But we agree with the ultimate conclusion that MPAs will not result in irreversible environmental damage.⁵⁹

AN-51

Chapter 7.3 – Significant and Unavoidable Impacts

We agree with the conclusion in Chapter 7.3 that all the impacts associated with the Proposed Project will be less than significant and that no avoidable impacts have been identified.⁶⁰

⁵⁶ *Id.* at 6.5-15.

⁵⁷ *Id.* at 6.5-16.

⁵⁸ *Id.* at 7-1.

⁵⁹ *Id.*

⁶⁰ *Id.* at 7-2.

Chapter 7.4 – Growth Inducement

We agree with the statement in Chapter 7.4 that “MPA designation could foster increased research or recreational opportunities,” which could “generate economic activity and associated growth in communities adjacent to the North Coast.”⁶¹ To be clear, one of the goals of the MLPA itself is to “improve recreational, educational, and study opportunities provided by marine ecosystems that are subject to minimal human disturbance, and to manage these uses in a manner consistent with protecting biodiversity.”⁶² Therefore, increased use of MPAs for non-consumptive activities is a desired outcome of the Proposed Project.

The DEIR speculates that the designation of MPAs could offset this growth by reducing consumptive economic activity. We, however, believe that the fisheries *benefits* of MPAs could ultimately generate economic activity in the North Coast community as well. Although CEQA does not assume non-consumptive or fisheries growth is either beneficial or detrimental,⁶³ we believe that any stimulation of economic activity in this region, while indirect, would be positive.

AN-52

Chapter 7.5 – Cumulative Impacts

We agree that the Chapter 7.5 discussion of cumulative impacts should be guided by what is practical and reasonable, specifically because the MLPA and the Proposed Project were designed to achieve conservation goals and advance environmental protection. We also agree that, “existing regulations, designations, and restrictions have been considered as part of the baseline condition for the project analysis”⁶⁴ and that, further, such existing conditions were carefully considered during the three-year time period during which the RSG, local communities, the BRTF, and Fish and Game Commission have been considering the Proposed Project.

Page 7-7 should say there are six, not seven, special closures in the North Central Coast study region.

AN-53

We appreciate the acknowledgement on page 7-8 that the 5-year review at the Channel Islands MPAs has indicated positive results, including: “increased growth of kelp forests, greater density and biomass of fish and invertebrate species commonly targeted by fishing efforts, larger proportion of large individuals in lobster populations, and a greater proportion of piscivores in the fish community.”

There are actually three existing MPAs in Oregon: two new marine reserves at Otter Rock and Redfish Rocks that were fully implemented in January, 2012, and one pre-existing MPA at Redfish Rocks. These MPAs are no longer pilot projects, as stated on page 7-8.

AN-54

Additionally, the three MPA complexes at Cape Falcon, Cascade Head and Cape Perpetua have now been approved in Oregon Senate Bill 1510 by both the state legislature and Governor Kitzhaber. As such, these MPAs and reserves now exist as pilot projects that will be studied for two years and enforced starting in 2014.

Washington’s second classification of MPAs that allows some limited take is actually called a “marine preserve,” not a “marine reserve,” as stated on page 7-9.

Page 7-10 should strike the word “a” from the first sentence.

AN-55

⁶¹ *Id.*

⁶² Marine Life Protection Act, Fish and Game Code § 2853(c)3.

⁶³ DEIR at 7-2.

⁶⁴ *Id.* at 7-4.

We agree that the Proposed Project will not make a considerable contribution to cumulative impacts related to air quality.⁶⁵ However, for the reasons stated in response to Chapters 3.2 and 4.4, we do not agree that the Proposed Project will lead to longer vessel trips and increased emissions of criteria air pollutants. The Final EIR should strike the word “would” from the Air Quality cell in Table 7-2 and from the Impact CUM-1 discussion on page 7-12.

AN-56

Similarly, we agree with the conclusion in Table 7-2 on Global Climate Change and Greenhouse Gas Emissions and on page 7-12. But for the reasons set out in our comments on Chapter 3.3, the Final EIR should strike the word “would” from both Table 7-2 and from the discussion of Impact CUM-2 on page 7-12.

We agree with the conclusion in Impact CUM-3 that the Proposed Project will “help protect degraded marine resources – groundfish, salmon, and abalone in particular”⁶⁶ and will have no negative impact on biological resources.

Chapter Eight: Alternatives Analysis

Chapter 8.2 – Alternatives Screening Process

The DEIR states that the MLPA mandates the creation of MPAs, so “consideration is limited to project alternative that would meet this primary project objective.”⁶⁷ It goes on to list the MLPA’s goals and objectives and says that the Proposed Project was developed to achieve these targets.

Chapter 8.3 – Alternatives Considered

We disagree that, after evaluation and analysis, both Alternative 1 and 2 are determined to “generally meet the Proposed Project objectives.”⁶⁸ As stated in our comments on the Executive Summary, Alternative 1 covers only three square miles (1%) of the North Coast study region and would generally provide a low level of protection.⁶⁹ It is therefore impossible for Alternative 1 to meet the project objectives laid out on pages 8-3 to 8-4, which call for the protection and maintenance of species diversity, protection of diverse habitat types in close proximity to each other, and sustained or increased reproduction by species likely to benefit from MPAs, among many other conservation-oriented regional objectives.

AN-57

Table 8-1 on pages 8-5 and 8-6, page 8-9, page 8-10 (twice), page 8-19, and page 8-20 (twice) all state that there are no special closures in Alternative 2. Since Alternative 2 actually includes the same special closures as the Proposed Project, this error should be corrected in the Final EIR on each of these pages.

AN-58

For the reasons stated in response to the Impact Analyses of HYD-3, CR-1 and REC-2, we disagree with the finding in table 8-3 that both Alternatives 1 and 2 will have fewer adverse impacts on Recreation than those of the Proposed Project. On the contrary, we believe –and the DEIR itself repeatedly argues that– the Proposed Project may actually enhance recreational opportunities and boost recreational activity. Page 8-9 correctly observes that Alternative 1 would not result in the benefits to “overall recreational quality that are expected under the Proposed Project.”

AN-59

⁶⁵ *Id.* at 7-10.

⁶⁶ *Id.* at 7-12.

⁶⁷ *Id.* at 8-2.

⁶⁸ *Id.* at 8-5.

⁶⁹ *Id.* at Table 8-1, 8-2 and page 8-8.

We agree with the findings in Table 8-3 that Alternatives 1 and 2 will have more adverse impacts on Biological Resources, Research and Education and Cumulative Effects than those of the Proposed Project.

Section 8.3.1 – Alternative 1: No Project Alternative

We agree that Alternative 1 would realize no added benefits to water quality, fisheries or habitats, archaeological or historical resources, when compared to the Proposed Project.⁷⁰

For the reasons discussed in response to Chapters 3.2, 4.4, 6.2 and 6.5, we disagree that Alternative 1 would have fewer adverse impacts on vessel traffic or demands on law enforcement and emergency response than those of the Proposed Project.

AN-60

We agree that Alternative 1 would offer none of the benefits to research and education facilities and overall recreational quality that are expected under the Proposed Project.⁷¹

Section 8.3.2 – Alternative 2: BRTF Enhanced Compliance Alternative

This impact analysis will need to be revised throughout to take into account that Alternative 2 actually does include special closures.

AN-61

Because Alternative 2 includes fewer MPAs when compared to the Proposed Project, we agree that Alternative 2 would not realize the same benefits to biological or cultural resources.⁷²

Chapter 8.5 – Environmentally Superior Alternative

For the reasons discussed in our comments on the Executive Summary, page 8-22 of Chapter Eight should identify the Proposed Project as the “Environmentally Superior Alternative.” There is nothing in CEQA or its guidelines that prohibits the Commission from identifying the Proposed Project itself as the ESA. Page ES-10 explicitly says Alternative 2 would “result in reduced long-term contribution to improved habitats or marine species” and page 8-10 says that Alternative 2 would not realize the benefits associated with protection of marine resources in the Proposed Project, due to fewer MPAs

AN-62

The Proposed Project, which does the best job of protecting habitat and marine species, should therefore be identified as the Environmentally Superior Alternative.

Appendix B: Characterization of Consumptive Uses and Associated Socioeconomic Considerations in the Region

Chapter B.1- Introduction

As stated in our comments on Chapter One, we appreciate that the main discussion of potential socioeconomic effects of the Proposed Project is appropriately included as a reference only in Appendix B and is not analyzed in its own socioeconomics chapter as a possible significant effect in the DEIR. Page B-1 of Appendix B reiterates the relevant State CEQA Guidelines that state, “economic or social effects shall not be treated as significant effects on the environment.”

⁷⁰ DEIR at 8-8.

⁷¹ *Id.* at 8-9.

⁷² *Id.* at 8-10 and 8-19.

The discussion in Chapter B-1 goes on to state correctly that socioeconomic impacts are not considered environmental impacts under CEQA unless they result in physical impacts to resources. However, in the subsequent sentence, Appendix B asserts that the Proposed Project will result in “CEQA- relevant indirect impacts of displacement” including “impacts on air quality, biological resources, cultural resources, and vessel traffic, which are described in more detail in Chapters 3 through 7 of the DEIR.”⁷³

As articulated in our comments on Chapters 3.2 and 4.4, assumptions of displacement and associated potential impacts as a result of the Proposed Project are speculative and unsubstantiated; therefore, all references to displacement impacts should be deleted from the FEIR and Appendix B.

AN-63

Chapter B.2 - Consumptive Use Industries in the North Coast Study Region

Chapter B.2 provides a useful overview of the North Coast’s commercial and recreational fisheries, fishing port complexes, harvest of kelp and edible algae, aquaculture, and existing fishing closure zones.

It highlights economic trends in the study region in the absence of significant MPAs, providing data on the number of fishermen and vessels as well as the value of commercial landings and the vulnerability of port communities. As stated in our comments on Chapter 1.1, these economic trends describe the baseline condition of fisheries in the North Coast, which includes a history of declining participation and declining landings. A discussion of these trends should be included in Chapter One in the FEIR in addition to being included in Appendix B, as this information provides context on the necessity of MPAs to restore and sustain ocean health in the study region.

AN-64

Section B.3.1 – Microeconomic Considerations

The first sentence of this section incorrectly states that the Proposed Project would result in displacement of commercial fishing and that fishermen “could be expected to experience losses and increased costs to conduct their business, to the extent that they could not efficiently redirect their activities.”⁷⁴

Section B.3.1 provides a list of socioeconomic conditions under which commercial fisheries might experience short or long-term costs based on displacement from MPAs; however, the discussion goes on to correctly state that “[t]he potential that any of these effects would actually occur, and the relative intensity of these potential effects, would be speculative.”⁷⁵ Furthermore, this section states that, “potential losses could be offset by increased biomass and aggregate harvests within fishing locations outside of the MPAs, caused by the spillover effect”⁷⁶ and that long-term benefits to fishing as a result of the Proposed Project could include increased revenues and incomes and improvements to local economies.

AN-65

Given Appendix B’s direct acknowledgement that impacts from displacement are purely speculative and its recognition of the anticipated fisheries benefits from the Proposed Project, any discussion of potential impacts from displacement should be deleted from Appendix B in the FEIR.

Section B.3.3 – Fishery Displacement and Congestion

Again, this section of Appendix B incorrectly assumes that displacement of recreational and commercial fishing activity would occur as a result of MPA implementation. For the reasons discussed in response to Chapters 3.2 and 4.4, assumptions of displacement are speculative and reference to associated impacts should be deleted from Appendix B in the FEIR.

AN-66

⁷³ *Id.* at Appendix B at B-1

⁷⁴ *Id.* at B-16

⁷⁵ *Id.*

⁷⁶ *Id.*

April 13, 2012

Additionally, this section of Appendix B relies on Ecotrust data to estimate displacement effects of the Proposed Project on commercial and recreational fishing activities. As stated in our comments on Impact BIO-1, the Ecotrust analysis overestimates the cost of putting an MPA in a particular location by asking fishermen to rate the value of fishing grounds over a lifetime of fishing and represents a worse-case scenario by assuming that fishermen will not relocate to areas outside of MPAs. Again, it is important to note that Ecotrust's "worst case" assumption that all displaced effort will discontinue is in *direct conflict* with the DEIR's pervasive "displacement" assumptions that fishermen will shift effort to areas outside MPAs. This discrepancy should be acknowledged in Appendix B in the FEIR if the Ecotrust analysis is retained in the document.

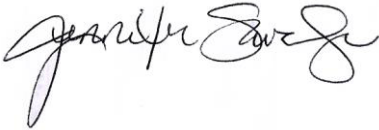
AN-67

Thank you for your consideration of our comments.

Sincerely,



Samantha Murray, Senior Manager, Pacific Program
Ocean Conservancy 



Jennifer Savage, North Coast Coordinator, Pacific Program
Ocean Conservancy



Beth Werner, Executive Director
Humboldt Baykeeper



Karen Garrison, Co-Director, Oceans Program
Natural Resources Defense Council 



Bill Lemos, Consultant
Natural Resources Defense Council 

Comment Letter AN – Savage, Jennifer

Response to Comment AN-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.

Response to Comment AN-2

See *Response to Comment AB-1*.

Response to Comment AN-3

See *Response to Comment S8-2*.

Response to Comment AN-4

Several revisions have been made to several sections of the DEIR, as follows, to address the inadvertent omission of special closures within Alternative 2.

The *Executive Summary* of the DEIR, in the subsection “BRTF Enhanced Compliance Alternative (ECA)” on page ES-10, has been revised as follows:

The BRTF ECA uses the same general geographies as the MPAs under the Proposed Project, but incorporates tribal uses into the proposed state marine conservation areas (SMCAs) and increases in the LOP in several offshore areas. The following major distinctions are made between the Proposed Project and Alternative 2 MPA designations:

- SMCAs at MacKerricher, Russian Gulch, and Van Damme are not included under Alternative 2.
- The Big River Estuary is changed from an SMCA designation (Proposed Project) to a recommended state marine park (SMP) designation¹ (under Alternative 2).
- The Double Cone Rock SMCA, as described for the Proposed Project, would retain its original name (Vizcaino) under Alternative 2.
- Four SMCAs (Vizcaino, Pyramid Point, Samoa, and Big Flat) are divided into offshore and onshore SMCAs under Alternative 2, though overall boundary areas are maintained.
- Ten Mile Estuary and Navarro River Estuary are changed from an SMCA designation (Proposed Project) to an SMRMA designation under Alternative 2.
- There are no regulatory options for individual MPAs under this alternative.
- ~~There are no special closures under Alternative 2.~~

For most of the resource topics, the alternatives analysis reveals that this alternative would have similar or fewer adverse environmental impacts overall. In particular, with the exclusion of ~~special closures and~~ several existing MPA locations, adverse effects on

consumptive activities, recreational opportunities, land use conflicts, and demands on law enforcement would be slightly lessened. ~~However, this alternative would result in reduced long-term contribution to improved habitats or marine species.~~ Increases in LOPs and greater specificity on allowable species and gear usage in specific MPA areas under this alternative would result in greater impacts on tribal take practices especially with regard to federally recognized (page ES-11) tribes, although this alternative may increase long-term contribution to improved habitats or marine species in the higher LOP areas. ~~However, the exclusion of special closures would allow greater access for tribes in these areas compared with the Proposed Project.~~ The remaining impacts, including those on non-federally recognized tribal communities, would likely be similar as described for the Proposed Project.

In DEIR Chapter 2 *Project Description*, Section 2.4 *Proposed Project Alternatives*, text has been added immediately following the first paragraph in the subsection “Alternative 2 – BRTF Enhanced Compliance Alternative (ECA)” on page 2-39, as follows:

Special Closures

This alternative includes the same seven special closures as in the Proposed Project (see page 2-8, and Chapter 8, Figure 8, of this DEIR).

In DEIR Section 7.5.2 *List of Cumulative Projects Considered*, the second paragraph in the subsection “Other Marine Protected Areas in California” on page 7-7, has been revised as follows:

The North Central Coast Study Region covers state waters from Alder Creek near Point Arena south to Pigeon Point. A redesigned network of 25 MPAs and six(6)seven special closures covering about 152 square statute miles (mi²), or 20% of state waters, has been in place since May 2010.

Table 8-1 in DEIR Section 8.3 *Alternatives Considered*, on pages 8-5 and 8-6, has been revised as follows:

Table 8-1. Summary of MPAs and Managed Areas by Type, Area, and Percentage of the North Coast Study Region for Existing, Proposed, and Alternative MPAs

Type of MPA or Managed Area	Existing MPAs (Alternative 1— No Project)	Proposed Project MPAs	ECA MPAs (Alternative 2)
<i>Amount of MPA Types</i>			
State Marine Reserve	1	6	6
State Marine Recreational Management Area	0	1	3
State Marine Park ¹	0	0	1
State Marine Conservation Area	4	13	11
Special Closures	0	7	0 7
Total¹	5	20	21
<i>Area (mi²)</i>			
State Marine Reserve	2.07	51.17	51.17
State Marine Recreational Management Area	0.00	0.79	1.03
State Marine Park	0.00	0	0.12

Table 8-1. Summary of MPAs and Managed Areas by Type, Area, and Percentage of the North Coast Study Region for Existing, Proposed, and Alternative MPAs

Type of MPA or Managed Area	Existing MPAs (Alternative 1— No Project)	Proposed Project MPAs	ECA MPAs (Alternative 2)
State Marine Conservation Area	1.06	84.94	81.86
Special Closures	0.00	0.19	0.00 0.19
Total¹	3.13	136.9	134.18
<i>Percentage of Study Region</i>			
State Marine Reserve	0.2	4.98	5.0
State Marine Recreational Management Area	0.0	0.08	0.1
State Marine Park	0.0	0	<0.1
State Marine Conservation Area	0.1	8.27	8.0
Special Closures	0.0	0.02	0.0 0.02
Total¹	0.3%	13.33%	13.1%

Notes: ECA = Enhanced Compliance Alternative, mi² = square statute miles, MPA = marine protected area, SMCA = state marine conservation area (in note below), SMP = state marine park (in note below), Study Region = North Coast Study Region

¹ Areas recommended by stakeholders and the Blue Ribbon Task Force as an SMP with restrictions consistent with this designation. Pursuant to California Fish and Game Commission authority (Public Resources Code 36725[a]), would be adopted as an SMCA, with a recommendation to the State Park and Recreation Commission, the designating authority for SMPs, for subsequent designation as an SMP at their discretion.

² Totals do not include special closures.

Source: Data compiled by Horizon Water and Environment in 2011

DEIR Section 8.3.2, *Alternative 2- BRTF Enhanced Compliance Alternative (ECA)*, second paragraph in the subsection “Characteristics of the ECA Alternative” on page 8-9, has been revised as follows:

As described in Chapter 2, “Project Description,” Alternative 2 proposes six state marine reserves (SMRs), three state marine recreational management areas (SMRMAs), one state marine park (SMP), and eleven SMCAs. It also includes seven special closures. As indicated in Tables 8-1 and 8-2, the overall geographic area of protection is similar to that of the Proposed Project, and the size of the individual MPAs vary only slightly from the Proposed Project. ~~Unlike the Proposed Project, there are no special closures included in Alternative 2.~~

In DEIR Chapter 8, *Alternatives Analysis*, text at the top of page 8-10 has been revised as follows:

- The Double Cone Rock SMCA, as described for the Proposed Project, would retain its original name (Vizcaino) under Alternative 2.
- Four SMCAs (Vizcaino, Pyramid Point, Samoa, and Big Flat) are divided into offshore and onshore SMCAs under Alternative 2, though overall boundary areas are maintained.
- Ten Mile Estuary and Navarro River Estuary are changed from an SMCA designation (Proposed Project) to an SMRMA designation under Alternative 2.
- There are no regulatory options for individual MPAs under this alternative.
- ~~There are no special closures under Alternative 2.~~

Other than the nearshore components of the four divided SMCAs, the level of protection offered by the MPAs under Alternative 2 is mostly “very high” and “moderate-high” (see Table 2-11). Restrictions proposed under Alternative 2 are shown in **Table 8-4** for all proposed MPAs and MMAs, and in **Table 8-5** for all proposed special closures (both located at the end of this chapter). In general, allowed uses are similar to regulations of the Proposed Project, though Alternative 2 provides greater specificity on the recreational take methods included to accommodate tribes within the MPA areas.

In DEIR Section 8.3.2, *Alternative 2- BRTF Enhanced Compliance Alternative (ECA)*, the third paragraph in the subsection “Impact Analysis” on page 8-10 has been revised as follows:

Biological Resources

Fewer MPAs ~~and no special closures~~ are identified under Alternative 2, compared with the Proposed Project. While this slight decrease in protected area would not result in any new or increased adverse effects on biological resources, benefits associated with the protection of marine resources at these locations would not be realized.

In DEIR Section 8.3.2, *Alternative 2 –BRTF Enhanced Compliance Alternative (ECA)*, the first paragraph in the subsection “Social Resources” on page 8-19 has been revised as follows:

Social Resources

In general, the differences under Alternative 2 with regard to consumptive uses would apply to recreational rather than commercial fishing activities. Commercial activities would remain largely unchanged with the exception of additional allowance of salmon take in the Ten Mile Beach SMCA. ~~Additionally, Alternative 2 would not include access or take restrictions for the special closures included in the Proposed Project.~~ As such, Alternative 2 would have slightly reduced impacts on commercial activities in the Study Region compared with the Proposed Project.

DEIR Section 8.3.2, *Alternative 2 –BRTF Enhanced Compliance Alternative (ECA)*, starting at the second paragraph on page 8-20, has been revised as follows:

Alternative 2 removes the existing MPAs at MacKerricher, Van Damme, and Russian Gulch SMCAs, whereas they are retained and modified as described in the Proposed Project. However, this change in protection for these areas would have little effect on consumptive uses, as take is not restricted under the Proposed Project in these locations except for commercial harvesting of giant and bull kelp. Instead, greater opportunities for commercial take of giant and bull kelp harvesting would result under Alternative 2, as restrictions ~~on the harvesting of kelp~~ in these locations under the Proposed Project would not be imposed.

~~Alternative 2 does not include the seven special closures surrounding rocks and islands. In the Proposed Project, special closures would restrict public access and take of marine resources without exceptions for species, ethnicity, or method of take. Alternative 2 would allow public access to these areas, as is the present case under existing conditions (Alternative 1 or No Project Alternative). Alternative 2 would result in a lessened adverse effect on the commercial and subsistence fishing community, compared with the Proposed Project.~~

Overall, the take provisions under Alternative 2 would result in a smaller total area of protection, and greater recreational use allowances at certain locations, ~~and no special closures~~. This decreased area of protection would have slightly less potential for adverse effects on adjacent land uses and demands on law enforcement, though benefits on research and education would decrease correspondingly. All other effects on social resources would be similar to those described for the Proposed Project.

In DEIR Chapter 8 *Alternatives Analysis*, the title description of Table 8.4, starting on page 8-23, has been revised as follows:

Table 8.4. Regulations for Marine Protected Areas and Marine Managed Areas in Alternative 2

Table 8.5 has been added to DEIR Chapter 8, *Alternatives Analysis*, immediately following Table 8.4 on page 8-30, as follows:

Table 8.5. Regulations for Special Closures Proposed in Alternative 2

<u>Special Closure Name</u>	<u>Proposed Regulations</u>	<u>Seasonality of Special Closure</u>
<u>Southwest Seal Rock Special Closure</u>	<u>300-ft closure around Southwest Seal Rock</u>	<u>Year-round</u>
<u>Castle Rock Special Closure</u>	<u>300-ft closure around Castle Rock</u>	<u>Year-round</u>
<u>False Klamath Rock Special Closure</u>	<u>300-ft closure around False Klamath Rock</u>	<u>March 1–August 31</u>
<u>Sugarloaf Island Special Closure</u>	<u>300-ft closure around Sugarloaf Island</u>	<u>Year-round</u>
<u>Steamboat Rock Special Closure</u>	<u>300-ft closure around Steamboat Rock</u>	<u>March 1–August 31</u>
<u>Rockport Rocks Special Closure</u>	<u>300-ft closure around Rockport Rocks</u>	<u>March 1–August 31</u>
<u>Vizcaino Rock Special Closure</u>	<u>300-ft closure around ‘seaward’ side of Vizcaino Rock</u>	<u>March 1–August 31</u>

Response to Comment AN-5

Additional background information on the stakeholder and public process to develop the Proposed Project is presented in DEIR Chapter 2, Section 2.3 *Proposed Project*. No changes to the DEIR are necessary. See also *Response to Comment AX-2*.

Response to Comment AN-6

DEIR Section 1.1.5, *Location and General Characteristics of the North Coast Study Region*, is meant as an introduction to the area and is not intended to be an all-encompassing description. The topics listed in the comment are addressed in the physical, cultural, and social resources evaluations in the DEIR. No changes are necessary.

Response to Comment AN-7

DEIR Chapter 1 *Introduction*, Section 1.1.5 *Location and General Characteristics of the North Coast Study Region*, top of page 1-17, has been revised as follows to address this typographical error:

The straight-line distance between these two points is approximately 225 mi, but the actual length of the shoreline is much longer (about 517~~47~~ mi).

Response to Comment AN-8

Such information is not necessary to support the environmental analysis in the DEIR. No change to the DEIR has been made.

Response to Comment AN-9

Chapter 1 of the DEIR is not a required section identified in State CEQA Guidelines. This chapter is intended to provide the reviewer with a background summary of the purpose of the document and an overview of the CEQA compliance process. A brief summary of the MLPA Initiative's MPA Planning Process is provided in Section 1.1.3 and a summary of the design considerations for the MPAs is provided in Section 1.1.4. The topics included in the comment are specifically addressed in Chapter 4 *Biological Resources* and in Appendix D, which includes the list of species likely to benefit from MPAs in the North Coast Study Region; they are not necessary to include in the introduction chapter.

Response to Comment AN-10

Such information is not necessary to support the environmental analysis in the DEIR. However, see *Master Response 1: Scope of the MLPA and Regulatory Authority* for further discussion. No change to the DEIR has been made.

Response to Comment AN-11

Comment noted.

Response to Comment AN-12

Comment noted. Please see *Response to Comment AN-4* regarding inclusion of special closure information for Alternative 2.

Response to Comment AN-13

This comment raises complex issues of law and policy and does not address the sufficiency of the EIR. No further response is warranted.

Response to Comment AN-14

Comment noted. DEIR Chapter 2 *Project Description*, on page 2-44, provides design considerations directly taken from the MLPA Master Plan for Marine Protected Areas, which was used by the NCRSG in designing MPAs. While the NCRSG contemplated additional design considerations, such as "siting MPAs adjacent to existing onshore state and national parks, marine labs to better facilitate enforcement of MPAs" as referenced by the commenter, no change to the DEIR is needed.

Response to Comment AN-15

Comment noted. No change is necessary to support the environmental analysis in the DEIR.

Response to Comment AN-16

See *Response to Comment AB-5*.

Response to Comment AN-17

Impact AIR-1 of DEIR does in fact clarify the assumptions used for the impact analysis of recreational vessel displacement. As stated the end of the first paragraph of page 3.2-13 under "Recreational Displacement":

As discussed in the methodology section above, displacement of recreational fishing vessels used for consumptive and non-consumptive activities could increase the distance and duration of vessel transit, resulting in increased criteria air pollutant emissions (NO_x, PM₁₀ and PM_{2.5}). *Because limited useful data are available on recreation vessel trips for consumptive uses, this displacement cannot be quantified.* (emphasis added)

Furthermore, on Page 3.2-10, the last two paragraphs of the methodology for Recreational Vessels describes that while an emissions estimate cannot be accurately defined, "the analysis assumes that displaced recreational fisherman will travel longer distances with greater travel times to new destinations." Since a quantitative approach is not feasible with the available data, this qualitative approach was used by the Commission in an effort to disclose potential impacts.

As a conservative estimate, the Commission used the following assumption in the analysis of Impact AIR-1 (second paragraph on page 3.2-14):

Overall, it is expected that displacement of recreational vessels would be less than, or at most, equal to commercial fishing vessel displacement. This would result in emissions of criteria air pollutant less than or, at most, equal to those from commercial fishing vessels.

In doing so, the Commission is not contradicting the previous statements that emissions cannot be accurately quantified. Rather, this estimate is a conservative approach that assumes some increase in recreational vessel travel and trip duration while acknowledging that they would not exceed emission estimates of commercial fishing vessels.

Since the comment does not provide any specific alternative assumptions to support a different quantitative analysis, no further changes to the DEIR are necessary.

Response to Comment AN-18

See *Response to Comment AB-5*.

Response to Comment AN-19

As noted in *Response to Comment AN-17*, the impact discussion does clearly describe the assumptions used for the impact analysis of recreational vessel displacement while acknowledging limitations of the available data. Since the comment does not provide any

specific alternative assumptions to support a different quantitative analysis, no changes to Impact GHG-1 of the DEIR are necessary.

Response to Comment AN-20

The Commission is not aware of any information to support the extent to which this effect would occur. Without supporting information, it would be speculative to make such an assertion. No changes to the DEIR are required.

Response to Comment AN-21

The information provided regarding pollutant point sources in the Study Region is noted. However, the Commission is not able to locate, and the comment does not provide, specific information regarding these facilities to verify their inclusion in the DEIR. Furthermore, the inclusion of this information would not have an effect on the findings of the analysis. As such, no changes to the DEIR are necessary.

Response to Comment AN-22

While a project may result in benefits, the purpose of CEQA is to evaluate the potential adverse effects of a proposed project. No changes to the DEIR are necessary.

Response to Comment AN-23

Table 3.4-1 *Areas of Special Biological Significance in the North Coast Study Region* (page 3.4-6 of the DEIR) has been revised as follows:

Table 3.4-1. Areas of Special Biological Significance in the North Coast Study Region

ASBS Site	Area (mi ²)	Nearby Marine Protected Areas
Jughandle Cove	1.40 32	Point Cabrillo SMR Mackerricher SMCA
Trinidad Head	0.46	Samoa SMCA
King Range	39.15	Mattole Canyon SMR, Sea Lion Gulch SMR, Big Flat SMCA
Redwood National Park	97.26	Reading Rock SMR, Reading Rock SMCA

Notes: ASBS = Areas of Special Biological Significance, mi² = square statute mile(s), SMCA = state marine conservation area, SMR = state marine reserve
 All the ASBS sites listed are also state water-quality protection areas.
 Source: MLPAI 2010

Response to Comment AN-24

Please refer to *Response to Comment AN-16*. As previously stated, the DEIR relied on conservative assumptions for the analysis while acknowledging the limitations of available data. Since the comment does not provide any specific alternative assumptions to support a different analysis, no changes to Impact GHG-1 of the DEIR are necessary.

Response to Comment AN-25

The Commission agrees that vessel abandonment resulting from implementation of the Proposed Project is unlikely. However, the inclusion of this issue in the DEIR is intended to represent a conservative approach to the analysis. As noted in Impact HYD-2 on page 3.4-18, the findings indicated that this would be a less-than-significant impact. No changes to the DEIR are necessary.

Response to Comment AN-26

The commenter does not provide any specific information to demonstrate that the assumptions used in the DEIR are incorrect. Furthermore, since the analysis of Impact HYD-3 on page 3.4-18 finds that the Proposed Project would result in "no impact," alteration of this text would have no effect on the impact conclusion. No changes to the DEIR are necessary.

Response to Comment AN-27

Comment noted. See *Response to Comment A6-2*.

Response to Comment AN-28

The following changes have been made to the DEIR, Chapter 4 *Biological Resources*, on page 4-54:

Adaptive Management and Its Role in Evaluating Effects

Adaptive management is a part of the MLPA (FGC, Section 2853[c][3]). The MLPA requires monitoring to determine whether its goals related to biological resources are being met. If the goals of the MLPAMPLA (see Chapter 2, "Project Description") are not being met, then either regulatory or management changes could occur to try and meet the goals. Adaptive management requirements were considered in the impact analysis where appropriate. More details regarding adaptive management requirements for the MLPA are discussed in Chapter 2.

Response to Comment AN-29

Comment noted. See *Response to Comment A6-2* and *Response to Comment AB-8*.

Response to Comment AN-30

See *Response to Comment AB-9*.

Response to Comment AN-31

The following changes have been made to DEIR Chapter 4 *Biological Resources*, Impact BIO-6, on page 4-69:

The MLPAMPLA has similar goals to the existing plans and policies. The Proposed Regulations would be consistent with existing local, state, and federal policies and ordinances protecting biological resources; thus, no adverse impact would occur to existing local, state, or federal plans and policies. The options to the Proposed Project would slightly modify some of the MPA boundaries from those of the Proposed Project. The existing policies and plans for these options are identical to those described above for the Proposed Project, with the following additions:

Response to Comment AN-32

The following change has been made to DEIR Chapter 5 *Cultural Resources*, at the bottom of page 5-8:

Nonindigenous Exploration and Settlement

RussianRussia, Spanish, and British ships sailed off the coast of Northern California starting in the late 1500s in Mendocino County and the 1700s in Del Norte and Humboldt Counties (Van Kirk 1999).

Response to Comment AN-33

The Commission agrees that disturbance to historical resources from nonconsumptive use inside the MPAs will not likely result in significant adverse impacts to the resources. However, the inclusion of this issue in the DEIR is intended to represent a conservative approach to the analysis. As noted in Impact CR-1 on page 5-20, the findings indicated that this would be a less-than-significant impact. No changes to the DEIR are necessary.

Response to Comment AN-34

The Commission appreciates your acknowledgement that MLPAI planning process made efforts to minimize impacts to favorite fishing grounds. The DEIR states on page 5-21 that “it is not likely that the Proposed Project would cause community-wide economic failure and decay that would lead to the loss of historical maritime properties.” However, the inclusion of this issue in the DEIR is intended to represent a conservative approach to the analysis. As noted in Impact CR-2 on page 5-21, the findings indicated that this would be a less-than-significant impact. No changes to the DEIR are necessary.

Response to Comment AN-35

Comment noted. This comment contains 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*. Note that the DEIR concluded in Impact CR-6 on page 5-26 that Option B for each of those MPAs would potentially increase the chance of accidental damage to submerged archaeological sites. However, as noted on page 5-26, the findings indicated that all options would still result in a less-than-significant impact.

No changes to the DEIR are necessary.

Response to Comment AN-36

The last sentence on page 6.1-10 of DEIR Chapter 6, Section 6.1 *Land Use and Utilities*, has been revised as follows:

Compared with the rest of California, the lands adjacent to the Study Region areis sparsely populated (Table 6.1-2).

Response to Comment AN-37

A change the text of Impact LU-4 in DEIR Chapter 6, Section 6.1 *Land Use and Utilities*, at the top of page 6.1-17 has been made as follows:

Impact LU-4: Conflict with the California Coastal National Monument Resource Management Plan (Significance Criteria B and C)

Within the Study Region, BLM manages CCNM, which includes small islands, offshore rocks, reefs, and pinnacles above mean high tide along the entire California coastline, and overlaps with the Study Region of the Proposed Project. The primary management focus of CCNM is preservation and protection of the areas and associated habitat. The main objective of the proposed network of MPAs is similar: to protect, maintain, restore, enhance, and manage marine resources. Implementation of MPAs created by the Proposed Project that surround or are adjacent to areas within the CCNM would be consistent with the objectives of BLM's management goals for implementation of the CCNM. The two programs would be complementary. No impact would occur.

Response to Comment AN-38

Based on this comment, *Impact LU-5: Conflict with Existing Adjacent Land Uses* has been modified in the third paragraph on page 6.1-17, as follows:

As previously noted, the total area proposed for MPA designation is limited in comparison to the area available for unrestricted activity. In addition, as stated on page 6.1-10 of this section, where feasible, the MPAs of the Proposed Project were designed to avoid placing MPAs within 10 miles of major ports and harbor, which minimizes the effect on adjacent port and harbor uses. Furthermore, the shoreline span of proposed MPA boundaries.

Response to Comment AN-39

Please see *Response to Comments A6-2 and AB-9* regarding displacement and the Ecotrust analysis. No change to the DEIR has been made.

Response to Comment AN-40

This comment raises complex issues of law and policy and does not address the sufficiency of the EIR. No further response is warranted.

Response to Comment AN-41

Refer to *Master Response 4: Enforcement*.

Response to Comment AN-42

Refer to *Master Response 4: Enforcement*.

Response to Comment AN-43

This comment raises complex issues of law and policy and does not address the sufficiency of the EIR. No further response is warranted.

Response to Comment AN-44

This comment recommends adding a cross-reference to DEIR Chapter 2, Section 2.5.2 *Enforcement*, to Chapter 6, Section 6.2 *Public Services and Law Enforcement*, which details elements of MPA placement, design, boundaries, and regulations taken into consideration

during MPA design to aide in public understanding and enforcement. Therefore, in DEIR Chapter 6, Section 6.2 *Public Services and Law Enforcement*, the second paragraph of Impact PSU-1 on page 6.2-6 has been revised as follows:

It is recognized that the Proposed Project would place greater fishing and use restrictions within designated MPAs, and increase the geographic variation in regulations on the coastline of the Study Region. As described in Section 2.5, “Management, Enforcement and Monitoring of MPAs,” the Department’s enforcement staff and federal and local agencies would be charged with enforcing the new MPA restrictions within the North Coast Study Region. It is reasonable to believe that creating a larger network of MPAs would increase the demand for enforcement of MPAs within the Study Region compared to existing conditions (3 MPAs). ~~While t~~ Technology advances, outreach and education, and improved efficiency are anticipated to support both compliance and enforcement, as well as the initial MPA design itself, which integrated guidelines for MPA placement, design, boundaries, and regulations, aimed at facilitating enforcement (see DEIR Chapter 2, Section 2.5.2 “Enforcement”). However, ~~these factors this is~~ are not anticipated to supplant enforcement personnel in the field...”

Response to Comment AN-45

While a project may result in benefits, the purpose of CEQA is to evaluate the potential adverse effects of a proposed project. The EIR analysis did not identify any significant adverse impacts.

Response to Comment AN-46

As stated in Impact REC-1 on page 6.3-17, physical deterioration of recreational facilities resulting from the Proposed Project are not considered to be substantial. The analysis finds that this impact would be less than significant. No changes to the DEIR are necessary.

Response to Comment AN-47

DEIR Section 6.3.4 *Impact Analysis* does contain the following information under the “Methodology” discussion on page 6.3-18:

This section focuses mainly on the potential impacts of the Proposed Project on nonconsumptive recreation. Potential effects related to recreational fishing and other consumptive recreational activities are discussed in more detail in Appendix B and in other chapters of this EIR where secondary physical effects on the resource area could occur.

As indicated, while the impact discussions focus mainly on nonconsumptive activities, the Commission included a brief discussion of consumptive activities, as applicable, to provide the reader a broader context of potential effects. Removal of the text would not alter the findings of the analysis of Impact REC-2, which were identified as less than significant. As such, no changes to the DEIR are necessary.

Response to Comment AN-48

The second paragraph of Section 6.5.4 *Impact Analysis*, under the heading “Methodology” on page 6.5-13, explicitly recognizes that although fishing activity can be calculated by

assuming that fishing vessels activity is evenly distributed, “[i]n reality, fishing activity is not evenly distributed, and so this only provides a general estimate.”

In using this assumption, the Commission is undertaking a good faith effort to quantify the potential impacts of the Proposed Project, while still acknowledging that this scenario is a simplified version of actual density variations. It should be noted, however, that the argument that vessel density would decrease in the Study Region cannot be substantiated. Thus, while this assumption may not fully represent actual density increases, it is not so fundamentally flawed as to represent an inaccurate estimate of potential effects. Furthermore, the comment does not provide any specific alternative assumptions to support a different quantitative analysis.

Regarding the potential for increased oceanic hazards, including collisions, as stated in Impact VT-1 on page 6.5-14, vessel density increases resulting from the Proposed Project are not considered to be substantial, and increases in oceanic hazards are not expected to noticeably increase. The analysis finds that this impact would be less than significant.

No changes to the DEIR are necessary.

Response to Comment AN-49

The Commission used varying assumptions in different resource chapters to determine the “worst-case” scenario for each resource topic, as a conservative approach to disclose the potential effects of the Proposed Project. While the Vessel Traffic Hazard chapter may use a different assumption than the Air Quality or Greenhouse Gas Emissions chapters, this conservative approach does not create fundamental flaws in the analysis.

No changes to the DEIR are necessary.

Response to Comment AN-50

As noted in *Response to Comment AN-16*, the DEIR relied on conservative assumptions for the potential distance and trip increases associated with the Proposed Project while acknowledging the limitations of available data. Since the comment does not provide any specific alternative assumptions to support a different quantitative analysis, no changes to Impact VT-3 of the DEIR are necessary.

In response to your comment regarding the MPA prohibitions on new future energy uses, it should be noted that the Proposed Project does not explicitly ban or prohibit such development in the Study Region. Such uses may be implemented at a future time after undergoing proper environmental review and receiving approval from the appropriate jurisdictional agencies. It is not within the scope of the Project to endorse or prohibit this type of development. This comment is noted, and no changes to the DEIR are necessary.

Response to Comment AN-51

As stated in DEIR Chapter 7, Section 7.2, the State CEQA Guidelines require that an EIR identify irreversible impacts or changes that may be caused by the proposed project. Vessel displacement and indirect impacts associated with vessel displacement, such as hazardous spills and accidental collisions, could occur after implementation of the Proposed Project. Though the potential for these indirect impacts to occur may be low, the purpose of CEQA is

to disclose all reasonably foreseeable environmental changes. The Commission has complied with CEQA and no changes to the DEIR are necessary.

Response to Comment AN-52

Comment noted.

Response to Comment AN-53

The description of regulations established in the North Central Coast Study Region on page 7-7 in Chapter 7 of the DEIR has been updated as follows:

The North Central Coast Study Region covers state waters from Alder Creek near Point Arena south to Pigeon Point. A redesigned network of 25 MPAs and ~~six(6)seven~~ special closures covering about 152 square statute miles (mi²), or 20% of state waters, has been in place since May 2010.

Response to Comment AN-54

This information, though more current than what is presented in the DEIR, would not change the findings of the cumulative impact analysis. As such, no changes to the DEIR are necessary.

Response to Comment AN-55

This is a minor typographic error that does not substantially change the information presented or the reader's interpretation of the information that is presented.

Response to Comment AN-56

As stated in Chapter 7, Section 7.2, the State CEQA Guidelines require that an EIR identify irreversible impacts or changes that may be caused by the proposed project. Vessel displacement and indirect impacts associated with vessel displacement, such as air quality and GHG emissions, could occur after implementation of the Proposed Project. Though the potential for these indirect impacts to occur may be low, the purpose of CEQA is to disclose all reasonably foreseeable environmental changes. The Commission has complied with CEQA and no changes to the DEIR are necessary.

Response to Comment AN-57

See *Response to Comment AN-2*.

Response to Comment AN-58

See *Response to Comment AN-4*.

Response to Comment AN-59

In response to your comment regarding the conclusions of the alternative analysis as shown in Table 8-3 of the EIR, it should be noted that an alternative is evaluated based on the degree to which it would reduce or eliminate one or more impacts of the proposed project. The following is stated in Section 8.2.3 of the DEIR:

The analysis of the Proposed Project's effects did not identify any significant adverse impacts. As such, the CEQA criterion that an alternative should reduce or eliminate one or more of the significant impacts of a proposed project was not applicable to the alternatives evaluation. Instead, the alternatives evaluated were considered with the aim of further reducing any of the Proposed Project's impacts that were already found to be less than significant.

In other words, since there are no significant adverse effects to avoid or reduce, the alternatives analysis considered the extent to which adverse project effects are further lessened. So although the Proposed Project's effects on recreation are less than significant, by not implementing new restrictions, Alternative 1 would avoid displacement effects. Similarly, the take provisions of Alternative 2 would result in a smaller area of protection, thereby reducing the potential displacement of recreational opportunities.

Because the alternatives analysis of the DEIR is intended to focus on reducing impacts related to the Proposed Project, the discussion contained within Chapter 8 is adequate and no further changes are necessary.

Response to Comment AN-60

As noted in *Responses to Comments AN-16 and AN-48*, the DEIR relied on conservative assumptions for the potential vessel distance, time, and density increases associated with the Proposed Project while acknowledging the limitations of available data. Therefore the assumptions used in the analysis leads to the conclusion that the No Project Alternative would result in lessened adverse effects on vessel traffic, enforcement, and emergency responses as compared to the Proposed Project. Since the comment does not provide any specific alternative assumptions to support a different conclusion, no changes to Section 8.3.1 of the DEIR are necessary.

Response to Comment AN-61

See *Response to Comment AN-4*.

Response to Comment AN-62

See *Response to Comment S8-2*.

Response to Comment AN-63

See *Response to Comment A6-2*.

Response to Comment AN-64

Such information is not necessary to support the environmental analysis in the DEIR. No change to the DEIR has been made.

Response to Comment AN-65

See *Response to Comment AN-64 and AB-8*.

Response to Comment AN-66

See *Response to Comment AN-34 and AB-8*.

Response to Comment AN-67

See *Response to Comment AB-9*.

April 14, 2012

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

Re: Comments on Draft Environmental Impact Report for North Coast Marine Protected Areas

Dear Department of Fish and Game:

Please include the following minor corrections to the Draft EIR. By so doing the document will more accurately reflect the conditions of the southern bio-region under consideration in the review.

Section 4.4.3-59: popular sites for urchin take, please remove areas where there is no urchin take:

Ten Mile Beach SMCA

Point Cabrillo SMR (correction for northern new section in Proposed Project)

Big River SMCA

Navarro River Estuary SMCA

AO-1

Correct the report to show the following: Ten Mile Beach proposed SMCA is not a place where urchins are gathered because it is sand bottom here; Point Cabrillo SMCA has been closed to urchin harvest for years, but the proposed new northern boundary would mean an area just north of the existing MPA would no longer be harvested, so with the new SMR here urchin harvest there would be curtailed in this new area only; Big and Navarro Rivers do not have urchin populations because they are estuaries.

Change the purchase date in Social Resources section 6.1-7 Big River Program from 2005 to 2002. The referenced property surrounding the Big River estuary was purchased by the Mendocino Land Trust and transferred to State Parks in 2002.

AO-2

There is no mention of the public boat-launching site at Big River in Table 6.3-8. The boat launch at the old mill site needs to be included because this is a popular launch site for motorized and non-motorized watercraft.

AO-3

In section 6.3-11: Popular Kayak Routes in NCSR, the Big River Estuary should be listed.

AO-4

On page 7 in the Water Quality section, the following missing Pollutant Point Sources in the North Coast Study Region should be added:

AO-5

- 1.) Westport Community Services District — nearby MPAs are Ten Mile SMR and Double Cone Rock SMCA.

2.) Albion Flat Campground — nearby MPAs are the Little River and Navarro Estuary SMCAs.

AO-5

Also on Page 7, with regard to ASBSs, The Jug Handle State Park Area of Special Biological Significance in the NCSR. Table 3.4-1 states that Jughandle Cove is an ASBS with the MacKerricker SMCA nearby. The closest MPA is at Point Cabrillo, just 1.4 miles away (south). The MacKerricker SMCA is over 5 miles north.

AO-6

With these corrections I believe the document will be more accurate. Please feel free to contact me should you have questions about these factual adjustments.

Sincerely,



William Lemos
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Comment Letter AO – Lemos, William

Response to Comment AO-1

Page 4-59 of DEIR Chapter 4, Section 4.4.3, has been revised to remove the following locations as popular sites for take of red sea urchins: 1) Ten Mile Beach SMCA acknowledging the MPA is comprised of minimal amounts of hard substrate, including 0.01 linear miles of offshore rocks, 0.03 linear miles of rocky shores, and 0.03 linear miles of hard 0-30m habitats; 2) Big River Estuary, and 3) Navarro River Estuary SMCA, as follows:

According to records of urchin landings between 2003 and 2008 (MLPAI 2011), the following popular sites for take of urchins would be restricted by the Proposed Project:

- Double Cone Rock SMCA (southern border)
- Ten Mile SMR
- ~~Ten Mile Beach SMCA (northern border)~~
- Point Cabrillo SMR (northern border)
- ~~Big River SMCA~~

With respect to Point Cabrillo SMR, since part of the proposed SMR is currently regulated by the existing Point Cabrillo SMR, the Proposed Project would constitute less of a change from baseline conditions than analyzed in the DEIR. No change has been made to the conclusion of Impact BIO-3 on page 4-60 of the DEIR.

Response to Comment AO-2

The information you provided regarding the purchase date for the property surrounding the Big River estuary is noted. In DEIR Chapter 6, Section 6.1 *Land Use and Utilities*, the last paragraph of page 6.1-7, in the subsection “Big River Program,” has been revised as follows:

Big River Program

In ~~2005-2002~~, Mendocino Land Trust acquired the property along the Big River Estuary to preserve, restore, and manage estuarine, wetlands, aquatic, and wildlife habitat; provide wildlife-oriented education and research; and allow public access for recreational uses compatible with estuarine, wetlands, aquatic, fish and wildlife habitat preservation and restoration.

Response to Comment AO-3

The information provided regarding a launch site in the Study Region are noted. However, the Commission cannot verify this information and the inclusion of this information would not have an effect on the findings of the analysis. As such, no changes to the DEIR are necessary.

Response to Comment AO-4

The information provided regarding popular kayak routes in the Study Region is noted. However, the comment does not provide any specific information regarding these routes for inclusion in the DEIR. Furthermore, the inclusion of this information would not have an effect on the findings of the analysis. As such, no changes to the DEIR are necessary.

Response to Comment AO-5

See Response to Comment AN-21.

Response to Comment AO-6

See Response to Comment AN-23.



MLPA CEQA Comments

1 message

Jeanine Pfeiffer <jeanine.pfeiffer@gmail.com>

Sun, Apr 15, 2012 at 11:28 PM

To: MLPAComments@horizonwater.com

April 15, 2012

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

The ten pages of comments (one page of "overview" and nine pages of detailed comments divided by chapter and section) attached to this email reflect observations made as a resident of Mendocino County, and as a consulting scientist to the County of Mendocino, the Yurok Tribe, and the Smith River Rancheria during the MLPA Initiative in the North Coast Study Region.

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" The world has realized it should be concerned about saving biodiversity. But cultural knowledge is just as important. Destroy the local knowledge system and thousands of years of time-tested data are gone."

– *Darshan Shankar, Founder and Director of the Foundation for Revitalization of Local Health Traditions, India*

Comments on the Draft EIR for the North Coast Study Region MLPA

Overview:

The *Draft Strategy for Public Participation in the MLPA North Coast Study Region* (DFG 2010) outlined a protocol for “joint fact-finding” to collaboratively develop a common knowledge base with constituents, but formally structured encounters between academic and local experts never took place during the Marine Life Protection Act Initiative (MLPAI) process in the North Coast Study Region (NCSR), because the persons appointed as regional stakeholders represented a limited portion of community expertise. This loss underlies much of what is missing from the Draft EIR.

The MLPAI contained a charge to base decisions on the “best available science.” The best available science includes local expertise, Native expertise, and just as many social and cultural scientists as biological and physical scientists. The best available science is inclusive, collaborative, transparent, and modest – in other words, it is keenly aware of its limitations.

The best available science does not rely solely on academic or archival sources, but spends just as much time in the field as it does in a meeting room or in front of a computer. The best available science incorporates site-specific variation, both ecological and cultural. For example, Mendocino County fishermen and biologists repeatedly offered their time and equipment to the MLPAI Science Advisory Team to conduct ground-truthing exercises to provide critical missing data for nearshore habitat at 0-30 meters depth. These offers were never honored, and a proxy was used in the habitat models instead.

The EIR is based primarily, if not exclusively, on written archival material and reports provided by the Department of Fish & Game (DFG), as evidenced in Chapter 10 (References). As such, it omits critical content contained in hundreds of hours of expert testimony provided verbally during MLPAI meetings in the North Coast Study Region (NCSR), most of which was never documented, and often never acknowledged or responded to within the meetings by the people sitting at the center table.

We could also find no evidence of extensive documents provided to the DFG by the tribes listed on Pages 5-10 and 5-11 and Table 2.1, which are directly relevant to Sections 1.1.6, 1.5, 2.3, 4.2.3, 4.3.2 and Chapters 5 and 6.

We applaud the inclusion of environmental justice in Section 6.6. Yet this section does not begin to address the environmental justice issues faced by many constituents in the NCSR. What may appear to be an insignificant macroeconomic impact in a large-scale analysis translates to a significant microeconomic impact in a County with less than 90,000 residents. When one family business or household is crippled or negatively impacted by marine policies that do not yield comprehensive ecological and social benefits, we all feel it. This is also an environmental justice issue, due to the heightened vulnerability of family-based, small-scale fishing operations in a remote and economically marginalized county such as Mendocino.

As Section 5.3.2 notes, the entire North Coast is effectively a traditional cultural property¹ for one, or several of the tribes and tribal communities who have inhabited the region for millennia, yet there is no detailed analysis of this in the Draft EIR. Instead, we have an entire appendix devoted to 157 shipwrecks.

The very fact that certain rights within the MLPA Initiative are only considered, or apportioned to, federally-recognized tribes, remains a significant, and unresolved, environmental justice issue. In California, the state with the largest Native American population, an estimated **90%** of Native Americans living in California pertain to tribes who, to this day, have been denied federal recognition².

¹ Per Criteria (A) – (D) as stipulated in the National Park Service Bulletin 38, *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (revised 1998).

² These figures are taken from a Spring 2006 publication by The Center for Human Services, UC Davis Extension. “Fewer than 10% (approximately 40,000) of Indians living in California are members of federally-recognized tribes.”

AP-1

AP-2

AP-3

AP-4

SPECIFIC COMMENTS

CHAPTER 1

Section 1.1.5 (Page 1-17, ¶3)

This paragraph begins by stating that the human population (etc.) combine to create a complex setting, yet most of the bullet points describe biogeographical features. More bullet points should highlight key features of the human population, i.e.,:

- One of the most diverse populations of Native American tribes and tribal communities in the State; many of whom are actively conserving marine species and habitats
- a coastline which historically can be designated a traditional cultural resource
- significant percentage of the coastal population practicing subsistence harvesting
- some of the last remaining areas of sustainably harvested red abalone
- artisanal seaweed harvesters who are proactively developing policies for their businesses

AP-5

Section 1.1.5 (Page 1-18, ¶1)

Multiple stakeholder comments have questioned the division into “consumptive” and “non-consumptive” uses; noting that so-called “recreational” uses can also have consumptive impacts, including (but not limited to, trash left by beach visitors and items taken by beach combers, motor fuel fumes and leaks, clearing of kelp by divers creating passageways); and that cultural uses, including but not limited to: ceremonies and rituals, are not recognized within either of these terms.

AP-6

Section 1.1.6 (Page 1-21, ¶3)

This section needs to be substantially expanded. Many more federally-recognized and non-federally-recognized tribes claim ancestral territories within the North Coast Study Region (NCSR) that are not listed in this sub-section.

AP-7

Section 1.5 (Page 1-30)

Stakeholders, especially from tribal constituencies, take issue with the terms “consumptive” and “recreational” uses. See Page 6.6-7, “...‘tribal take’ includes gathering, harvesting and fishing for cultural and religious purposes as well as for subsistence.”

AP-8

Section 1.6.2 (Page 1-31 and 1-32)

The extremely low attendance at the four scoping meetings (a total of 27 people attended) demonstrates that inadequate outreach was provided to the relevant constituencies.

AP-9

CHAPTER 2

Section 2.3 and Table 2-1 (Pages 2-6ff)

This section needs to be substantially expanded. Note that “Tribal Take” is restricted to members of federally-recognized tribes. A significant portion of Mendocino and Lake County constituents of Native American heritage do not belong to federally-recognized tribes (including, but not limited to, Yokayo and Noyo tribal communities and dis-enrolled members of rancherias), and as such, are excluded from this provision.

AP-10

The very fact that certain rights within the MLPA Initiative are only considered, or apportioned to, federally-recognized tribes, remains a significant, and unresolved, environmental justice issue. In California, the state with the largest Native American population, an estimated **90%** of Native Americans living in California pertain to tribes who, to this day, have been denied federal recognition³.

³ These figures are taken from a Spring 2006 publication by The Center for Human Services, UC Davis Extension. “Fewer than 10% (approximately 40,000) of Indians living in California are members of federally-recognized tribes.”

Section 2.5.1 (Page 2-43) Management

Tribes and tribal communities within the NCSR continue to request co-management agreements with the DFG.

Section 2.5.2 (Pages 2-43 and 2-44) Enforcement

The current MPA configuration anticipates that the proposed MPAs, existing within 517 statute miles of shoreline (225 statute miles), would be patrolled by a total of 19 wardens assigned to the region. This averages out to approximately 27 miles of shoreline per warden. Stakeholders have repeatedly expressed their deep concern that this level of enforcement is inadequate.

With the addition of more, and more extensive MPAs to the region, we anticipate potential biological impacts of the loss of enforcement capacity that may be an unavoidable result of adding significantly to the workload of the wardens; e.g. wardens on patrol enforcing the MPA regulations are not available to address poaching, trafficking, and water pollution.

Section 2.5.3 (Page 2-45 and 2-46) Monitoring and Adaptive Management

Recommend that all agencies involved with monitoring work closely and collaboratively with local communities, involving local experts and practitioners in monitoring program design, implementation, analysis, and reporting. **This goes beyond “volunteer monitoring activities” to involve local experts (e.g., divers, fishermen, tribal members) as research associates and co-investigators; and includes regular and timely reports to relevant City Councils and County Boards of Supervisors.**

AP-11

CHAPTER 3

No comments

CHAPTER 4

Section 4.2.3 Local Plans, Policies, Laws, and Regulations (Page 4-14)

This section needs to be substantially expanded. No mention is made of plans, policies, laws, and regulations pertaining to the tribal territories of the Yurok Tribe, Smith River Rancheria, or Wiyot Tribe, all of which are recognized as having ancestral territory within the NCSR in Section 1.1.6

AP-12

Section 4.3.1 Ecosystems and Biological Habitats (Page 4-14ff)

Only standard habitats are mentioned. No mention is made of the urchin barrens present in the NCSR in this section (although they are described on Page 4-48), which, due to the predominance of urchin cover, have distinct ecological characteristics. The presence, persistence, and impacts of urchin barrens on related species should also be discussed in the sub-section entitled “Ecological Linkages” on Page 4-35ff.

AP-13

Nearshore habitat data for 0-30 meters depth is inaccurate. Mendocino County fishermen and biologists repeatedly offered their time and equipment to the MLP AI Science Advisory Team to conduct ground-truthing exercises to provide critical missing data for nearshore habitat at 0-30 meters depth. These offers were never honored, and a proxy was used in the habitat models instead.

Table 4-6 Kelp Canopy Coverage in the North Coast Study Region (Page 4-30)

The missing data in this table could be partially reconstructed with the assistance of local experts, viz., urchin divers and artisanal seaweed harvesters, who have commented on earlier visual presentations of this data (viz., Dr. Karina Nielsen in a Ft. Bragg lecture).

AP-14

Section 4.3.2 Important Regional Species (Pages 4-36ff)

This section needs to be substantially expanded. The only traditional subsistence harvesting mentioned is contained in the Subsection entitled “Coastal Plants and Algae on Page 4-50. **Recommend that a separate sub-section entitled Species of Cultural Importance be inserted.** The critical importance of salmon and other cultural

AP-15

keystone species such as surfperch to tribes and tribal communities, many of whom are known as Salmon Nations, are not mentioned in this section.

AP-15

Section 4.4 Impact Analysis – Evaluation of Displacement (Pages 4-53ff)

The model used to estimate the increase in fishing intensity is unscientific, due to the following inaccurate assumptions:

- The model assumes that fishing pressure in the NCSR remains static.
- The model assumes all fishing grounds to be homogenous (i.e., identical habitat, identical species composition, identical population levels).
- The model assumes all fishing to be evenly distributed throughout the study region.

This discussion should take into account the highly uneven distribution of fishing pressure across the study region, which is likely to increase further after Project implementation, and should be based on spatial analysis of specific benthic habitat and fish assemblages in relation to ports and harbors. (See written comments contained in Appendix A and cited in Chapter 10 – References.)

AP-16

Implementation of the proposed MPAs will cause disproportionate and uneven effort shift across the NCSR, due to dynamic weather conditions, highly heterogeneous substrate, and the constantly changing distributions of marine species and vegetative (seaweed) habitat.

For example, commercial artisanal seaweed harvesters in Mendocino County have carefully distributed their harvesting efforts along the coast. The last-minute inclusion, without public vetting, of MacKerricher, Van Damme, and Russian Gulch SMCAs in the list of proposed MPAs would restrict commercial artisanal harvesters from harvesting *Nerocystis* (bull kelp) in these areas and violate the ten-mile safety zone provision used by the regional stakeholders in designed the unified proposal for the NCSR. Seaweed harvesters have proposed that permits to harvest bull kelp *for edible purposes only* be allowed in these SMCAs

CHAPTER 5

This chapter has not yet incorporated the hundreds of pages of cultural information provided to the DFG Commission by NCSR tribes and tribal communities listed on Pages 5-10 and 5-11 and in Table 2.1 in response to the September - October 2011 DFG Commission factual record gathering process.

The following criteria for determining a cultural property are drawn from the National Parks Service Bulletin Number 38:

Criterion A

As the First Peoples and aboriginal stewards of the coastline and associated marine resources, tribes and tribal communities in the NCSR made a significant contribution to the coast history. Virtually every major feature (rock, peninsula, bay, estuary, river mouth, etc.) along the coast has a traditional name, story, legend, and/or ceremony associated with it.

AP-17

Criterion B

Every natural feature of the coastline has a cultural association with the lives of ancestral tribes including archaeological sites of ceremonial sweathouses, sites of massacres, rocks said to be the bodies of legendary figures, and legendary sea creatures said to occupy caves, rock shelters, and deep waters along the coast.

Criterion C(3)

The culturally significant natural features of the coast have high artistic value to the tribes and tribal communities in the NCSR, both tangibly and intangibly. Tangibly, abalone, mussel, and clam shells feature prominently in ceremonial regalia. Intangibly, the songs, creation stories, and ceremonial narratives of tribes and tribal communities in the NCSR are intrinsically and indelibly embedded in hundreds of places along the coast.

Criterion C(4)

The coastline is a larger entity of traditional cultural importance, in that culturally important marine resources to tribes and tribal communities in the NCSR for spiritual, religious, customary, and subsistence reasons, are distributed sporadically and seasonally along the entire coast.

Criterion D

The coastline has already yielded a wealth of ethnographic, sociological, and folkloric information, and a number of archaeological sites and sites registered on the County, State and Federal Historical Registers. The coastline continues to yield critical information and insights into tribes and tribal communities' traditions and culture, as part of the tribes and tribal communities in the NCSR efforts to revitalize their traditional culture (while simultaneously stewarding the marine resources that are vitally important to their culture).

AP-17

CHAPTER 6**Section 6.2 Public Services and Law Enforcement (Pages 6.2-1ff)**

This section needs to be substantially expanded. Within the subsection on the California Department of Parks and Recreation, although the proposed park closures are mentioned on Page 6.2-4, the impact of these closures on proposed NCSR MPAs is not analyzed. This is a significant omission, due to the close proximity of proposed MPAs to most of the affected coastal state parks, the presence of threatened and endangered species such as red abalone in these MPAs, and the high annual park attendance (e.g., over 947,000 visitors to MacKerricher State Park in FY2007-8; over 188,0000 visitors to Van Damme State Park).

In light of these closures, the statement on Page 6.3-18 *"the vast majority of proposed MPAs would be located adjacent to or in proximity of existing national, state, or county park facilities. To the extent that additional users would recreate in these proposed MPA locations, existing facilities are already in place to serve visitors"* is inaccurate and misleading.

AP-18

Additionally, the statement on Page 6.3-18: *"The reduced presence or absence of fishing vessel traffic in these areas potentially could encourage more recreational users to utilize these MPAs"* should be re-written to state: *"The reduced presence or absence of fishing vessel traffic in these areas potentially could encourage more **unauthorized fishing and harvesting (e.g., poachers) and recreational users to utilize these MPAs."***

We disagree that the paucity of fish and game wardens and the proposed closures of coastal state parks adjacent to MPAs has a "less than significant" impact as stated on Page 6.2-7, given our previous observation that current DFG wardens are required to cover an average of 27 statute miles of shoreline per person, and with the addition of more, and more extensive MPAs to the region, we anticipate potential biological impacts of the loss of enforcement capacity that may be an unavoidable result of adding significantly to the workload of the Wardens; e.g. Wardens on patrol enforcing the MPA regulations are not available to address poaching, trafficking, and water pollution.

Section 6.4 Research and Education (Pages 6.4-1 ff)

No mention is made of the research, collecting, and educational activities conducted by the Marine Science Technology program of the College of the Redwoods, Ft. Bragg campus (<http://www.redwoods.edu/departments/marine/>).

AP-19

Section 6.6 Environmental Justice (Pages 6.6-1 ff)

This section needs to be substantially expanded.

Despite the 2003 environmental justice policy of the California Natural Resources Agency as outlined on Page 6.6-3, the following principles were not adequately practiced during the MLP AI process in the NCSR:

1. At the initiation of the MLP AI process in the NCSR, tribal constituents were informed that their concerns would not be part of the discussions. Through the consistent and concerted effort of tribes in the region, this initial policy was challenged and changed. But once the regionally-based meetings were completed (following the final Blue

AP-20

Ribbon Task Force meeting), and relevant discussions were centered in DFG Commission meetings, outreach to tribes focused primarily on the most highly-resourced tribal groups, leaving the majority of the tribes and tribal communities unaware of ongoing developments in the process.

The *Draft Strategy for Public Participation in the MLPA North Coast Study Region* outlined a protocol for “joint fact-finding” to collaboratively develop a common knowledge base, but formally structured encounters between academic and local experts never took place during the MLP AI process in Mendocino County. One of the most deep-seated concerns repeatedly expressed by constituents, and yet never effectively addressed by the MLP AI process, involves the disconnect between the formally-recognized (and largely externally-based) Science Advisory Team and the local experiential knowledge base held by coastal residents, especially our more senior experts. The most active MOCA members have logged hundreds, thousands, or even tens-of-thousands of person-hours in State waters and along our coastlines. These experts include conservationists and educators who have been actively involved in resource and species conservation issues for decades; multi-generational commercial and recreational fishermen who possess intimate knowledge of our coastline, seaweed harvesters who cooperatively developed sustainable practices (e.g., the Seaweed Stewardship Alliance), and tribal and tribal community representatives whose ancestral ties stretch back for millennia, and whose families spent weeks, seasons, or lifetimes on the shoreline.

2. The MLP AI process assumed that members of the Regional Stakeholder Group (RSG) are recognized community leaders (which is not always the case), and that RSG members were willing to volunteer extraordinary amounts of time to communicate with a diverse group of constituents; thus **no significant effort was made to consult with community groups and leaders outside of the RSG.**

3. Due to the internet-centric nature of the documentation, the extremely rapid turnover times for document review, and the fact that the MLP AI never employed locally based communications staff, over 90% of the MLP AI documentation was neither accessible or understandable to the NCSR constituency. Despite the significant population of Latino constituents in the NCSR, none of the documentation was available in Spanish.

This issue was evidenced in the EIR commentary process, as providing only three printed copies of a 914-page document for the entire population of the northern Mendocino County coastline; copies that were only available at public libraries open a few days a week, or a DFG office that closed at 5 pm daily (or would have cost \$150 to reproduce), meant that the majority of Mendocino County constituents – who either have no internet access, dial-up access, or slow-speed satellite access – were unable to adequately review and comment on the Draft EIR.

4. See Point 3., above. The bulk of the MLP AI documentation and meetings were accessibly only by the internet, required sophisticated analytical skills to interpret and analyze (viz., the reports prepared by the Science Advisory Team, and the web-based MarineMap – a program that many constituents remain unfamiliar with). Most Mendocino County residents either have no internet access, only dial-up service, or satellite-based service, which does not permit web-based streaming or web-based software programs such as Google Earth or MarineMap.

5. As noted earlier in our comments, the extremely low attendance at the four scoping meetings (a total of 27 people attended) demonstrates that inadequate outreach was provided to the relevant constituencies. A 2-inch notice in the classified section of a local newspaper, and one email sent to an over-burdened and under-resourced County Clerk does not equate sufficient outreach.

Most public meetings, hearings, and workshops for the stakeholder-based portion of the MLP AI were held during business hours in locations up to a distance of up to 16+ hours round-trip for constituents. **After intensive lobbying by civic leaders, the meeting format was revised** to include satellite nodes in two NCSR cities for webinars and teleconferences, but these too were held during business hours, in locations up to a distance of 4+ hours round-trip for many constituents. When the stakeholder-based portion of the MLP AI was complete, the meetings shifted to DFG Commission meeting locations, again at a distance of up to 16+ hours round-trip for NCSR constituents. Although these latter meetings were live-streamed on CAL-SPAN, only in-person public testimony was allowed.

AP-20

6. See Point 1., above, which echoes the point stated on Page 6.6-12, “*not all tribes were represented during the MLPA Initiative process.*” This continues to be the case.

7. See Points 3. and 4., above. When the Mendocino County Board of Supervisors requested access to a relevant environmental justice data set on socio-economic factors for Mendocino County compiled by EcoTrust (letter sent to the CA Natural Resources Agency dated November 30, 2010); over 1 ½ years later, the County still has received no response.

8. MLPAI staff and consultants evidenced a lack cultural competency training. Some of the more egregious demonstrations of this included: cutting off tribal elders during public testimony, and failing to listen to, acknowledge or respond to scientifically relevant testimony, queries, or suggestions by local experts during public comment periods.

AP-20

Section 6.6.3 (Pages 6.6-4 ff)

Subsistence fishing: no reliable or comprehensive data on subsistence fishing for the NCSR was captured, reported, or analyzed by the MLPAI process. Although a short, survey-based study on Native American harvesting practices was conducted by MLPAI staff, due to the extremely limited numbers of individuals who voluntarily completed the survey, its results cannot be considered representative of the communities within the NCSR.

AP-21

Section 6.6.4 Impact Analysis (Pages 6.6-13 ff)

The very fact that certain rights within the MLPA Initiative are only considered, or apportioned to, federally-recognized tribes, remains a significant, and unresolved, environmental justice issue.

The analysis contained in this section considers a limited number of species within a limited number of proposed MPAs, and does not consider the overall impact of State-sanctioned limiting of access to ancestral territories to the culture, identity, traditions, and livelihoods of tens of thousands of Native Americans throughout the NCSR. Given the lack of a comprehensive analysis, it is unclear how the EIR can conclude that “*overall, there would not be significant or disproportionate impacts on the subsistence fishing or tribal community as a result of these Options*” (Page 6.6-19).

Although Page 8-8 describes “*adverse direct and indirect impacts on cultural resources, including disturbance or loss of historical resources, traditional cultural properties and activities, and tribal practices.*” Yet none of these impacts are detailed or considered in this section.

On Page 6.6-20, the statement “*Considering that the proposed restrictions would apply to all shoreline subsistence fishers equally, and equal opportunities for involvement and participation in the MLPA planning process were provided, and abundant areas would remain for subsistence fishing and gathering, a disproportionate impact on minority or low- income populations near the Study Region would not likely result from the Proposed Project*” is based on erroneous assumptions:

(1) “*Equal opportunities for involvement and participation in the MLPA planning process*” applies only to constituents who were: (a) independently wealthy or financed (i.e., paid a consultancy fee to attend the meetings); (b) possessed high-speed internet (thus excluding Mendocino County residents with no internet connection, or dial-up); (c) fluent in English (thus excluding at least 1/5th of Mendocino County residents); and (d) possessed scientific training or scientific literacy, or had access to someone with scientific training (thus excluding the majority of Mendocino County residents).

AP-22

Constituents with the highest amount of relevant expertise – those who are actively fishing and seaweed harvesting – are also the ones with the least amount of time available to participate in the MLPA process, due to their need to earn a living. Community members who tried to play a proactive role in the MLPA process struggled to attend all the meetings (and cover travel costs to those meetings out of their own pockets), download and read all the documents (especially over dial-up internet service if digital file sizes exceed 1 MB), become fluent in online MarineMap software, and comment on a revolving door of proposals and reports, while taking time out of their jobs and family care responsibilities to contribute uncompensated volunteer input. **The most expert**

constituents – persons with thousands of person-days on the ocean – were the least likely to have adequate opportunities to participate in the MLPA planning process.

(2) “*Abundant areas would remain for subsistence fishing and gathering*” ignores the fact that most of the NCSR coastline is off-limits to subsistence fishing and gathering due to: (a) seasonal weather conditions (for most of the winter, i.e., October – March, the waves are too rough for safe harvesting); (b) the fact that most coastal property in Mendocino County is privately owned and therefore inaccessible to the general public; and (c) complex fishing restrictions, including seasonal and semi-permanent closures that cover most of the NCSR (see Map, Northern California Commercial and Recreational Fishing Closures on Page 216 of the NCSR Regional Profile Appendix).

What may appear to be an insignificant macroeconomic impact in a large-scale analysis translates to a significant microeconomic impact in a County with less than 90,000 residents. When one family business or household is crippled or negatively impacted by marine policies that do not yield comprehensive ecological and social benefits, we all feel it.

Small-scale family fisheries, which are a substantial portion of the currently viable and sustainable fisheries in Mendocino County, could suffer significant impacts due to displacement effort, as detailed in Section B.3.1 in this EIR. They include lost revenue, increased travel costs, loss knowledge, user conflicts, possible localized overfishing, depletion or habitat destruction in remaining open areas, and the loss of local enforcement in areas designated as MPAs. This is also an environmental justice issue, due to the heightened vulnerability of family-based, small-scale fishing operations in a remote and economically marginalized county such as Mendocino.

CHAPTER 7

The EIR does not adequately or comprehensively address the potential impacts of anthropogenic activities that could potentially be far more damaging to the proposed marine protected areas whether or not MPAs are established: such as water diversions, oil drilling and oil transport, naval sonar, hydrokinetic power projects (e.g., wave energy), and non-point source pollution (e.g., from “recreational” users who spread non-biodegradable litter).

Section 7.3 Significant and Unavoidable Impacts

Significantly limiting access to marine resources by tribes, tribal communities, and subsistence harvesters is a significant and unavoidable impact that should be addressed, in detail, in this section.

Section 7.5.2

Black abalone is depleted in the NCSR, and other harvested species of abalone in the NCSR stand to be negatively impacted from the effort shift from the adjacent North Central Coast Study Region, where popular abalone diving locations have been temporarily closed (due to the recent incidence of red tide) or permanently closed via recently established MPAs in that region.

Just because the proposed hydrokinetic project near Point Cabrillo “*would not overlap with the proposed Point Cabrillo SMR*” (Page 7-8) does not mean that marine resources within that SMR would remain unaffected.

CHAPTER 8

Table 8-3, the Alternatives Comparison Table, is based on flawed assumptions for CEQA Resource Topics Cultural Resources, as described in the Comments above. Table 8-3 should be revised as follows:

CEQA Resource Topic	No Project Alternative	ECA Alternative
Cultural Resources	+ (not “-”)	=

(-) Overall, the alternative would have additional adverse effects, or would be less beneficial, compared with the Proposed Project (i.e., effects would be more adverse).

AP-22

AP-23

AP-24

AP-25

AP-26

AP-27

(+) Overall, the alternative would have decreased adverse effects compared with the Proposed Project (i.e., effects would be more beneficial).
 (=) Overall, the effects would be similar to those described for the Proposed Project.

AP-27

CHAPTER 9

We note that among the EIR authors, there were no senior scientists trained in cultural ecology, historical ecology, environmental anthropology, or cultural studies. This is an oversight that has plagued the MLP AI since the Act's inception in 1999, and continued through the process for the NCSR, where the Science Advisory Team also lacked the requisite expertise.

AP-28

CHAPTER 10

The reference to "Pfeiffer, J" for Chapter 5 is misspelled here and wherever it appears in the EIR.

Additional references that should be included and cited for Chapters 5 and 6:

- Petterson J.S., E.W. Glazier, A. Wagschal, C. Pomeroy, L. Madge, L. Stanley, R. Scalf, J. Stevens, P. Godde and M. Stevens. December 2010. North Coast Pre-MLPA Community Based Socioeconomic Characterization and Risk Assessment. Final Report. Impact Assessment, 2066 Avenida de la Playa, Suite F, La Jolla, CA 92037. Funding provided by the Humboldt County Headwaters Fund, Eureka, CA.
- Pfeiffer, JM with M Rocha, R McConnell, and the Yurok Tribe. April 2011. Native Science, Harvesting, and Conservation. Invited presentation to the California Department of Fish and Game Commission in Sacramento, April 6, 2011.
- Factual Records provided to the CA DFG Commission in September – October 2011 by the tribes identified in Table 2-1 and listed on Pages 5-10 and 5-11.
- Verbal testimony provided throughout the MLP AI process from Spring 2009 through Winter 2011.

AP-29

Appendix A

No comments.

Appendix B

Section entitled "Edible Algae Harvest" on Page B-9ff should be reviewed by Mendocino County artisanal harvesters for accuracy.

AP-30

Appendix C

Kelp beds are largely absent from the 23 maps in this appendix. This oversight needs to be corrected.

Appendix D

The Levels of Protection (LOP) model used to assess the potential benefits to inclusion, or negative impacts from exclusion in marine protected areas, has yet to incorporate the specific conditions and realities of the North Coast Study Region. The model is based on a dichotomous ("yes/no") decision-making tree, and is limited to localized biological and ecological determinants (no economic, cultural, social, policy, or larger contextual questions are incorporated into the model). The model assumes that all potential uses are limitless and exploitative to the maximum extent, access is unimpeded, and all activities take place in isolation from any other activity. The model sets as both its baseline, and its goal, an "unharvested system"

AP-31

[i.e., a state marine reserve], ostensibly with no anthropogenic disturbance by humans. The model does not yet incorporate the cultural ecology of the region, i.e., thousands of years of traditional indigenous use and stewardship.

The model's current assumptions result in LOPs that are incongruent with current realities along the Northern California coast. For example, the model assigns a low LOP to hand-harvested species such as edible seaweed and mussels, historically and currently harvested sustainably by artisanal seaweed harvesters, subsistence gatherers, and tribal members. The model assigns a high LOP to culturally important pelagic species such as salmon (citing their highly mobile nature), despite environmental realities that currently negatively impact salmon found within MPAs at different points in their life cycle (e.g., water diversions, farmed salmon, plastics contaminants).

AP-31

Appendix E

We do not understand why 157 shipwrecks merit an entire appendix with detailed tables and maps, yet the thousands of Native American cultural resource sites in the NCSR, many of whom are far older, and closer to population centers (and therefore more vulnerable) are not?

AP-32

Appendix F

Although we are pleased to see the supplemental information provided by the Yurok tribe contained in this appendix, why is there no equivalent documentation sought and obtained from the other 23 recognized tribes in the NCSR?

Documents possessed by the California DFG that were not referenced in the citations or the EIR text include Factual Records provided to the CA DFG Commission in September – October 2011 by the tribes identified in Table 2-1.

AP-33

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Comment Letter AP – Pfeiffer, Jeanine

Response to Comment AP-1

Several points made within the comment contain unsubstantiated narrative and opinion. With respect to opportunities for public input, there were ample opportunities for public participation in a number of locations throughout the North Coast Region, including numerous efforts directly to engage tribes and tribal communities of the north coast. Please refer to DEIR Chapter 6, Section 6.6 *Environmental Justice* and Table 6.6-4, on pages 6.6-8 through 6.6-11, for a comprehensive description of opportunities for involvement during MLPA planning process. Also see DEIR page 6.6-12 for a description of outreach and participation efforts with tribes and tribal communities.

With respect to the science used during the MLPA planning process, see *Master Response 3: Inadequacy or Application of Data Gathered During the MLPA Initiative Planning Process, and Adequacy of the Science Standard*. Furthermore, note that, with respect to the use of best readily available science, as well as materials and reports used within the DEIR and referenced in DEIR Chapter 10 *References*, CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commenters. When responding to comments, lead agencies need only respond to significant environmental issues and do not need to provide all information requested by reviewers, as long as a good faith effort at full disclosure is made in the EIR (CEQA Guidelines Section 15204[a]).

Finally, documents submitted by California tribes and tribal communities in the MLPA planning process are incorporated by reference on Page 5-1 of DEIR Chapter 5 *Cultural Resources*.

Finally, the narrative documents provided by tribes are incorporated by reference on Page 5-1 of DEIR Chapter 5 *Cultural Resources*. “Factual records” submitted by tribes are part of rulemaking file. No changes to the DEIR are required.

Response to Comment AP-2

This comment appears to assert that the Proposed Project does not comply with Environmental Justice requirements of state law. However, Environmental Justice is not a CEQA consideration. The concept was introduced into state law by Senate Bill 115 (Statutes of 1999, Chapter 690) and was originally proposed to be included in CEQA. However, those provisions were subsequently deleted by the September 3, 1999, amendments to the bill. As enacted, the bill only gave broad policy guidance to the California Environmental Protection Agency, and required it to develop a model environmental justice mission statement for boards, departments, and offices within the agency. The intent of the bill was to avoid disparate effects of “environmental hazards” (e.g., air pollution and hazardous waste facilities) on low-income and minority communities (Assembly Committee on Natural Resources, analysis of Senate Bill 115 [1999–2000 Regular Session] August 16, 1999).

The Natural Resources Agency subsequently adopted its own policy directed at ensuring that minority and low-income populations “are not discriminated against, treated unfairly, or caused to experience disproportionately high and adverse human health or environmental effects from environmental decisions.” The policy also expressly states:

“This policy is intended only to improve the internal management of the Resources Agency and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the State of California, its agencies or instrumentalities, its officers or employees, or any other person.”

Two considerations are evident. First, the Proposed Project—an array of MPAs intended to conserve and protect public trust resources in the marine environment—is fundamentally different from a project that generates air pollution or hazardous waste. To the extent that air quality might be affected by redirection or displacement of fishing vessels, there is no evidence on the record that such changes would disproportionately impact low-income or minority communities on land. Second, the emplacement of MPAs only affects use—not access—to the marine resources being protected. A low-income or minority person on a boat enjoys the same degree of access as everyone else. Having to transit an SMR in order to fish may be an inconvenience and may impose higher transportation costs, but those considerations are not properly considered by CEQA. Third, to the extent that shore-based fishing is affected, a similar circumstance results.

Response to Comment AP-3

See *Response to Comment A1-4* regarding the analysis of TCPs in the DEIR.

Information contained in Appendix E, *Cultural Resources Analysis*, of the DEIR is technical information from an archival records search at the Northwestern Information Center and North Coastal Information Center of the California Historical Resources Information System and from the California State Lands Commission (SLC) shipwreck database. The records search did not result in any information regarding TCPs.

Response to Comment AP-4

These comments raise complex issues of law and policy and do not address the sufficiency of the EIR. Also, see *Response to Comment AP-2*.

Response to Comment AP-5

DEIR Section 1.1.5, *Location and General Characteristics of the North Coast Study Region*, is meant as an introduction to the area and is not intended to be an all-encompassing description. The topics listed in the comment are covered in the physical, cultural, and social resources evaluations in the DEIR. No changes are necessary.

Response to Comment AP-6

For the purposes of the EIR, the term “consumptive use” is meant to describe activities associated with use of the coastal environment for take or extraction of marine resources specifically for consumption, or in other words eating or ingesting. Similarly, the term “nonconsumptive use” is meant to describe activities associated with use of the coastal environment that do not involve the take or extraction of marine resources. As stated in DEIR Chapter 6 *Social Resources*, Section 6.3 *Recreation*, Subsection 6.3.3 *Environmental Setting* under heading *Recreational Activities in the Study Region* on page 6.3-9, fourth sentence in the last paragraph:

Nonconsumptive uses of the coastal environment include beach-going, religious/ceremonial activities, swimming, surfing, sailing, kayaking, diving, wildlife

viewing, photography, and other activities that do not involve the take or extraction of marine resources.

Potential impacts of the Proposed Project on biological resources and water quality potentially resulting from substantial shifts in recreational activities conducted in the Study Region are addressed in *Impact REC-1: Physical Deterioration of Coastal Beaches/Waters and Recreational Facilities* and *Impact HYD-3: Effects of Potential Shifts in Non-Consumptive Recreational Uses on Water Quality*.

The DEIR adequately evaluates cultural consumptive and nonconsumptive uses of the coastal environment within the Study Region. See Chapter 4 *Biological Resources*, Chapter 5 *Cultural Resources*, and Chapter 6 *Social Resources* for further discussion of the impacts of the Proposed Project on the coastal marine environment.

Response to Comment AP-7

The comment appears to refer to subsection *Tribally Owned Lands* within Section 1.1.5, *Jurisdictions of Coastal and Open Waters*, on page 1-21 of the DEIR. This provides a list of federally recognized tribes that maintain jurisdiction over coastal lands adjacent to the North Coast Study Region, and the list is complete. No changes are necessary.

Response to Comment AP-8

This comment contains statements not related to the environmental review published in the DEIR, but which instead are 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*. However, see *Response to Comment AP-6* for a discussion on definition of the terms consumptive and nonconsumptive use as utilized in the DEIR.

In addition, the DEIR includes a footnote on page 2-6 of Chapter 2, *Project Description*, addressing the terms “tribal take” and “take” regulations.

Response to Comment AP-9

Although this comment does not raise significant environmental issues in the document, the Commission notes that the purpose of the NOP is only to facilitate interagency coordination (14 CCR 15375). CEQA requires only substantial compliance with notice requirements, and this was achieved (e.g., see PRC, Section 21092[b][2]).

Response to Comment AP-10

This comment raises complex issues of law and policy and does not address the sufficiency of the EIR. However, the comment is relevant 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*. Also, see *Response to Comment AP-2* regarding environmental justice.

Response to Comment AP-11

See *Master Response 4: Enforcement*. The comment regarding monitoring does not address the sufficiency of the EIR and no change is warranted.

Response to Comment AP-12

This comment is general in nature, and does not provide specific information to integrate into the EIR. To our knowledge, no specific plan has been submitted for inclusion. In addition, this comment raises complex issues of law and policy and do not address the sufficiency of the EIR. No change to the DEIR is needed.

Response to Comment AP-13

With respect to urchin barrens, the commenter states that the DEIR does not effectively describe urchin barrens in the Study Region. However, pages 4-59 and 4-60 of Chapter 4, Biological Resources include a detailed explanation of this habitat type. Impact BIO-3, on page 4-60 of the DEIR, adequately addresses the potential impact of the removal of the human predator and specifically addresses urchin barrens, concluding that the impact is less than significant. No change to the DEIR is necessary.

While the interaction of MPAs and sea urchin populations is complex and not easily characterized, there is considerable evidence that the establishment of MPAs in nearshore rocky habitats does not necessarily lead to the formation of sea urchin barrens. For example, the Gerstle Cove area in Sonoma County and the South Caspar Point area in Mendocino County were closed to commercial sea urchin fishing in 1990, in part to study recovery rates of fished-down sea urchin populations. Urchin populations have increased in both closures and have been surveyed intermittently during the intervening 18 years along with adjacent control sites. In 2008 surveys, preliminary results showed that kelp abundance was almost identical inside and outside the Caspar Point commercial urchin closure area, a sign that despite their relatively high density inside the closure, red sea urchins had not created an urchin barren after nearly 2 decades.

It is expected that the proposed MPAs will result in the return of naturally balanced ecosystems that can be more resilient to sea urchin barrens.

With respect to nearshore 0-30m habitat data, see *Response to Comment A11-4*.

Response to Comment AP-14

Refer to *Response to Comment A5-1*.

Response to Comment AP-15

A section about species of cultural importance can be found in DEIR Chapter 5 *Cultural Resources*, on page 5-10. The text has been pasted below for reference:

The rich diversity of marine and coastal resources continues to be part of the daily lives of tribes. Important marine resources include salmon, clams and abalone (both as food sources and for the shells), mussels, seaweed, eels, crab, rockfish, steelhead, trout, sea bass, perch, lingcod, surf fish, candle fish (or eulachon), and sea salt. Subsistence fishing for crab, salmon, steelhead, surf fish (smelt), eels, mussels, and clams, among other coastal resources, occurs regularly from rocky beaches and in other coastal areas. Marine shells, such as abalone and olivella, are especially important for repairing and making traditional regalia used in ongoing ceremonies.

No changes were made to the DEIR.

Response to Comment AP-16

Comment noted. See *Response to Comment A6-2* regarding changes made to the DEIR. DEIR Section 6.1, *Land Use*, includes a discussion on page 6.1-10 of the NCRSG's 10-mi buffer around ports and harbors.

Response to Comment AP-17

The cultural information submitted by tribes and tribal communities is incorporated in the DEIR by reference. See *Response to Comment AP-3*.

The Department acknowledges that NPS Bulletin 38 provides guidelines for determining the eligibility of sites for listing as TCPs in the NRHP in order to implement the NHPA. As noted in DEIR Chapter 5 *Cultural Resources*, Section 5.2.1 *Federal Laws, Regulations, and Policies*, on page 5-3, the "National Historic Preservation Act (NHPA) of 1966, as amended in 2004, is the primary mandate governing projects under federal jurisdiction that may affect cultural resources. If 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." This project is not funded by the federal government, and it is not part of a federal action; as such, the criteria in the statute do not directly apply. Instead, CEQA's definitions regarding a significant impact have been used.

See *Response to Comment A1-4* regarding the analysis of TCPs in the DEIR.

Response to Comment AP-18

See *Master Response 4: Enforcement*.

Response to Comment AP-19

In the subsection "Scientific Research and Collecting in the North Coast Study Region" in DEIR Chapter 6.4 *Research and Education*, Section 6.4.3 *Environmental Setting* on page 6.4-2, it states that "The scientific research within the Study Region is wide-ranging, including intertidal ecology, underwater archeological research, and studies of the pelagic zone and deep ocean. Some of the primary research marine laboratories and universities adjacent to the Study Region are listed below (MLPAI 2010)." Consequently, the list of research institutions that follows on pages 6.4-2 through 6.4-5 is not an exhaustive list. Furthermore, Impact RES-1 *Effects on Scientific Research or Educational Facilities* on page 6.4-10 of the DEIR finds that the Proposed Project would have a less-than-significant effect on research and educational facilities, and Impact RES-2 *Effects on Scientific Research or Educational Opportunities* on pages 6.4-11 and 6.4-12 finds that the Proposed Project would have no adverse impact on research and educational activities.

As such, no changes are necessary to the DEIR.

Response to Comment AP-20

This comment pertains to the MLPA Initiative planning process and development of the proposed regulations and does not directly pertain to the adequacy of the EIR. In this regard, see *Response to Comment A1-6*.

Several points made within the comment contain unsubstantiated narrative and opinion. With respect to public access to meetings and materials, there were ample opportunities for public participation in a number of locations throughout the North Coast Region, including numerous efforts directly to engage tribes and tribal communities of the north coast. Please refer to DEIR Chapter 6, Section 6.6 *Environmental Justice* and Table 6.6-4, on pages 6.6-8 through 6.6-11, for a comprehensive description of opportunities for involvement during MLPA planning process. Also see DEIR page 6.6-12 for a description of outreach and participation efforts with tribes and tribal communities.

Staff at local Department offices were also available to assist members of the public with access, navigation and review of web-based materials including viewing of web-based streaming materials or web-based mapping such as Google Earth or MarineMap. Also, see *Master Response 3: Inadequacy or Application of Data Gathered During the MLPA Initiative Planning Process, and Adequacy of the Science Standard*.

Specifically with respect to point 3 in the comment, the requirements for public review of a DEIR, see *Response to Comment A8-8*.

Furthermore, regarding the NOP and scoping hearings, although these comments do not raise significant environmental issues in the document, the Commission notes that the purpose of the NOP is only to facilitate interagency coordination (14 CCR 15375), to allow other agencies the opportunity to contribute to how the project is characterized. CEQA requires only substantial compliance with notice requirements, and this was achieved (e.g., see PRC, Section 21092[b][2]).

Response to Comment AP-21

See *Master Response 3: Inadequacy or Application of Data Gathered During the MLPA Initiative Planning Process, and Adequacy of the Science Standard*.

As discussed in *Impact EJ-1: Reduced Subsistence Take Opportunities for Tribes and Tribal Communities* on pages 6.6-13 through 6.6-19, the Proposed Project would have a less-than-significant impact on subsistence take practices of tribes and tribal communities. Similarly, *Impact CR-3: Adverse Impacts on Traditional Cultural Properties and Activities Involving Take by Federally Recognized Tribes* on pages 5-21 through 5-23 in Chapter 5, *Cultural Resources*, evaluated the potential impact of the Proposed Project to tribal practices involving varying types of take of marine resources. The DEIR found the impact of the Proposed Project on subsistence practices of tribes and tribal communities to be less than significant. No information is presented to refute this determination. No changes to the DEIR are necessary.

Response to Comment AP-22

These comments raise complex issues of law and policy and do not address the sufficiency of the EIR. However, they are relevant 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*. See also *Response to Comment AP-2* regarding environmental justice.

Response to Comment AP-23

The scope of the CEQA analysis is directly tied to the scope of the Proposed Project, as established under the authority of the MLPA. The Proposed Project does not include regulation of water diversions, oil drilling or transport, navy sonar activities, hydrokinetic power projects. Therefore, the DEIR does not evaluate potential impacts of the Proposed Project on these topics, but does consider them in the cumulative impact analysis. Chapter 7 of the DEIR, *Other Statutory Considerations*, is a required discussion according to CEQA Guidelines. Section 7.5 *Cumulative Impacts*, Subsection 7.5.1, explains the CEQA analysis requirements for evaluation of cumulative impacts in detail. The Commission has met the requirements for evaluation of cumulative impacts, per State CEQA Guidelines Sections 15130 and 15355. See also *Master Response 1: Scope of the MLPA and Regulatory Authority* and *Master Response 2: Analysis of Other Activities within the North Coast Study Region*.

Also note that potential impacts on water quality from shifts in recreational uses are addressed in *Impact HYD-3: Effects of Potential Shifts in Non-Consumptive Recreational Uses on Water Quality*.

Response to Comment AP-24

Potential impacts due to proposed restrictions on marine take activities conducted by members of tribes and tribal communities are addressed in DEIR Chapter 5 *Cultural Resources* and Chapter 6, Section 6.6 *Environmental Justice*. The commenter is directed to specifically review the following impact discussions:

- Impact CR-3: *Adverse Impacts on Traditional Cultural Properties and Activities Involving Take by Federally Recognized Tribes*
- Impact CR-4: *Adverse Impacts on Traditional Cultural Properties and Activities Involving Take by Non-Federally Recognized Tribes*
- Impact CR-5: *Adverse Impacts on Nonconsumptive Tribal Practices*
- Impact EJ-1: *Reduced Subsistence Take Opportunities for Tribes and Tribal Communities*
- Impact EJ-2: *Reduced Subsistence Fishing Opportunities for Non-Tribal Minority and Low-income Groups, and Isolated Communities*

As discussed in the above-listed impact discussions, the DEIR concluded that the project would have less-than-significant impacts on take by tribes, tribal communities, and other subsistence fishers in the Study Region.

The State CEQA Guidelines define “significant effect on the environment” as a “substantial, or *potentially* substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historical or aesthetic significance” (emphasis added) (State CEQA Guidelines, Section 15382). The determination of the significance, or potential significance, of an impact must be based on substantial evidence. “Substantial evidence” is defined in State CEQA Guidelines Section 15384 as follows:

- (a) “Substantial evidence” as used in these guidelines means enough relevant information and reasonable inferences from this information that a fair

argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence.

Substantial evidence shall include facts, reasonable assumptions predicated on facts, and expert opinion supported by facts. The DEIR provides a comprehensive evaluation of the project's environmental impacts in compliance with CEQA and the State CEQA Guidelines, and in accordance with professionally accepted methodology for the evaluation of environmental resources. The DEIR and this FEIR present substantial evidence to support the conclusions drawn within these documents regarding the significance of the project's environmental effects. When comments disagree about environmental conclusions, the EIR need only summarize the main points of disagreement and explain the lead agency's reasons for accepting one set of judgments instead of another. Section 15151 of the State CEQA Guidelines states that "Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts." (See also *Greenbaum v. City of Los Angeles* (1984) 153 Cal.App.3d 391, 413; and *Browning-Ferris Industries v. City Council* (1986) 181 Cal.App.3d 852, 862-863.) The lead agencies will ultimately determine which conclusion is appropriate, based on the substantial evidence presented in the EIR and other documents in the whole of the record.

This comment presents an area of disagreement over an impact conclusion. However, no evidence is offered to support that a different conclusion should be drawn. As such, no further response to the disagreement presented in the comment is necessary.

Response to Comment AP-25

See *Response to Comment R-5* regarding potential impacts to abalone, as well as evaluation of fishing effort displacement.

Response to Comment AP-26

See *Master Response 2: Analysis of Other Activities within the North Coast Study Region*.

The DEIR considered potential cumulatively considerable impacts of the Proposed Project and reasonably foreseeable future projects, such as hydrokinetic energy projects, in the Study Region. As stated in Chapter 7 *Other Statutory Considerations*, page 7-9, second paragraph under "Hydrokinetic Power Projects", the preliminary permit for the proposed hydrokinetic project near the proposed Point Cabrillo SMR is disclosed. However, the project has yet to be implemented and there is no evidence to suggest that the project will proceed to fruition. Additionally, any hydrokinetic power project must undergo CEQA and NEPA compliance prior to commencing with implementation. The potential effects of those projects will be disclosed under processes separate from this MLPA environmental review process. Cumulatively considerable effects of those projects in consideration of adopted MLPA regulations must be disclosed as part of CEQA and NEPA compliance. Further, only reasonably foreseeable future projects are required to be evaluated in the cumulative impact analysis.

Response to Comment AP-27

This comment presents an area of disagreement over an alternative evaluation. However, no evidence is offered to support that a different conclusion should be drawn. As such, no further response to the disagreement presented in the comment is necessary.

See Response to *Comment AP-23*.

Response to Comment AP-28

The State CEQA Guidelines do not require that the analysis be conducted by senior scientists. As stated in State CEQA Guidelines Section 15142 *Interdisciplinary Approach*:

An EIR shall be prepared using an interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the consideration of qualitative as well as quantitative factors. The interdisciplinary analysis shall be conducted by competent individuals, but no single discipline shall be designated or required to undertake this evaluation. (Note: Authority cited: Section 21083, Public Resources Code; Reference Sections 21000, 21001, and 21100, Public Resources Code.)

Further, State CEQA Guidelines Section 15149, *Use of Registered Professionals in Preparing EIRs*, states:

(a) A number of statutes provide that certain professional services can be provided to the public only by individuals who have been registered by a registration board established under California law. Such statutory restrictions apply to a number of professions including but not limited to engineering, land surveying, forestry, geology, and geophysics.

(b) In its intended usage, an EIR is not a technical document that can be prepared only by a registered professional. The EIR serves as a public disclosure document explaining the effects of the proposed project on the environment, alternatives to the project, and ways to minimize adverse effects and to increase beneficial effects. As a result of information in the EIR, the Lead Agency should establish requirements or conditions on project design, construction, or operation in order to protect or enhance the environment. State statutes may provide that only registered professionals can prepare technical studies which will be used in or which will control the detailed design, construction, or operation of the proposed project and which will be prepared in support of an EIR. (Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21003, 21061, and 21100, Public Resources Code.)

No evidence is offered to support that different conclusions should be drawn due to the experience and expertise of the EIR preparers or participants in the MLPA Initiative Planning Process. As such, no further response to the disagreement presented in the comment is necessary.

Response to Comment AP-29

This has been corrected. See *Response to Comment A6-4* for details. With respect to the other references, these references would not change the EIR analysis. Information submitted,

including verbally, during the MLPA Initiative Planning Process were considered during development of the Proposed Project and are documented as part of the rulemaking files. Documentation of the MLPA Initiative Planning Process is available for public review at this website: http://www.dfg.ca.gov/mlpa/binders_nc.asp.

See *Response to Comment A6-1* specifically regarding the incorporation of factual records submitted by tribes to the Commission as part of the rulemaking process.

Response to Comment AP-30

Comment noted.

Response to Comment AP-31

Refer to *Response to Comment F1-4*.

See *Master Response 3: Inadequacy or Application of Data Gathered During the MLPA Initiative Planning Process, and Adequacy of the Science Standard*.

See *Master Response 6: Levels of Protection (LOP)*.

Response to Comment AP-32

See *Response to Comment AP-3*.

Response to Comment AP-33

The materials included in Appendix F were volunteered by the Yurok Tribe. The materials relate to documentation of baseline conditions in the Study Region. The Commission, Department, or its contractors did not request this information from the Yurok Tribe or any other tribe in the Study Region. The materials are referenced in DEIR Chapter 2, *Project Description*, in the discussion of the unique and complex aspects of the Study Region. The information provided by the Yurok Tribe consists of copies of published documents and publically accessible data. The conditions described in the appendix materials apply to the entire Study Region.

See *Response to Comment A6-1* specifically regarding the incorporation of factual records submitted by tribes to the Commission as part of the rulemaking process.

N C T C A

Northern California Tribal Chairmen's Association

April 11, 2012

M. Wayne Donaldson, SHPO
California Office of Historic Preservation (OHP)
Sacramento, CA

Sent via email to mwdonaldson@parks.ca.gov

Re: Northern California Tribal Chairmen's Association (NCTCA) Request for SHPO/OHP review and comments on adequacy of *Draft Environmental Impact Report (DEIR), California Marine Life Protection Act (MLPA) Initiative, North Coast Marine Protected Areas Project* (State Clearinghouse #2011092029)

Dear Mr. Donaldson:

The undersigned, comprising members of the Northern California Tribal Chairmen's Association (NCTCA), request your assistance in reviewing the adequacy under CEQA of the subject document Cultural Resources Chapter 5 (download at http://www.dfg.ca.gov/mlpa/impact_nc.asp). Comments are due no later than April 16, 2012 via email to MLPAComments@HorizonWater.com.

We are among the 27 named Tribes that have been diligently participating in this regional MLPA planning effort. We continue to have concerns about project impacts on historical resources including Native American Traditional Cultural Places (TCPs) that may be eligible for listing because of their associations with *cultural practices* and beliefs of living Indian communities that (a) are rooted in the community's histories, and (b) are important in maintaining the continuing cultural identity of these communities (TCP criteria as stated in *National Register Bulletin 38*, with emphasis added).

We are concerned that the new proposed restrictions on Native American access to and non-commercial taking of living marine resources in proposed MLPA protected areas will significantly impact certain eligible TCPs. The DEIR cultural resources chapter states that no cultural resource surveys were conducted. Nor were tribes formally consulted to identify historical resources that may be impacted by the project.

We also question whether this project has a Federal nexus (NOAA? BLM?) such that it constitutes a Federal undertaking subject to Section 106 of the National Historic Preservation Act. Formal government-to-government tribal consultations to adequately identify historic properties, assess and resolve the effects of the undertaking as outlined in the regulations at 36 CFR 800 would be welcomed by tribes. In contrast, this CEQA analysis of project impacts on significant cultural resources fails to employ best practices in historic preservation.

AQ-1

AQ-2



Elk Valley Rancheria



Blue Lake Rancheria



Hoopa Valley Tribe



Karuk Tribe



Smith River Rancheria



Trinidad Rancheria



Wiyot Tribe



Yurok Tribe

Please submit comments directly to the MLPA (above) and furnish a copy via email to each of the signatories per their designed point-of-contacts by the April 16th deadline.

We appreciate your attention to this matter of great concern to northern California Tribal communities.

Sincerely,

Garth Sundberg

Garth Sundberg, Tribal Chairman Trinidad Rancheria

JACQUE HOSTLER, CEO

cherac.roads@gmail.com

Name & Email of designated point-of-contact for above

TH. O'Rourke

Thomas O'Rourke, Tribal Chairman Yurok Tribe

John Corbett, Legal Council Yurok Tribe

Name & Email of designated point-of-contact for above

johnc@yuroktribe.nsn.us

Kara Miller

Kara Miller, Tribal Chairwoman Smith River Rancheria

Russ Crabtree, tribal admin

rcrabtree@tolowa.com

Name & Email of designated point-of-contact for above

Claudia Brundin

Claudia Brundin, Tribal Chairwoman Blue Lake Rancheria

Janet Eidsness, THPO

+jeidsness@bluelakerancheria-nsn.gov

jpeidsness@yahoo.com

Name & Email of designated point-of-contact for above

Comment Letter AQ – Atkins, Amy

Response to Comment AQ -1

Regarding your comment about cultural resource surveys and consultations with tribes, there were ample opportunities for public participation in a number of locations throughout the North Coast Region during the MLPA process of designing the network of MPAs. Please refer to DEIR Chapter 6.6 *Environmental Justice*, in the subsection *Opportunity for Involvement in the MLPA Planning Process* on pages 6.6-8 through 6.6-12, for a comprehensive description of opportunities for involvement. Particularly, see the discussion under the subsection *Native American Tribes and Tribal Communities* on page 6.6-12 for details about outreach to tribes and tribal communities. Text from page 6.6-12 has been pasted below for reference:

Throughout the MLPA Initiative planning process, tribal representatives were actively involved and participated with community groups to develop MPA arrays and served on several MLPA Initiative groups. Seven tribal representatives, representing some of the federally and non-federally recognized tribes and tribal communities near the Study Region, served on the NCRSG and some also served on the Blue Ribbon Task Force (BRTF), Statewide Interests Group, and the NCRSG special closures workgroup. In previous study regions, no more than two tribal representatives ever served on MPA development groups. The Elk Valley Rancheria generously hosted several meetings of the BRTF and the NCRSG. The BRTF and MLPA Initiative staff visited many areas throughout the Study Region, including stops to visit tribes and tribal communities. Additionally, the SAT created a special working group to address tribal issues related to science guidelines, which met regularly in Eureka.

Many tribal representatives attended MLPA Initiative meetings and participated in public comment periods. At the meeting at Elk Valley Rancheria on January 13th and 14th, 2010, a panel made up of tribal representatives provided the BRTF with several hours of public testimony. Tribes and tribal communities were invited to provide information for the *Regional Profile of the North Coast Study Region: California-Oregon Border to Alder Creek*. (Regional Profile) (MLPAI 2010a). Eleven tribes and tribal communities provided information that was compiled verbatim in Appendix E to the Regional Profile (MLPAI 2010b). Despite the large number of representatives from tribes and tribal communities who participated in MPA working groups, not all tribes were represented during the MLPA Initiative process. It is noted that tribes and tribal communities prefer to speak only for their own tribal group, and will not speak on behalf of another tribal group without express permission.

After the Commission selected a preferred alternative for the MPA arrays, tribes and tribal communities continued to work together with the Commission to establish a mutually acceptable approach for tribal take. With tribal input, the Commission arrived at “Tribal Gathering Option 1,” included in the Proposed Project. Tribal Gathering Option 1 applies to federally recognized tribes that have submitted a “Factual Record” with sufficient documentation confirming current or historical use in specified geographies to the Commission. Beyond implementation, the Commission shall continue to “permit elected officials and other representatives of

tribal governments to provide meaningful input into the development of legislation, regulations, rules, and policies on matters that may affect tribal communities” (EO B-10-11).

In addition, archival research was conducted at the Northwest Information Center and North Coastal Information Center of the California Historical Resources Information System for the North Coast Marine Life Protection Areas for northern Mendocino, Humboldt, and Del Norte counties.

Also, see *Response to Comment A1-4* regarding the analysis of TCPs in the DEIR and *Response to Comment S1-1* regarding National Register Bulletin 38.

Response to Comment AQ -2

These comments raise complex issues of law and policy and do not address the sufficiency of the EIR. Rather, this comment contains statements not related to the environmental review published in the DEIR, but instead 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*.