



North Coast MLPA

1 message

Cliff Hart <cliff@humboldtinvestigations.com>

Mon, Apr 16, 2012 at 1:03 PM

To: MLPAComments@horizonwater.com

Dear Fish & Game Commissioners,

I am a local ocean fisherman here in Eureka and have not enjoyed following the cumbersome MLPA process here on the North Coast, but I have been somewhat relieved that we have had excellent representatives on the North Coast that became unified and submitted ONE alternative. I was disappointed to hear that FGC is considering changes to the unified proposal after all the hard work and energy that was put into the process by our local representatives, who were advised and guided the entire time by MLPA organizers knowledgeable of the requirements of the MLPA initiative.

AW-1

I urge you to support the unified proposal as it best represents the North Coast's interests. My family has fished the channels in south Humboldt Bay for Leopard Sharks, Bat Rays, and clams for many years, and moving the boundaries will ultimately prevent us from accessing these areas ever again.

Thanks for the time.

Cliff Hart

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Comment Letter AW – Hart, Cliff

Response to Comment AW -1

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

No changes to the DEIR are necessary.

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Via Email
MLPAcomments@HorizonWater.com

April 16, 2012

To: California Department of Fish and Game, c/o Horizon Water and Environment
From: Anna Kimber, Esq., Smith River Rancheria
Re: North Coast CEQA Comments

I have been asked to provide additional comments on behalf of the Smith River Rancheria, a federally recognized Tribe whose reservation lands lie within the boundaries of the North Coast Study Region. Smith River's Tribal Administrator Russ Crabtree previously submitted comments to the Department.

In addition, Smith River Rancheria, along with the Elk Valley Rancheria, Trinidad Rancheria, Yurok Tribe and Resighini Rancheria, submitted written comments and testimony before the Fish and Game Commission on April 11, 2012. Those comments addressed the need for the DEIR, ISOR and proposed regulations to be corrected to correctly identify the Smith River Rancheria as the only federally recognized Tribe authorized to fish and gather within the Pyramid Point proposed SMCA, and the Smith River Rancheria and Elk Valley Rancheria as the only federally recognized Tribes authorized to fish and gather within the Point Saint George proposed SMCA.

AX-1

Below are specific references to provisions of the DEIR and Proposed Regulations that needs to be corrected and/or clarified:

Executive Summary

It is recommended that the Executive Summary highlight the fact that the Revised Round 3 MLPA North Coast Regional Stakeholder Group "Unified" MPA Proposal ("RNCP ") was used as the foundation for developing the Preferred Alternative (See the June 9, 2011 report entitled "Options Regarding Marine Protected Areas for the MLPA North Coast Study Region: California Fish and Game Commission June 2011 Meeting," ["Option Report"] at page two).

AX-2

Chapter 1: Introduction

At 1-18; Part 1.1.6 entitled "Jurisdiction of Coastal and Open Waters," the discussion of the Federal Submerged Lands Act of 1953 should include reference to the exception to the general conferral ownership of the submerged lands to the State of California with respect to lands held in trust by the United States for the benefit of federally recognized tribes;

AX-3

"There is excepted from the operation of section 1311 of this title . . . (b) such lands beneath navigable waters held, or any interest in which is held by the United States for the benefit of any tribe, band, or group of Indians or for individual Indians;"

43 U.S.C. §1313.

It is recommended that, in addition to referencing the exception outlined above, this section be amended to include the following: "This exception needs to be taken into consideration with respect lands held in trust by the federal government for the benefit of federally recognized tribes whose reservations lie within the boundaries of the North Coast Study Region, since those lands were acquired prior to the passage of the Federal Submerged Lands Act of 1953."

AX-3

At 1-21;"Tribally Owned Lands." This should be clarified to say "The following federally recognized tribes maintain jurisdiction over coastal lands within the study region; lands held in trust by the federal government for the benefit of those federally recognized tribes."

Chapter 2: Project Description

At 2-7; The DEIR references the "six factual records representing twenty-four federally recognized north coast tribes and tribal communities prior to the 60-day deadline."

Smith River Rancheria's factual record was one of the six records submitted to the Commission within the 60-day deadline. The Tribe's factual record is provided with these comments, and is attached and identified as Exhibit A.

It is recommended that the six factual records received by the Commission within the 60-day deadline should be incorporated into the EIR, either as a separate Appendix, or incorporated into Appendix E, "Cultural Resources Analysis Memorandum North Coast Study Region;" an entire Appendix which in its current form only analyzes known shipwrecks within the Region. Appendix E fails to address the significant cultural resources which include the traditional tribal uses within the Region.

AX-4

At 2-18; Table 2-1 needs to be corrected with respect to the Tribes listed within the Pyramid Point SMCA to only identify the Smith River Rancheria. With respect to Point Saint George SMCA, only the Smith River Rancheria and Elk Valley Rancheria should be identified as the only tribes authorized to take within this proposed SMCA. This recommendation is supported by the written and public testimony submitted during the April 11, 2012 Commission meeting.

AX-5

Chapter 5-Cultural Resources

At 5-1; It is recommended this chapter reference the six factual records submitted to the Commission, not only by identifying it as a source, but also incorporating into the EIR all of the factual records as either a separate appendix, or within Appendix E," Cultural Resources Analysis Memorandum; North Coast Study Region;" an Appendix that in its current form only contains a memorandum addressing shipwrecks within the Region.

AX-6

At 5-2; The DEIR indicates that "economic or social effects of the proposed Project have been included in Appendix B of this document, to help the Commission determine the significance of physical changes caused by the Proposed Project." Yet Appendix B only analyzes commercial and recreational consumptive uses, and not traditional tribal uses.

AX-7

At 5-9; "Cultural Landscape," needs to be extensively modified to cite to the six factual records that were presented to the Commission by the federally recognized tribes within the Region. Again these records should be incorporated into the EIR, either as a separate appendix, or within Appendix E.

AX-8

At 5-21; "Impact CR-3" states "A number of tribal lands are on the borders of proposed MPAs. Tribal jurisdiction includes the area inland from mean high tide. However, the proposed MPAs are below the mean high tide line; therefore the Proposed Project is adjacent to, but does not occur on, tribal reservations or Rancherias."

Without specifically referencing the federal law, the above sentence suggests that the Submerged Lands Act of 1953 provides the State of California jurisdiction over the submerged waters below the mean high tide line, without exception.

As stated previously, the exception to the Submerged Lands Act provides: "There is excepted from the operation of section 1311 of this title . . . (b) such lands beneath navigable waters held, or any interest in which is held by the United States for the benefit of any tribe, band, or group of Indians or for individual Indians;" 43 U.S.C. §1313.

Specific to the Pyramid Point SMCA, the Smith River Rancheria was established in 1908 when lands were taken into trust by the United States for the benefit of the inhabitants of Smith River (well before the passage of the Submerged Lands Act, and during the period when the coastal waters were within the jurisdiction of the federal government). Records indicate this particular site was acquired by the federal government so the Tribe could access the ocean waters to fish and gather to sustain themselves.

The Rancheria's northern boundary line abuts the proposed southern boundary line of the Pyramid Point SCMA, at least with respect to the Preferred Alternative chosen by the Commission on June 29, 2012. Should the Preferred Alternative be implemented by the Commission, leaving the Pyramid Point southern boundary line as proposed, then there is no issue with respect to the applicability of the Submerged Lands Act, since none of the Smith River Rancheria will fall within the boundary of Pyramid Point.

However, the Sub-Option identified within the June 8, 2011 "Option Report" proposed the Pyramid Point southern boundary line be moved approximately 1/3 miles south to the northernmost tip of Prince Island; an island held in trust by the federal government for the benefit of the Smith River Rancheria.

It has always been the position of the Smith River Rancheria that the State of California has no authority to exert its regulatory jurisdiction within the Tribe's reservation boundaries. The reference to the Submerged Lands Act fails to take into consideration the documented fact that the purpose for which the United States placed those lands into trust for the benefit of the Tribe was to ensure access to the coastal waters so the Tribe could sustain and support itself by fishing and gathering. This clearly constitutes an interest which is held by the United States for the benefit of the Smith River Rancheria, and as such, the State of California is excepted from asserting jurisdiction within the waters surrounding the Smith River Rancheria.

This position is supported by the federal government as well. Attached to these comments and identified as Exhibit B is a June 29, 2011 letter from Acting Regional Director Carmen Fasio to Commission President Jim Kellog:

"It is our position that California state civil regulatory laws can have no force and effect within the reservation boundaries of the Smith River Rancheria, and the

intended purpose for which those lands were acquired for the Indians of Smith River cannot be impeded."

AX-10

The DEIR does not appear to analyze Sub-Option B, as described on page 5 of the June 9, 2011 "Option Report;" an option that would move the southern boundary of Pyramid Point SMCA 1/3 mile, and encompass the federal trust property of the Smith River Rancheria.

Any analysis that is performed within the final EIR must take into consideration the significant impacts the moving of the southern boundary will have, with respect to the jurisdictional questions regarding the impact of the attempted assertion by the State of jurisdiction upon the federal lands and waters held in trust by the United States for the benefit of the Smith River Rancheria.

AX-11

Based upon the "policy of avoidance" embraced by the parties to the MLPA process with respect to avoiding areas where significant tribal uses occur, the Sub-Option proposing the moving of the southern boundary of the Pyramid Point SMCA to include any portion of the Smith River Rancheria should be rejected, and the southern boundary of the Pyramid Point SMCA as defined within the Commission's Preferred Alternative should be adopted.

Initial Statement of Reasons for Regulatory Action and Proposed Regulations

There appears to be inconsistencies within the proposed regulatory language as to how tribal take is referenced within the various boundary options.

For example, at page 2 of the Proposed Regulations, with respect to Pyramid Point SMCA, "Option 1 – Proposed Regulation boundaries," subsection (1) the boundary descriptions appear to track the boundaries proposed by RNCP.

"Option 2" subsection (1) addresses the proposed moving of the boundary to the south to encompass Prince Island, the trust property of the Smith River Rancheria.

Subsection (B) describes what living marine resources will be taken, if any, and by whom.

AX-12

At first reading, it would appear that only 'Option 2' will provide for the exemption of federally recognized tribes (again, Smith River Rancheria should be the only Tribe listed within the Pyramid Point SMCA)

Compare the proposed regulations at page 6 with respect to South Humboldt Bay. The exemption for the Wiyot Tribe is listed in both boundary Options 1 and 2.

The boundary options within the Proposed Regulations need to be reviewed and drafted uniformly so it is clear that tribal exemptions will be permitted within any and all boundary options for the proposed SMCAs.

Factual Record of Current and Historical Uses by the Tolowa Dee-ni' of the Smith River Rancheria within the proposed State Marine Conservation Areas and Special Closures of Del Norte County

I. INTRODUCTION

On June 29, 2011, the California Fish & Game Commission, on a 4-1 vote, moved to adopt Tribal Option 1, as presented by the June 9, 2011 joint report prepared by the California Department of Fish & Game and the Marine Life Protection Act Initiative staff.

The Commission adopted Tribal Option 1 as the preferred alternative within the North Coast Study Region, to allow tribal gathering to continue within proposed State Marine Conservation Areas (SMCAs) by federally recognized tribes who, within sixty (60) days, submitted a factual record with sufficient documentation confirming current or historical use within the proposed SMCAs.

In response to the Commission's request, the following factual record has been prepared and is being submitted on behalf of the Tolowa Dee-ni' of the Smith River Rancheria. Given the time constraints, if necessary, the Tribe respectfully requests the opportunity to supplement the record at a later date. Further, although this record is being submitted within the timeframe proposed by the Fish & Game Commission, other federally recognized tribes who are unaware of this process should be afforded the opportunity to provide their submission at a later date.

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II. HISTORY, CULTURAL GEOGRAPHY AND HUMAN ECOLOGY OF THE TOLOWA DEE-NI' OF THE SMITH RIVER

Dü-ne nvñ-'e lhínlh-sa'-dvn shu'-naa-see-'a~.

This land is at the center of the world in the beginning of time.



Figure 1. California State Historical Marker of a Tolowa Indian Settlement at Pebble Beach, Crescent City (Taa-'at-dvn), California.

A. Historic Documentation of the Tolowa Dee-ni' within the North Coast Study Region

The Tolowa Dee-ni'¹ are the original inhabitants of the region now known as the Del Norte County coastline. The Tolowa derive from Athabascan-speaking people, who have lived since ancient times in the area stretching from Wilson Creek in California to the South, the Sixes River in Oregon to the North, to the watershed on the Coastal Range to the East, and to Point Saint George to the West. (See **Figure 1**) (Driver 1939). Ethnographic and archaeological accounts document thousands of years of coastal fishing, sea mammal hunting, and harvesting within Tolowa ancestral territories, including the fish camp at Dat-Naa-Svt/Yaa-ghii~-a~, and 8,000 years of occupation at Hiouchi on the main course of the Smith River (Tushingham 2009).

The ancestral Tolowa territory within the boundaries of California encompasses 955.1 square miles, with 32 fish-miles along the ocean and 35 fish-miles along the Smith River, a waterway draining a little over 600 square miles, and had spawning runs of silver salmon, king salmon, and steelhead (Baumhoff 1963:179-180, 231). Since ancient times, the Tolowa relied on oceangoing dugout canoes, so their territory can be considered as extending into the open ocean (Drucker 1937, Gould 1968, Hudson 1981, Lightfoot 1993).

After 500 BCE, permanent Tolowa settlements in California flourished. The Tolowa sustained themselves from the vast marine resources available to them, from seal mammal hunting and fishing along the coast from Winchuk River (Duu-srxuu-shi'/Um-sahng-ten) on the California-Oregon boundary, south to Wilson Creek (Daa-gheshlh-ts'a' /Tah-geshl-ten), about eight miles north of the mouth of Klamath River (Baumhoff 1958:225 ; Fagen 2003:239).

The creation story of the Tolowa tells of their emergence from Yan' -daa-k'vt (Yontocket) - the Center of the World - a historical site listed on the National Register of Historic Places, located approximately two miles south of the Tribe's modern day reservation, the Smith River Rancheria. From their genesis to the present, the Tolowa have practiced an intimate, sustained relationship with the ocean, coast, and associated marine resources. Each year the Tolowa perform an ancient World Renewal Ceremony, known as Nee-dash, to bring the earth back in balance (L. Bommelyn, Pers. Comm. 2011). Tolowa Dee-ni' lifeways are inseparable from the marine resources they have stewarded, ritually protected, and subsisted on for millennia.

According to documented reports, the Tolowa possessed such an encyclopedic knowledge of their territory and its biota and abiotic influences (e.g., geology, meteorology), visiting scholars found it impossible to capture the depth and breadth of their expertise². The Tolowa have made a significant contribution to the coastal history. Tolowa ancestral territories are powerful cultural landscapes with ritual, spiritual, social, narrative, and economic associations. The 20th century ethnographer Thomas T. Waterman documented over 700 place-names within southern Tolowa

¹ The original, self-name of the Tolowa is "Huss" meaning people. Tolowa comes from the Yurok name, ni-tolowo, meaning "I speak Athabascan of the Tolowa variety." (Heizer & Elsasser 1980:22) The Yurok word Tolowo is apparently connected with the town name Tolokwe." (Kroeber 1925:125).

² "It would be well-nigh impossible to include every spot in Tolowa territory which had supernatural associations. One receives the impression that every outcrop of rock, every trickle of water, every little clearing in the brush had power for good or evil, or figured in some event in mythological times." (Drucker 1937:228).

territory³. Tolowa place names and ritual narratives identify village sites and Indian ranches, gathering, hunting, and fishing places, major and minor topographical features, microhabitats and ephemeral phenomena. In addition to naming and revering hundreds of marine and terrestrial species, the Tolowa named and revered sloughs, flats along the river, crags, coves, sea stacks, flat rocks, rocks that were partially submerged, points where rocks are always falling; places where water always runs against the rocks, and points in the ocean you could swim to; creeks, riffles, areas where salmon spawn on gravel, places to set annual and seasonal weirs and nets for fish and lamprey; places where smelt gather, where smelt can and cannot be dried, where the fattest salmon can be found, where tule grows, where seabirds gather in crags, where whalers from the north stopped to eat mussels, places to catch eels, to collect oysters, clams, mussels, and to hunt ducks and mud-hens (Waterman 1921-22; Drucker 1937; Gould 1966, *passim*).

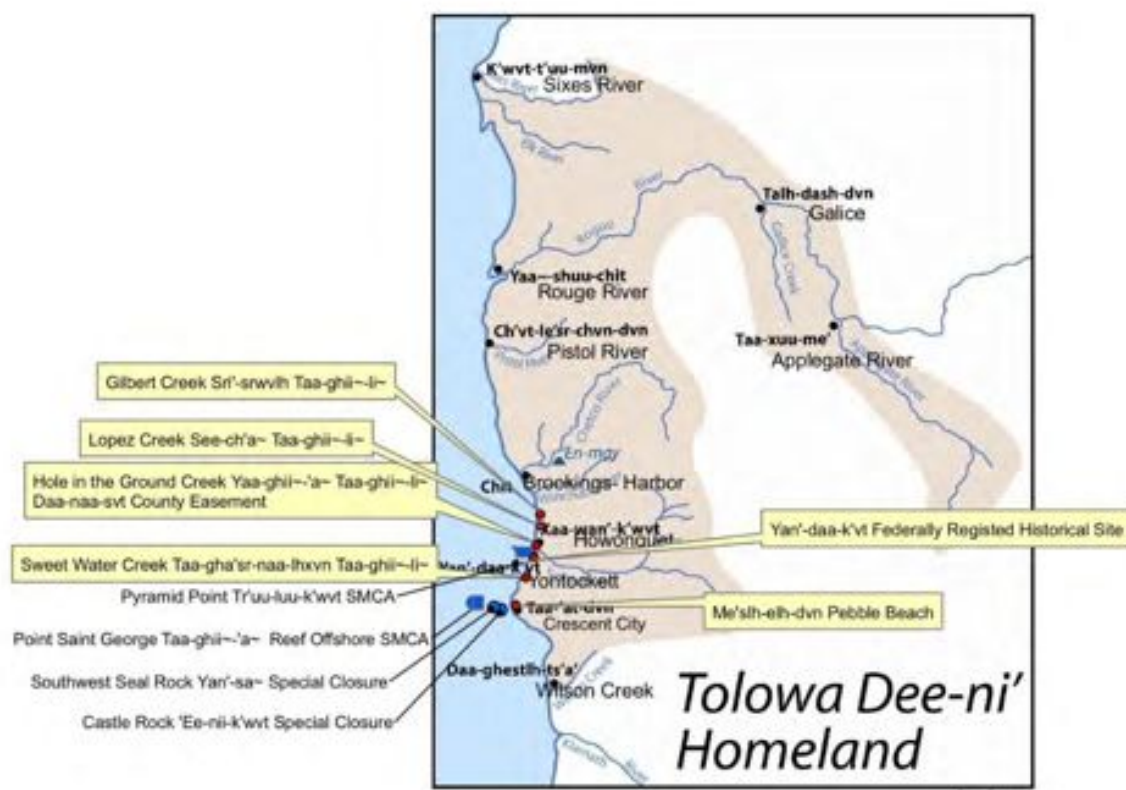


Figure 2. Documented Tolowa cultural sites and proposed Marine Protected Areas. Note: There are hundreds of other culturally significant sites within the Tolowa territory that are not identified, due to their confidential nature, many of which also meet the eligibility criteria for listing on the National Register of Historic Places.

Within the Tolowa territory, stretches of beach, river, and rock are designated as localities where sweat houses and fish camps were established, where the first salmon ceremony and the first sea lion hunt originated, and where ecological and geographical features embody, and are infused by, ancient stories. There is documentation of flat rocks where two men going after mussels lost their paddle, and places where canoes always capsized, as well as large hollow tree where a rich man

³ Waterman's unpublished field notes and maps from 1921-22.

camped while fishing, and a place where the rocks still retain the impression of a whale's body stranded by receding flood waters. There are pits where hunters dove for luck, where dentalia were transplanted, and where sea serpents lived (Ibid.).

B. The Interrelationship between the Tolowa Dee-ni' and other Tribal Communities within the North Coast Region

The North Coast Region has yielded a wealth of ethnographic, sociological and folkloric information related not only to the history of the Tolowa Dee-ni', but numerous other tribes and tribal communities within the region. The coastline is a larger entity of traditional cultural importance, including the importance related to the marine resources for the spiritual, religious, customary and subsistence uses of the tribes and tribal communities. The Tolowa recognize that there was always, and continues to be, traditional subsistence, ceremonial, and customary uses that may be inter-tribal and intra-tribal within a specific geography beyond and/or within those defined boundaries. This may be based on ownership, gathering, hunting, and/or harvesting rights obtained through permission, heredity, marriage, trade, gambling, dowry, and the immediate need for a particular resource. Furthermore, there are areas shared for ceremonial, trade, and other customary purposes. Within the North Coast Study Region, there is a wealth of connections intertwined between California tribes, tribal communities, and individual Indians that is both familial and evident in shared cultural traits. For fishing, some of the similarities in technique and stewardship may be seen in the detailed report prepared by Kroeber and Barrett (1960) specific to northwestern California.

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It is also understood that there may be areas of geographic overlap identified amongst the California Tribes. This is a result of the relationships as described above, as well as the individual history unique to each Tribe post-contact. The assertion, negotiation, and claims by each California Tribe of their respective ancestral and/or aboriginal lands and waters are a matter for California Tribes to resolve among ourselves, and not for the State of California to broach in any manner. Nor is it necessary to address or resolve these issues as the Tolowa and the State of California move forward to address matters related to the Marine Life Protection Act process. Rather, this is, and will continue to be, a matter for resolution between California Tribes, Tribal communities, and individual Indians in the future.

C. Tolowa Dee-ni' Traditional Practices and Uses of Marine Resources within the North Coast Region

See naa-svt-dvn xwee-ghatlh-ghelh wee na'sr-dvtlh-nvsh
First on-the-beach camp is-worked

Dayn lhvmsr mvn tr'ulh-yvmlh.
Someone prays for smelt.



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Figure 3. Traditional fish camp, with smelt drying on beach grass. The smelt are caught, processed, and distributed communally amongst the tribe (Drucker 1937, Kroeber & Barrett 1960).

Tolowa traditional tribal practices and use of marine resources are consistent with the goals of the Marine Life Protection Act. Tolowa harvesting, hunting, and fishing practices are sustainable and contribute to the health and resilience of the ecosystem, while simultaneously helping to maintain the health and resilience of the Tolowa culture and way of life.

Traditional Tolowa harvesting of marine resources has never been for individual use or exploitative gain. The Tolowa, now as in the past, hunt, fish, gather, harvest, process, and distribute marine resources communally⁴ (Drucker 1937, Driver 1939, Kroeber & Barrett 1960).

Historically, Tolowa hunting, fishing, gathering, and recovery territories were very tightly circumscribed. For example, beach claims were delineated for whales drifting ashore, and hunting claims were established for sea lions - only certain rich men in major communities could initiate the hunts, and only certain men could participate in the hunt (Gould 1968). According to elders interviewed by Waterman, everyone owned his own rock – “poor people couldn’t fish” (1921-22: 332). The meat of sea mammals was very precisely circumscribed according to social status. The combination of enforced territorial polities with communal distribution of subsistence foods was a powerful incentive to follow tribal regulations and avoid independent, exploitative resource use. Moreover, traditional Tolowa did not consider foods saleable, only edible (Drucker 1973:241).

⁴ “...[T]he economic unit as not the individual, but the entire paternal kin group” (Drucker 1937:241).

Tolowa traditional practices and technological innovations demonstrate stewardship and conservation via specific fishing/harvesting practices that incorporated judicious use of physical techniques [e.g., basketry, traps, etc.], spatial regimes [e.g., harvesting/fishing rights distributed over carefully delimited areas or within specific populations], temporal regimes [e.g., rights associated with a time period, by season, time of day], hydrological regimes [rights associated with a designated water quantity – e.g., at minus tides, or when river has reached a certain level], taxonomic regimes [rights associated with certain taxa or species], morphologic or life-cycle regions and techniques that took into account specific physiological characteristics of the organism and/or its life-cycle [e.g., not catching pregnant females], and demographic regimes [rights associated with a specific user group].

Table 1 outlines the documented historical procurement patterns for marine resources by the Tolowa. **Tables 2** and **3** provide numerous examples of how these different conservation regimes were associated with certain species and historical traditions. **Table 4** identifies the marine resources found within the Tolowa territory, and identifies the cultural importance and historical use of those resources.

Table 1. Historical Procurement Patterns for Marine Resources of Major Dietary Importance

SEASONAL OCCURRENCE OF MAJOR (STAPLE) TOLOWA INDIAN PROCUREMENT SYSTEMS												
PROCUREMENT SYSTEM	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1. Large Sea Mammals												
2. Marine Shellfish												
3. Acorns												
4. Anadromous Fish												
5. Waterfowl												
6. Surf Fish												

(Source: Gould 1975:161)

Table 2. Examples of Traditional Ecological and Social Technologies for Sustaining Marine Resources

Technology	Materials/Methods	Marine Resources
Fish weir	Hazel wickerwork of intertwined shoots ¹	Finfish, lamprey
Gill nets	Gill nets were small, taken up as soon as fish entered. No drifting or seining. This technology kept harvests limited and immediate.	Finfish
Scoop nets	Scoop nets lashed to V-shaped poles and yielded by a single fisherman walking along the shoreline limited catch to the fisherman's individual strength and prowess (late dips into the surf catch no fish).	Smelt (surf fish)
Communal food sharing	"[A]ll seafoods (fish, shellfish, mammals) obtained in canoes were distributed communally to all who stood by when the canoes landed." ¹	All canoe-fished resources
Territorial polities controlled by Headman	The Northern and Southern sides of Sea Lion Rock were controlled by different headman in consultation with the community; no sea lion hunting was allowed outside of the annual hunt, only certain hunters within specific villages were permitted to join the hunt.	Sea lion

Sources: ¹Anderson 2005:233, 247 (see Driver 1939:380). Gould 1968.

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**Table 3. Historical Uses and Conservation Regimes Involving Marine Resources
(Partial Listing)**

SO = Socially-based management; SP = Spatial; TM = Temporal; H = Hydrological; T = Taxonomic; M = Morphologic; D = Demographic

Species	Historical tradition	SO	SP	TM	H	T	M	D
Clam Longneck Quahog	Adults collected, juveniles re-seeded into sand Money (naa-set (glycermis), clam shell disks/buttons (ts'vn- daa~-k'e)						√	
Crabs	Dungness crab collected in shallow waters (tide pools, estuaries, river mouths, waves)		√			√		
Dentalium	Collected shells washed ashore Money (tetlh-t'as), long ones were especially valued, and carefully guarded in special pouches; kle-ah short ones) Nose bones (mi~sr-me'-sla) of long shells						√	
Mussels	Adults hand-picked, juveniles left behind Hunters tied mussel hairs onto clothing as a rattlesnake deterrent ⁴ .						√	
Olivella shell	Regalia; abandoned shells collected (inhabited shells left untouched)						√	
Salmon	First salmon rite for the Smith River spring influx of king salmon (ha' gucli xa'c renic; salmon-go-out-to-catch) held by "formulist" ² included 5-day fast, basketry "first foods" tray, narrative recital of the world's origins and salmon journey Temporary communal salmon fish weir installation in Smith River and use guided by rites ² ; other fishing areas owned individually; weirs left to be destroyed by high water	√ √	√ √	√		√ √	√	
Sea anemones	Medium-sized anemones gathered (very small ones occasionally gathered and boiled)						√	
Sea Lion	First Sea Lion hunt ³ in July/August on NW & SW Seal Rocks, ≈ 6.5 miles off Point St. George, breeding area for Stellar sea lions. 7 villages participated, each canoe carrying 2-3 sea lions, received ceremonially at the beach, meat distributed according to social dictates, remains returned to the ocean.	√	√	√	√			√
Seaweed	Seasonally collected (beginning with no-frost days through June) during morning low tides; only XXX collected			√	√	√		
Surf fish/smelt	Fished with dip/scoop nets; no drifting or seining Taboo areas on the beach where smelt could not be dried Behavioral strictures on beach protocol guard against disturbing spawning fish (children and dogs told not to play in the waves) [†]	√	√					
Turban snails	Medium-sized snails hand-gathered						√	

Sources: ¹Baumhoff 1958:225-6; ²Blackburn and Anderson 1993:320, also citing DuBois 1932, Barnett 1937, Drucker 1937, Driver 1938; ³Fagen 2003:227-8 also cites Gould 1968; ⁴L. Bommelyn Personal Communication 2011.

[†] Modern transitory visitors (such as surfers and dog-walkers) during spawning season, and their disregard for the surf fish immediately offshore that are disturbed by their activities, are a constant source of distress to the Tolowa.

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**TABLE 4. Culturally Important Marine Taxa and Historical Use Types
(KEY: Subsistence, Ritual, Medicinal, Narrative, Other Customary Uses)**

*Given the time constraints, this species and usage list is inclusive, but not exhaustive.

Culturally Important Marine Taxa/Tolowa Translation	SUBSIST	RITUAL	MED	NARR	OTHER CUSTOM USE
Abalone / <i>lha' -k'wa'sr -t'i</i>	✓	✓	✓	✓	✓
Anemones / <i>duu-ma</i>	✓			✓	
Barnacles / <i>ch'vtlh-tr'e'</i>	✓			✓	✓
Beach grass / <i>naa-svt-xvm-shrvn'</i>					✓
Chitons / <i>met-gaa-chu</i>	✓	✓			
Clams / <i>met-'e</i>	✓	✓		✓	✓
Crabs / <i>k'a-srvsr</i>	✓			✓	
Crawfish / <i>nii~lii~me'-taa-ga-srvsr</i>	✓			✓	
Dentalium / <i>naa-gha'sr- detlh-yu'</i>		✓	✓	✓	✓
Dolphin / <i>tee-'vn'-lii~che'</i>	✓	✓		✓	
Eels / <i>dvsh-xa~</i>	✓		✓	✓	
Finfish	✓	✓	✓	✓	✓
Groundfish	✓			✓	
Kelp / <i>ghvtlh-k'vsh</i>			✓	✓	✓
Lamprey / <i>dvsh-xa~</i>	✓	✓		✓	
Limpets / <i>baa-sre-xee-tr'at-lhki</i>		✓		✓	✓
Mussels / <i>dee-lhat</i>	✓	✓	✓	✓	✓
Octopus / <i>k'waa-ne'-lhan</i>	✓		✓	✓	
Oysters	✓			✓	
Pelagic fish	✓			✓	
Salmon / <i>lhuk</i>	✓	✓	✓	✓	✓
Sand dollars / <i>shaa-xas-t'ee-mvn</i>		✓	✓	✓	✓
Sea birds	✓		✓	✓	✓
Sea cucumbers	✓				
Sea snails / <i>dee-nuk</i>	✓	✓	✓	✓	✓
Sea lion / <i>ch'an-t'i</i>	✓	✓		✓	✓
Seals / <i>sri'-sree-nvsh</i>	✓	✓		✓	✓
Sea urchin / <i>yaa-'ilh-xvth-ne</i>	✓				
Seaweeds / <i>lat</i>	✓	✓	✓	✓	
Shrimp	✓			✓	
Skate				✓	✓
Starfish / <i>drinth-t'i</i>			✓	✓	✓
Sturgeon / <i>lhvm'-chu</i>	✓	✓	✓	✓	✓
Surf fish / <i>Smelt /lhvm'sr</i>	✓	✓	✓	✓	✓
Whales / <i>tee-la~</i>	✓	✓	✓	✓	✓

Sources: Goddard 1911, Waterman 1921-22, DuBois 1932, Barnett 1937, Drucker 1937 (who also listed "small unidentified marine forms," p.231), Driver 1939, Hewes 1947, Baumhoff 1958, Kroeber & Barrett 1960, Gould 1966 and 1975, Losey & Yang 2007, L. Bommelyn Pers. Comm. 2011, M. Scott Pers. Comm. 2011

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Figure 4. Tolowa Dee-ni stewardship rituals, performed with regalia such as this dress from the National Museum of the American Indian, decorated with shells, include songs, prayers, and ceremonies to protect all living things.

C. Historic Overview and Documentation of the Tolowa Contact with Non-Indians

"In the fifty years after Contact, the Tolowa were massively expropriated. They went from a village-based social ownership of use rights to the coast, coastal plain, riverine, and interior areas of a six hundred square mile region, most of present-day Del Norte County, to being in an internal diaspora, exiles in their own homeland...[yet the historical and archaeological evidence indicates a] persistent effort on the part of the Tolowa people to carry on living as they had lived...with subsistence based on skilled fishing, gathering, and hunting" (Collins 1998:44,47).

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In 1850, the Tolowa population was estimated at 2,400 (Drucker, 1937; citing house count information provided 50-60 years prior). Population estimates also mention 23 Tolowa villages, all located on the coast or along the lower reaches of the Smith River. (Cook 1956:101)

The introduction of the non-Indian population to the Tolowa people, particularly after the establishment of the state of California, resulted in the Tolowa decimation. One of the most terrible massacres occurred in 1853 during a World Renewal Ceremony at the center of the Tolowa Dee-ni's spiritual world, Yan' -daa-k'vt (Yontocket). Yan' -daa-k'vt is where the Creator made the First Redwood tree, then created First People. The Tolowa Dee-ni' founded a large village settlement at this sacred place, held the First Salmon Ceremony, and maintained a sacred sweat house that was considered "Salmon's home" (Parkman 1989).

Due to repeated massacres that occurred during the state-funded Dee-ni' Holocaust from 1853-56, and ethnic cleansing that continued through the 1890s, by 1910 the California-based Tolowa population was estimated to be 150-210 people (Kroeber 1925:883; Cook 1956:101; Thornton 1986). This loss of 80% of the populace also constituted a collapse of the traditional social-political systems that supervised resources access, use, and distribution. Records reflect the Wiyot and the Tolowa were the most exposed to white influence of any of the northwest tribes. Because their aboriginal lands were located on the fertile, commercial, and well settled coast,

evidence reflects their early and rapid disintegration, and almost extinction. "They should have suffered the worst losses and did" (Cook 1956:101)

In addition to the cultural genocide experienced by tribal members, many of the sacred sites of the Tolowa were destroyed by invading settlers and entrepreneurs. The village site of Sastaso, 0.5 mile south-southwest of the tip of Point St. George on a rocky promontory, was dynamited to supply rock for the breakwater at Crescent City (Gould 1966:16). A sea rock, only revealed at high tide, used as a gathering place for sweathouse wood, was blasted away for road ballast (Drucker 1937:230).

D. The Tolowa Dee-ni' of the Smith River Rancheria Today

1. The Smith River Rancheria

Between 1906 and 1908 a series of appropriations were passed by Congress, providing funds to purchase small tracts of land in central and northern California for Indians of those areas. The land acquisitions resulted in what has been referred to as the Rancheria System in California. (Act of June 21, 1906, 34 Stat. 325, at 333, and Act of 1908, at 35 Stat. 70)

In correspondence dated September 10, 1907, C.E. Kelsey, Special Agent for the California Indians wrote to the Secretary of the Interior concerning the lands he was seeking to acquire for the benefit of the Tolowa people. Although a number of tracts were contemplated, the focus was primarily on lands which provided the Tolowa with access to the Smith River or ocean, where "abundant supplies of sea food, multitudes of salmon in season, ~~surfish~~, shell fish, crabs, clams, mussels, rock oysters and other kinds of sea food in the ocean which would support the old people if their lands bordered on the ocean." (September 10, 1907 correspondence from Special Agent C.E. Kelsey to the Secretary of the Interior). On February 6, 1908, the federal government purchased over one hundred seventy eight acres of lands for the benefit of the Tolowa people the lands which currently make up the Smith River Rancheria, one of two reservations established in Del Norte County for the Tolowa people.

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Although the Rancheria was terminated pursuant to the California Rancheria Act (Act of August 18, 1958, P.L. 85-671, 72 Stat. 69, as amended August 11, 1964, 78 Stat. 390), in 1983, in Tillie Hardwick, et al., v. U.S., the United States Northern District of California ruled the termination of Smith River Rancheria to be unlawful, and in 1987 the parties stipulated that the original boundaries of the Smith River Rancheria were restored, and all lands within the restored boundaries were declared "Indian Country" Tillie Hardwick et al., v. U.S., Civ. No. C-79-1910-SW, p. 4 (N.C. Cal., March 2, 1987)(Hardwick II)(unpublished).

Since its re-establishment, the land base of the Smith River Rancheria of the Tolowa Dee-ni' has grown to over 700 acres within Del Norte County.

2. The Smith River Rancheria Tribal Government

The Smith River Rancheria is a federally recognized tribe, eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as an Indian tribe. Federal Register, Vol. 75, No. 190, p. 60813, Oct. 1, 2010. The Tribe's governing body is the Tribal Council, comprised of seven (7) elected members. The Tribes' current enrollment is 1,442 members, of which 440 live within Del Norte County, and 369 live within the Tolowa ancestral territories outside the County.

The Tribe's Enrollment Ordinance defines the Tolowa Deeni' to be a person who is a descendent of the Dee-ni' peoples and the associated federal Indian census rolls, whose place of origin is within the Tribe's ancestral territory, as described in Section IIA. The Tribe regulates its membership in accordance with the Constitution and related laws of the Smith River Rancheria. All members receive not only the rights that flow from their membership, including the right to due process, but members also accept the responsibilities that flow from their membership to adhere to the Tribe's law.

The Smith River Rancheria provides its tribal citizens above the age of 10 with an identification card. Each card contains the member's name, date of birth, and a unique tribal enrollment number, accompanied by a photo. All documents are safeguarded, and the process is strictly followed, with the final authority for enrollment resting with the Tribal Council.

Since its re-establishment, the Tribe has developed a more sophisticated governmental structure and has committed to expanding its capacity to manage its tribal affairs and to meet the needs of its community. The Tribe has established a tribal court, authorized to exercise jurisdiction over its members and territory. The Tribe's Natural Resource Department manages its growing land base, and the Tribal Council is currently deliberating as to how to expand its management capabilities to include oversight of coastal management and marine resource use. The Tribe had joined with the Northern California Tribal Chairman's Association in its commitment to establish cooperative relationships with the State of California to address the management and protection of the marine natural resources within the North Coast Region.

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III. THE TOLOWA'S CURRENT TRADITIONAL PRACTICES

Lat si~s-xa xvm-ni. Taa-tvn lat hat xvm-ni. Shin-nat-le-dvn dvsh-xaa~-lat-'e' xvm-ni.

Seaweed grows in the ocean. Three-times seaweed there grows.

Duu hat-dvn lat yvlh-sri. Lhtin' nn-chwaa 'ee-lee-dvn.

Summer-becoming [when] last-seaweed grows. Don't then pick seaweed, too big it-becomes-then.

Since time immemorial, despite the successive waves of immigration, colonization, genocide, ethnic cleansing, subjugation, and illegal expropriation of tribal lands and material culture, the Tolowa have always lived within their aboriginal homelands and sustained a continuous relationship with the ocean, coastline, and marine resources.

The Tolowa maintain active tangible and intangible relationships with sites, i.e. tangible (sites used for harvesting, hunting, or habitat maintenance, social or ritual gatherings, shelter, or trade - including reciprocal site-sharing relationships with other tribes), or intangible relationships (sites referred to in stories, songs, sayings, or the traditional knowledge base of the tribe).

A. Relationship of the Proposed Marine Protected Areas to the Tolowa Ancestral Territory

Shu' numlh-ts'a'-dvn Taa-ghii~-'a~telh-xat. Lhan-t'i srtaa~ hat xee-yvlh-sri.

Good low-tides Pt. St. George they-go. Many-kinds food there they-get.

Based upon the recommendations of the Marine Life Protection Act Initiative staff, the California Fish & Game Commission has proposed the establishment of four proposed Marine Protected Areas (MPAs) within the ancestral territory of the Tolowa Dee-ni' of the Smith River Rancheria: Pyramid Point (Tolowa: Tr'u-u -luu-k'wvt) State Marine Conservation Area (SMCA); Point St. George Reef (Tolowa: Taa-ghii~-'a~) Offshore SMCA; Southwest Seal Rock (Tolowa: Yan'-sa~) Special Closure; and Castle Rock (Tolowa: 'Ee -nii-k'wvt) Special Closure. The Tolowa connection to these proposed MPAs is memorialized by their ancient Tolowa names, and are known to the Tolowa not only as main landmarks and for hundreds of natural areas (e.g., rocks, beaches, bays, etc.), but also for their associated natural phenomena (e.g., wave action, fish, mammalian, and avian behaviors, etc.), and anthropogenic histories (e.g., human ritual and substance uses of the sites (Waterman 1921-22; Drucker 1937).

Due to the Tolowa's long and intimate traditional association with this portion of the coastline within Del Norte County, all of the proposed MPAs cover areas that are currently used by the Tolowa to continue their customary lifeways, for tangible (physical) or intangible (spiritual and religious) purposes; many purposes involving the use of marine resources. These customary uses are not commercial or recreational: they are tribal, and traditional. Any marine resources taken from these areas have always been, and will continue to be, distributed communally in accordance with the Tolowa custom and tradition.

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Figure 5. Tolowa Dee-ni' fish camps are an ancient tradition practiced continuously to the present.
Fish "bed" (smelt), Ocean Shore, Smith River, Calif. July 21, 1934. Photo obtained from The Bancroft Library, University of California, Berkeley.

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1. Pyramid Point (*Tr'uu-luu-k'wvt*) Proposed State Marine Conservation Area

Pyramid Point is known to the Tolowa as *Tr'uu-luu-k'wvt*, meaning "line-fishing-upon". The Smith River Rancheria, lands held in trust by the Federal government for the benefit of the Tolowa, abuts the proposed southern boundary of the *Tr'uu-luu-k'wvt*/Pyramid Point SMCA. Prince Island Rock (*Setlh-xa~*), off the shore of the Rancheria, is also federal trust property, and since ancient times has been known as an area known for the excellent clam bed at its base. Prince Island Rock also has additional cultural significance for the Tolowa, since manhood rites included swimming around *Setlh-xa~* (L.Bommelyn Personal Communication, 2011). It has been, and will continue to be, the position of the Smith River Tolowa that the California Fish and Game Commission has no authority to assert regulatory jurisdiction within the Tribe's reservation boundaries, including the waters within the reservation boundaries. Thus, any proposal to move the southern boundary of the *Tr'uu-luu-k'wvt*/Pyramid Point SMCA will be opposed by the Tribe. Indeed, it continues to be the position of the Smith River Rancheria that due to the significant uses of the marine resources that occur within the *Tr'uu-luu-k'wvt*/Pyramid Point SMCA by the Tolowa, the Commission should adhere to the policy of avoidance adopted by the North Coast Regional Stakeholders Group and the Blue Ribbon Task Force, and not establish the *Tr'uu-luu-k'wvt*/Pyramid Point SMCA.

The proposed *Tr'uu-luu-k'wvt*/Pyramid Point SMCA encompasses a series of prehistoric, historic, and modern day fish camps maintained by the Tolowa since time immemorial. Ethnographic and archaeological accounts document thousands of years of coastal fishing, sea mammal hunting, and harvesting within Tolowa ancestral territories, including the fish camp at *Dat-Naa-Svt/Yaa-ghii~-a~*, located within the proposed boundaries of the *Tr'uu-luu-*

k'wvt/Pyramid Point SMCA (Gould 1966, Tushingham 2009). Hundreds of Tolowa songs, stories, sayings, place-names, and customary traditions are based on fish camps, primarily to catch smelt, but also to catch surf-fish (Kroeber & Barrett 1960, Gould 1966, Tolowa Language Classes 1983).

Tolowa stories, songs and prayers speak of pelicans, seagulls, king fishers, summer geese, sea otters, quahogs, horseneck clams, glycermis and olivella shells, seaweed, sea anemone, mussels, mussel worm fish bait, smelt, redbtail perch, ling cod, snapper, steelhead, whales, beach grass and driftwood. Tolowa regalia, still worn in traditional ceremony and dance, is exquisitely and heavily decorated with abalone, clam and olivella shells, dentalia, and sea bird feathers (Waterman 1921-22, National Museum of the American Indian Archives, n.d., *passim*). A more complete, but not exhaustive list of culturally important marine taxa and the historical use types for the Tolowa is outlined in **TABLE 4** above.⁵

In support of the continued use of the fish camps at Dat-Naa-Svt/Yaa-ghii~-a~ by the Tolowa, on July 24, 2007, the Del Norte County Board of Supervisors passed Resolution No. 2007-045:

WHEREAS, the Board of Supervisors of the County of Del Norte finds that the continued use of Dat-Naa-Svt (Hole-in-the-Ground) is an established historic use by the Tolowa People; and

WHEREAS, it is the intention of the Board of Supervisors to demonstrate support for the Tolowa people and their culture; and

WHEREAS, the Board of Supervisors deems it advisable to make known its support of the cultural use of the area shown as Easement 'J' on Book 12 of Maps Page 004; and

BE IT RESOLVED that it is the intention of this Board of Supervisors by this resolution to acknowledge the right of the Tolowa people to utilize the area (Easement 'J') consistent with Book 12 of Maps 004.

"Easement 'J'" is a recorded cultural easement, dedicated to the Tolowa Indian Tribe for the exclusive benefit of the Tolowa Indians, "to continue their historic use of the land," during the months of July through September of each year. The fish camps have also been proposed for listing with the National Register of Historic Places.

Currently a small number of Tolowa families set up annual fish camps which happen within a 2-week period during the 90-day window, to catch and process smelt and other finfish. In local nomenclature, the entire stretch of beach is called "Indian Beach." Fish camps and language camps enable the tribe "to teach our children how we have lived for centuries...the traditions they are learning are all pre-contact" (Personal communication, Marva Scott, 2011). In addition to scholarly accounts of fish camps dating from the 1800s to the present (Drucker 1937, Kroeber

⁵ During the MLPAI process, Initiative staff compiled a list of species they believed were harvested by California Tribes and Tribal Communities in the North Coast Region (California MLPAI 2010). This list, as with most ethnographic information compiled externally by anthropologists, is incomplete. For purposes here, the categories of species traditionally taken by the Tolowa are: fin fish, marine plants, invertebrates, pinnipeds, marine mammals, and marine birds. The Tolowa recognize the current take of pinnipeds, marine mammals and others are restricted pursuant to the Endangered Species Act and other applicable laws.

& Barrett 1960, Byram and Lewis 2001), these traditions have been well documented in numerous newspaper articles throughout the years⁶.

The continuance of fish camps located within the Tr'uuluu-k'wvt/Pyramid Point SMCA is essential for the Tolowa's physical and spiritual welfare. For tribal people, the loss of access to culturally important resources not only impacts the individual and the individual's household; it impacts the community at large and the socio-economic, socio-cultural and socio-political relationships within the community (Charles and Wilson 2009). As Turner et al. note, "the decline or removal of key food sources can introduce a cascading effect in which important associated cultural practices and institutions are also lost" (2008:7). For example, wild-harvesting of marine resources directly impacts tribal food security: not only is wild food availability important for household subsistence, large harvests are consistently shared with elders. Even when harvesting commercially, a portion of the harvest is distributed to elders. Just as the loss of terrestrial wild-harvested foods has damaged Native health throughout the world, the loss of wild-harvested marine resources such as salmon, other finfish, and seaweed in tribal diets also leads to serious health problems (Norgaard 2005, Whitesell et al. 2007).

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More seriously, the loss of access to culturally important resources, along with displacement from landscapes or seascapes considered to be sacred, directly impacts the individual's, family's, and community's ability to sustain deeply held cultural and spiritual relationships with not only the species used, but with associated species and their habitats – relationships that tribal people see as part of their ancestral responsibility. Entire coastlines within ancestral Tolowa territory are important culturally, religiously, and spiritually, such as beaches used for fish camp and ceremony.

⁶ B. Hanly, "Fish Camp," News from Native California, Winter 1996/97; "Preserving tradition; Tolowa gather at beach site to dry smelt for winter stores," Daily Triplicate, July 27, 2011; "Learning the traditions; Summer camp passes on Tolowa customs, language to next generation," Daily Triplicate, July 20, 2006; "Tradition, preserved. Yaa-ghii~'a` (Fish Camp)," Daily Triplicate, August 17, 2007.



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Figure 6. Ethnographic and archaeological accounts document thousands of years of coastal use within Tolowa ancestral territories, including the fish camp at (Dat-Naa-Svt), located within the boundaries of the proposed Pyramid Point SMCA (Gould 1966, Tushingham 2009).

2. Point St. George (*Taa-ghii~-‘a~*) Reef Offshore Proposed Marine Conservation Area

Point St. George, named by the Tolowa as *Taa-ghii~-‘a~*, meaning “outward-lays-there” centuries before George Vancouver’s 1792 naming of the site, includes the village site of *Taa-ghii~-‘a~*. Archaeological evidence which supports prehistoric and historic occupation by the Tolowa includes: living houses, sweathouses, smokehouses, brush shelters, workshops for finishing flint, bone, and antler tools, assembling fishing nets and lines, cleaning, drying and smoking fish, butchering mammals, pounding, cracking, and preparing acorns and shellfish, a waste dump, and a cemetery (Gould 1966). Chipped stone tools, and mammalian, avifauna, shellfish and fish remains, including whale, sea otter, sea lion, shark, sturgeon, salmon, hake, halibut, surfperch, and rockfish, found at Point St. George date to 300 BCE (Gould 1966).

The *Taa-ghii~-‘a~*/Point St. George village complex contains enormous shell middens, projectile points, arrowheads, knife blades, hand drills, scrapers, harpoon tips, tule-mat needles, antler wedges, pestles, net sinkers, fishhooks, and pipes (Gould 1966). This cultural complex and the traditional implements unearthed by Gould show the Tolowa’s extensive relationships with sea

lions (“ocean deer”)⁷, seabirds, migrating waterfowl, shellfish, finfish, eels and aquatic plants. Tolowa mythology identifies the rocks off Taa-ghii~‘a~/Point St. George as parts of Grandmother, blown apart by the North Wind. Taa-ghii~‘a~/Point St. George is identified in traditional Tolowa stories as a living place, a place of wild currants, seaweed, quahogs, horseneck clams, mussels, sea anemone, shells, and “good low tides” and as a launching site for subsistence sea-lion hunting (Gould 1968), used continuously through the 20th century (Goddard 1911). Drucker (1937) reports that the Tolowa moved to their summer camp at Point St. George when the ocean waters were smooth enough to risk hunting expeditions. Traditional Tolowa songs feature Taa-ghii~‘a~/Point St. George and the nearby rocks (K’wvt-nunt) (Tolowa Language School 1983).

3. Southwest Seal Rock (Yan’-sa~) Proposed Special Closure

Srwee-la’-ne xee-nvs me’ Yan’-sa~ ‘vn’ naslh-xat.

Five of them went to South Sealion Rock in a canoe.

Northwest (Dan’-sa~) and Southwest Seal Rocks (Yan’-sa~) are ancient sea mammal hunting grounds. In prehistoric and historic times the First Sea Lion hunt was held in July or August. Tolowa headman determined the timing of the hunt, with seven villages participating. Traditional canoes contained 4-5 men covered in deerskin with blackened face, acting like sea lions. After spearing the animals, each canoe returned carrying 2-3 sea lions, and was received ceremonially at the beach, with meat distributed according to social dictates, and the remains ritually returned to the ocean (Fagen 2003:227-8 also cites Gould 1968). Yan’-sa~/Southwest Seal Rock is featured in ancient Tolowa stories (Goddard 1911).

4. Castle Rock (‘Ee-nii-k’wvt) Proposed Special Closure

Castle Rock, known to the Tolowa as ‘Ee-nii-k’wvt, meaning “land-there-upon” is a site of historical line fishing, egg and seaweed gathering, and sea lion hunting. Before the Crescent City harbor was built, sand deposits around the rock supported a thriving razor clam population harvested by the Tolowa. The artificial harbor has changed the natural pattern of sand deposition, such that the sand infill disappeared, and the area now consists of rocks. As a result, the historical razor clam population has been extirpated.

⁷ “Some of the largest Northern seal-lion rookeries in the Pacific occur on the rocks and rocky islands off the Point, with the largest being on a pair of rocks about 6.5 miles offshore (NW and SW Seal Rocks on the U.S. Coast and Geodetic chart 5895, St. George Reef” (Drucker 1937:94).

IV. CONCLUSION



Figure 7. Traditional, communal cooking of wild salmon on redwood stakes.

The Tolowa Dee-ni' of the Smith River have continuously occupied the Del Norte coastline since time immemorial. It is well-documented in the scholarly literature, oral histories and in the archaeological record that the Tolowa Dee-ni' have maintained a spiritual, cultural, and customary relationship with the coast and the associated marine resources. Tolowa harvesting, hunting, and fishing practices are sustainable and contribute to ecological and cultural health and resilience of the people. The historical record demonstrates that the Tolowa have taken finfish, invertebrates, mammals, and marine plants within this region since time immemorial, and should be included as traditional uses protected under the proposed state regulations.

Traditional tribal practices are consistent with the goals of the Marine Life Protection Act. The Tolowa Dee-ni' of the Smith River will continue to assert that there has been no cessation of their inherent rights to continue to fish and gather within their ancestral homelands. This factual record is being submitted as an act of good faith by the Tolowa Dee-ni' of the Smith River, who wish to establish a collaborative relationship with the State of California, to work towards our mutual respective goal to protect the marine resources that are of such significance to all of us.

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⁸ Note: although all of these references were used in creating the factual record, due to time and space constraints, only a selection are cited directly in the text. The remainder were used *passim*.

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ORAL HISTORY REFERENCES

1983 Tolowa Language Meetings Editorial Board:

- Loren Bommelyn of Nii~lii~chvn-dvn, Chairman
- Betty Green of Nii~lii~chvn-dvn, Secretary
- Berneice Humphrey of Yan'-daa-k'vt, Editor
- Tom Parsons, Editor
- Barbara Beall and Hallie Neil, Typists

1983 Tolowa Language Meetings Elder Cultural Contributors:

- Amelia Brown, Yuu-k'w'vt-day-na, of Lht'vsr-me'.
- Sam Lopez, Xay-lish, of Xaa-wan'-k'wvt.
- Ella Norris, Nanlh-chu-tr'e', of Da'-tin'-dvn.
- Ed "Goble" Richards, Lha'-dvn-tes-na, of Xaa-wan'-k'wvt.
- Laura Scott Coleman of Nii~lii~chvn-dvn.
- Ellen LaFountain of 'Ee-chu-le'.
- Edward Lopez of Xaa-wan'-k'wvt.
- Lena Smiley Lopez of 'Ee-chu-le'.
- Frank, Fred, and, Lila James Moorehead of Xaa-wan'-k'wvt.
- Irene Seymore Natt of Me'slh-telh-dvn.
- William Roberts (Willie Bob) of Taa-gha'rs-naa-lhxvn.
- Anna Brown Sanderson and Harriet Brown Smith of . Yan'-daa-k'vt.
- Ernest Scott of Nii~lii~chvn-dvn.
- Ethel Moorehead Scott of Xaa-wan'-k'wvt.
- Bertha Grimes Stewart of . Yan'-daa-k'vt.
- Letsy Brown Whipple of Xaa-wan'-k'wvt.

1983 Tolowa Language Meetings Contemporary Leaders and Contributors:

- Eunice Bommelyn
- Loren Bommelyn
- Audree Bowen
- Margaret Brooks
- Betty Brown
- Joseph Giovannetti
- Betty Green
- Carl James
- Margaret Matthews
- Darrell Moorehead
- Marvin Richards
- Viola Richards
- Sheryl Steinruck

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IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

JUN 29 2011

Jim Kellogg, President
Members of the Commission
California Fish and Game Commission
P.O. Box 944244-2090

Dear President Kellogg:

I am writing to you about the proposal being considered by the California Fish and Game Commission at your June 29, 2011 meeting regarding the establishment of the Pyramid Point State Marine Conservation Area (SMCA) pursuant to the Marine Life Protection Act (MLPA). We have been informed by the Smith River Rancheria that the California Department of Fish and Game is proposing the southern boundary of this SMCA be moved to a point that will include and impact the federal tribal trust property of Smith River Rancheria.

The Tribe's Rancheria was placed into trust by the federal government in 1908 for the benefit of the Indians of the Smith River. The reservation consists of over 163 acres, lying along the Pacific Ocean, and also includes Prince Island to the west. The federal government specifically chose to take these lands into trust for the benefit of the Indians of Smith River so the tribal members would have access to the ocean and its abundant supplies of sea food.

It is our understanding that throughout this MLPA Initiative process, all parties agreed to a "policy of avoidance," whereas areas of tribal use were to be avoided to the extent possible. This should be particularly true when federal tribal trust property is involved, such as is this case. It is also our understanding the MLPA Initiative and Department of Fish & Game staffs have proposed that the southern boundary for the Pyramid Point SCMA be moved northward in order to avoid the lands within the Smith River Rancheria. Our agency is in strong support of this recommendation. It is our position that California state civil regulatory laws can have no force and effect within the reservation boundaries of the Smith River Rancheria, and the intended purpose for which those lands were acquired for the Indians of Smith River cannot be impeded.

Feel free to call me at (916) 978-6000, if you have any questions.

Sincerely,

Acting Regional Director

cc: Chairperson, Smith River Rancheria

AX-14

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Comment Letter AX – Kimber, Anna

Response to Comment AX-1

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*.

Response to Comment AX-2

The following text has been added to the DEIR to clarify the foundation for the Proposed Project.

Executive Summary, last paragraph of Page ES-2 under “Project Development Process”:

During the primary round of proposal development, self-organized community groups proposed eight different MPA networks that were submitted to the North Coast Regional Stakeholder Group (NCRSG). The NCRSG reviewed these proposals, as well as existing MPAs in the Study Region and other data, and underwent two additional rounds of proposal development, culminating in a single proposal submitted to the BRTF. Based on this proposal from the NCRSG, the BRTF presented the Commission with two MPA proposals and recommendations for consideration in determining a preferred alternative. The two alternatives were the “Revised Round 3 NCRSG MPA Proposal” (RNCP) and the “BRTF Enhanced Compliance Alternative” (ECA). The Commission reviewed these proposals for feasibility and achievement of the MLPA Goals and Regional Objectives (see below). The Commission selected the RNCP proposal as the foundation for developing a preferred alternative. This process ultimately resulted in the development of the Proposed Project and its alternatives, which are evaluated in this DEIR.

Chapter 2, Project Description, last paragraph on Page 2-6:

At its June 29, 2011 meeting, the Commission selected the RNCP proposal as the foundation for developing a preferred alternative for the north coast MPAs. The Commission also considered three options for incorporating traditional tribal gathering or take practices in proposed MPAs for the Study Region within its preferred alternative.

Response to Comment AX-3

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

Response to Comment AX-4

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.

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 SLC shipwreck database.

Response to Comment AX-5

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*.

Response to Comment AX-6

See *Response to Comment AX-4*.

Response to Comment AX-7

In the DEIR, Appendix B, *Characterization of Consumptive Uses and Associated Socioeconomic Considerations of the Region*, evaluates consumptive commercial and recreational uses. Tribal consumptive uses are included in Appendix B; however, as discussed in DEIR Chapter 5 *Cultural Resources*, Section 5.3.2 *Cultural Landscape*, on page 5-10, there is a distinction between commercial and recreational consumptive uses and tribal consumptive uses:

Tribal members practice many traditional cultural uses of the coast and ocean waters that are consumptive and nonconsumptive. Traditional practices are specific to different tribes; they are not a single, large group of people. Consumptive uses include traditional subsistence, medicinal, spiritual, and ceremonial contexts. Nonconsumptive use examples include use of the viewshed from a particular place for spiritual purposes. These cultural uses are not recreational or commercial, though some tribes have commercial fishing interests, as well. Particular locations are important for certain resources and/or uses by a given family, tribe, or tribal community (MLPAI 2010a).

The analysis in Appendix B of the DEIR is further clarified in Chapter 6.6 *Environmental Justice*, in the subsection “Native American Tribes and Tribal Communities” on page 6.6-7:

As described in Appendix B, “Consumptive Uses and Associated Socioeconomic Considerations in the Region,” tribal take was included in the recreational statistics evaluated in the analysis. However, the potential for misunderstanding exists here. Although tribes and tribal communities may practice certain methods of take and/or seek certain species that are similar or identical to those practiced and/or sought in the recreational activities of the general population, and though they are required to possess a sport fishing license as required in the Fish and Game Code, it is recognized that tribes and tribal communities do not consider their use of marine resources as recreational. For tribes and tribal communities, these activities serve purposes of cultural fulfillment and traditional subsistence. Moreover, each tribe and tribal community adheres to their own unique cultural and traditional practices.

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

No changes to the DEIR are necessary.

Response to Comment AX-8

See *Response to Comment AX-4*.

Response to Comment AX-9

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

Response to Comment AX-10

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

Response to Comment AX-11

The Commission's proposed options, as defined in the June 9, 2011 "Option Report" were in fact evaluated in the CEQA document. Table 2-1 in Chapter 2, *Project Description* lists the proposed regulations within each MPA, including options (or sub-options as they are referred to in the Option Report).

The potential impacts of the proposed option for the Pyramid Point SMCA were evaluated in Chapter 5, *Cultural Resources, Impact CR-3: Adverse Impacts on Traditional Cultural Properties and Activities Involving Take by Federally Recognized Tribes*, and Chapter 6.6 *Environmental Justice, Impact EJ-1: Reduced Subsistence Take Opportunities for Tribes and Tribal Communities*. The issue raised in the comment is specifically addressed in the DEIR in the first paragraph at the top of Page 6.6-18.

As stated in the DEIR, tribal take activities would be allowed for recognized members of the Smith River Rancheria. There would be no impact on practices or subsistence take activities conducted by recognized members of the Smith River Rancheria at Prince Island. There would be no conflict with the Proposed Project on federal lands or waters held in trust by the United States for the benefit of the Smith River Rancheria.

Response to Comment AX-12

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*.

Also see *Response to Comment S3-1*.

Response to Comment AX-13

See *Response to Comment AX-4*.

Response to Comment AX-14

See *Response to Comment S4-3* regarding the Pyramid Point SMCA evaluation.