

# InterTribal Sinkyone Wilderness Council

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## *InterTribal Cultural Conservation for Sinkyone Indian Lands*

April 16, 2012

Becky Ota

Habitat Conservation Program, Marine Region

MLPA North Coast CEQA Comments

California Department of Fish and Game

c/o Horizon Water and Environment

P.O. Box 2727

Oakland, CA 94602

Sent via US Mail and Email

Re: Comments on Draft EIR, Marine Life Protection Act, North Coast Study Region

Dear Ms. Ota:

The InterTribal Sinkyone Wilderness Council (Council) submits these comments on the Draft EIR on proposed Marine Protected Areas (MPAs) under the Marine Life Protection Act for the North Coast Study Region (Draft EIR or Draft). The Council is a consortium of ten federally-recognized Tribes in Mendocino and Lake Counties. The Council's member Tribes are: Cahto Indian Tribe of the Laytonville Rancheria, Coyote Valley Band of Pomo Indians, Hopland Band of Pomo Indians, Pinoleville Pomo Nation, Potter Valley Tribe, Redwood Valley Rancheria of Pomo Indians, Robinson Rancheria of Pomo Indians, Round Valley Indian Tribes, Scotts Valley Band of Pomo Indians and Sherwood Valley Rancheria of Pomo Indians.

The Council has participated in the MLPA process in the North Coast Region from the beginning, including the discussions regarding the scope of the Draft EIR. Our comments on the Draft focus primarily on its treatment of the potential impacts on the environment from the Tribal take provisions in proposed MPAs in the southern bioregion of the North Coast Study Region.

In general, the Council believes the Draft EIR sufficiently identifies and analyzes the possible impacts to the environment from the Proposed Project and its alternatives. The Draft provides adequate information for the Fish and Game Commission to evaluate possible environmental impacts before adopting the network of MPAs and the Tribal take provisions. The Draft's conclusion that the potential environmental impacts are less than significant under the applicable CEQA is correct and amply supported by the information and alternatives analyzed. Accordingly, no mitigation measures are required to be analyzed or adopted.

The Draft's conclusion that the Tribal take provisions of the Preferred Alternative will not cause significant adverse impacts to the environment is amply supported by the information provided by the Tribes to the MLPA Initiative in the form of Tribal Profiles and to the Fish and Game Commission as part of the documentation to show historic or current uses of areas proposed for State Marine Conservation Areas (SMCAs). As noted in these submissions, Tribal use of the marine environment has been and continues to be based on stewardship principles embedded in Tribal traditions and culture. Further, because Tribal gathering, harvesting and fishing in the marine environment have continued largely uninterrupted since time immemorial, the Draft properly treats such uses as part of the environmental baseline for purposes of CEQA review.

The Draft's description of Tribal traditional uses is largely accurate and complete. The Draft properly relies on information submitted by the Tribes themselves. The Tribes' information comes from a wide variety of credible and reliable sources, such as Tribal elders, Tribal cultural preservation projects, and documentation by anthropologists, historians, archaeologists and linguists. This is precisely the kind of information on which decision-makers relied upon in evaluating the potential environmental impacts of the proposed project and feasible alternatives.

**InterTribal Sinkyone Wilderness Council is a Nonprofit Consortium of California Indian Tribes**

● *Cultural Conservation* ● *Native Stewardship* ● *Watershed Rehabilitation* ● *Cultural Ecology Education*

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In addition, we would like to suggest several factual clarifications to the chapter on Cultural Resources. In Section 5.3.1, Historical Setting, there is the statement that under Public Law 280, California Indian Tribes lost control of 40 rancherias and their lands “no longer had the protection conferred by federal status.” Page 5-9. Although Public Law 280 had a pernicious effect, it did not terminate all federal protections for Tribal land or divest the Tribes of ownership or control over their lands. Under Public Law 280, Congress authorized the State of California (and several other states) to assert criminal jurisdiction over crimes occurring within Indian reservations or rancherias and to assert limited civil jurisdiction over disputes involving Indian people. The U.S. Supreme Court has made clear that Public Law 280 did not authorize California to extend its civil regulatory laws over Indian reservations or land. *See Bryan v. Itasca County*, 426 U.S. 373 (1976). The Ninth Circuit Court of Appeals has reached the same conclusion. *Santa Rosa Band v. Kings County*, 532 F.2d 655 (9<sup>th</sup> Cir. 1975), *cert. denied*, 429 U.S. 1038 (1977). The Tribes continue to have sovereign authority under federal law over most civil matters involving Indian persons and occurring on the reservations. Public Law 280 certainly intrudes on the sovereign authority of Indian Tribes, but it is an exaggeration to suggest that it entirely deprived Tribes of control of their lands or terminated all federal protections.

BC-1

The termination of federal status for 41 rancherias occurred pursuant to the California Rancheria Act of 1958. Act of August 18, 1958, Pub. L. No. 85-671, 72 Stat. 619, as amended by Act of Aug. 11, 1964, Pub. L. 88-419, 78 Stat. 390 (authorizing distribution of assets of other requesting rancherias). The Tribes subject to the Rancheria Acts lost the protections of federal law, and their land and other assets were stripped of their trust status and distributed to their members. For all practical and legal purposes, those Tribes ceased to exist as separate sovereign entities under federal law. The Draft correctly notes that some of these Tribes have been restored to federal status and that others are awaiting restoration.

With regard to Section 5.4.3, Environmental Impacts, we suggest that additional emphasis should be placed on the policy of avoidance adopted by the Regional Stakeholder Group and Blue Ribbon Task Force in the subsection analyzing potential impacts on traditional cultural properties and take by federally recognized Tribes (Impact CR-3, at pages 5-21 through 5-23). Representatives of the InterTribal Sinkyone Wilderness Council participated in the development of this policy, and its application resulted in avoidance of many areas of cultural importance to Tribes in the North Coast Study Region. Emphasis on the avoidance policy bolsters the conclusion that impacts to traditional cultural properties and Tribal take are less than significant.

BC-2

In the section addressing environmental justice issues, there is a statement about non-federally recognized Tribes that should be clarified. In subsection 6.6.3, Environmental Setting, the statement is made that reservations and rancherias are home to both federally recognized Tribes and non-federally recognized Tribes. This is not accurate. Non-federally recognized Tribes, because they do not have sovereign status under federal law, do not occupy lands that have the same federal jurisdictional status as reservations and rancherias. The federal government does not hold the lands of non-federally recognized Tribes in trust nor do such lands have the same legal protection under federal law as the lands of federally recognized Tribes. Individual Native Americans who are not members of federally recognized Tribes in some cases do reside on the reservations and rancherias of federally recognized Tribes, but it is inaccurate to describe lands that may be held by unrecognized Tribes as being under the protection of federal law.

BC-3

We further suggest that the analysis of the feasibility of the Tribal Gathering Option in the Enhanced Compliance Alternative (ECA) in Section 8 should include the salient point, as noted elsewhere in the Draft, that Tribal gathering, harvesting and fishing are not properly treated as recreational in nature under this alternative. As the Draft notes, Tribal uses of the marine environment have a unique cultural component that distinguishes such uses from those that are recreational. This characteristic of Tribal uses is relevant to the feasibility analysis, because the

BC-4

comparable level of take allowed between Tribal and recreational categories should not determine feasibility. Rather, the characterization of Tribal take as a distinct and separate category is critically important with regard to whether the ECA is feasible at all. It plainly is not feasible if Tribal take is simply lumped together with recreational take, as stipulated by the ECA.

BC-4

Finally, the impact analysis of the ECA contains the erroneous statement that the recreational take allowances in the near shore SMCAs under that alternative are “functionally comparable” to the take allowances for specified federally recognized Tribes in the Proposed Project SMCAs. The Draft concludes that, as a result, the impacts on those Tribes under the ECA would be only “slightly greater.” Pages 8-10 and 8-19. In fact, the species allowed to be taken by Tribes in the SMCA near shore areas under the ECA are somewhat more limited than allowed under the Proposed Project. For example, the ECA near shore Big Flat SMCA allows take of only one species of crab and two species of shrimp, whereas the Proposed Project Big Flat SMCA would allow Tribal take of all species of crab and shrimp permitted under State law. In light of this difference, the impacts the ECA’s restrictions would cause Tribes qualify as more than slight. The Draft should reflect this fact.

BC-5

We appreciate the opportunity to provide these comments. Please let us know if you have questions or need more information about any of our comments.

Sincerely,



Priscilla Hunter  
Chairwoman

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## Comment Letter BC – Rosales, Hawk

### Response to Comment BC-1

Based on this comment, in DEIR Chapter 5 *Cultural Resources*, the second paragraph on page 5-9 is modified as follows:

As nonindigenous settlers colonized the north coast, many tribes were relocated inland and/or became landless or homeless. In the early 1900s, the U.S. Congress passed a series of laws that provided funds to purchase land for landless and homeless California Indians. These parcels of land were called *rancherias* and were often occupied by small family groups or unrelated families. With the passage of Public Law 83-280 in the mid 1950s, the California Rancheria Act of 1958, federal status was terminated for 41 rancherias. California tribes lost control of 40 rancherias, and their lands no longer had the protection conferred by federal status. In 1983, a lawsuit resulted in restoring federal recognition to 17 rancherias, while others are still waiting for the reversal of termination. Rancherias in the north coast that regained their federal status through this lawsuit include Blue Lake, Elk Valley, Pinoleville, Potter Valley, Redwood Valley, Rhonerville, and Smith River (MLPAI 2010c).

### Response to Comment BC-2

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

### Response to Comment BC-3

Based on this comment, in DEIR Chapter 6.6 *Environmental Justice*, in the subheading “Population Trends and Projections,” the end of the first paragraph on page 6.6-4 is modified as follows:

Reservations and rancherias are also located throughout these three counties and are home to a number of federally ~~and non-federally~~ recognized tribes and tribal communities that maintain strong cultural connections to the marine environment; however, there are a number of non-federally recognized tribes and tribal communities that do not reside in reservations or rancherias.

### Response to Comment BC-4

Comment noted. Based on this comment, in DEIR Chapter 8, *Alternatives Analysis*, the first sentence of the third paragraph under the subheading “Characteristics of the ECA Alternative” on page 8-9 is modified to add a footnote reference as follows:

This alternative does not include take exemptions for specifically federally recognized tribes, tribal take would be regulated under the same conditions as for all recreational users<sup>1</sup>. In the offshore portion of the four divided SMCAs, and the other SMCAs, recreational take is established at “moderate-high” or “high” level of protection, for all recreational take, including tribal take<sup>2</sup>.

Corresponding footnotes are added at the bottom of DEIR page 8-9 as follows:

<sup>1</sup> See page 5-10 of Chapter 5 *Cultural Resources* for a discussion of recreational consumptive uses versus tribal consumptive uses.

<sup>2</sup> See the footnote on page 6.6-7 of Section 6.6, *Environmental Justice* for a discussion of tribal take.

#### Response to Comment AA-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*.

In addition, see *Response to Comment AP-6* for a discussion on definition of the terms consumptive and nonconsumptive use as utilized in the DEIR.

No changes to the DEIR are necessary.

#### Response to Comment BC-5

Your comment is noted. In response, DEIR Chapter 8 *Alternatives*, the first paragraph on page 8-19 has been revised as follows:

For the specified federally recognized tribes, the differences under Alternative 2 would result in ~~slightly~~ greater impacts on the tribal take activities at Reading Rock SMCA and the offshore SMCAs at Pyramid Point, Samoa, Big Flat, and Vizcaino/Double Cone Rock, where a subset of recreational take allowances are included that would provide for some, but not all, of the tribal take proposed under the Proposed Project.

April 15, 2012

Ed Salsedo  
POB 276  
Orick, Calif. 95555  
707-488-0104

MLPA North Coast CEQA Comments  
Depart. Fish and Game  
c/o Horizon Water and Environment  
POB 2727  
Oakland, Calif. 94602

Re: MLPA CEQA Comments/ Notice of Intent

I am concerned that that the CEQA process to implement the North Coast portion of the MLPA is flawed.

Having made inquiries into the participation of The California Coastal Commission (CCC) in the process I find that there has been little to none. Having spoken to John Dixon the so called representative of the Coastal Commission, I asked what authority he had to excluded the CCC from the process he said none and referred me to the San Francisco Office. I spoke to Mark Delaplaine, asked if the CCC had signed off on the process, he responded that he did not know and would check into it for me. Mr. Delaplaine could not produce any Documents on CCC letter head giving up authority and/or jurisdiction of coastal waters with in there sphere of influence.

He did provide me with a letter from Jaime C. Kooser, PH.D., Deputy Director, Energy, Ocean Resources and Water Quality to Ms Patricia Wolf ,Regional Manager , Marine Region CDFG.

The letter states "I understand you recently had discussions with John Dixon, the Coastal Commissions marine ecologist and representative on the Marine Life Protection Act ("MLPA") team,..... will require a coastal development permit..." The letter continues, "This letter is to inform you that after discussing this matter internally, we have determined that no coastal development permit is necessary if the MMA only prohibits the capture , removal or disturbance of living biological resources, and does not limit public'sacce4ss to sate waters. Although we believe that even as so understood the establishment of MMAs could still be considered to result in a "change in the intensity of use of water" for purpose of section 30106 of the Coastal Act"

Please provide any documentation from CCC relinquishing authority over project area and reasons for have done so.

Having spoken to Elizabeth Pope, DFG, Eureka, I asked her the same questions as afore mentioned, she referred me to Mr. Dixon, her take on the inquire was that there was no structure proposed on the effected area and that all proposed areas were below Mean HighTide.

BD-1

BD-2



I inquired if that be the case, I would like to see all authorization for implementation of proposed project by The State Lands Commission. She informed me that there was none.

The Sate Lands Commission holds title to and manages some four million acres of sovereign land held in trust for the people of California. These lands, consisting of coastal and tidelands and all navigable rivers, streams and lakes.....they cannot be sold and must be used for water-dependent or water-oriented purposes such as navigation, boating, recreation and fishing.

In California, the Public Trust Doctrine historically has referred to the right of the public to use California's waterways to engage in "commerce, navigation, and fisheries" The Doctrine was described by the California Supreme Court in its historic National Audubon Society v. Superior Court (1983) decision as "an affirmation of the duty of the state to protect the people's common heritage of streams, lakes, marshlands and tidelands, surrendering the right of protection only in rare cases when the abandonment of that right of protection is consistent with purpose of the trust"

With this explanation of the purpose and jurisdiction of the Sate Lands Commission it beyond me that they were not included in the process.

Please provide documentation from State Lands Commission relinquishing jurisdiction and/or authority over proposed project area.

The EIR is to inform other government agencies and the public generally of the environment impact of a proposed project (No Oil Inc. v. City of Los Angeles, 13 Cal.3d 68.)

CEQA does not require technical perfection in an EIR, but rather adequacy, completeness, and a good- faith effort at full disclosure. A court does not pass upon the correctness of an EIR's environmental conclusions, but only determines if the EIR is sufficient as an informational document. (Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692

CEQA requires that decisions be informed and balanced. It must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement (Laurel Heights Improvement Assoc. v. Regents of U.C. (1993) 6 Cal.4<sup>th</sup> 1112 and Citizens of Goleta Valley v.. Board of Supervisors (1990) 52 Cal.3d 553

CEQA 15004 3C

The environmental document preparation and review should be coordinated in a timely fashion with the existing planning, review, and project approval process being used by each public agency. These procedures, to the maximum extent feasible, are to run concurrently, not consecutively.

In that Coordination is required by Astute, I believe that the current draft EIR is flawed in

BD-2

BD-3



that the CCC and the State Lands Commission were exclude from the process.

BD-3

I further contend that the MLPA is unconstitutional , in that it violates Article 1, Section 25 of the California Constitution.

The people shall have the right to fish upon and from the public lands of the State and in the waters thereof, excepting upon lands set aside for fish hatcheries, and no land owned by the State shall ever be sold or transferred without reserving in the people the **absolute right to fish thereupon;** and no law shall ever be passed making it a crime for the people to enter upon public land within the State for the purpose of fishing in any water containing fish that have been planted therein by the State .....

BD-4

My final comment is that if any group or class of individual United States citizens is given preferential treatment when and if the proposed project is implemented I here by give notice that a court action will be filed under the equal protection clause of the 14<sup>th</sup> amendment.

BD-5

Sincerely,



Ed Salsedo

Cc. California Resource Department, DFG

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## Comment Letter BD – Salsedo, Ed

### Response to Comment BD-1

This comment does not address the sufficiency of the EIR. Further, this comment is more appropriately addressed in the rulemaking process. See *Response to Comment A1-6*.

### Response to Comment BD-2

This comment raises issues of the legitimacy of the regulations and the implementation of the regulations and does not address the sufficiency of the EIR. However, the comment may be 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*.

Note, however, that as required by CEQA, both the California Coastal Commission and the SLC were fully notified through the planning process and development of the DEIR for the Proposed Project. Comments on the DEIR have been submitted by the SLC (Comment Letter BE).

### Response to Comment BD-3

See *Response to Comment BD-2*.

### Response to Comment BD-4

This comment does not address the sufficiency of the EIR.

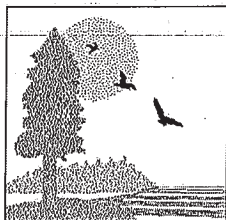
### Response to Comment BD-5

These comments raise complex issues of law and policy and do not address the sufficiency of the EIR.

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STATE OF CALIFORNIA

EDMUND G. BROWN JR., Governor

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April 16, 2012

File Ref: SCH #2011092029

Becky Ota  
California Department of Fish and Game  
350 Harbor Blvd.  
Belmont, CA 94002**Subject: Draft Environmental Impact Report (Draft EIR) for the Marine Life Protection Act (MLPA) North Coast Study Region, Del Norte, Humboldt and Mendocino Counties**

Dear Ms. Ota:

The California State Lands Commission (CSLC) staff has reviewed the subject Draft EIR for the Marine Life Protection Act North Coast Study Region (Project), which is being prepared by the California Department of Fish and Game (CDFG) on behalf of the California Fish and Game Commission (CFGC). CFGC, because of its intent to amend regulations related to Marine Protected Areas (MPAs) pursuant to authority established through passage of the MLPA (Stats. 1999, Ch. 1015), is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The CSLC will act as a trustee agency because of its trust responsibility for projects that could directly or indirectly affect sovereign lands, their accompanying Public Trust resources or uses, and the public easement in navigable waters. Additionally, because the Project involves sovereign lands, the CSLC may act as a responsible agency.

**CSLC Jurisdiction and Public Trust Lands**

The CSLC has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The CSLC also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6301, 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the Common Law Public Trust. Additionally, the CSLC is the state entity responsible for locating the offshore federal-state boundary.

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all people of the State for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space; however, the CSLC may authorize other uses not

BE-1



inconsistent with the Public Trust on a case by case basis. Public Trust values and uses include, but are not limited to, swimming, boating, and general water-related recreational purposes, preservation of lands in their natural state for scientific study, as open space, and as wildlife habitat.

The information under the heading "State Lands Commission" on p. 1-22 should include information about the Public Trust Doctrine as described above. Additional information is available on the CSLC's website:

[http://www.slc.ca.gov/Policy\\_Statements/Public\\_Trust\\_Home\\_Page.html](http://www.slc.ca.gov/Policy_Statements/Public_Trust_Home_Page.html).

On tidal waterways, the State's sovereign fee ownership extends landward to the mean high tide line (MHTL), except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court. On navigable non-tidal waterways, including lakes, the State holds fee ownership of the bed of the waterway landward to the ordinary low water mark and a Public Trust easement landward to the ordinary high water mark, except where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

BE-1

All of the submerged lands waterward of the MHTL in the Project area are sovereign lands. A lease from the CSLC is required for any portion of a project extending onto state owned sovereign lands, which are under its exclusive jurisdiction; use of lands under the jurisdiction of legislative or federal grantees requires permission from that grantee/trustee of sovereign Public Trust lands. CSLC staff has had discussions with staff of the MLPA Initiative, the CDFG, and the Department of Parks and Recreation about the use of sovereign land as part of the MLPA process. Some areas proposed as MPAs may have existing leases with the CSLC that could conflict with certain MPA designations or may be under the jurisdiction of local grantees. CSLC staff has sent existing lease information in the form of Geographic Information Systems (GIS) data to help avoid conflicts with existing facilities and uses under lease; information on existing uses of those granted lands must be obtained from the individual grantees.

### **Project Description**

The Draft EIR analyzes the effects of designing and implementing the northern California coast component of a statewide network of MPAs, as required by the MLPA, and other marine managed areas and Special Closures determined appropriate to help fulfill the MLPA. Specifically, the area subject to this analysis includes state waters between Alder Creek (Mendocino County) and the California border with Oregon (Del Norte County).

CFGC proposes to designate and enforce protection of the proposed MPAs and Special Closures to meet the agency's objectives and needs as follows:

- To protect the natural diversity and abundance of marine life, and the structure, function, and integrity of marine ecosystems;
- To help sustain, conserve, and protect marine life populations, including those of economic value, and rebuild those that are depleted;

- 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;
- To protect marine natural heritage, including protection of representative and unique marine life habitats in California waters for their intrinsic value;
- To ensure that California's MPAs have clearly defined objectives, effective management measures, and adequate enforcement, and are based on sound scientific guidelines; and
- To ensure that the state's MPAs are designed and managed, to the extent possible, as a component of a statewide network.

CSLC staff understands that the Project would include the designation of the following areas in the North Coast Study Region under the MLPA:

- Six state marine reserves (SMRs);
- 13 state marine conservation areas (SMCAs);
- One state marine recreational management area (SMRMA); and
- Seven special closure areas.

Two alternatives are discussed in depth in the Draft EIR: Alternative 1, the "No Project" Alternative required by CEQA, and Alternative 2, the Enhanced Compliance Alternative. The Draft EIR identifies Alternative 2, which would include six SMRs, three SMRMAs, one SMCA recommended for future designation as a State Marine Park (SMP), and 11 SMCAs, as the Environmentally Superior Alternative.

### **Environmental Review**

CSLC staff requests that CFGC consider the following comments on the Project's Draft EIR.

### **Management, Enforcement, and Monitoring of MPAs**

1. Monitoring and Adaptive Management. Although the impacts of increased greenhouse gas emissions from altered fishing vessel traffic are discussed in the Draft EIR, there is no mention of considering how climate change will impact the MPA network's effectiveness. Considering the potential for sea level rise, fluctuations in seawater temperature, salinity, and chemistry, and changes in ocean currents, nearshore habitat, as well as the concentration and diversity of marine species in the proposed MPAs may shift due to factors not related to MLPA protections. In section 2.5.3, Monitoring and Adaptive Management, the Draft EIR discusses the criteria that the Project's proposed monitoring program will meet. Although the criteria are open-ended enough to account for biogeochemical changes in the MPAs due to climate change, staff recommends that CDFG and CFGC consider modeled predictions of these changes when designing the Project's monitoring program and any subsequent adaptive management.

BE-2

### Land Use and Utilities

2. Impacts on Future CSLC Leasing. In section 6.1.4, the Draft EIR states that the regulations would restrict new CSLC leases within an MPA without approval of the CFGC. In addition to the CSLC's interest in maintaining appropriate jurisdictional authority over sovereign lands already leased under existing legal authority, the CSLC is concerned about designations that may interfere with its ability to approve future leases in areas designated as MPAs. This consideration necessarily requires a balance between the MLPA's specific directive to improve the effectiveness of the MPA network in order to protect the marine ecosystem, a goal supported by the CSLC and consistent with the Public Trust, and the need for the CSLC to preserve its ability to exercise its discretionary authority to balance Public Trust uses when approving leases on state lands. Although the Draft EIR, in its evaluation of Impact LU-3, does consider the Project's potential conflict with present and future CSLC leases, the analysis concludes that, because any future CSLC leases are speculative, the Project will have a less than significant impact on land use conflicts with CSLC. Staff is concerned, however, of conflicting agency mandates when considering future projects, especially regarding projects that can maintain or utilize non-biological resources.

BE-3

3. Marine Renewable Energy Facility Siting. Impact LU-7 discusses the potential impact on future marine renewable energy development in the North Coast Study Region. Conflict with marine renewable energy projects, both at the pilot project phase and at full-buildout, is particularly a concern along the North Coast, which has high wave energy potential relative to the rest of the California coast. Although the Draft EIR states the Project would only create restrictions in 13 percent of the Study Region, specific requirements of wave energy projects may result in conflicts. These requirements include proximity to onshore electrical transmission infrastructure and electricity demand, proximity to a port large enough to accommodate vessels for equipment delivery and maintenance vessels, available wave energy, ocean floor substrate type, and water depth, and others. Because of these siting requirements, not all offshore areas are necessarily interchangeable, and as interest in offshore energy continues, potential siting conflicts may arise between optimal wave energy sites and designated MPAs. The CSLC staff recommends CDFG's continued participation in the California Marine Renewable Energy Working Group in the agencies' collective effort to balance protection and enhancement of offshore habitat and species with development of renewable energy production.

BE-4

### Cultural Resources

4. Shipwreck Database Information. The wording used in Table 5-1, "Proposed MPAs and Special Closures, and Known Shipwreck Sites" to describe the output from the CSLC's shipwrecks database is misleading. As described in the accompanying text, the locations of most shipwrecks are unknown. In references to shipwrecks' recorded locations as determined solely by information from the CSLC database, staff suggests that the words "Known" throughout the table and text be replaced with "Potentially Located." "Known" connotes too much certainty that the resources are

BE-5

present within a specific area. Similarly, the use of the word "documented" in the second sentence under the "Shipwrecks" heading should be replaced with "potentially located" to indicate less certainty about these resources.

BE-5

CSLC staff requests that a footnote be added to Appendix E indicating that the latitude and longitude coordinates for the locations of shipwrecks are estimates based on newspaper and other historic accounts and do not represent known locations in most cases.

5. Underwater Parks. Point Cabrillo Light Station. Please consider adding the word "Some" at the beginning of the sentence "Historians consider the shipwreck as "the most significant shipwreck on the west coast," since not all historians would agree. There are many other candidates including the SS *Brother Jonathan*, SS *City of Rio de Janeiro*, and San Agustin, to name a few.

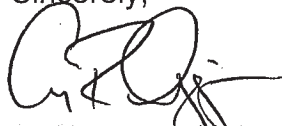
BE-6

Please either delete the information about the historic anchors at Russian Gulch and Van Damme State Parks or add a sentence that, under current State law, it is unlawful for sport divers to salvage anchors or other maritime artifacts from State lands without a permit from the CSLC.

Thank you for the opportunity to comment on the subject Draft EIR. As a trustee agency, and potentially a responsible agency, the CSLC will need to rely on the Final EIR for the issuance of any amended or new lease as specified above and, therefore, we request that you consider our comments prior to adoption of the EIR. Please send additional information on the Project to the CSLC staff listed below as plans become finalized.

Please send copies of future Project-related documents, including electronic copies of the Final EIR, Mitigation Monitoring and Reporting Program, CEQA Findings and Notice of Determination (NOD) when they become available, and refer questions concerning environmental review to Sarah Sugar, Environmental Scientist, at (916) 574-2274 or via e-mail at [sarah.sugar@slc.ca.gov](mailto:sarah.sugar@slc.ca.gov). For questions concerning archaeological or historic resources under CSLC jurisdiction, please contact Senior Staff Counsel Pam Griggs at (916) 574-1854 or via email at [pamela.griggs@slc.ca.gov](mailto:pamela.griggs@slc.ca.gov). For questions concerning CSLC leasing jurisdiction, please contact Ninette Lee, Public Land Management Specialist, at (916) 574-1869, or via email at [ninette.lee@slc.ca.gov](mailto:ninette.lee@slc.ca.gov).

Sincerely,



Cy R. Oggins, Chief  
Division of Environmental Planning  
and Management

cc: Office of Planning and Research  
LMD, CSLC  
DEPM, CSLC

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## Comment Letter BE – Sugar, Sarah

### Response to Comment BE-1

Comment noted. This issue was recognized and discussed in the DEIR Chapter 6.1, *Land Use and Utilities*, and specifically addressed in Section 6.1.4 *Impact Analysis*, in the subsection “Impact LU-3: Conflict with California State Lands Commission Leases.” As this comment does not address the sufficiency of the EIR or its analysis, no change to the EIR is necessary.

### Response to Comment BE-2

CEQA requires an analysis of impacts of a proposed project on the environment, not impacts of the environment on the project. The implementation of the Proposed Project or alternative regulatory proposals is not expected to have a significant impact on climate change or sea level rise.

### Response to Comment BE-3

As described in the DEIR, because no specific proposals related to leases of state lands in the Study Region are known at this time, it would be speculative to make conclusions with respect to the Proposed Project’s impacts on such proposals. Instead, at the time that such a proposal were developed, the MPA network would be part of that proposal’s baseline environmental conditions, and the impact evaluation would focus on the impacts of that proposal on the MPA network, rather than the other way around.

### Response to Comment BE-4

Comment noted. See Master Responses 1 and 2 regarding the approach to impacts of the Proposed Project, as compared to the impacts of future proposals on the Proposed Project.

### Response to Comment BE-5

With regard to the discussion on shipwrecks in DEIR Chapter 5 *Cultural Resources*, Section 5.3.3 *Known and Recorded Cultural Resources* recognizes the uncertainty in shipwreck information in the Study Region and within the SLC shipwreck database. The last four sentences of the first paragraph in the “Shipwrecks” subsection of DEIR Chapter 5, page 5-14, are provided below for reference.

...it is clear that in some cases, location information contains errors in the original data. **Table 5-1** shows the historic shipwreck locations that appear inside or less than 1 mi from the Proposed Project and relevant proposed Options. The nearby locations are included in the table to account for the possibility of mapping error described above. Additionally, shipwrecks identified in the SLC database are for the most part merely the last reported sighting of a sinking ship rather than a verified location of a shipwreck. These limitations notwithstanding, the shipwreck database is a useful indicator of an area’s sensitivity for shipwrecks.

The comment suggests changing the word “documented” in the discussion on shipwrecks to “potentially located.” DEIR Chapter 5 *Cultural Resources*, Section 5.3.3 *Known and Recorded Cultural Resources*, the second sentence in the “Shipwrecks” subsection, on page 5-14, has been changed as follows:

A shipwreck database maintained by SLC was consulted to identify wrecks that could be within proposed MPAs or special closures. A review of the SLC shipwreck database revealed that 132 wrecks are potentially located ~~documented~~ offshore of the Mendocino County, 131 in Humboldt County, and 23 in Del Norte County.

The comment also suggests changing the wording in Table 5-1 on DEIR pages 5-14 through 5-16 from “known” to “potentially located.” However, the term “known” in the table headings is intended to differentiate between shipwrecks that have been sited (either submerged or as they were sinking) as opposed to others that might exist, but have not been discovered. The table is shown to illustrate the sensitivity of an area for shipwrecks. It is not intended to suggest that the exact locations are known. To clarify this discrepancy, the title of Table 5-1 has been adjusted to add “approximate locations” to the table title. Specifically, DEIR Chapter 5 *Cultural Resources*, Section 5.3.3 *Known and Recorded Cultural Resources* on page 5-14 in the “Shipwrecks” subsection has been changed as follows:

**Table 5-1.** Proposed MPAs and Special Closures, and Approximate Locations of Known Shipwreck Sites\*

The comment additionally requests that a footnote be added to DEIR Appendix E *Cultural Resources Analysis Memorandum* indicating that the coordinates for the locations of shipwrecks are estimates based on newspaper and historic accounts. A footnote has been added to DEIR Appendix E, *Cultural Resources Analysis Memorandum*, as follows:

Addition of an asterisk (\*) next to Latitude and Longitude columns of 3 tables in Appendix E listing information on wrecks in Del Norte County, Humboldt County, and Mendocino County.

Addition of the following footnote at bottom of each table:

\* These latitude and longitude coordinates are estimates based on data from various sources, including newspaper and historic accounts, and do not represent known documented locations.

#### Response to Comment BE-6

The last sentence of the first paragraph of “Point Cabrillo Light Station,” DEIR Chapter 5 *Cultural Resources*, Section 5.3.3, on page 5-17, has been revised as follows:

Some H~~h~~istorians consider the shipwreck as “the most significant shipwreck on the west coast” (State Parks 2011a, 2011b).

The last sentence of the first paragraph of “Russian Gulch State Park,” in DEIR Chapter 5 *Cultural Resources*, Section 5.3.3, on page 5-17, has been revised as follows:

Sport divers have salvaged an anchor, chain, and vessel transom piece recovered within the underwater park that are now displayed on the front lawn of the Park’s Mendocino District Headquarters (State Parks 2011a). \*

\* Note that under current state law, it is unlawful for sport divers to salvage anchors or other maritime artifacts from state lands without a permit from the CSLC.

No edits are necessary for the Van Damme State Park anchor information, as the description notes that this anchor is located at the visitor center and not underwater.



April 16, 2012

Re: Draft Environmental Impact Report (DEIR) for North Coast Marine Life Protection Act (MLPA) process

To whom it may concern:

On behalf of our 62,000 members, we are writing to support the advancement of the CEQA process for the north coast study area of the MLPA and suggest specific changes and additions to the final EIR. Audubon California and the Mendocino Coast Audubon chapter have been committed to the north coast process from an early stage. Dave Jensen, president of Mendocino Coast Audubon was appointed to the Regional Stakeholder Group, and I was a non-voting participant on the special closures work group, providing technical support and other assistance.

Much of Audubon's focus in the process has been on seabirds, the most rapidly declining group of birds in the world<sup>1</sup>, as well as the group most sensitive to climate change<sup>2</sup>. Seabirds are considered excellent indicators of the health and productivity of marine ecosystems due to their rapid response to oceanographic conditions<sup>3</sup>. Seabirds and shorebirds are a statutory endpoint to benefit in the Master Plan for the MLPA.

Within California itself, the north coast is of special significance to our resident breeding seabirds, hosting about 40% of the state's total. Castle Rock hosts 250,000 common murre, our "California penguin" and a focal species for state conservation efforts. Close to \$10 million has been spent on murre colony restoration and protection in the last 30 years through the OSPR Trustee Council series of mitigation settlements. These activities restore colonies through eradicating invasive species and conducting social attraction to rebuild extirpated colonies. In a complementary fashion the MLPA enhances the food base for marine and coastal birds at offshore and estuarine marine reserves, and protects colonies from disturbance through special closures which serve as buffers around these colonies.

<sup>1</sup> Croxall, J. et al. 2012. Seabird conservation status, threats and priority actions: a global assessment. *Bird Conserv. Int.* 22: 1–34.

<sup>2</sup> State of the Birds 2010: Climate Change. Cornell Lab of Ornithology.

<sup>3</sup> Cury et al. 2012. One-third for the birds: global seabird response to forage fish depletion. *Science*. 23 December 2011. 334 (6063) pp. 1703-1706.

In light of these considerations, we have the following comments on the DEIR:

**The text on page 2-2 should include additional information on the hemispheric importance of the California Current Large Marine Ecosystem as well as the increasingly recognized importance of forage fish.**

Recent studies tracking the movement of highly migratory marine wildlife highlight the northern California Current as one of the most important regions in the Pacific Basin for seabirds and other marine wildlife such as sharks, large predatory fish, whales, sea turtles and pinnipeds seeking rich feeding grounds<sup>4</sup>. Another study just released by the Lenfest Ocean Program shows the economic advantage of leaving fish in the water versus removing them for other purposes, based on commercial and recreational fisheries considerations alone<sup>5</sup>

BF-1

**As is presented in the DEIR, the seven Special Closures included in the Proposed Project (page 2-8) should remain unmodified and a component of the Proposed Project in the Final EIR as the sum of the regulatory package to be considered by the Commission for adoption.**

Breeding seabirds and marine mammals are prone to disturbance and are known to abandon their nests and haul-outs after as little as one disturbance event from boats, foot traffic or aircraft. This susceptibility to disturbance is the rationale for a 300-foot closure around the Farallon Islands National Wildlife Refuge; the six special closures recently put into place for the North Central Coast MPA study region; and, for the initiation of the Seabird Protection Network of the Gulf of the Farallones National Wildlife Refuge.

Area closures are crucial to the viability of seabird and marine mammal populations in the north coast. Its abundant rocks and islets supports 40% of California's breeding seabirds, over 500,000 individuals. Among the 13 species breeding here are California Species of Special Concern Fork-tailed Storm-petrel, Cassin's Auklet and Tufted Puffin.<sup>6</sup> Seabirds are an integral part of the marine ecosystem and provide substantial economic and aesthetic benefits to north coast residents. The North Coast's rocks and islets comprise most of the BLM's California Coastal National Monument, which ranks seabird conservation as one of its top priorities.

BF-2

The Special Closures Work Group of the Regional Stakeholder Group, which includes commercial and recreational fishermen, agreed on 10 sites for introduction to the larger Stakeholder Group. These sites were selected for their high importance to breeding seabirds

<sup>4</sup> Block, B. et al. 2011. Tracking apex marine predator movements in a dynamic ocean. *Nature* 475. pp. 86-90.

<sup>5</sup> Pikitch, E. et al. 2012. Little fish, big impact: a summary of new scientific analyses. Lenfest Ocean Task Force. Stoy Brook New York.

<sup>6</sup> Shuford, W.D., and Gardali, T., eds. 2008. California Bird Species of Special Concern: a ranked assessment of species, subspecies, and distinct populations of birds of immediate conservation concern in California. *Studies of Western Birds* 1. Western Field Ornithologists and California Department of Fish and Game.

and/or marine mammals as well as their negligible impacts on recreational or commercial fishing access or revenues. Each site had been identified as a seabird or marine mammal hotspot by the North Coast Science Advisory Team. Of the 10 sites, Castle Rock, False Klamath Complex, and Trinidad Complex are considered globally significant colonies in that they support 10,000-250,000 breeding seabirds. Ultimately the Regional Stakeholder Group included seven of the ten proposed sites in the Unified Proposal submitted to the Blue Ribbon Task Force.

BF-2

We emphasize that that this final set of areas totals only 0.18 km<sup>2</sup> represents a compromise and was accepted for inclusion by Tribal, business, fishing and conservation representatives first on the special closures work group, and then on the larger Regional Stakeholder Group.

The seven motions adopted by the MLPA Blue Ribbon Task Force included the forwarding of the seven Round 3 NCRSG Special Closures Recommendation to the Commission as part of the overall regulatory package.

### **Special closures need to be included in the Alternative 2.**

We support the Proposed Project and therefore do not support Alternative 2, however, we noted that the DEIR fails to include the special closures in Alternative 2 despite the clear intent of the Blue Ribbon Task Force and the Commission to include them in any Alternative, aside from the no-project alternative.

From the BRTF, Attachment A of the “Summary of Actions Resulting from Motions Adopted by the MLPA Blue Ribbon Task Force for the MLPA North Coast Study Region” dated November 16, 2010, states: BRTF Motion 1: Forward the Revised Round 3 MLPA North Coast Regional Stakeholder Group (NCRSG) MPA Proposal and Special Closures Recommendation for the MLPA North Coast Study Region to the California Fish and Game Commission

BF-3

From the Commission, the Initial Statement of Reasons dated December 12, 2011 states multiple times that the “Proposed Regulation includes 19 MPAs, one marine managed area (MMA), and seven special closures.”

The marine advisor to the Commission recently confirmed that the absence of the special closures in Alternative 2 DEIR is an oversight and should be remedied in the final EIR.

### **The Proposed Project should not be subject to further modification.**

We urge the Commission to adopt the Proposed Project at its June hearing in Eureka. We support the Proposed Project with reluctance as it does not meet size, spacing or habitat representation guidelines in the MLPA Master Plan. These deficiencies were pointed out by the Fish and Game Commission at its February 2, 2011 hearing. However, we respect the wishes of the Regional Stakeholder Group which arrived at consensus after an unusually challenging set of negotiations. The Proposed Project is supported by regional legislators, as well as north coast cities, counties and harbor districts.

BF-4



Thank you for the opportunity to submit these comments.

Sincerely,

Anna Weinstein

A handwritten signature in dark ink, appearing to read 'Anna Weinstein', with a long horizontal flourish extending to the right.

Seabird program director

## Comment Letter BF – Weinstein, Anna

### Response to Comment BF-1

The commenter suggests additional language in DEIR Chapter 2 to reference peer-reviewed scientific studies on migratory marine wildlife in the North Coast Study Region. The project location description in DEIR Chapter 2 *Project Description*, on page 2-2, has been revised as follows:

The Study Region is part of the California Current Large Marine Ecosystem (LME), one of only four temperate upwelling systems in the world. The California Current LME is considered globally important for biodiversity because of its high productivity and the large numbers of species it supports. The California Current LME extends from Vancouver Island to Baja California and is stimulated by upwelling, which richly supplies surface waters with nutrients. These nutrients support blooms of phytoplankton, which in turn form the foundation for a food web that includes thousands of species of invertebrates, fish, marine mammals, and seabirds (MLPAI 2010a). Recent studies tracking the movement of highly migratory marine wildlife highlight the northern California Current as one of the most important regions in the Pacific Basin for seabirds and other marine wildlife such as sharks, large predatory fish, whales, sea turtles and pinnipeds seeking rich feeding grounds (Block et al. 2011). Another study just released by the Lenfest Ocean Program shows the economic advantage of leaving fish in the water versus removing them for other purposes, based on commercial and recreational fisheries considerations alone (Pikitch et al. 2012).

### Response to Comment BF-2

See *Response to Comment AN-4* regarding inclusion of special closures in Alternative 2.

### Response to Comment BF-3

See *Response to Comment AN-4*.

### Response to Comment BF-4

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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## WINNEMEM WINTU TRIBE

14840 BEAR MOUNTAIN ROAD • REDDING, CA 96003

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WWW.WINNEMEMWINTU.US

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April 11, 2012

Sonke Mastrup, Executive Director  
California Fish & Game Commission  
P.O. Box 944209  
Sacramento, Ca. 94244-2090

Re: Support for Traditional Tribal Uses in Proposed California Marine Protected Areas

Dear Director Mastrup,

The Winnemem Wintu Tribe strongly supports the proposed regulation to allow federally and state (SB18) recognized Tribes of the North Coast to continue traditional non-commercial fishing, gathering and harvesting within the state marine conservation areas (SMCAs) proposed for the North Coast Study Area.

Tribes hold unique legal and political status unique to their sovereign rights as independent governments. The Tribes of the North Coast region have participated in the MLPA process with the Marine Life Protection Act Initiative, Blue Ribbon Task Force, Department of Fish & Game and the Fish & Game Commission by providing verbal testimony and factual documentation of the traditional Tribal uses and practices that are directly derived from marine and coastal landscapes. Traditional Tribal practices provide subsistence for our peoples' continued connection to and use of our cultural and spiritual resources. Tribes of the North Coast have profound respect and understanding for the complexities of our marine and coastal ecosystems because we have developed sound preservation and conservation methods to ensure their longterm integrity and wellness.

Tribes apply traditional stewardship knowledge in these places for

"If the Sacred Fires are not lit, how will our children learn?"

Honor Your Traditional Lifeways

BG-1

millennia as they continue non-commercial fishing, gathering and harvesting in marine areas that ensures the continuation of healthy and diverse ecosystems.

The proposed regulation is a carefully articulated statement acknowledging broad base support for the continuation of Tribal non-commercial uses in SMCA's without the new take limitations to be imposed on other users.

The Winnemem Wintu Tribe wishes to thank all the participants of the many diverse backgrounds who have arrived at a singular regulatory language agreement for the North Coast. It is unprecedented that Tribes and agencies joined to foster the preservation and protection of both traditional ways of life and the many forms of marine life. We are especially appreciative to the InterTribal Sinkyone Wilderness Council for its transparent advocacy on behalf of Tribal rights and its continued dedication to conservation measures to ensure wellness for our environment. The Winnemem Wintu Tribe recognizes the Fish & Game Commission for its support of the traditional Tribal uses in the proposed Marine Protected Areas, and urges you to adopt the proposed Tribal use regulations as outlined in the Initial Statement of Reasons for Regulatory Action.

Under One Sky,

A handwritten signature in cursive script that reads "Caleen Sisk".

Caleen Sisk  
Tribal Chief and Spiritual Leader



## Comment Letter BG – Sisk, Caleen

### Response to Comment BG -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.