

Chapter 3 RESPONSES TO COMMENTS

3.1 Introduction

CEQA requires the lead agency to prepare an FEIR, addressing all substantive comments received on the DEIR, before approving a project. The FEIR must include a list of all individuals, organizations, and agencies that provided comments on the DEIR, and must contain copies of all comments received during the public review period along with the lead agency's responses. This chapter provides the list of comments received (Section 3.2) followed by copies of the comments and responses to those comments (Section 3.3).

3.2 List of Comments Received

A total of 61 submittals, including letters and emails, and numerous individual comments from public meetings, were received during the public review period. These submittals are listed below in **Table 3-1**. The comments received on the DEIR were generally sorted by date, and then alphabetically by last name for those received on the same date. They were then assigned a letter designation on this basis. Individual comments within each letter are marked and numbered in the right-hand margin of the comment letter.

Note that the public transcripts were designated with a single letter identifier. Comments received at the public meetings in Fort Bragg on March 20, 2012, Crescent City on March 21, 2012, and Eureka on April 11, 2012, are provided in the transcripts contained in Submittals A, F and S, respectively. Note that the Eureka meeting was held to receive comments on both the proposed regulations and the DEIR; as all comments are included in the meeting transcript (Submittal S), only comments related to the DEIR are marked as individual comments for the purposes of this FEIR. Each meeting transcript contains multiple commenters which are listed in their order of appearance on the transcript. Commenters at the same meeting are all identified with the same letter that matches the transcript, then the number which matches their order of appearance in the transcript, and finally the number of their individual comment. For example, Comment A1-2 represents Dan Hamburg's (speaker 1) second comment (-2) at the Fort Bragg meeting (A).

Table 3-1. List of DEIR Comments Received During the Public Review Period

| Submittal No. (# of Individual Comments) | Commenter, Agency or Organization | Date Comment Received | Page Number |
|--|--|--------------------------|----------------|
| A1 (6) | Dan Hamburg, Mendocino County Board of Supervisors | March 20, 2012 | 3-18 |
| A2 (5) | Char Flum, Ocean Protection Coalition | March 20, 2012 | 3-22 |
| A3 (3) | Larry Knowles, Rising Tide Sea Vegetables and Seaweed Stewardship Alliance | March 20, 2012 | 3-24 |
| A4 (5) | Bill Maahs, individual | March 20, 2012 | 3-26 |

| Submittal No. (# of Individual Comments) | Commenter, Agency or Organization | Date Comment Received | Page Number |
|---|---|----------------------------------|------------------------|
| A5 (3) | Terry d'Selkie, Ocean Harvest Sea Vegetable Company | March 20, 2012 | 3-29 |
| A6 (5) | Jeanine Pfeiffer, individual | March 20, 2012 | 3-31 |
| A7 (4) | William Lemos, individual | March 20, 2012 | 3-34 |
| A8 (10) | Ed Oberweiser, Foundation of Sustainable Living | March 20, 2012 | 3-37 |
| A9 (5) | Rex Gresset, individual | March 20, 2012 | 3-40 |
| A10 (1) | Richard Charter, individual | March 20, 2012 | 3-46 |
| A11 (8) | David Gurney, Ocean Protection Coalition | March 20, 2012 | 3-47 |
| A12 (1) | Tomas DiFore, individual | March 20, 2012 | 3-51 |
| A13 (5) | Sheila Dawn Tracy, individual | March 20, 2012 | 3-53 |
| A14 (1) | Carson Bell, individual | March 20, 2012 | 3-55 |
| A15 (4) | Gabriel Maroney, individual | March 20, 2012 | 3-56 |
| A16 (2) | Elaine Charkowski, individual | March 20, 2012 | 3-57 |
| A17 (6) | Judy Filer, individual | March 20, 2012 | 3-59 |
| B (4) | Char Flum, individual | March 20, 2012 | 3-85 |
| C (15) | David Gurney, Ocean Protection Coalition | March 20, 2012 | 3-89 |
| D (1) | Anonymous | March 20, 2012 | 3-95 |
| E (4) | Judy Filer, individual | March 21, 2012 | 3-99 |
| F1 (7) | John Corbett, Yurok Tribe | March 21, 2012 | 3-105 |
| F2 (1) | Steve Bradley, individual | March 21, 2012 | 3-110 |
| F3 (6) | Mike Belchik, Yurok Tribe | March 21, 2012 | 3-111 |
| F4 (1) | Jennifer Savage, Ocean Conservancy | March 21, 2012 | 3-114 |
| F5 (1) | Alicia McQuillen, Yurok Tribe | March 21, 2012 | 3-116 |
| F6 (1) | Charlene Storr, Tolowa Nation | March 21, 2012 | 3-117 |
| F7 (3) | Craig Strong, Yurok Tribe | March 21, 2012 | 3-118 |
| F8 (1) | Christa Norton, Yurok Tribe | March 21, 2012 | 3-120 |
| F9 (3) | Doug Corrigan, individual | March 21, 2012 | 3-127 |
| F10 (3) | George Bradshaw, individual | March 21, 2012 | 3-128 |
| F11 (6) | John Corbett, Yurok Tribe | March 21, 2012 | 3-130 |
| G (3) | John Corbett, Yurok Tribe | March 21, 2012 | 3-141 |
| H (2) | Michael Belchik, Yurok Tribe | March 21, 2012 | 3-147 |
| I (1) | Aaron Newman, Humboldt Bay Harbor, Recreation and Conservation District | March 29, 2012 | 3-151 |
| J (2) | Shawn Cherry, individual | March 20, 2012 | 3-155 |
| K (1) | Bryan Scilacci, individual | March 29, 2012 | 3-159 |
| L (9) | Russ Crabtree, Smith River Rancheria | March 21, 2012 | 3-163 |
| M (2) | Mike Turek, individual | April 4, 2012 | 3-173 |
| N (1) | David Gurney, Ocean Protection Coalition | March 9, 2012 | 3-177 |
| O (5) | Terry d'Selkie, Ocean Harvest Sea Vegetable Company | April 6, 2012 | 3-185 |
| P (1) | Herrick Hanks, Bureau of Land Management | April 9, 2012 | 3-189 |
| Q (3) | Douglas V. Corrigan, individual | April 4, 2012 | 3-193 |
| R (12) | John McCowen, Mendocino County Board of Supervisors | April 10, 2012 | 3-197 |

| Submittal No. (# of Individual Comments) | Commenter, Agency or Organization | Date Comment Received | Page Number |
|---|--|----------------------------------|------------------------|
| S1 (2) | Thomas O'Rourke, Yurok Tribe | April 11, 2012 | 3-211 |
| S2 (3) | Hawk Rosales, Intertribal Sinkyone Wilderness Council | April 11, 2012 | 3-218 |
| S3 (1) | Denise Padgette, Smith River Rancheria | April 11, 2012 | 3-224 |
| S4 (4) | Russ Crabtree, Smith River Rancheria | April 11, 2012 | 3-227 |
| S5 (1) | Jackie Hostler, Trinidad Rancheria Tribal Council | April 11, 2012 | 3-238 |
| S6 (6) | John Corbett, Yurok Tribe | April 11, 2012 | 2-245 |
| S7 (4) | Bill Lemos, individual | April 11, 2012 | 2-252 |
| S8 (3) | Beth Werner, Humboldt Baykeeper | April 11, 2012 | 2-253 |
| S9 (4) | Dan Kruger, Soper Company | April 11, 2012 | 2-256 |
| S10 (4) | Larry Knowles, Rising Tide Sea Vegetables and Seaweed Stewardship Alliance | April 11, 2012 | 3-260 |
| S11 (1) | Terry d'Selkie, Ocean Harvest Sea Vegetable Company | April 11, 2012 | 3-263 |
| S12 (8) | Kendall Smith, Mendocino County Board of Supervisors | April 11, 2012 | 3-267 |
| S13 (1) | Bob McConnell, Yurok Tribe | April 11, 2012 | 3-278 |
| S14 (1) | Ann Rennacker, Ocean Protection Coalition | April 11, 2012 | 3-281 |
| S15 (3) | David Gurney, Ocean Protection Coalition | April 11, 2012 | 3-282 |
| S16 (2) | Alicia McQuillen, Yurok Tribe | April 11, 2012 | 3-285 |
| S17 (2) | Bill Gaines, California Outdoor Heritage Alliance | April 11, 2012 | 3-288 |
| S18 (1) | Christa Norton, Yurok Tribe | April 11, 2012 | 3-292 |
| S19 (1) | Rick Copeland, Wilderness Unlimited | April 11, 2012 | 3-295 |
| S20 (5) | Paul Weakland, individual | April 11, 2012 | 3-308 |
| T(1) | Daniel Rockey, Intertribal Sinkyone Wilderness Council | April 11, 2012 | 3-327 |
| U (4) | Hawk Rosales, Intertribal Sinkyone Wilderness Council | April 11, 2012 | 3-331 |
| V (4) | Denise Padgette, Smith River Rancheria | April 11, 2012 | 3-337 |
| W (1) | Russ Crabtree, Smith River Rancheria | April 11, 2012 | 3-347 |
| X (1) | Janet Eidsness, Blue Lake Rancheria | April 11, 2012 | 3-357 |
| Y (1) | Virginia Bass, Humboldt County Board of Supervisors | April 11, 2012 | 3-361 |
| Z (3) | Brandi Easter, multiple non-governmental organizations | April 11, 2012 | 3-365 |
| AA (41) | John Corbett, Yurok Tribe | April 11, 2012 | 3-371 |
| AB (9) | Beth Werner, multiple non-governmental organizations | April 11, 2012 | 3-425 |
| AC (3) | Dan Kruger, Soper Company | April 11, 2012 | 3-431 |
| AD (1) | Larry Knowles, Commercial Edible Seaweed Harvesters | April 11, 2012 | 3-441 |
| AE (1) | Kendall Smith, Mendocino County Board of Supervisors | April 11, 2012 | 3-445 |

| Submittal No. (# of Individual Comments) | Commenter, Agency or Organization | Date Comment Received | Page Number |
|---|--|----------------------------------|------------------------|
| AF (17) | David Gurney, Ocean Protection Coalition | April 11, 2012 | 3-451 |
| AG (1) | Rick Copeland, Wilderness Unlimited | April 11, 2012 | 3-457 |
| AH (1) | Weston Arvin, Wilderness Unlimited | April 11, 2012 | 3-463 |
| AI (1) | George Visger, Visger and Associates | April 11, 2012 | 3-467 |
| AJ (1) | Daniel Doble, individual | April 11, 2012 | 3-471 |
| AK (1) | Atta Stevenson, California Indian Water Commission | April 11, 2012 | 3-475 |
| AL (1) | Atta Stevenson, North Coast Regional Stakeholder Group | April 11, 2012 | 3-479 |
| AM (1) | Atta Stevenson, California Indian Water Commission | April 11, 2012 | 3-483 |
| AN (67) | Jennifer Savage, multiple organizations (Ocean Conservancy, Natural Resources Defense Council, and Humboldt Baykeeper) | April 13, 2012 | 3-487 |
| AO (6) | William Lemos, Daylightducks Consulting | April 14, 2012 | 3-527 |
| AP (33) | Jeanine Pfeiffer, individual | April 15, 2012 | 3-531 |
| AQ (2) | Amy Atkins, Trinidad Rancheria | April 16, 2012 | 3-553 |
| AR (8) | Amy Atkins, Trinidad Rancheria | April 16, 2012 | 3-557 |
| AS (6) | Amy Atkins, Trinidad Rancheria | April 16, 2012 | 3-575 |
| AT (3) | Richard Charter, Ocean Foundation | April 16, 2012 | 3-587 |
| AU (6) | Douglas Garcia, U.S. Bureau of Indian Affairs | April 16, 2012 | 3-591 |
| AV (30) | David Gurney, Ocean Protection Coalition | April 16, 2012 | 3-597 |
| AW (1) | Cliff Hart, individual | April 16, 2012 | 3-613 |
| AX (14) | Anna Kimber, Smith River Rancheria | April 16, 2012 | 3-617 |
| AY (5) | James Martin, Navarro-by-the-Sea Center | April 16, 2012 | 3-651 |
| AZ (1) | Alicia McQuillen, Yurok Tribe | April 16, 2012 | 3-657 |
| BA (1) | Christa Norton, Yurok Tribe | April 16, 2012 | 3-693 |
| BB (1) | Christa Norton, Yurok Tribe | April 16, 2012 | 3-723 |
| BC (5) | Hawk Rosales, Intertribal Sinkyone Wilderness Council | April 16, 2012 | 3-733 |
| BD (5) | Ed Salsedo, individual | April 16, 2012 | 3-739 |
| BE (6) | Sarah Sugar, California State Lands Commission | April 16, 2012 | 3-745 |
| BF (4) | Anna Weinstein, Audubon California | April 16, 2012 | 3-753 |
| BG (1) | Caleen Sisk, Winnemem Wintu Tribe | April 19, 2012 | 3-759 |
| BH (1) | Don Gillespie, Friends of Del Norte | April 14, 2012 | 3-763 |
| BI (8) | Ed Oberweiser, Foundation of Sustainable Living | April 17, 2012 | 3-767 |

3.3 Comments and Responses to Comments

A copy of each comment letter, email, and verbal comment that was received during the DEIR review period is included in this section. Responses to each letter, email, or transcript follow immediately after the comment submittal. For example, Comment Letter B is presented in its entirety, followed by responses to the comments in Letter B. As mentioned previously, individual comments within each letter are marked and numbered in the right-

hand margin of the comment letter. These individual comment numbers correspond to the responses provided after the letter. For example, *Comment B-3* from Comment Letter B has a corresponding response in *Response to Comment B-3*.

Master Responses

Master responses have been prepared to provide consistent responses to topics raised multiple times by various commenters. In the individual response to comments, the commenter is directed to review these master responses, where appropriate.

Master Response 1 – Scope of the MLPA and Regulatory Authority

Various comments raised a number of issues related to the nature and extent of the MLPA and concern over the regulatory authority governing offshore commercial/industrial activities, such as oil drilling, hydrokinetic power projects, and aquaculture projects, as well as military operations. While the Department and the Commission retain jurisdiction over the management and take of species within the state's sovereign boundaries, including within MPAs, the MLPA cannot supersede otherwise lawful activities that are not within the authority of the Commission to regulate (California Fish and Game Code [FGC], Section 2852[d]). Other regulatory agencies, however, may take into consideration the existence of MPAs in their consideration of the environmental impacts of authorizing a given activity. These regulatory agencies include, but are not limited to, the Bureau of Ocean Energy Management, Regulation, and Enforcement, the Federal Energy Regulatory Commission, the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency; the State Lands Commission, the California Coastal Commission, the State Water Resources Control Board, and Regional Water Quality Control Boards.

As described in the Impact Analysis of DEIR Chapter 6, Section 6.1 *Land Use and Utilities*, should future offshore activities be proposed within an established MPA that may result in take of species subject to protections under state law or regulation, the project proponent would need to contact the Commission to pursue regulatory remedy or appropriate authorization to accommodate take associated with the desired activity, at the Commission's discretion.

Several commenters also complained that the MLPA does not prevent military operations. Mission critical activities of the U.S. military are not subject to marine managed area classifications (California Public Resources Code [PRC], Section 36710).

Master Response 2 – Analysis of Other Activities within the North Coast Study Region

A number of comments were received asserting that a variety of activities which are occurring, or could occur in the future, within the Study Region have the potential for adverse environmental impacts, particularly impacts on aquatic habitats and species and water quality. Specific examples provided in the comments included oil drilling, hydrokinetic power projects, commercial aquaculture, and Naval exercises involving use of sonar. The comments suggest these activities should be evaluated in this EIR analysis, or that the Proposed Project should include restrictions on these activities. This response

addresses the first issue. See *Master Response 1: Scope of the MLPA and Regulatory Authority* for a discussion on regulation of these activities.

The CEQA analysis did not directly evaluate these activities because the project does not propose any regulations related to them. However, under CEQA, an EIR must contain a discussion of project-related cumulative impacts. (See generally State CEQA Guidelines, Section 15130.) A cumulative impact refers to the combined effect of “two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” (*Id.*, Section 15355) According to state law, cumulative impacts reflect “the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.” (*Id.*, Section 15355, subd. [b]) Under CEQA, an EIR must discuss the cumulative impacts of a project when the project’s incremental contribution to the combined effect is “cumulatively considerable.” (*Id.*, Section 15130, subd. [a]) However, an EIR need not discuss impacts that do not result, in part, from the proposed project. (*Id.*, subd. [a][1])

Consistent with these requirements, Chapter 7 of the DEIR contains the cumulative impact analysis for the Proposed Project. The “list” approach was selected for the cumulative impacts analysis, per State CEQA Guidelines Section 15130. Only closely related past, present, and reasonably foreseeable probable future projects are required to be considered in the cumulative impact analysis (State CEQA Guidelines, Section 15355[b]). DEIR Chapter 7 includes the list of projects and regulations evaluated (Section 7.5.2, starting on page 7-4). Topics considered in the evaluation include future fishing regulations, other MPAs in California, Oregon, and Washington, aquaculture projects, hydrokinetic power projects, water and utility infrastructure projects, and greenhouse gas emissions.

There are currently federal and state moratoriums or bans on leasing of offshore areas for oil and gas mining activities. As such, it would be speculative to characterize or make conclusions regarding future projects of this nature, and CEQA does not require an EIR to speculate and, as such, the effects of offshore oil and gas mining activities were not evaluated. Similarly, regarding nearshore or intertidal aquaculture, federal and state policies are in development and the characteristics of any future aquaculture projects within or adjacent to the Study Region are speculative. As such, these types of projects and their effects were not evaluated.

A number of comments noted that evaluation of potential impacts of future hydrokinetic energy projects in or adjacent to the Study Region needs to be evaluated in the EIR. As stated in Chapter 7, page 7-9, second paragraph under “Hydrokinetic Power Projects,” a preliminary permit for the proposed hydrokinetic project near the proposed Point Cabrillo SMR is disclosed. However, the project has yet to be implemented and there is no evidence to suggest that the project will proceed to fruition. Additionally, any hydrokinetic power project must undergo CEQA and National Environmental Policy Act (NEPA) compliance prior to commencing with implementation. The potential effects of those projects will be disclosed under processes separate from this MLPA environmental review process. Cumulatively considerable effects of those projects in consideration of adopted MLPA regulations must be disclosed as part of that CEQA and NEPA compliance. Again, only reasonably foreseeable probable future projects are required to be evaluated in the cumulative impact analysis.

With respect to Naval exercises involving the use of sonar, no evidence has been discovered or provided during the preparation of this EIR to suggest that the Proposed Project would contribute to the impacts of sonar. As described earlier, an EIR need not evaluate cumulative impacts to which the project would have no contribution.

Potential cumulative impacts emissions of criteria air pollutants, greenhouse gas emissions, and biological resources were addressed in Chapter 7, Section 7.5.3. For further information regarding that analysis, please refer to that discussion in the DEIR.

In this respect, the EIR considered the impacts of other activities within the Study Region in accordance with CEQA requirements. The Commission has fully met the requirements for evaluation of potential effects of the Proposed Project when added to other closely related past, present and reasonably foreseeable probable future projects, per State CEQA Guidelines Sections 15130 and 15355. No evidence has been provided as part of the public comments to suggest that the project would contribute to cumulative impacts which were not described in the DEIR. Therefore, no changes to the DEIR are necessary.

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

Many comments were concerned that the EIR analysis did not adequately utilize the information gathered during the MLPA Initiative process. Many comments also expressed concern regarding the MLPA Initiative data gathering process and how that information was used to develop the proposed network of MPAs. Comments centered around specific topic areas such as: the MLPA Science Advisory Team (SAT) and the Levels of Protection (LOP); biological resource modeling; missing data about kelp and urchin beds; and the science used for the MLPA planning process versus the CEQA data-gathering process. The general recurring theme questions the adequacy of the science driving the MLPA process, asserting that the science being used is not the Best Available Scientific Information (BASI) and recommending that the process not continue until more research and study is conducted. However, state law emphasizes timeliness over certainty or perfection. By way of review, in 2004 the National Academy of Sciences sponsored a major discussion of BASI in the context of the Magnuson-Stevens Fishery Management Act, and noted that “best” explicitly suggests that there is no better scientific information available and implicitly suggests the use of the most relevant and contemporary data and methods. However, the MLPA process is expressly based “on sound scientific guidelines” and “the best *readily available* science” (FGC, Sections 2853[b][5], 2855[a]). The MLPA use of best readily available science is an important qualification that emphasizes timeliness over certainty or perfection. Similarly, the Marine Life Management Act, which predates the MLPA, qualifies its application of BASI with the language: “...on other relevant information that the department possesses, or on the scientific information or other relevant information that can be obtained *without substantially delaying the preparation of the plan*” [emphasis added] (FGC, Section 7072[b]).

The MLPA emphasis of timeliness over certainty or perfection of information is further underscored by the concept of adaptive management, which recognizes that this process proceeds in the face of “scientific uncertainty” and prospectively contemplates that “monitoring and evaluation shall be emphasized so that the interaction of different elements within marine systems may be better understood” (FGC, Section 2852). The

objective of adaptive management under the MLPA is not to reduce uncertainty through increased scientific rigor, but rather to produce practical information that guides management decisions. To date, the California experience with adaptive management of marine resources is exemplified through the Marine Life Management Act (FGC, Sections 90.1, 7056[g]) and the Nearshore Fishery Management Plan, which addresses the critical concepts of the precautionary principle, and the variability of adaptive management strategies in data poor, data moderate, and data rich circumstances.

That the Legislature, as a matter of public policy, has favored timeliness over certainty of information does not mean that inadequate science should be used. In that respect, external peer review is a strong guarantor of the adequacy of the science. The MLPA mandates that an external peer review process be established, and allows use of the process identified in Section 7062 of the Marine Life Management Act “to the extent practicable” (FGC, Section 2858). FGC Section 7062(a) allows for submission to peer review of documents “that include, but are not limited to [marine living resources management documents].” However, such submissions are discretionary.

Also, it is important to understand that the charge of the peer review entity is not to authenticate the data presented to them, but to evaluate the scientific methodology employed and the facial plausibility of the conclusions that can be drawn therefrom. More importantly, the peer review entity is not expected to approve, disapprove, or comment on the wisdom of those conclusions. This must be so, because reasonable people can in good faith arrive at different conclusions using the same data and methodology.

In that regard, the Commission undertook such a peer review of the scientific basis for the MLPA Master Plan for MPAs (Master Plan). Consistent with the statutory direction of FGC Section 7062, the scientific design guidelines used in preparing alternative MPA recommendations were reviewed by a panel convened by Oregon Seagrant. The reviewers were selected by Seagrant independent of the Commission, and asked to review: (1) the Master Plan SAT guidance on MPA network design; and (2) the consideration of habitats in the design of MPAs provided by the SAT. The reviewers were also asked: (1) in general, is the document logically organized and factual? (2) are its recommendations clearly and unambiguously stated? (3) are there specific statements that you feel are incorrect or misleading? and (4) is there anything of importance that was not stated or covered? The three reviewers found the document and advice appropriate and not lacking in any way.

Master Response 4 – Enforcement

Some comments expressed concern regarding the Department’s enforcement capabilities. Specifically, the Department received a number of comment letters questioning whether the Department has sufficient personnel, including law enforcement, to monitor MPA compliance, and to enforce and prosecute persons conducting operations in violation of the proposed regulations and other applicable law. According to the comments, because the Department allegedly lacks sufficient personnel to monitor and enforce the proposed regulations and other applicable law, the Department cannot conclude, as CEQA contemplates, that the regulations would be fully enforceable and related impacts would be less than significant.

As the outset, we note that there is no authority for the proposition that the MLPA requires funding, enforcement and monitoring issues to be comprehensively and finally addressed prior to, or contemporaneous with, the MPA designation process, and CEQA only requires an analysis of the impacts of proposed projects on public services and utilities, which include police, fire, and other typically government-provided services. For CEQA purposes, it is only where the proposed project would result in adverse changes to these services and increase the need for enforcement facilities that are relevant and analyzed.

This has already been adequately addressed within the DEIR analysis. As noted in DEIR Chapter 6, Section 6.2 *Public Services and Law Enforcement*, it is reasonable to believe that creating a larger network of MPAs would increase the demand for enforcement of MPAs within the Study Region compared to existing conditions. The Department's enforcement staff will remain as the lead in enforcing these new regulations despite existing budget constraints that are likely to preclude the addition of staffing specifically to enforce MPA restrictions. However, though allocating existing personnel to enforce new MPA regulations may cause delays in service, delays in response times, or create decreased law enforcement coverage, in the context of the State CEQA Guidelines, this would result in a less-than-significant environmental impact because the Proposed Project will not require the provision of new or physically altered governmental facilities whose construction would create such impacts. For details on how enforcement was appropriately factored into the design of the proposed MPAs, the capacity to enforce MPAs, and the conclusion that environmental impacts to enforce existing laws and regulations would be less than significant, please see Chapter 2, Sections 2.5.1 and 2.5.2, and Chapter 6, Section 6.2 and specifically Section 6.2.4 of the DEIR.

The Department acknowledges the need for more fish and game wardens. The Department has advocated expansion of its warden force to more effectively detect and deter violations of the FGC and its implementing regulations. Poaching violations, which include exceeding limits on the number, size, and species of fish or game that may be taken at different times and locations, are of such a nature that they are often undetected. Similarly, efforts to combat violations related to lucrative black markets in wildlife products such as abalone would be enhanced with an expanded warden force.

However, wardens are not alone in policing areas on or near the ocean. Wardens work closely with both enforcement officers and non-enforcement staff from other federal, state, and local agencies, including officers from agencies focused on resource management, such as the U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service, National Oceanic and Atmospheric Administration, and the California Department of Parks and Recreation, as well as county sheriffs and city police. Wardens also investigate information provided by members of the general public and interested nongovernmental organizations.

While some of the comments suggest there will be high rates of noncompliance by individuals regarding prohibitions within the MPAs being established, CEQA does not require the Department to presume that there will be high rates of noncompliance or that individuals or groups within the study area have a special propensity to violate the law.

The Department acknowledges there would be benefits to increased funding for Department law enforcement, including funds to increase the overall number of Department wardens in California. While these increases would likely enable the

Department to investigate more violations of the FGC that are difficult to detect, such as poaching and commercialization of wildlife, the Department disagrees that it is or will be unable to enforce the existing or proposed regulations without additional resources. There is no support for suggestions that current staff levels make the proposed regulations unenforceable or that, for purposes of CEQA, related impacts subject to the Commission's regulatory authority under the FGC will not be less than significant.

Master Response 5 – Natural Constraints and Baseline Conditions

A large amount of information has been submitted by commenters regarding the harsh conditions in the North Coast Region, which inherently limit the ability of Native Americans and other individuals to harvest marine resources. Some of the conditions identified include: limited coastal access; frequency of high winds and rough seas; hazards posed by floating debris along the shoreline; turbidity of rivers and along the shoreline; relative infrequency of negative tides; regulatory restrictions on the season of shellfish harvesting to reduce the potential for paralytic shellfish poisoning; and demographic and structural constraints. The comments go on to state that because of these conditions, the potential for harvest (in particular, harvest by Native Americans) to have an adverse impact on the marine system, or any marine species in particular, is correspondingly limited. The Department and Commission acknowledge that it is reasonable to conclude that these conditions do in fact result in less harvest than if such conditions did not exist.

From the perspective of CEQA, these conditions constitute “baseline conditions,” in other words, the conditions that existed at the time the NOP was filed. Under CEQA, the significance of the impacts of a proposed project is evaluated by comparing the conditions which would exist after the project is implemented against these baseline conditions. An EIR should characterize baseline conditions to the extent necessary to understand and evaluate the impact of the proposed project. In this case, the Proposed Project would have no adverse effect related to these conditions. Specifically, harvesting by federally recognized Native American tribes would continue under the proposed regulations to the extent it is allowed under existing law (with the exception of within State Marine Reserves and the Special Closures—some of which would not have any restrictions beyond current regulations for half of the year). In other words, the only change (elimination of harvesting within SMRs and Special Closures) would not have an adverse effect on the marine system or species. As such, the Proposed Project would have no potential for an adverse impact related to natural conditions, or on harvesting as it relates to these conditions. The extent to which baseline conditions have been described in the EIR corresponds to this conclusion.

Rather, the extent to which Native American harvesting, or take by any entity, is having an effect on marine resources is a question for reserve design, rather than a consideration of changes to baseline conditions. In other words, the network of MPAs was designed in part to address the effects that take of marine resources is having on those resources. Tribal representatives were deeply involved in development of the RNCP, and the RNCP is a consensus-based proposal. Because of this consensus, it is implicit that the stakeholder group, including tribal representatives, concluded that an alternative network of MPAs that would be more restrictive on tribal harvest was not necessary to address the effects of tribal harvest. The fact that the Commission selected this alternative affirms that the Commission supported this conclusion.

Master Response 6 – Levels of Protection (LOP)

A number of comments have stated that Science Advisory Team (SAT) levels of protection (LOPs) identified for various proposed MPAs are invalid for the Study Region, because the methodology does not recognize the role of north coast tribes and tribal communities as a natural part of the ecosystem, and does not account for inherent restrictions on take due to natural or regulatory constraints. A discussion of natural constraints and baseline conditions is provided in Master Response 5.

At the outset, the Commission acknowledges the deep cultural connection that tribes and tribal communities have with the environment. However for CEQA purposes, anthropogenic activities are considered distinct from the natural environment (PRC, Section 21001[c]). This is consistent with the MLPA, which distinguishes “human activities” from “natural ecological functions.” [FGC Sections 2851(c), 2857(b).] The discussion, then, is necessarily constrained to the environmental effects of take, and not the underlying reasons, cultural or otherwise, which occasioned the take. This response explains how and why LOPs were developed, what the methodology was founded on, and how tribal information was used.

The MLPA itself recognized that a program of MPAs “may include areas with various levels of protection” (FGC, Section 2853[c]). The MLPA Master Plan for Marine Protected Areas describes the purpose and initial development of a scale for LOPs developed by the SAT (CDFG 2008, Section 3). The purpose of categorizing MPAs by their respective LOP was to serve as a planning tool, to simplify comparisons of the overall relative conservation value of MPAs within and among proposed MPA network components. The intent of LOPs was simply a tool for the SAT to assess prospects for different MPA arrays to meet their resource protection goals, using a precautionary approach. When assigning an LOP, the SAT considered the role that the target species plays in the marine ecosystem and the extent to which its removal has the potential to alter the marine community. This potential change to the marine community may not be realized in all areas, however, the SAT assigned LOPs conservatively so that allowed activities within an MPA receiving higher LOPs are less likely to impact the marine community even if fishing effort is locally intense or increases to high levels in the future.

The SAT reviewed data and scientific literature to assess potential effects of commercial and non-commercial (i.e., tribal and recreational) activities in proposed MPAs, taking into account the species and methods of take and regulations that apply to all users. The SAT did not assess potential effects of any subgroup of non-commercial users.

LOPs were developed using the best readily available science pursuant to the MLPA (FGC, Section 2856[a][1]). All SAT products from every study region, including LOPs, were developed for that region in an iterative peer process that was continually refined by the 20+ member SAT and informed by stakeholder and public input.

In applying the LOP decision tree, the SAT made three important scientific assumptions:

- 1) For the purpose of comparison, an unharvested system is a SMR that is successful in eliminating extractive uses within the MPA.

- 2) Any extractive activity can occur locally to the maximum extent allowable under current state and federal regulations.
- 3) The proposed activity is considered in isolation from other activities (i.e., without cumulative effects of multiple allowed activities). This assumption is based upon limitations to assess the cumulative impacts of multiple activities, not a belief that cumulative impacts do not occur.

The LOP decision tree provided a simplified way to “assess the certainty that an MPA will achieve the goals of the MLPA regardless of the spatial distribution and magnitude of take” (SAT 2011a). The assumptions associated with the LOP decision tree reflect the SAT’s approach to cope with uncertainty. For example, even if detailed historical records of take (e.g., how many mussels were taken from each cove each year along the whole North Coast) was available to the SAT, it is still uncertain how this may change in the future (e.g., establishment of a new access point). Therefore, the LOP framework is based on the potential impacts of a proposed human activity and do not predict the status of any fishery, the abundance of any organism or its need for protection, or the level of take, including the degree to which natural restrictions or fishing restriction may affect level of take. The LOP framework simply seeks to compare the marine community in an MPA that allows specified take to a comparable MPA without take (i.e., an SMR) (SAT 2011a). With wise management or minimal harvest levels, the realized impacts of harvest activities on the marine ecosystem may be substantially lower than those assessed by the LOP (SAT 2011a).

Because fisheries regulations are applied at spatial scales greater than individual MPAs, the magnitude and spatial distribution of take within an MPA cannot be predicted. Therefore LOPs are not based on existing patterns or magnitude of take. Instead, LOPs assess the certainty that an MPA will help achieve the goals of the MLPA *regardless* of the spatial distribution and magnitude of take. An MPA that has been assigned a high LOP is likely to contain marine communities that resemble those in an unharvested ecosystem (i.e. no take area). Lower LOPs indicate that the MPA are less likely to contain marine communities that resemble those in an unharvested ecosystem, especially if harvest activities are intense within the MPA.

Assignment of LOPs under methods determined by the SAT was not the only tool used to inform planning, especially as it pertained to north coast tribes. The North Coast SAT also established a “Tribal Workgroup” at the beginning of the planning process in the Study Region, to facilitate focused opportunities for tribal information and input, and discussion of that information relative to SAT considerations. This action is consistent with the MLPA direction to take into account relevant information from local communities [FGC, Section 2855[c]].

Information provided by the tribes and tribal communities was used by the NCRSG either to avoid placement of MPAs in geographies actively used, or to propose the uses to continue within the MPA. In addition, the SAT provided a supplemental evaluation of the final MPA proposal, at the request of the BRTF, to include MPAs at all LOPs if the proposed uses were those intended to accommodate tribal uses. While the supplemental evaluation did not specifically evaluate the effects of tribal gathering activities on the marine ecosystems, nor did it supplant the utility of LOPs using the SAT-determined methodologies, it provided the BRTF with the best available scientific information about the habitats included in MPAs that accommodate tribal uses, independent of the assigned LOP.