

## California Marine Life Protection Act Initiative

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March 17, 2010

Dear Chair Gustafson,

Per your request, MLPA Initiative senior staff has reviewed the legal questions provided to you by MLPA Blue Ribbon Task Force (BRTF) members Meg Caldwell and Roberta Cordero. We believe some of these questions may be answered when we complete our expanded tribal regional profile appendix next month, but most are best combined and answered in a longer term process that will go well beyond our October completion date for the MLPA North Coast Study Region.

In our continuing discussions with the California Fish and Game Commission and California Department of Fish and Game (DFG) legal staff, all advise that (1) the commission needs to continue its legal obligation of not granting exemption to any party from the MLPA, (2) the commission does not have the legal authority to grant an exclusive use for tribes or tribal communities without legislation, and (3) both the commission and DFG should continue discussions with the tribes and tribal communities. We have requested formal legal written advice from DFG be delivered to the BRTF as soon as possible. Once this guidance and legal framework are formally in place, further discussion on these matters seems outside the charge of the BRTF.

Policy guidance based on legal consultation to date is that state marine reserves should be outside of tribal gathering areas. When this is not possible, these areas should be characterized and protected in a state marine conservation area or a state marine park that does not attempt to provide exclusive use. The language that the BRTF drafted and is being considered at this Thursday's teleconference meeting is consistent with that policy guidance and encourages stakeholders to put forward other options within that guidance that offer potential approaches and mechanisms for respectfully characterizing how traditional gathering uses and locations can co-exist within an MPA. Such options may be able to be put forward as part of the BRTF's final October recommendations or they may need to become part of a longer term process that is scheduled to begin with an April 9 meeting in Sacramento; that meeting will bring together DFG, California State Parks, and California coastal tribes and tribal communities from throughout the state to establish a framework and timeline for addressing these major legal and legislative issues over the longer term.

Sincerely,

Ken Wiseman  
on behalf of senior staff