

California Marine Life Protection Act Initiative

1416 Ninth Street, Suite 1311 Sacramento, CA 95814 916.654.1885

To: MLPA North Coast Regional Stakeholder Group
From: MLPA Initiative Staff
Subject: Legal Guidance from the California Department of Fish and Game and California Fish and Game Commission Staff
Date: February 19, 2010

The purpose of this memorandum is to summarize anticipated legal guidance to the MLPA Blue Ribbon Task Force regarding the consideration of tribal uses in marine protected area (MPA) planning; this guidance is being developed by the California Department of Fish and Game (DFG) and California Fish and Game Commission staff in consultation with staff from the California Attorney General's Office and the United States Department of Interior's Bureau of Indian Affairs. In addition, DFG has met with several California tribes and tribal communities in the north coast region to gain additional understanding.

As we have heard at previous MLPA Blue Ribbon Task Force meetings, DFG is committed to continuing its engagement in meaningful dialogue with California tribes and tribal communities in an effort to better understand and recognize traditional harvesting practices. Since July of last year, DFG has been working to develop legal guidance to provide California tribes and tribal communities, as well as the MLPA Initiative, with options for moving forward with developing recommendations for redesigned MPAs on the north coast and coast-wide.

In order to help inform your discussions next Thursday regarding recommendations to the BRTF on this subject, MLPA Initiative staff thought it would be helpful to share the probable general parameters of the legal guidance before its formal release.

The legal guidance is expected to note that there are federal laws that exist to protect the traditional harvesting practices of tribes and tribal communities in California, but they generally apply only to sovereign nations and sovereign lands. Under state law very few traditional harvesting practices have been officially recognized as rights. Officially recognized harvest rights are almost entirely focused on the Trinity and Klamath rivers. The lack of state law concerning traditional tribal harvesting practices in the marine waters of the state prevents DFG and the California Fish and Game Commission from having the authority to provide exclusive rights or exemptions to the tribes in any network of MPAs produced through implementation of the MLPA.

However, in light of the ancient ancestral and current cultural ties of California tribes and tribal communities to the resources and places under consideration in the MPA planning process, DFG proposes the following approaches to address tribal concerns. Tribes and tribal communities could identify traditional harvesting practices and locations using generalized descriptions; this information could be shared in consultation with the state and/or with the regional stakeholders during deliberations, keeping in mind certain needs for confidentiality. Also, the regional stakeholders can work together to ensure that state marine reserves are not placed over sites where traditional harvesting is practiced; an MPA placed in such a site can be designated as a state marine conservation area or state marine park that specifically allows those activities to continue for tribal and non-tribal harvesters.

As soon as legal counsel for DFG has issued the official legal guidance, we will forward that immediately to all parties. DFG staff has stated they look forward to consulting with California tribes and tribal communities to identify co-management/partnership opportunities beyond the MLPA Initiative and the MPA planning process.