

California Marine Life Protection Act Initiative
MLPA Blue Ribbon Task Force Policy Guidance on Tribal Uses:
How to Incorporate into the Development of MPA Proposals
April 30, 2010

The Marine Life Protection Act (MLPA) Blue Ribbon Task Force (BRTF) provided guidance to the MLPA North Coast Regional Stakeholder Group (NCRSG) for considering tribal uses during the development of marine protected area (MPA) proposals in Rounds 2 and 3 of the MPA planning process. The guidance was approved at the March 18, 2010 BRTF meeting (summarized in the document, "Guidance Motions Related to Tribes and Tribal Communities" dated March 22, 2010) communicated to the NCRSG at its March 24-25 meeting. Specific to non-commercial, consumptive tribal uses that take place in state waters (mean high tide line out to three nautical miles), the guidance takes into account the requirements of the MLPA, the advisory role of the BRTF, the authority of the California Fish and Game Commission, requests from the NCRSG, as well as input from California from north coast tribes and tribal communities.

The BRTF guidance for tribal uses is supplemental to, and does not replace or take priority over previous BRTF guidance. In particular, one of the primary charges of the NCRSG is to develop MPA proposals that meet MLPA guidelines, such as scientific guidelines detailed in the MLPA and the *California Marine Life Protection Act Master Plan for Marine Protected Areas*. NCRSG members should accommodate interests of north coast tribes and tribal communities, to the extent possible, while fulfilling this primary charge.

It is important to acknowledge the continued commitment of north coast tribes and tribal communities, the California Department of Fish and Game (DFG), and the MLPA Initiative to develop relationships and identify solutions to move the MPA planning process forward. Some of the broader issues related to jurisdiction and exclusive gathering and ceremonial uses cannot be addressed within the MLPA Initiative and are longer-term issues that should be pursued in parallel to the north coast MPA planning process. Recognizing that the current MPA planning process does not sufficiently address many tribal issues and concerns, interim steps have been established to incorporate north coast tribes' and tribal communities' interests into the MPA planning process; these include, but are not limited to:

- North coast tribes and tribal communities have invited MLPA Initiative groups to visit tribal and ancestral territories via field trips of the north coast study region.
- The *Regional Profile of the North Coast Study Region (California-Oregon Border to Alder Creek)* includes sections specific to north coast tribes and tribal communities and also contains a California tribes and tribal communities appendix to which tribes and tribal communities contributed unedited information.
- North coast tribes and tribal communities were invited to participate in a BRTF panel discussion to help inform the BRTF of the relationship tribes and tribal communities have with marine resources.
- The MLPA Master Plan Science Advisory Team (SAT) formed a work group to focus on tribal considerations and develop evaluation methods to consider tribal uses.
- DFG representatives have met with several California tribes and tribal communities in the north coast region to gain a better understanding of traditional gathering and harvesting practices and continue to engage in meaningful dialogue to examine and address short- and long-term issues affecting tribal activities (e.g., cultural, subsistence, ceremonial, etc.) specific to traditional uses of marine resources.

These examples, together with BRTF guidance, provide a foundation to move forward in developing MPA proposals. This document outlines how the BRTF guidance regarding tribal uses will be incorporated during the north coast MPA planning process.

Overview of the MPA Planning Process

The MLPA Initiative is an iterative planning process that requires an ongoing dialogue between the NCRSG and north coast tribes and tribal communities to ensure information is readily available to the NCRSG for its deliberations. Throughout the MPA planning process, tribes and tribal communities can share information regarding tribal marine resource uses and provide feedback regarding proposed MPAs and how they may impact tribal use. Information and feedback are most useful when shared early in the MPA planning process so that core NCRSG MPA designs can thoughtfully reflect tribes' and tribal communities' interests and input. Both tribal and non-tribal NCRSG members must work together to meet the goals of the MLPA and accommodate tribal interests by crafting reasonable alternative MPA proposals that address MLPA guidelines, a commitment made in the ground rules for the NCRSG.

NCRSG Actions to Incorporate BRTF Guidance

The NCRSG should incorporate the BRTF guidance by taking the following actions:

1. Work with California tribes and tribal communities to learn more about tribal history, gathering and ceremonial practices, and other non-commercial uses of marine resources:
 - a. Review tribal sections of the *Regional Profile for the North Coast Study Region (California-Oregon Border to Alder Creek)* and the tribal appendix.
 - b. Continue discussions among NCRSG members to learn more about specific tribal uses along the north coast. These discussions should also include tribes not represented on the NCRSG.
 - c. Utilize spatial information on California tribal use areas in the north coast, as available.
2. Avoid, where possible, placing MPAs in geographies where tribal non-commercial, consumptive uses occur, especially areas identified by north coast tribes and tribal communities as "high priority areas":
 - a. Consider high priority areas identified by both NCRSG tribal members, as well as tribes not represented on the NCRSG.
 - b. Identify and consider MPAs in the north coast external MPA arrays from Round 1 that are located outside of high priority tribal use areas.
 - c. Consider MPAs created during Round 1 proposed in high priority use areas, determine what guidelines are being met by these MPAs, and identify alternate geographies that avoid high priority areas while still meeting proposed guidelines
3. Where high priority tribal use areas cannot be avoided, design MPAs to accommodate known tribal non-commercial, consumptive uses that identify species and gear types, to the extent possible.
 - a. Propose MPA designation types consistent with proposed uses.
 - i. Do not propose a state marine reserve (SMR) where extractive activities are intended to be allowed.
 - ii. Propose a designation of state marine park (SMP) if tribal extractive uses and other recreational uses are the only proposed allowed activities and if the area is appropriate for SMP designation.
 - iii. Propose a designation of state marine conservation area (SMCA) if commercial activities are proposed to be allowed.

- b. Specify allowed uses, including species and gear type, for all tribal, non-commercial, consumptive activities that the NCRSG intends to allow in proposed MPAs, as information becomes available. Note that the NCRSG cannot propose to exclusively limit an allowed use to California tribes and tribal communities. Proposed allowable species and gear types must apply to all users.
 - i. Indicate species and gear type in MarineMap, using either the drop-down menu or the “Additional Proposed Allowed Uses” field for uses that do not have an assigned level of protection (LOP).
 - ii. If applicable and desired, indicate seasonality in the “Additional Proposed Allowed Uses” field.
- c. If necessary, design an offshore MPA coupled with a nearshore MPA that allows for shore-based, non-commercial consumptive tribal uses.
 - i. Work with staff, tribal members, and other stakeholders to further refine allowed uses to be consistent with tribal consumptive uses.
 - ii. Consider how the MPA design affects the extent to which the MPA proposal meets the science guidelines. Modify other components of the proposal, as needed, to ensure the proposed MPAs meet the science guidelines.
- d. Consider recommendations for co-management with tribes or tribal communities located in proximity of proposed MPAs, where appropriate. The recommendation should be placed in the “Other Regulated Activities” field in MarineMap.

Tribal Uses in Round 2 MPA Proposal Evaluations

During Round 2 evaluations of draft MPA proposals, the following steps will be taken with regard to tribal uses:

1. Individual MPAs proposing tribal uses must specify those uses, including species and gear types as applicable, as part of the “Proposed Allowed Uses” for that MPA.
2. For MPAs with insufficient information on proposed allowed uses:
 - a. Staff will work with the NCRSG gem groups to determine how to handle MPAs that are lacking the necessary allowed use information. If species and gear types cannot be identified for proposed uses, then the MPA can either be removed or that proposed use can be removed.
 - b. Staff will identify such issues for the BRTF.
3. DFG and California State Parks will review MPAs with proposed regulations that include tribal consumptive uses and provide feedback on the designation type and/or proposed allowed uses relative to each department’s criteria and analysis.
4. The SAT Tribal Work Group and DFG will invite north coast tribes and tribal communities that may be affected by proposed MPAs to engage in discussions during in-person meetings. The goal of the in-person meetings is to assemble information about traditional gathering activities in areas where MPAs are proposed. For tribes and tribal communities that are comfortable sharing information with the NCRSG, it will help the NCRSG to better tailor MPAs to accommodate the identified activities.