

California Marine Life Protection Act Initiative
Frequently Asked Questions for the
Marine Life Protection Act South Coast Tribal Forum
Revised March 2, 2009

Below is a list of frequently asked questions regarding the Marine Life Protection Act Initiative that have been posed by California Natives at previous tribal outreach events. Answers to the questions are in the attached pages.

1. What are marine protected areas (MPAs), what is their purpose, and how do they function?
2. Were California Natives involved in the creation of the Marine Life Protection Act (MLPA)? Does the MLPA address California Native interests? How or how not?
3. Have California Natives participated in the MLPA Initiative process? How? And how does the MLPA South Coast Tribal Forum fit into the process?
4. Can Native Americans use government-to-government consultation to engage the State of California and the MLPA Initiative process?
5. How are federal government agencies involved in the MLPA Initiative process?
6. What recourse do I have if I disagree with the Marine Life Protection Act?
7. If an MPA includes natural resources or places of cultural interest and traditional use to California Native Americans, would Indian people be able to use those resources or places?
8. What is the impact of MPAs on cultural resources, including submerged village sites?
9. How can I be involved in the MLPA south coast MPA planning process? Is there a deadline? Besides the MLPA South Coast Tribal Forum, what other support can I expect?
10. Can I become a member of the MLPA South Coast Regional Stakeholder Group (SCRSG)? How else can I provide input, since no other members of my tribe are on the SCRSG?

1. What are marine protected areas (MPAs), what is their purpose, and how do they function?

A "**marine protected area**" (**MPA**) is a named, discrete geographic marine or estuarine area seaward of the mean high tide line or the mouth of a coastal river, including any area of intertidal or subtidal terrain, together with its overlying water and associated flora and fauna that has been designated by law or administrative action to protect or conserve marine life and habitat. MPAs are primarily intended to protect or conserve marine life and habitat. [Reference: *Public Resources Code, Sections 36602 and 36710*]

The State of California has three types of MPA classifications, each with different allowed uses. **State marine reserves (SMR)** prohibit all extractive activities. **State marine parks (SMPs)** allow some recreational fishing and prohibit commercial extraction. **State marine conservation areas (SMCAs)** allow for specified commercial and recreational activities. Allowed uses in SMPs or SMCAs can include fishing for certain species but not others, fishing with certain practices but not others, and kelp harvesting, provided that these activities are consistent with the objectives of the area and the goals and guidelines of each study region.

MPAs have been studied in a variety of locations around the world, including California. On average, science shows that there are increases in the number of individual animals, average individual size, numbers of young produced, and even the total numbers of different species inside MPAs. Additional information on MPA effectiveness may be found on the MLPA Initiative website at <http://www.dfg.ca.gov/mlpa/science1.asp>.

MPAs are primarily intended to protect or conserve marine life and habitat, and are therefore a subset of marine managed areas (MMAs). Marine managed areas are a broader group of named, discrete geographic areas along the coast that protect, conserve, or otherwise manage a variety of resources and uses, including living marine resources, cultural and historical resources, and recreational opportunities. Marine managed area classifications include state water quality protection area, state marine cultural preservation area, and state marine recreational management area.

2. Were California Natives involved in the creation of the Marine Life Protection Act (MLPA)? Does the MLPA address California Native interests? How or how not?

California Natives were not significantly involved in creating the Marine Life Protection Act (MLPA), an oversight that has been recognized by the MLPA Initiative and the California Department of Fish and Game.

The goals of the MLPA, however, are strongly aligned with the conservation and resource protection interests of many California Natives. Key goals include:

- Protect the natural diversity and abundance of marine life, and the structure, function, and integrity of marine ecosystems.
- Help sustain, conserve, and protect marine life populations, including those of economic value, and rebuild those that are depleted.
- 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.
- Protect marine natural heritage, including protection of representative and unique marine life habitats in California waters for their intrinsic value.

3. Have California Natives participated in the MLPA Initiative Process? How? And how does the MLPA South Coast Tribal Forum fit into the process?

Native American participation in the MLPA Initiative process has increased over the history of the project. Currently, two tribal representatives participate as appointed members of the MLPA South Coast Regional Stakeholder Group (SCRSG) (see questions #9 and #10 below for more information on the tribal participants in the SCRSG). Both tribal SCRSG members are “primary” members, meaning they are both voting members. The SCRSG consists of 64 stakeholders representing a wide variety of interests and perspectives regarding southern California’s marine resources. The SCRSG is charged with developing alternative marine protected area (MPA) proposals for review and consideration by a policy level blue ribbon task force and the California Fish and Game Commission, the ultimate decision-making body under the MLPA.

The south coast “study region”—which ranges from Point Conception to the California/Mexico border, including offshore islands—is the third of five regions being addressed as part of the MLPA Initiative process.

The central coast study region (Pigeon Point in San Mateo County to Point Conception in Santa Barbara County) was the first of these five study regions to complete the MLPA planning and implementation process. In April 2007, the California Fish and Game Commission adopted MPAs for the central coast that will function as part of a statewide network of MPAs. There were no California Native representatives on the central coast regional stakeholder group during the central coast process.

To help improve Native American participation and representation, a concerted effort was made to better involve tribal interests in the next study region—the north central coast (Alder Creek near Point Arena in Mendocino County to Pigeon Point, including offshore islands). Two tribal representatives were appointed to the MLPA North Central Coast Regional Stakeholder Group. These tribal members participated in the development of MPA proposals and assisted in bringing appropriate information about Native American cultural uses in that region. The MPA proposals developed by the north central coast regional stakeholder group are currently being considered by the California Fish and Game Commission.

When the MLPA Initiative began addressing the south coast in 2008, a commitment was made to further increase efforts to involve tribal members and interests in the MLPA Initiative process. As noted above, two tribal members have been appointed to the south coast regional stakeholder group. Additionally, the MLPA Initiative has hosted or co-hosted a number of workshops and meetings aimed at increasing outreach and education to California Natives.

As part of this effort to inform and involve the greater community of California Natives, the MLPA Initiative will host two, one-day MLPA South Coast Tribal Forums. The objectives of the tribal forums are to:

1. Provide information about the California Marine Life Protection Act (MLPA) and the MLPA Initiative process to interested tribal members in southern California.
2. Initiate steps for tribal participation in the MLPA Initiative, and determine effective ways for tribes to share information on tribal-ocean relationships and current and traditional ocean uses.

MLPA Initiative staff hope to use the outcomes of the tribal forums to establish a model for more effective tribal involvement in the MLPA Initiative that can be replicated in the final two study regions:

the north coast (California/Oregon border to Alder Creek near Point Arena), and San Francisco Bay (waters within San Francisco Bay, from the Golden Gate Bridge northeast to the Carquinez Bridge).

4. Can Native Americans use government-to-government consultation to engage the State of California and the MLPA Initiative process?

Unlike the federal government, the State of California has no legal authority to engage in formal, government-to-government consultation with California Natives. As such, the California Department of Fish and Game and the California Department of Parks and Recreation—the two principal state agencies involved in implementing the MLPA—have no jurisdiction to enter into formal government-to-government consultations with California Natives. For its part, the MLPA Initiative is a public-private partnership, which similarly cannot engage with tribes in a formal consultation process.

However, as in the past, state agencies like the California Department of Fish and Game and the California Department of Parks and Recreation are willing to engage in *informal* consultations with tribes to learn and address tribal needs and interests.

The most direct way for Native Americans to inform the MLPA Initiative is to participate in the process itself. See question 9 below for more information on how to become involved.

5. How are federal government agencies involved in the MLPA Initiative process?

Just as tribes participate as members of the MLPA South Coast Regional Stakeholder Group, so too do federal agencies. Agencies such as the Channel Islands National Marine Sanctuary, the Channel Islands National Park, and the National Park Service all serve as south coast stakeholder group members and have equal standing and voting power as tribal representatives, commercial and recreational fishing interests, the conservation community, divers, local government officials, and non-consumptive users.

As federally-recognized tribes have formal government-to-government relations with these agencies, these tribes can also seek to influence the MLPA Initiative process through consultation with these agencies.

6. What recourse do I have if I disagree with the Marine Life Protection Act?

If you disagree with the Marine Life Protection Act (MLPA) itself, you may contact your state assemblyperson, state senator, or the Governor to voice your concerns. As the Marine Life Protection Act has already been passed (it was signed into law in 1999), it would take another act by the California State Legislature and the Governor to revise or repeal it.

While the above path remains an option for California Natives and indeed all California citizens, participation in the MLPA Initiative process itself may be the most effective way to influence the outcomes of the act.

7. If an MPA includes natural resources or places of cultural interest and traditional use to California Native Americans, would Indian people be able to use those resources or places?

Depending on the type of MPA designation, Native American uses of resources and access to places may be restricted.

The Marine Managed Areas Improvement Act (*Public Resources Code, Section 36710*) states that within a state marine reserve (SMR), “it is unlawful to injure, damage, take, or possess any living, geological, or cultural marine resource, except under a permit or specific authorization from a managing agency for research, restoration, or monitoring purposes. While, to the extent feasible, the area shall be open to the public for managed enjoyment and study, the area shall be maintained to the extent practicable in an undisturbed and unpolluted state. Access and use for activities such as walking, swimming, boating, and diving may be restricted to protect marine resources. Research, restoration, and monitoring may be permitted by the managing agency. Educational activities and other forms of nonconsumptive human use may be permitted by the designating entity or managing agency in a manner consistent with the protection of all marine resources.” Any use or access that is granted cannot be discriminatory, meaning that use and access cannot be restricted to any one user group.

There are two other types of marine protected areas, namely state marine parks (SMPs) and state marine conservation areas (SMCAs), that do allow restricted recreational and/or commercial extraction. These two designations could be used to allow resource use or access to California Natives. However, it should be noted that this use or access is not exclusive of Native Americans but rather available to all user groups.

Depending on the type of MPA, it may be possible for Native Americans to obtain approval for specific types of cultural use in MPAs. For instance, extraction of particular mineral resources in state marine parks (SMPs) may be possible. A permit or lease would be required from the California State Lands Commission and may also be required from the California Department of Parks and Recreation.

The Department of Fish and Game does not have a permitting process directed specifically to Native Americans.

8. What is the impact of MPAs on cultural resources, including submerged village sites?

The Marine Life Protection Act (MLPA) applies only to state waters up to the mean high tide line; the MLPA does not apply to resources lying above the mean high tide line, including cultural resources. MPAs that are created under the MLPA are not directed primarily toward protection of cultural resources. However, designation of a state marine reserve, a state marine conservation area, or a state marine park may have the secondary effect of indirectly protecting cultural resources.

Submerged cultural resources, including submerged village sites, are under the jurisdiction of the California State Lands Commission. The California State Lands Commission administers the Shipwreck and Historic Maritime Resources Program under Public Resources Code sections 6309, 6313, and 6314. Submerged village sites are protected by these statutes from unauthorized activities that result in removal of artifacts or damage to the site.

Permits for excavation may be authorized when the activity is justified by an education, scientific, or cultural purpose, or the need to protect the integrity of the site or the resource. The California State Lands Commission may also consider leasing a submerged area that includes cultural resources for their management and protection, but this would take place external to the MLPA process.

Outside of the jurisdiction of the MLPA, there is a type of marine managed area that can be designated by the California Park and Recreation Commission to protect submerged cultural resources—a state marine cultural preservation area. As defined in the Marine Managed Areas Improvement Act (*Public Resources Code, sections 36700-36900*), a state marine cultural preservation area is a “nonterrestrial marine or estuarine area designated so the managing agency may preserve cultural objects or sites of

historical, archaeological, or scientific interest in marine areas.” In a state marine cultural preservation area, “it is unlawful to damage, take, or possess any cultural marine resource. Complete integrity of the cultural resources shall be sought, and no structure or improvements that conflict with that integrity shall be permitted. No other use is restricted.”

Native Americans interested in protecting cultural resources may consider working with the California Department of Parks and Recreation to pursue designation of state marine cultural preservation areas, but this would take place external to the MLPA process.

9. How can I be involved in the MLPA South Coast MPA planning process? Is there a deadline? Besides the MLPA South Coast Tribal Forum, what other support can I expect?

There are a variety of ways California Natives can be involved in the planning process:

Stay Informed

- Visit the MLPA website at www.dfg.ca.gov/mlpa
- Sign up on the MLPA Initiative listserv at http://www.dfg.ca.gov/mlpa/maillinglist_sc.asp
- View live webcasts of meetings as they take place (www.cal-span.org/) or archived versions of the meetings on the MLPA website (www.dfg.ca.gov/mlpa/meetings_sc.asp)

Provide Input

- Contact a member of the MLPA South Coast Regional Stakeholder Group to express your interests and views.
- Provide verbal comment in person at task force, science advisory team, regional stakeholder group, and California Fish and Game Commission meetings
- Submit feedback on documents for public comment available on the MLPA website
- Submit comments, ideas and suggestions via email or regular mail

Email: MLPAComments@resources.ca.gov

Mail: Marine Life Protection Act Initiative
c/o California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Fax: 916.653.8102, Attn: MLPA Initiative

Attend Upcoming Public Meetings

All MLPA Initiative meetings are open to the public and are announced via the MLPA Initiative mailing list; meeting agendas and materials are posted to the MLPA website as they become available. Visit the MLPA website and learn more about how these groups interact and contribute to the process.

Participate at the MLPA South Coast Tribal Forums

- Connect with other interested California Natives
- Provide direct input on MPA proposals
- Receive basic training in MarineMap, an online mapping tool used to view data layers and/or develop MPA proposals

- Meet with SCRSG members, MLPA Initiative staff, and California Department of Fish and Game and California Department of Parks and Recreation representatives

**10. Can I become a member of the MLPA South Coast Regional Stakeholder Group (SCRSG)?
How else can I provide input, since no other members of my tribe are on the SCRSG?**

In September 2008, the director of the California Department of Fish and Game and the chair of the MLPA Blue Ribbon Task Force appointed a sixty-four-member SCRSG. Currently, there are two tribal representatives on the SCRSG: Louie Guassac (Kumeyaay) and Roberta Cordero (Chumash). While the opportunity to become a member of the SCRSG is closed, both SCRSG tribal members are charged with involving their immediate tribes as well as reaching out beyond their tribal affiliations in an effort to be inclusive of all California Natives in the south coast region. You are encouraged to work with Louie and Roberta to ensure that your opinions, thoughts and concerns are voiced through the MLPA Initiative process.