

# Key Outcomes Memorandum

**Date:** September 24, 2010

**To:** Members, MLPA North Coast Regional Stakeholder Group

**From:** Eric Poncelet and Ben Gettleman, Kearns & West

**Re:** Key Outcomes Memorandum – August 30-31, 2010 NCRSG Meeting

**cc:** MLPA Initiative staff and contractors, California Department of Fish and Game staff, and California Department of Parks and Recreation staff (collectively known as the I-Team)

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## Executive Summary – Key Outcomes

On August 30-31, 2010, the Marine Life Protection Act (MLPA) North Coast Regional Stakeholder Group (NCRSG) participated in its seventh meeting, in Fortuna, CA.

**Key outcomes** from the meeting are as follows:

- The NCRSG completed a single Round 3 marine protected area (MPA) proposal.
- The NCRSG produced a recommendation for special closures; the recommendation includes seven year-round or seasonal special closures.
- The NCRSG agreed (with one abstention) to forward its Round 3 MPA proposal and its recommendation for special closures to the MLPA Master Plan Science Advisory Team (SAT), the California Department of Fish and Game (DFG), and the California Department of Parks and Recreation for evaluation, and to the MLPA Blue Ribbon Task Force (BRTF) for consideration.
- The NCRSG voted on a proposed motion regarding State of California recognition of a traditional tribal use category within MPAs. The motion received broad though not unanimous NCRSG support.

Key **next steps** are listed in section III below.

## I. Meeting Objectives, Participants and Materials

On August 30-31, 2010, the Marine Life Protection Act (MLPA) North Coast Regional Stakeholder Group (NCRSG) participated in a meeting in Fortuna, CA. This *Key Outcomes Memorandum* summarizes the meeting's main results.

The primary objectives of the meeting were to:

1. Develop Round 3 NCRSG marine protected area (MPA) proposal(s) to be forwarded to the MLPA Blue Ribbon Task Force (BRTF)
2. Ensure accuracy of MPA proposal boundaries, designation types, and allowed uses
3. Discuss next steps for presenting the Round 3 NCRSG MPA proposal(s) to the BRTF

Thirty NCRSG members participated in the meeting.

BRTF Chair Cindy Gustafson and BRTF member Roberta Cordero participated in the meeting.

MLPA Master Plan Science Advisory Team (SAT) Co-chair Eric Bjorkstedt participated in the meeting.

MLPA Initiative, California Department of Parks and Recreation (State Parks), and California Department of Fish and Game (DFG) staff – collectively known as the “I-Team” – staffed the meeting.

Meeting materials may be found on the MLPA website at:

[http://www.dfg.ca.gov/mlpa/meeting\\_083010.asp](http://www.dfg.ca.gov/mlpa/meeting_083010.asp)

## II. Key Outcomes

### A. Welcome, Agenda Review and Brief Introductions

MLPA Initiative Executive Director Ken Wiseman provided opening remarks, and requested that the NCRSG meeting be dedicated in memory of Harold “Skip” Wollenberg.

Mr. Wiseman then introduced BRTF Chair Cindy Gustafson and Adrianna Shea, Deputy Executive Director of the California Fish and Game Commission. Chair Gustafson thanked the NCRSG members for their hard work.

Mr. Wiseman thanked five NCRSG members (Brandi Easter, Kevin McGrath, Jennifer Savage, Tom Trumper and Dave Wright) who attended the Shelter Cove community information session on August 29.

Eric Poncelet from the facilitation team welcomed the NCRSG members and reviewed the meeting agenda and objectives. He also noted that the meeting was being held in Wiyot territory.

### B. Updates

I-Team staff presented guidance for completing Round 3 MPA proposal(s). Facilitator Eric Poncelet reviewed the meeting flow, key elements, and keys to success for the two-day meeting. Marine Planner Darci Connor then reviewed the key next steps for finalizing the NCRSG Round 3 MPA proposal(s) and preparing for the October 25-26 BRTF meeting. Eric Poncelet noted that during the upcoming BRTF meeting, NCRSG members would be invited to explain the decisions made during

their Round 3 deliberations, and how they ultimately arrived at their Round 3 proposal(s). Mr. Poncelet added that NCRSG members also would have the opportunity to express support and preference for the Round 3 proposal(s) at the BRTF meeting.

Science and Planning Advisor Dr. Satie Airamé reviewed the meeting's SAT-related briefing documents. Dr. Airamé noted that both the SAT and staff responses to science questions documents were in draft form and had not yet been approved by the SAT.

Dr. Airamé then presented an update on outreach to California tribes and tribal communities. She noted that no new input on proposed uses in MPAs had been provided since the July 29-30 NCRSG meeting, but that revisions and clarifications had been made. Dr. Airamé added that during the meeting, it would be important for the NCRSG to clarify for each proposed MPA whether tribal uses are intended to be allowed, and if so, whether the full list of species and gear types (Document E4 from the July 29-30 NCRSG meeting) would be used or whether the MPA-specific list of species would be used (briefing document C.2).

### C. Completion of Round 3 NCRSG MPA Proposal(s)

The NCRSG spent nearly all of August 30 and much of August 31 continuing development of its Round 3 MPA proposal(s). On the afternoon of August 31, the NCRSG completed a single Round 3 NCRSG MPA Proposal. The group agreed (with one abstention) to forward this proposal to the SAT, DFG, State Parks, and I-Team staff for evaluation, and to the BRTF for consideration.

Below is a summary of key issues discussed:

1. During their August 30 deliberations, several NCRSG members asked whether it would be possible to include state marine reserves (SMRs) that allowed for tribal uses in the Round 3 MPA proposal(s). I-Team staff reiterated that, by law, SMRs do not allow for any take. I-Team staff also agreed to further consider the issue to provide additional clarity. On the morning of August 31, Dr. Satie Airamé and DFG Senior Marine Biologist Susan Ashcraft presented on the different options for the NCRSG to express intent for an SMR with proposed activities for tribal traditional, non-commercial gathering, harvesting and fishing for subsistence, ceremonial or stewardship purposes. Dr. Airamé and Ms. Ashcraft highlighted the implications of different designation options and how these options would affect SAT evaluation and regulations in the future (Presentation slide included as Appendix A). The three options were:
  - a. *SMR that would not allow any take* (including non-commercial uses intended to accommodate tribal uses) until potential future legislation addressed the issue.
  - b. *SMCA with proposed activities that would accommodate tribal uses only*. This option would need to allow use by all non-commercial users in order to accommodate tribal uses.
  - c. *Nearshore SMCA paired with an offshore SMR*. Nearshore, this option would allow use by all non-commercial users in order to accommodate tribal uses nearshore. Offshore, it would not allow any take (including non-commercial uses intended to accommodate tribal uses) until potential future legislation addressed the issue.
2. On August 30, NCRSG members discussed briefly whether, for SMCAs intended to allow tribal non-commercial uses, they wanted to include the list of tribal uses identified for the entire north coast study region, or whether they wanted to include the MPA-specific lists of uses. NCRSG members acknowledged that both lists were still incomplete. After discussion, NCRSG members requested that their intent to include tribal uses be made clear in the Round 3 MPA proposal(s), and that following the NCRSG meeting I-Team staff work to identify the

- appropriate set of proposed allowed uses (including species and gear types) intended to accommodate tribal uses for each MPA with input from tribes and tribal communities.
3. The NCRSG discussed whether to include with its Round 3 MPA proposal a recommendation to prohibit the installation of seafloor pipelines and/or sub-seabed slant holes to transport hydrocarbon products from offshore sedimentary basins in state waters. The NCRSG created a subcommittee—consisting of Pete Nichols, Zack Larson and Dave Jensen—to develop a draft motion for review by NCRSG members and eventual discussion and consideration at the BRTF's October meeting.
  4. The NCRSG selected six co-leads to help lead the quality control process and present the NCRSG MPA proposal to the BRTF: Brandi Easter, Zack Larson, Bill Lemos, Jennifer Savage, Tom Trumper and Adam Wagschal.

#### D. Special Closures

The NCRSG deliberated on and completed a recommendation for north coast special closures to be considered by the BRTF.

The following special closures were broadly supported by the group:

- Southwest Seal Rock Special Closure
- Castle Rock Special Closure
- False Klamath Rock Seasonal\* Special Closure
- Sugarloaf Island Special Closure
- Steamboat Rock Seasonal\* Special Closure

NCRSG members were mixed on other proposed special closures. The facilitators used straw polls to assess the current level of support for these, including proposed special closures at False Cape Rock, Rockport Rocks and Vizcaino Rock. The results of the straw polls are listed below.

- Rockport Rocks Seasonal\* Special Closure – First straw poll
  - Yes – 6
  - No – 7
  - Abstain – 8
- Rockport Rocks Seasonal\* Special Closure – Second straw poll
  - Yes – 16
  - No – 0
  - Abstain – 3
- Vizcaino Rock Seasonal\* Special Closure
  - Yes – 12
  - No – 6
  - Abstain – 2
- False Cape Rock Special Closure
  - Yes – 5
  - No – 13
  - Abstain – 8

\*Note: All proposed seasonal closures are from March 1 to August 31

Since the Rockport Rocks and Vizcaino Rock special closures were generally supported among the NCRSG, the NCRSG agreed with the staff recommendation based on the straw poll results to include these two special closures as part of their recommendation to the BRTF. Due to a lack of support, the False Cape Rock special closure was not included.

Several NCRSG members noted that they did not believe they had adequate time to fully discuss all the special closures in detail. I-Team staff noted that the NCRSG would have the opportunity to address any outstanding issues concerning its special closures recommendation at the October 25-26, 2010 BRTF meeting.

## E. Tribal Use Motion

NCRSG member Jacque Hostler presented a proposed motion regarding State of California recognition of a traditional tribal use category within MPAs (proposed motion included as Appendix B). After deliberating on the proposal, NCRSG members voted on two motions related to this topic. The results of both votes are included below (Note: five NCRSG members were not present when the vote took place; the votes of the five absent members were secured after the meeting and have been included in the vote totals below).

- Motion 1: Whether to support the proposed motion to the BRTF (the first 2 paragraphs of the attached document).
  - Yes – 27
  - No – 0
  - Abstain – 4
  - Note: One person at the meeting did not vote on this motion
  
- Motion 2: Whether to include the following text in the “design considerations box” for all of the MPAs in the NCRSG Round 3 proposal: “The NCRSG proposes that the following language be included in the MPA regulations: All California Indian Tribal traditional, non-commercial fishing, gathering, and harvesting for subsistence, ceremonial or stewardship purposes shall be uses that are exercised by the members of California Indian tribes and tribal communities.”
  - Yes – 30
  - No – 0
  - Abstain – 2

## F. Public Comment

Members of the public provided comment on August 30 and August 31, including members of the public who participated via teleconference from Fort Bragg and Crescent City. Key themes from public comment included:

- Concern that the state will not have sufficient resources to enforce the MPAs that will be created
- Support for Proposal 0
- Support for protecting traditional gathering by California tribes and tribal communities
- Appreciation for the NCRSG’s hard work
- Appreciation for the consideration of Petrolia in the process
- Concerns over potential economic impacts to local communities
- Support for meeting the minimum science guidelines
- Request for special closures not to be placed near ports and harbors
- Support for modifying the northern boundary of the proposed Ten Mile MPA
- Appreciation for considering California tribes and tribal communities in the process
- Concern over the science guidelines not being met

- Support for adaptive management and an urchin experiment at Point Cabrillo
- Support for prohibiting industrialization in all MPAs
- Support for delaying the process to resolve tribal rights issues
- Support for limiting potential impacts on commercial fishing

### III. Recap of Next Steps

#### A. Key Next Steps for NCRSG Members

- A work session was to be held with volunteer NCRSG members and I-Team staff on September 1, 2010, to complete supporting MPA attribute information for the Round 3 NCRSG MPA Proposal, including site-specific rationale, goals/objectives, and other design considerations.
- A quality control (QC) process would follow the NCRSG meeting to confirm the accuracy of the Round 3 NCRSG MPA Proposal. During this process, the NCRSG also would be able to finalize the supporting attribute information drafted on September 1. [Note: The co-leads submitted a list of recommended changes to staff on September 8.]
- In addition, co-leads would draft NCRSG supporting materials to accompany the Round 3 NCRSG MPA Proposal and offer any additional thinking and work done since the conclusion of Round 3. [Note: These materials were shared with the NCRSG and submitted to staff during the week of September 13].

#### B. Key Next Steps for I-Team Staff

- During the weeks of September 6 and September 13, 2010, I-Team staff will produce materials that provide basic information about the Round 3 NCRSG MPA Proposal, including:
  - Description of MPAs – A document that details for each MPA the name, proposed allowed uses, written boundary descriptions, site-specific rationale, and other attribute information. This document will be similar to the “Array Spreadsheet” available in MarineMap for each proposal.
  - Maps - A set of maps in PDF format that graphically show the proposed MPAs; proposed special closures also will be displayed.
  - Habitat Calculations – A spreadsheet that presents the amount of habitat captured in each proposed MPA; this will be similar to the information that can be exported directly from MarineMap.
  - Special Closures - A document describing proposed special closures with maps in PDF format showing proposed boundaries. A document that shows basic information for each proposed special closure, including the amount of habitat captured in each proposed special closure.
- I-Team staff will make available to the public the Round 3 NCRSG MPA Proposal and accompanying Round 3 NCRSG Special Closures Recommendation in MarineMap and the materials described above on the MLPA website ([http://www.dfg.ca.gov/mlpa/mpaproposals\\_nc.asp](http://www.dfg.ca.gov/mlpa/mpaproposals_nc.asp)). NCRSG members and the public will receive an email notification when these materials have been posted, which is expected to be on or around September 22.
- Additional materials regarding the MPA proposal will be posted to the MLPA Initiative website, including evaluation results, as they become available.

# APPENDIX A

## Marine Life Protection Act Initiative



## Proposed State Marine Reserves with Proposed Tribal Uses

Presented to the North Coast Regional Stakeholder Group  
August 31, 2010 • Fortuna, CA

Satie Airamé, Science and Planning Advisor • California MLPA Initiative



## Proposed SMRs with Tribal Uses

NCRSG Intent	SAT Evaluation	Regulations*
SMR with proposed activities for tribal traditional, non-commercial gathering, harvesting and fishing for subsistence, ceremonial or stewardship purposes	(a) SMR	(a) no take
	(b) SMCA (proposed activities to accommodate tribal uses only)	(b) proposed activities open to all non-commercial users to accommodate traditional, non-commercial gathering, harvesting and fishing activities
	(c) nearshore SMCA (to 1000 feet or other feasible distance; proposed activities to accommodate tribal uses only) paired with offshore SMR	(c) offshore SMR is no take; nearshore SMCA includes proposed activities open to all non-commercial users to accommodate traditional, non-commercial gathering, harvesting and fishing activities

\* Potential future modification to allow tribal traditional, non-commercial gathering, harvesting and fishing

SMR = state marine reserve    SMCA = state marine conservation area

# APPENDIX B

## MLPA North Coast Regional Stakeholder Group Motion Regarding State of California Recognition of a Traditional Tribal Use Category within Marine Protected Areas under the Marine Life Protection Act *Adopted August 31, 2010*

### **Motion**

By this formal, approved motion, the MLPAL North Coast Regional Stakeholder Group (NCRSG) requests that the MLPA Blue Ribbon Task Force advise and strongly urge the California Department of Fish and Game (DFG) and the California Fish and Game Commission (F&GC) to formally adopt a special category of tribal uses within marine protected areas (MPAs) in order to protect and preserve the traditional cultural practices and heritage of California Indian tribes and tribal communities, and to develop co-management arrangements between tribes and tribal communities and the State of California.

The NCRSG proposes that the following language be included in the MPA regulations: "All California Indian Tribal traditional, non-commercial fishing, gathering, and harvesting for subsistence, ceremonial or stewardship purposes shall be uses that are exercised by the members of California Indian tribes and tribal communities."

### **Background**

Ample authority exists for the state's recognition and separate treatment of aboriginal tribal uses within MPA regulations. The Legislature has found that "[j]urisdiction over the protection and development of natural resources, especially the fish resource, is of great importance to both the State of California and California Indian tribes." Further, California law acknowledges tribes as a separate and distinct category of users, and that tribal gathering and harvesting has a cultural purpose which the state should protect: "To California Indian tribes, control over their minerals, lands, water, wildlife and other resources is crucial to their economic self-sufficiency and the preservation of their heritage." The California State Legislature also has found that the state and the tribes share, as a mutual goal "the protection and preservation of the fish resource". Fish and Game Code §16000.

California MPAs are part of the National System of Marine Protected Areas, which were created by federal executive order in 2000. That order explicitly states that the creation and management of MPAs shall "not diminish, affect, or abrogate...the United States trust responsibilities to Indian tribes." California is therefore obligated under federal law to respect and protect Indian use rights in the MLPA process. Executive Order 13158, May 26, 2000, 65 Fed. Reg. 105,34909 (May 31, 2000).

In adopting and implementing regulations pursuant to the MLPA, DFG and F&GC are subject to the above stated statutory provisions, in addition to the provisions of the MLPA, which requires that "interested parties" (e.g., tribes and tribal communities) be consulted in the process for establishment of new MPAs.

The above provisions collectively provide ample authority for the state's separate and distinct treatment of tribal uses.