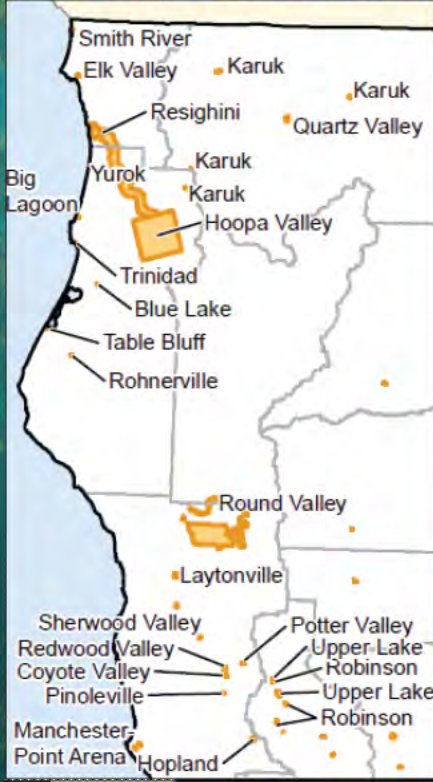


# Integrating Tribal Resource Use in California's Marine Life Protection Act Initiative

ON THE WEB AT [HTTP://WWW.BREN.UCSB.EDU](http://www.bren.ucsb.edu)

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Map of tribal territories of the north coast of California

## Introduction

The California Marine Life Protection Act (MLPA) Initiative is a planning process that is creating a network of marine protected areas (MPAs) along the coast of California. The MLPA Initiative was designed as an inclusive, transparent, science-based, and stakeholder-driven process so that the final MPA network would protect California's natural marine resources while accounting for the needs of its various user groups. As the Initiative assembled a wide range of data required to design the MPA network in the north coast region it became evident that the available data on tribal marine resource use was incomplete or in a qualitative form, making it incompatible with the quantitative analyses used by the MLPA Initiative. The north coast region's 35 Native American tribes and tribal communities maintain long-standing cultural ties to the California coast for both consumptive and non-consumptive uses. The MLPA itself does not explicitly address tribal sovereign rights within its legislation, leaving tribes regulated under the same rules as other users.

## Project Role

The California Department of Fish and Game, charged with implementing the Marine Life Protection Act, does not have the authority to regulate user groups differently based on their political or ethnic affiliations, so simply providing tribal groups with a blanket exemption from restrictions imposed within MPAs was not an option. The only means by which the California Department of Fish and Game can allow the use of marine species within MPAs is by regulating the take of species under the categories of commercial and recreational fishing. Fishing regulations, defined as "uses," consist of a unique combination of a species and a gear type used

to harvest the species. If the placement of MPAs overlapped with areas of traditional tribal harvesting and gathering the California Department of Fish and Game could create recreational fishing regulations that would accommodate the continued use of species highly valued by tribes. However, specific information on tribal harvesting and gathering locations, as well as species and gear types used by tribes, had never been systematically documented or mapped in California.








The primary goal of our project was to collect data on tribal marine resource to be incorporated into the north coast MPA network proposals. In addition to collecting data, we assessed the comments received during outreach to tribal groups, analyzed written and verbal public comments given throughout the MLPA process, and conducted a comprehensive literature review of the MLPA Initiative structure, legal framework, and evaluation methods in order to understand:

- 1) How tribal groups participated in the MLPA process
- 2) What data gaps on tribal marine resource use still existed
- 3) How tribal input was incorporated into the MPA network proposals
- 4) The implications of incorporating tribal input to the conservation goals of the MLPA and to tribal groups

### Data Collection and Data Gaps

Working with MLPA Initiative staff, we interviewed members of north coast tribes and tribal communities to gather data on:

- 1) Proposed MPAs that overlapped with areas of traditional tribal gathering
- 2) Uses, defined by specific combinations of species taken and gear types used for extraction, that tribes would want allowed in MPAs if geographical overlap could not be avoided.

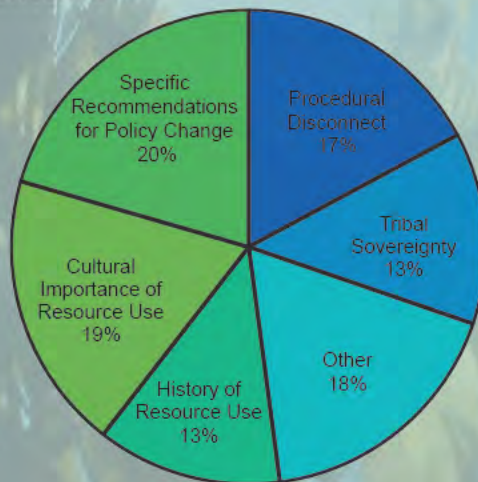
Species: GROUND FISH	Gear Type	OPTIONAL	
		Season	Level of Use: 1-5
<input type="checkbox"/> lingcod 	<input type="checkbox"/> spear fishing <input type="checkbox"/> hook and line <input type="checkbox"/> other gear		
<input type="checkbox"/> rockfish (includes many species; photo is one example) 	<input type="checkbox"/> spear fishing <input type="checkbox"/> hook and line <input type="checkbox"/> other gear		
<input type="checkbox"/> Pacific staghorn sculpin 	<input type="checkbox"/> gear		
<input type="checkbox"/> cabezon 	<input type="checkbox"/> hook and line <input type="checkbox"/> spear fishing <input type="checkbox"/> other gear		
<input type="checkbox"/> kelp greenling 	<input type="checkbox"/> spear fishing <input type="checkbox"/> hook and line <input type="checkbox"/> other gear		
<input type="checkbox"/> rock greenling 	<input type="checkbox"/> spear fishing <input type="checkbox"/> hook and line <input type="checkbox"/> other gear		
<input type="checkbox"/> white sturgeon 	<input type="checkbox"/> hook and line		

This data sheet facilitated the communication of species and gear type data. Because tribal groups often use different names for species, the inclusion of photographs was essential. To protect the privacy of traditional tribal harvesting and gathering locations, we only requested information within geographic regions where MPAs had been proposed instead of the entire coastline. This information was aggregated prior to submission to the MLPA Initiative to protect the confidentiality of participating tribes.

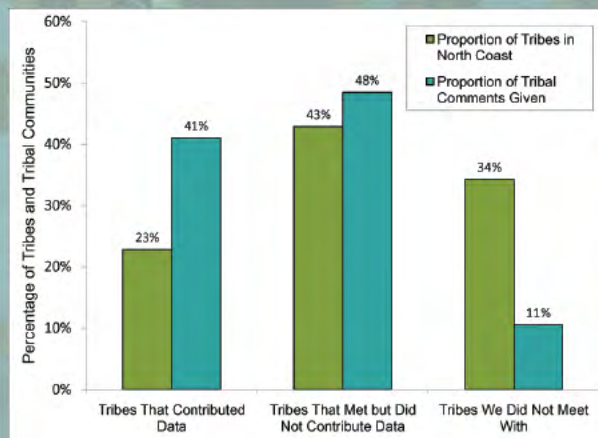
Efforts were made to contact all tribal groups listed in the north coast regional profile, however, we only met with 23 of the 35 tribal groups, so a clear gap exists in the direct person-to-person communication we established. In addition, not all tribes we met with provided input on the draft MPA proposals and the detail of the input ranged from very specific to very general, leaving additional gaps in our data.

### Tribal Participation

In order to further assess tribal participation in the MLPA process, we reviewed all 1,703 written and verbal comments given from November 2009 to February 1, 2011. The chart below shows the topics mentioned most frequently in comments addressing tribal concerns.



We also assessed which tribal groups made use of opportunities for input in the MLPA process. The majority of public comments regarding tribal issues were given by tribal members. In the graph below, the green bars indicate the proportion of tribes in each category, while the blue bars indicate the number of comments tribal groups within each category gave.



We found that tribal groups were consistent in their engagement in the process: those that contributed data and engaged in meetings with Initiative staff gave more public comments per group, on average, than groups that opted not to participate in the MLPA Initiative. Groups that contributed data to our project were much more likely to give written and verbal public comments as well.

## Incorporation of Tribal Input

**Proposed Uses:** The data we collected on species and gear types used by tribes was incorporated into the final MPA network proposals as proposed recreational fishing regulations. A number of the marine resource uses listed by tribes were not legal in state waters or were unenforceable by the California Department of Fish and Game and so were excluded.

**Intent Language:** Language was incorporated into proposed MPA regulations to identify which of the uses proposed were intended only for tribal groups in the event that tribe-specific exclusions will be possible in the future. As a result, regulations within MPAs included three categories of uses: commercial, recreational, and recreational intended to accommodate tribal gathering.

**Structure and Boundaries:** Active participation of tribal groups throughout the process significantly altered the structure and boundaries of some MPAs.

### Pyramid Point Nearshore SMCA

The take of all living marine resources is prohibited except:

1. The recreational take of pelagic finfish except salmon (SPEARFISHING); surf and night smelt (DIP NET OR CAST NET).
2. The recreational take, intended to accommodate tribal uses, of:
  - finfish (HOOK AND LINE FROM SHORE ONLY);
  - shiner surfperch, surf smelt, top smelt, herring, anchovy and sculpin (DIP NET OR CAST NET);
  - surf smelt (BEACH NET);
  - marine invertebrates (includes clams, mussels, other bivalves, sea urchins) (HAND);
  - marine aquatic plants (except for sea palm) (HAND).

Excerpt from one of the final MPA proposals. It highlights the specific uses to be allowed within the MPA to accommodate tribes.

## Implications of Incorporating Tribal Input



The north coast region of California. Colored shapes indicate locations of proposed MPAs.

**Implications to the MLPA Conservation Goals:** The goals of the MLPA include protecting the natural diversity and function of marine ecosystems and sustaining and restoring marine life populations. As a result of tribal input there were significantly more recreational uses proposed for some of the MPAs in the final network proposals. The recreational fishing regulations created to accommodate tribal uses are open to all recreational users limiting the MPAs ability to protect marine species and habitat. As a result, 7 of the 17 MPAs in the final proposal fell below a critical threshold and were not considered in the scientific evaluation determining whether the proposed network met the conservation goals of the MLPA.

### Map Legend:

- MPAs that meet minimum conservation requirements
- MPAs that do not meet minimum conservation requirements due to the number and variety of uses intended to accommodate tribal groups
- MPAs that do not meet minimum conservation requirements due to other proposed uses
- State waters, 0-3 nautical miles offshore
- ● MPAs of less than 0.5 square miles in size

**Implications to Tribal Groups:** Because the proposed uses intended to accommodate tribes would be allowed for all recreational users, the protection for these targeted species within MPAs is reduced. Therefore, fishing pressure from all recreational users could result in impacts to, or loss of, these species. Since some uses listed by tribes were excluded for legal reasons, traditional tribal uses are restricted within some MPAs.

## Key Findings

- **Tribal participation** in any facet of the MLPA process is more a function of the group's general willingness to share information than a preference toward one form of participation or another.
- **Tribal input was incorporated and influenced MPA network design** by affecting MPA location and size, as well as the numbers and types of uses allowed within MPAs.
- **Not all tribal requests were incorporated** resulting in restrictions to tribal gathering and harvesting within MPAs, but specific language included in the final proposals could facilitate a system of tribal exemption in the future.
- **The lack of an existing State or MLPA-specific mechanism** to address tribal concerns resulted in MPA proposals that addressed tribal concerns by accommodating all recreational users at the cost of achieving MLPA conservation goals.



Native American woman from the Tolowa Tribe

## Recommendations

Based on conclusions drawn from our analyses and firsthand experiences working within the MLPA process, we offer a set of recommendations for improving tribal consultation, outreach, representation, and relationships for future marine spatial planning processes.

- Explicitly incorporate formal and informal tribal consultation requirements into laws establishing guidelines for marine spatial planning and/or develop a formal state-tribal or department-tribal consultation process
- The relevant government entity (e.g. national, state, county) involved in planning should issue an official statement declaring its legal authority and stance on indigenous rights
- Pursue a hybrid approach to tribal representation within the planning process that acknowledges tribal groups reliance on natural resources while recognizing their sovereignty
- Determine how best to represent and structure the variety of tribal interests within the stakeholder planning process
- Develop a method of analysis and collect field data to better assess the potential ecological impacts of tribal gathering
- Create a robust outreach process for interactions with tribal groups
- Develop a formalized approach to accommodating uses and/or systems of co-management for tribal groups that are not federally recognized

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We also thank the MLPA Initiative staff and the MarineMap team. Background photo courtesy of Clinton Bauder. Tolowa woman photo courtesy of Edward S. Curtis. Map data sources: ESRI, i-cubed, USDA FSA, USGS, AEX, GeoEye, Getmapping, Aerogrid, and IGP.