

**Marine Life Protection Act
Joint Tribal Meeting with California Agencies**

Location: California Environmental Protection Agency
Sierra Room
1001 "I" Street
Sacramento, Ca 95814

Date: December 21, 2010

Time: 10 am to 12 pm

Meeting Notes

Tribal Attendees: **Irenia Quitiquit** (Scotts Valley Band of Pomo Indians and CalEPA TAC); **Meyo Marrufo** (Robinson Rancheria of Pomo Indians); **Robert Columbro** (Shingle Springs Band of Miwok Indians); **Sarah Ryan** (Big Valley Rancheria Band of Pomo Indians); **Mario Hermosillo** (Cloverdale Rancheria); **Atta P. Stevenson** (Inter-Tribal Water Commission and CA Indian Heritage Council); **Javier Silva** (Sherwood Valley Band of Pomo); **Koiya Tuttle** (Potter Valley Tribe); **L. Dan Rodriguez** (Coyote Valley Tribe); **Devin Chatoian** (Federated Indians of Graton Rancheria); **Salvador Rosales** (Potter Valley Tribe); **Paula Britton** (Habematolel Pomo of Upper Lake); **Ben Henthorne III** (Hopland Band of Pomo Indians); **Jeff Want** (Scotts Valley Band of Pomo Indians); **Ken Tippon** (CalEPA Tribal Advisory Committee).

California Agency Attendees: **Lester Snow** (California Secretary for Natural Resources); **Linda S. Adams** (Secretary for Environmental Protection); **John McCamman** (Director of the Department of Fish and Game); **Sonke Mastrup** (Deputy Director of the Wildlife and Fisheries Division, Department of Fish and Game); **Ken Wiseman** (Executive Director, Marine Life Protection Act Initiative); **Leslie Walden** (Deputy Secretary for Law Enforcement and Counsel); **Ricardo Martinez** (Deputy Secretary for Environmental Justice, Tribal and Border Affairs)

I. Introductions and Opening Comments

Linda Adams (**LA**) hears loud and clear about the MLPA issues impacting Tribes.

Lester Snow (**LS**) - Aware of MLPA issues with Tribes in the North Coast area. Assemblymember Wesley Chesbro is introducing legislation to change MLPA statutes to exempt Tribes to allow gathering practices.

John McCamman (**JM**) wants to clarify misconceptions that are happening MLPA process and reassure Tribes that Department of Fish and Game (**DFG**) has been actively engaged with Tribal discussions since North Coast MLPA came up. Staff have attended many meetings, stakeholder group active participation in groups. Tribes were heard loud and clear.

Javier Silva (**JS**) – the Tribes were underrepresented on the North Coast process – 6 seats in a tri-county area. DFG has not come out to Tribal lands to understand the issues. Only the Science Advisory Committee (with no Tribal representation) did come out. The state needs to follow a consultation process. Concern that the information is not going to the right person.

Koiya Tuttle (**KT**) The biggest concern for Tribes in the North Coast area is that we are not exempt from MLPA proposal in general. We are not ok with what is being proposed and there has been a lack of consultation with Tribes. The Blue Ribbon Task Force (**BRTF**) Tribal rep is from southern CA – the rep should have been from northern CA.

Atta Stevenson (**AS**) No formal consultation policy was used with the MLPA process; also, poor facilitation; professional facilitators should have been used. There needs to be consultation and creation of a uniform policy. The BRTF should have had local Tribal representatives and Tribes not from the immediate area. Many Tribes care about the coast.

Meyo Marrufo (**MM**) Traditional Tribal uses is extremely important as a category and a starting point in our discussion with you. Tribes are ready to handle co-management and multi-jurisdictional issues.

Sonke Mastrup (**SM**) - Started working with Tribal Councils in Feb 09 and he has learned a lot. Fish and game only implements the law, doesn't set it. We need a consultation process and build some structure with the Tribes, we are only now learning how to communicate and listen. We are developing this relationship and it will take a while.

II. Discussion on the role of Tribes in the MLPA process: Traditional Tribal Uses

JM- What are traditional Tribal uses? How do you define them? We need definitive information about it and more detail on this as a use category.

MM - Some of us filled out your surveys and provided that info. Can you clarify what you really want for this definition?

Sarah Ryan (**SR**) - How much detail do you need? How detailed are the other categories? Is that really the delay?

JM – The other categories have some level of detail and can be found on the MLPA site. **EDITOR'S NOTE: Can't find definitions of categories on the MLPA site.**

AS – A Fish and Game Commissioner said that the final MLPA plan will be last plan. Because of how costly it was, it won't be revisited. We have never had to define use.

Paula Britton (**PB**) -What are northern CA Tribes saying what traditional Tribal gathering is? Each Tribe is separate. Fish and Game should gather language on traditional users.

SM - Our responsibility - are these marine resources dying and how many? I don't need to know what you know and why you are doing it. We need to know uses.

Ken Wiseman (**KW**)- Our process included Sonke and his staff - we came up with recommendation that will go before the Fish and Game Commission. Think we made a lot of progress. We can't by law fix this but we want it to be fixed. It is not possible to allow traditional Tribal gathering in closed areas, it has to be through legislation.

JM – How far off coast and how far on the coastal reaches is traditional Tribal uses occurring? He originally heard 1 mile and then 50 miles and then whole coast. It just kept going. These are state resources, not Tribal resources. We can't give away our responsibility and authority.

PB - That was a taking, not a giving.

KW - Chesbro is coming up with language to get exemption so traditional Tribal gathering isn't rolled into recreation. It's important to get the language as focused as possible to get commission to adopt it. It would be an exemption. With that comes enforcement issues - who belongs there and what recognition do you carry. What is being taken? Up to 135 different things at any given location. Fish and Game wants to measure this - how many months out of year. Currently, Fish and Game is calculating 20,000 recreational users. If all these users were Indians gathering all these items, it would have an impact. There are opportunities for education: explaining the difference between a "take" and Tribal gathering. We don't need to address sovereignty in general but rather talk about how do we let

gathering go on. We have conservation areas where we need to have traditional gathering - tell this to commission - we need these areas open to traditional gathering – we need to define what it looks like.

JM - Governor can do it by executive order; there are legislative limitations to make a distinction.

EDITOR'S NOTE: After the meeting, I asked CalEPA for more details on the 'legislative limitations' of changing the definition of Recreational Users and adding a Traditional Tribal Gathering Use – have not heard back regarding this yet.

LS - Everyone understands that it would be nice/necessary to have Tribal exemption. Department of Fish and Game can't do this but there will be a bill introduced. The enforcement issue will be challenging if Tribes become exempt from gathering. How do you tell that someone is gathering legitimately or not?

AS – The unified singular array that moved forward wasn't unified - we didn't approve for more protected areas because these are too restrictive of our ways of life. We are against the ribbon to begin with because we believe all of CA belongs to us.

III. Discussion on Co-Management

a) Multi-Jurisdictional Enforcement Utilizing Tribal Resources

b) Assembling Steering Committee/Workgroup

c) Using Traditional Ecological Knowledge in Process

BH: during the arrays that have been passed, co-management has been a big issue. Now there will be areas on coast that will be more heavily visited since some areas will now be closed down. We need co-management.

JM -Co-management: Anything is possible. There are 120 tribes in CA. It will have to be site specific and there are limitations to what we can do as a state.

MM - We have several documents on traditional ecological knowledge, we'll forward that to you.

Suggestions: A special gathering permit similar to free fishing permits through Fish and Game. We can look at this to start the definition.

SM - Has been looking for joint responsibility for activities - looking for co-management examples.

Alaska fits our situation the best because resources are shared and areas are largely off reservation.

This type of model will need legislation.

BH - Perhaps Mendocino Tribes can assist wardens - Tribal officers.

JM – There are 2 programs: Reserve Deputy - have to be post certified - volunteer job to assist wardens Natural Resource Volunteer Program - train people in fish and game - public outreach, nuisance wildlife activities, communicating with people about how to get along with wildlife. We have a training class and can bring it to areas. He'd be happy to share info about it. Need to develop an MOU through the consultation process - we are constrained because of the public trust doctrine.

BH – Poaching: it needs to stop. North coast abalone issues are huge. Closures need to be monitored. Concerned about ability of Fish and Game to monitor these sites when they aren't familiar with them. Tribal officers can help monitor these areas also.

MM - Most Tribes have something we can offer in terms of co-management. We don't want abalone to disappear. We are also talking about adaptive management plans for species that are there. We are developing this for hitch in Lake County. Your species of concerns are ours. We know that if you kill the food, you kill the culture. Co-management is multi-faceted as we know. How do we go about developing this? Does it need to be separate policy?

JM - Issue of traditional Tribal uses doesn't equal co-management, right?

SM -Tribes would have to hold members accountable for agreements that are made.

MM – We need formally ask BIA to host a meeting to invite Sonke and John and CalEPA for a co-management discussion. We should develop meeting with them and have another meeting like this to talk about co-management. Staff/decision makers at appropriate levels should attend from Tribes and agencies.

LA - We'd be happy to be involved

AS - We participated in Western Governors meeting. They used the MLPA as an example to look at with ocean wellness issues. MLPA shouldn't be used an example because it was a flawed process.

KW – MLPA for San Francisco Bay won't be happening soon - funds not there to do process. Funds would be better spent for enforcement of coast. He hopes piece of legislation regarding Tribal exemption is drafted by February meeting.

KT - One aspect of co-management - setting quotas

IV. Discussion on Tribal Policy Development: Fish and Game developing a structure for Tribal consultation policy for management of resources.

MM - Put out an email to all California Tribes – which ones want to be on Steering Committee to develop criteria? Without a Tribal consultation policy - we can't move into co-management issues

JM - We have a total open door policy - we can meet anytime - don't need formal

PB - We need a formal Tribal consultation policy

SM - We value our Tribal partners. We want to use components from successful consultation politics. We can't negotiate treaties. If you have policy you work with that is efficient, productive, please send it to us.

LA – An unfortunate situation with one of Linda's departments – a Sacred Site was involved – this was the impetus to getting the CalEPA Tribal Consultation Policy done. It was a big learning curve.

MM - CalEPA, State Parks, CalTrans all have policies

JS - Cynthia Gomez and her training earlier this year - Tribal sovereignty training - over 100 people there. Showed great need of knowledge of Tribal issues. Please continue that training, have Tribal people there to educate them. We have traditional ecological knowledge

AS - At the beginning of the Tribal consultation policy development process, it was offered tribal governance 101 - we will bring in group of facilitators. One of the major needs and hurdles is mandatory cultural awareness training for staff, especially in the field.

MM - Do you have an organization policy on how you contacted Tribes for the MLPA? Irenia can send Fish and Game the CalEPA Tribal consultation policy

KW - We reached out statewide to Heritage Commission to make sure people were aware of our process. We expanded for north coast to inland because of organization and sheer numbers

BH – Large cluster of Tribes in Mendocino - we are unique

JM – I have not read CalEPA's Tribal consultation policy. We need a process for consultation - we need to work it out. What happens at that February meeting before the Fish and Game Commission: They are the deciding body on what will be the marine protected areas in north coast. Tribes need to get involved and be engaged with the Commission.

LS - It seems we reached an agreement on the need for a uniform Tribal consultation policy. An Executive Order will be needed to smooth over the policy with State Parks and DOT (CalTrans) - we need to pursue it. We should make sure it's a transition issue for the new Governor and make sure that Chesbro gets bill right. Chesbro has committed to working on it.

MH – Arizona has a method whereby hunting and fishing can be mutually enjoyed by other states - Most Tribes have constitution and this might be a goal to add something to the Fish and Game code.

The construct of state code does not recognize Tribal boundaries. What could be developed is contract

AS - We have overlooked the BIA who are providing oversight for the Tribes, provide legal expertise. BIA should be sitting here protecting our inherent Tribal gathering rights. Why would we give our detail to you - you broke our confidence by putting things online.

SM - One interest group wanted to sue Fish and Game and get access to our notes. A version of notes was distributed that kept out sensitive issues. Been losing staff and budget - scrambling for ways to staff this. Times will be lean for a while. He is working with 3rd party group to facilitate - can protect confidentiality better

JS – During the April 9th meeting, workgroups were formed: legal, co-management and ? What resources can you provide to help us continue workgroups? We are willing to go 1/2 way

JM - We can't provide anything for Tribal participation

SM - That's why we asked BIA -they have funding and they have trust responsibility. **But Tribes have to ask for resources. Help us by engaging federal agencies – USFW and USFS.**

Follow up after agenda topics finished :

- Eye opening for **DFG**, develop Tribal policy informally to start, take legislation action, utilize Governor's executive decision; discuss informally to get a Tribal policy workgroup; talk with folks on resource volunteer training.
- **LA** invited Tribes to the Technical Advisory Stakeholders group in January to host or put our issue on agenda.
- **MM** questioned why doesn't CalEPA have oversight on other state agencies re: CEQA & NEPA process –subject to Tribal consultation process? **DFG** said they didn't have to follow this process? **DFG** does spend enormous funds on these processes; CEQA document was certified last week for MLPA.
- Ken Tippon (**KeT**) mentioned consultation is different than how the state agencies see it, Tribes need to work on a state- Tribal consultation policy, unless federal funding is involved, under Section 106 it's very difficult for Tribes to deal with because of the amount of agencies. Under the **Tribal Advisory Committee** who advises **CalEPA** on what is necessary in turns of contacting Tribes in their everyday environment on projects. The most common problem is that Tribes hear about projects after the fact, which creates problems down the line. We're stating here this is where the problem lies, get the lines of communications open. **DFG** is willing to open these lines for communication. **CalEPA** is trying to figure out how to do the communication plan to deal with these issues impacting tribes. Presently **CalEPA** is working on a comprehensive communication resource tool to use statewide as a No. 1 priority.