

Tribal Proposal to California Department of Fish and Wildlife (CDFW) for Amending Commercial Harvest Rules for Kelp and Sea Palm

This paper outlines proposed changes to the state's current commercial harvest rules for kelp and sea palm. The changes are proposed by the following federally recognized Tribes: Cahto Tribe of Laytonville Rancheria; Coyote Valley Band of Pomo Indians; Hopland Band of Pomo Indians; Potter Valley Tribe; Redwood Valley Little River Band of Pomo Indians; Robinson Rancheria of Pomo Indians; Round Valley Indian Tribes; Scotts Valley Band of Pomo Indians; and Sherwood Valley Rancheria of Pomo Indians. The InterTribal Sinkyone Wilderness Council, a Tribal organization whose member Tribes include those listed above, fully supports the changes detailed in this Tribal proposal.

This proposal discusses the Tribes' rationale for amending applicable Fish and Game regulations, in Division 6, Part I, Chapter 6. State authority for making these proposed changes is vested within the California Code of Regulations, in Title 14, at Section 165; and within the California Fish and Game Code, at Section 399.

The Tribes, the Sinkyone Council, biologists, and many others have serious concerns about the growing environmental threats contributing to alarming declines in kelp species. Widespread die-off of kelp is an increasing problem in the north coast region and elsewhere along the state's coastline.

Kelp species continue to be severely impacted from increasing pressures of commercial and recreational harvesting, climate change, warming ocean waters, acidification, pollution, coastal development, purple urchins, and other factors. Many studies have documented widespread and significant declines in these species, as well as a number of potential causes. We include citations of several key studies at the end of this proposal.

Since 2015, the Tribes and the Sinkyone Council have been meeting with California Department of Fish and Wildlife (CDFW) about Tribal issues of concern relating to kelp and seaweed. Since 2018, the Tribes have been engaged in an ongoing process of formal, collective Government-to-Government Consultation with representatives of CDFW with regard to amending the state's existing commercial kelp and seaweed harvest regulations. Representatives of the Fish and Game Commission are Observers in this Tribal Consultation process. Tribal engagement on these issues is based upon our cultural responsibility to protect and tend these marine species for the sake of all life on this planet. Tribal traditional care and utilization of kelp and seaweed is vital to the protection and continuation of our peoples' cultural ways of life and wellbeing, and for maintaining and restoring health, balance and abundance to the marine ecosystem for the benefit of all.

Our previous proposal to CDFW, dated April 21, 2021, was entitled "Tribal Proposal to California Department of Fish and Wildlife (CDFW) for Amending Commercial Harvest Rules for Kelp and Seaweed". That paper was a broader discussion about both kelp and seaweed species. This proposal discusses Tribal concerns regarding kelp species and sea palm. A separate proposal discussing only seaweed species is currently being developed.

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For countless generations, Indigenous Peoples along the entire West Coast have cared for and intensively interacted with the marine environment, including a wide range of kelp species that are of immense importance to our ways of life. We wish to point out here—and in stark contrast to our deep respect for and diligent care of kelp—that these species continue to sharply decline as a consequence of non-Indigenous society’s greed and disrespect for nature. That greed and disrespect has all but eliminated many once-abundant populations of marine finfish, invertebrate, mammal, kelp, seaweed, and other species, and continues to threaten the wellbeing and biological diversity of marine life along the state’s entire coastline. An early consequence of this greed and disrespect was the removal of Tribes from their traditional role as guardians of coastal and marine environments, and disruption of the Tribes’ intergenerational care of and relationship with these and countless other species. Fundamentally, the greed and disrespect results from a blatant dismissal of the Natural Law and Indigenous Law adhered to by the Tribes for millennia, which exist to ensure the abundance and balance of ecosystems.

Only in very recent years has the state established Marine Protected Areas (MPAs) in an effort to conserve and revitalize imperiled marine species and habitats. While this is a necessary and good step, the state has yet to meaningfully make room for the Tribes’ traditional roles in the care, management and use of both marine and terrestrial environments.

Certain environmental factors contributing to kelp declines cannot be immediately remedied. These require multi-year efforts in areas of activism, policy, law, and management to enact and implement stronger environmental regulations and more effective measures for addressing the climate crisis. ***However, there are two important processes the state can and should engage in now to address the kelp crisis.***

The first process: This involves evaluating the impacts of commercial kelp harvesting, and then developing and adopting an informed set of robust restrictions designed to address those impacts. For far too long, the state has allowed commercial harvesters to take large quantities of kelp, with very few rules, and harvest limits applicable to only a few circumstances. Current regulations include take limits only for bull kelp used for human consumption. Commercial kelp harvesters realize substantial incomes as a result of absurdly small permit fees. They treat kelp as an economic commodity. That view, coupled with insufficient limits on the quantity of take, contributes to the harm of these species and their ecosystems. Yet, despite these decades-long activities, crucial environmental, social and other impacts of commercial harvesting have never been sufficiently investigated or quantified.

We are not saying that commercial harvesting is the only source of impact to kelp. But we are saying it is a source of impact, which can and must be addressed. And, that commercial harvest impacts should be evaluated by impartial entities outside of (and in no way connected to) the industry, so that the impact can be more fully understood and then responsibly regulated.

From discussions with CDFW representatives and others, it has become clear that any data CDFW possesses regarding commercial harvest of kelp is limited to information received from commercial harvesters. This so-called data does not provide a sufficiently reliable basis for ascertaining actual current or recent harvest amounts, or the cumulative impacts of past, present, or projected future commercial kelp harvesting activities. The only available “data” are the “self-reporting” harvest logs commercial harvesters are supposed to submit to CDFW.

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The accuracy of the industry's self-reporting cannot be corroborated due to CDFW's inability to monitor commercial harvesting activities.

CDFW has proposed various amendments to the existing commercial kelp regulations. But without sufficient data to inform a thorough understanding of the levels of harvest and impacts of commercial activities, the development of amendments is a difficult and frustrating process. CDFW's initial approach to amending the regulations was to utilize the precautionary principle as a basis for informing development of new harvest restrictions. The Tribes believe CDFW should have adhered to its originally proposed set of restrictions, which were based on sound science and were lenient toward commercial harvesters. A number of substantive alterations made to the originally proposed amendments are the result of complaints by commercial harvesters. This has produced a CDFW proposal that is significantly less robust with regard to protection of kelp species. In our view, this has resulted in compromising the original intent of CDFW's earlier proposals, which was to protect these species and the ecosystem.

Unless significant restrictions are enacted, commercial harvesters ultimately will find there is no kelp left to harvest. Tribal people and environmentalists long decried the overharvesting of many marine species, but to no avail. The Tribes knew that those largely unregulated levels and methods of commercial harvest could never be sustainable, and so traditional leaders expressed first dismay and then outrage that state laws allowed for unrestrained take of numerous marine species, all for economic profit. Our concerns fell on deaf ears. And ultimately, hundreds of those species experienced dramatic population crashes. We are at a similar crossroads with regard to kelp. The Tribes are the original marine guardians who recognize these warning signs. Things are not right. The ecosystem is out of balance. And unless significant measures are taken, the worse is yet to come.

We realize the state will not enact a complete closure for the commercial harvest of all kelp species. Therefore, we ask the state to support a moratorium that involves the short-term closure of commercial harvest for three keystone species.

Ultimately, CDFW will need to develop a robust stewardship, monitoring and enforcement program to effectively oversee commercial harvest activities. Comprehensive plans are also needed for addressing best practices and longterm management of kelp species. Establishment of Tribal management and co-management of marine ecosystems can further help to ensure the protection and revitalization of these species and places, and our cultural ways of life.

The second process: This involves the state pursuing a meaningful process that will lead to formal recognition of Tribes' inherent rights and responsibilities for carrying out their traditional kelp and seaweed gathering and stewardship practices. Those traditional Tribal rights and responsibilities pre-exist and will always exist; therefore, their validity does not depend upon anyone's recognition except that of the Creator and Nature. The practice of these inherent rights and responsibilities is necessary for the longterm protection and sustainability of marine and coastal ecosystems, and the Tribes' cultural lifeways. The Tribes need their traditional gathering of kelp and seaweed to be recognized as a distinctly separate category of "Tribal Cultural Tending & Gathering."

Tribal traditional practices are neither commercial nor recreational. In order for the Tribes to fully exercise cultural practices without the interference of irrelevant laws, it is necessary that

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the state formally and fully recognize, respect, and support Tribes' rights and responsibilities with regard to their cultural relationships and interactions with the natural ecosystems and native species situated within lands and waters administered under state authority.

First and foremost, these places, plants and animals are situated within Tribal traditional territories, to which the Tribes have never relinquished their cultural connections or inherent rights. In understanding that, it then becomes clear why it is demeaning to Tribes that the state continues to categorize the Tribal gathering of kelp and seaweed under "recreational" or "commercial" harvest codes. Those regulations are not designed for addressing the needs of Indigenous communities who have depended upon marine life since the beginning of time. Gathering kelp and seaweed is for the continuation of our cultural ways of life that—despite past genocidal practices, denial of rights and continued obstacles—are still practiced and taught. Tribal gathering and preparation of kelp is crucial for the continued survival of our cultural ways of life. For us, these are customary and human rights.

CDFW and the Fish and Game Commission should fully and meaningfully engage with Tribes in collaboratively crafting a regulatory solution to satisfactorily address Tribes' needs as regards their traditional gathering of kelp and seaweed, and recognize Tribes' roles in management and co-management of kelp, seaweed and other marine species in state marine waters.

Our Tribal proposal to CDFW for amending the commercial harvest regulations for kelp and sea palm includes the following:

- 1) Enact an emergency moratorium on the commercial harvest of bull kelp within all state waters for at least 10 years, as this is a keystone species that continues to suffer massive die-offs. The state should utilize the precautionary principle and not wait to implement this crucially important step.
- 2) Enact an emergency moratorium on the commercial harvest of giant kelp within all state waters for at least 10 years, as this species is crucial to helping offset the effects of massive bull kelp die-offs. The state should utilize the precautionary principle and not wait to implement this crucially important step.
- 3) Enact an emergency moratorium on the commercial harvest of sea palm within all state waters for at least 10 years. Like bull kelp and giant kelp, sea palm is a highly sensitive keystone species. Establish monitoring locations at the start of the 10-year closure. Throughout the 10-year closure, evaluate population levels and other indicators.
- 4) Based on CDFW's primary mission to protect and steward marine ecosystems, as well as the precautionary principle, develop and advance a set of amendments that are centered in scientifically sound data and information—including Tribal traditional knowledge, which the state formally recognizes as a "legitimate" type of knowledge system. Tribal traditional knowledge must be treated with the same deference and respect as the non-Indigenous scientific methods and epistemologies. Allow both Tribal input and scientific information to significantly and meaningfully inform a new set of proposed amendments.
- 5) Seek partners to support a multi-year process of observing and quantifying commercial harvest impacts. Use that data to inform subsequent amendments to the regulations.

The Sinkyone Council and its member Tribes will provide further recommendations, ideas and issues of concern to CDFW. The Tribes are not going to disappear, either from these lands and

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waters or from this discussion. In the long run, the ocean and the commercial harvesters will thank the state for defending the environment, so that there are places in which these species remain. An improved and more balanced approach to commercial harvesting is inevitable. The longer meaningful and positive change is delayed, the harder it will be to fix the environmental, social and cultural damage that results from not taking bold action when it still can be taken.

Published studies and reports: A variety of data, studies, reports, and other documents support this Tribal proposal. While it is by no means exhaustive, the following list includes key recent papers about impacts to kelp and seaweed along the West Coast.

- a) Van Pelt, M.; Steinruck, J.; Laucci, R.; Rosales, H.; Rohde, J.; Sinkyone Council Member Tribes; Sundberg, R.; Ben, J.; Comet, S.; Torma, T.; Hernandez, T.; Chen, C.; and Seminara, D. **Informing the North Coast MPA Baseline: Traditional Ecological Knowledge of Keystone Marine Species and Ecosystems, A Collaborative Project Among: Tolowa Dee-ni' Nation, InterTribal Sinkyone Wilderness Council, Cher-Ae Heights Indian Community of the Trinidad Rancheria, and Wiyot Tribe**, May 2017. *California Sea Grant, U.C. San Diego*.
<https://caseagrant.ucsd.edu/sites/default/files/39-Rocha-Final.pdf>
- b) McPherson, Meredith L.; Finger, Dennis J. I.; Houskeeper, Henry F.; et al. **Large-scale shift in the structure of a kelp forest ecosystem co-occurs with an epizootic and marine heatwave**, March 2021. *Communications Biology*.
<https://www.nature.com/articles/s42003-021-01827-6>
- c) Rogers-Bennett, L. & Catton, C.A. **Marine heat wave and multiple stressors tip bull kelp forest to sea urchin barrens**, September 2019. *Nature Research*.
<https://www.nature.com/articles/s41598-019-51114-y>
- d) Straub, Sandra C.; Wernberg, Thomas; Thomsen, Mads S.; Moore, Pippa J.; Burrows, Michael T.; Harvey, Ben P.; and Smale, Dan A. **Resistance, Extinction, and Everything in Between—The Diverse Responses of Seaweeds to Marine Heatwaves**, December 2019. *Frontiers in Marine Science*.
<https://www.frontiersin.org/articles/10.3389/fmars.2019.00763/full>
- e) Beas, R.; Micheli, F.; Woodson, C. **Geographic variation in responses of kelp forest communities of the California Current to recent climatic changes**, September 2020. *Research Gate*.
https://www.researchgate.net/publication/344214367_Geographic_variation_in_responses_of_kelp_forest_communities_of_the_California_Current_to_recent_climatic_changes
- f) Frölicher, T. & Laufkötter, C. **Emerging risks from marine heat waves**, July 2020. *Nature Research*.
<https://www.nature.com/search?q=Emerging+risks+from+marine+heat+waves>
- g) Arafeh-Dalmau, N.; Shoeman, D.; Montaña-Moctezuma, G.; Micheli, F.; Rogers-Bennett, L.; Olguin-Jacobson, C.; and Possingham, H. **Marine heat waves threaten kelp forests**, February 2020. *Science*.
<https://science.sciencemag.org/content/367/6478/635.1#:~:text=Between%202014%20and%202016%2C%20extreme,kelp%20forests%20have%20not%20recovered>