

# California Fish and Game Commission

## Tribal Committee

### Meeting Materials



**December 13, 2022**

**San Diego**

## Overview of Tribal Committee Meeting

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- Welcome to this meeting of the California Fish and Game Commission Tribal Committee. The Committee is comprised of up to two Commissioners who co-chair each meeting; members are assigned annually by the Commission. Currently the Tribal Committee is chaired by Commissioner Jacque Hostler-Carmesin.
- Our goal today is informed discussion to guide future decision making, and, we need your cooperation to ensure a lively and comprehensive dialogue.
- We are operating under Bagley-Keene Open Meeting Act, but it is important to note that the Committee chairs cannot take action independent of the full Commission; instead, the chairs make recommendations to the full Commission at regularly scheduled meetings.
- These proceedings are being recorded and may be posted to our website for reference and archival purposes.
- Items may be heard in any order pursuant to the determination of the committee chair.
- Requests for regulatory change need to be directed to the full Commission and submitted on the required petition form, FGC 1, available on the Commission website and from staff upon request. However, at the Committee's discretion, the Committee may request that staff follow up on items of potential interest to the Committee and possible recommendation to the Commission.
- Committee meetings operate informally and provide opportunity for everyone to provide input on agenda items. If you wish to contribute to an agenda item, please follow these guidelines:
  1. Raise your hand and wait to be recognized by the Committee chair.
  2. Provide your name, affiliation (if any), and the number of people you represent.
  3. Time is limited; please keep your contribution precise to give others time to speak.
  4. If several speakers have the same concerns, please appoint a group spokesperson.
  5. If speaking during general public comment, the subject matter you present should not be related to any item on the current agenda (public input on agenda items will be taken at the time the Committee discusses each item).

# Introductions for California Fish and Game Commission Tribal Committee

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## Commissioners

Jacque Hostler-Carmesin	Chair
Erika Zavaleta	“Visiting” commissioner

## Commission Staff

Melissa Miller-Henson	Executive Director
Chuck Striplen	Tribal Advisor and Liaison
Susan Ashcraft	Marine Advisor
Ari Cornman	Wildlife Advisor
Cynthia McKeith	Analyst
Kimberly Rogers	Sea Grant State Fellow

## California Department of Fish and Wildlife

Chad Dibble	Deputy Director and Liaison to the Commission
Scott Gardner	Chief, Wildlife Branch
Jay Rowan	Chief, Fisheries Branch
Chris Stoots	Assistant Chief and Tribal Liaison, Law Enforcement Division
Craig Shuman	Regional Manager, Marine Region
Becky Ota	Environmental Program Manager, Habitat Conservation Program, Marine Region
Sarah Fonseca	Tribal Cultural Resources Specialist, Department Lands Program, Wildlife Branch

## California Ocean Protection Council

Mike Esgro	Marine Ecosystems Program Manager and Tribal Liaison
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**Commissioners**  
**Samantha Murray**, President  
La Jolla  
**Erika Zavaleta**, Vice President  
Santa Cruz  
**Jacque Hostler-Carmesin**, Member  
McKinleyville  
**Eric Sklar**, Member  
Saint Helena  
**Anthony Williams**, Member  
Huntington Beach

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Gavin Newsom, Governor

**Melissa Miller-Henson**  
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## Fish and Game Commission



*Wildlife Heritage and Conservation  
Since 1870*

### TRIBAL COMMITTEE

Committee Chair: Commissioner Hostler-Carmesin

### Meeting Agenda

**December 13, 2022; 1:00 p.m.**

#### Participate in Person

**Handlery Hotel San Diego  
950 Hotel Circle North  
San Diego, CA 92108**

#### Participate via Webinar

***To participate in the meeting virtually, please join via Zoom or by telephone.  
[Click here](#) or go to <http://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=205953&inline>  
for instructions on how to join the meeting.***

*Pursuant to California Government Code Section 11133, this committee meeting is being conducted by webinar/teleconference in addition to the in-person location. Commission members may participate remotely. The public may provide public comment during the public comment periods and otherwise observe remotely, consistent with the Bagley-Keene Open Meeting Act.*

**Note: Please see important meeting procedures and information at the end of the agenda.** All agenda items are informational and/or discussion only. The Committee develops recommendations to the Commission but does not have authority to make policy or regulatory decisions on behalf of the Commission.

Call to order – **Chair Hostler-Carmesin**

**1. Approve agenda and order of items**

**2. Annual tribal planning meeting**

Discuss updates on priorities identified at the July 20, 2022 tribal planning meeting, held annually pursuant to the Commission's Tribal Consultation Policy, and start initial discussions on 2023 meeting planning.

**Exhibit 2.1:** [Commission Tribal Consultation Policy, dated Jun 2015](#)

[Exhibit 2.2: Agenda for July 20, 2022 Commission Annual Tribal Planning meeting](#)

[Exhibit 2.3: Summary of July 20, 2022 Commission Annual Tribal Planning meeting](#)

**3. Co-management roundtable discussion**

Discuss tribal co-management initiatives and projects planned or underway in collaboration with public agencies and California tribes. Invited speakers:

- *Miguel Luna, Tribal Historic Preservation Officer, Fernandeano Tataviam Band of Mission Indians on new Tribal Conservation Corps and other tribal projects*
- *Buffy McQuillen, Tribal Historic Preservation Officer, Federated Indians of Graton Rancheria on Tolay Lake co-management agreement with County of Sonoma*

[Exhibit 3.1: Adopted co-management vision statement and definition, dated Feb 2020](#)

**4. Tribal subsistence harvest definition and related management mechanisms**

Receive staff update on workgroup meetings to develop a definition related to California Native American subsistence activities (distinct from “commercial” or “recreational”) and revisit workgroup process.

[Exhibit 4.1: Project issue statement \(revised December 2022\)](#)

[Exhibit 4.2: Work plan summary \(revised December 2022\)](#)

[Exhibit 4.3: Draft guiding questions](#)

**5. Staff and agency updates requested by the Committee**

Receive updates from staff and other agencies, including current topics on the work plan for which the Committee has requested an update.

- (A) California Natural Resources Agency
  - I. 30x30 Initiative
  - II. Tribal nature-based solutions
- (B) California Ocean Protection Council (OPC)
  - I. OPC draft tribal engagement strategy: Consultation and listening sessions
  - II. OPC tribal investments: Tribal Marine Stewards Network, Tribal Small Grants Program
- (C) California Department of Fish and Wildlife
  - I. Law Enforcement Division
  - II. Wildlife and Fisheries Division
    - a. Southern California steelhead
  - III. Marine Region
    - a. Marine protected areas 2022 decadal management review
- (D) Commission staff
  - I. Wildlife Resources Committee
  - II. Marine Resources Committee
  - III. Justice, equity, diversity and inclusion plan
  - IV. Coastal Fishing Communities Project

[Exhibit 5D.1: Marine Resources Committee work plan, revised Dec 5, 2022](#)

[Exhibit 5D.2: Wildlife Resources Committee work plan, revised Dec 7, 2022](#)

**Exhibit 5D.3:** Potential agenda items for Feb 2023 Commission meeting, dated Dec 6, 2022

**Exhibit 5D.4:** Commission rulemaking timetable, dated Dec 5, 2022

**6. Future agenda items**

- (A) Review work plan agenda topics, priorities, and timeline
- (B) Potential new agenda topics for Commission consideration

**Exhibit 6.1:** TC work plan, revised Dec 2, 2022

**7. General public comment for items not on agenda**

Receive public comment regarding topics not included in this agenda.

Note: The Committee may not discuss or take action on any matter raised during this item, except to consider whether to recommend that the matter be added to the agenda of a future meeting [Sections 11125, 11125.7(a), Government Code].

Adjourn

**California Fish and Game Commission**  
**Tribal Consultation Policy**  
*Adopted June 2015*

On September 19, 2011, Governor Edmund G. Brown, Jr., issued Executive Order B-10-11, which provides, among other things, that it is the policy of the administration that every state agency and department subject to executive control implement effective government-to-government consultation with California Indian Tribes.

**Purpose of the Policy**

The mission of the California Fish and Game Commission (FGC) is, on the behalf of California citizens, to ensure the long term sustainability of California's fish and wildlife resources by setting policies, establishing appropriate rules and regulations, guiding scientific evaluation and assessments, and building partnerships to implement this mission. California Native American Tribes, whether federally recognized or not, have distinct cultural, spiritual, environmental, economic and public health interests and unique traditional knowledge about the natural resources of California.

The purpose of this policy is to create a means by which tribes and FGC can effectively work together to realize sustainably-managed natural resources of mutual interest.

**Policy Implementation**

1. Communication. Both FGC and the tribes are faced with innumerable demands on their limited time and resources. In the interest of efficiency, FGC will annually host a tribal planning meeting to coordinate the upcoming regulatory and policy activities before FGC. The meeting will provide a venue for education about process, identifying regulatory and policy needs, and developing collaborative interests; this will include inviting sister agencies to participate.
2. Collaboration. In areas or subjects of mutual interest, FGC will pursue partnerships with tribes to collaborate on solutions tailored to each tribe's unique needs and capacity. The structure of these collaborative efforts can range from informal information sharing, to a memorandum of understanding with more specific agreements regarding working relationships and desired outcomes, to co-management agreements with specific responsibilities and authorities.
3. Record-keeping. FGC will maintain a record of all comments provided by tribes and will include them in administrative records where appropriate.
4. Training. FGC will provide training to interested tribes on its processes for regulation and policy development.

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## Fish and Game Commission



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### ANNUAL TRIBAL PLANNING MEETING

Committee Chair: Commissioner Jacque Hostler-Carmesin

#### Meeting Agenda

**July 20, 2022; 2:00 p.m. – 4:00 p.m.**

**California Natural Resources Building  
2<sup>nd</sup> Floor, Conference room 3-201  
715 P Street  
Sacramento, CA 95814**

**and**

#### Webinar and Teleconference

***To participate in the meeting, you may join via Zoom or by telephone. [Click here](#) or go to <https://us06web.zoom.us/j/81059378743> to join the meeting.***

If you are not able to join using your computer or mobile device app (which give you maximum functionality for participating), you may join by phone by dialing 215-446-3656 or 888-363-4734 (US toll free). Conference code: 506989.

For assistance in joining Zoom meetings, you can visit: <https://support.zoom.us/hc/en-us/articles/200941109>.

#### Call to order

- 1. Introductions and goals**  
Introductions of commissioners, tribal representatives, Commission staff and agency representatives.
- 2. Commission tribal consultation policy and consultation process**  
Brief review of the Commission's tribal consultation policy and discussion of potential policy update concurrent with other state natural resource agencies.

Exhibit 2.1: FGC Tribal Consultation Policy

3. **Recap of 2021 annual tribal planning meeting; review of Commission tribal projects and priorities for 2023**

Brief summary of the major discussion topics and outcomes from the 2021 meeting, and review of current and anticipated projects.

Exhibit 3.1: 2021 Annual Tribal Planning Meeting – agenda

Exhibit 3.2: 2021 Annual Tribal Planning Meeting – post-meeting summary

Exhibit 3.3: TC work plan

Exhibit 3.4: What is the Tribal Committee?

4. **Roundtable discussion about tribal priorities and issues of concern**

An opportunity for tribal representatives to share current priorities and issues of concern to help identify and explore potential opportunities for collaboration or action by the Commission. Items from this discussion can also help shape the work of the Commission's Tribal Committee.

5. **Closing thoughts**

Adjourn

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## Fish and Game Commission



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### **ANNUAL TRIBAL PLANNING MEETING**

#### **July 20, 2022 Meeting Summary Sacramento, Webinar and Teleconference**

This document is a summary of the California Fish and Game Commission (Commission) annual tribal planning meeting, as prepared by staff.

Commissioner Jacque Hostler-Carmesin welcomed everyone to the meeting, and then introduced Tribal Advisor and Liaison Chuck Striplen and Executive Director Melissa Miller-Henson.

Commissioner Hostler-Carmesin moderated the meeting, with representatives from approximately a dozen tribes and tribal communities in attendance. In addition, the California Natural Resources Agency (CNRA) Assistant Secretary for Tribal Affairs Geneva E.B. Thompson attended the meeting in person, along with staff from the California Department of Fish and Wildlife (Department) and the California Ocean Protection Council.

#### **1. Introductions and goals**

Commissioner Hostler-Carmesin invited attendees to introduce themselves. Tribal representatives introduced themselves first, followed by Department staff, other agency staff, and then Commission staff. Chuck Striplen briefly reviewed the agenda for the meeting.

#### **2. Commission tribal consultation policy and consultation process**

Chuck Striplen reviewed the Commission's tribal consultation policy and staff's coordination with other state natural resource agencies on updating consultation policies; Geneva Thompson described her role in coordinating this effort. She hopes to have a report soon on the work.

On mention of the training element of the Commission's Tribal Consultation Policy, one tribal representative asked about available training for tribes. No formal training is currently available, but several attendees supported a range of possible trainings, including monitoring and data collection, drone surveys, the California Administrative Procedure Act, and Commission processes (e.g., petitions). Commission and DFW staff committed to follow-up with appropriate contacts and to discuss possible training opportunities internally.

Geneva E.B. Thompson noted that the Native American Heritage Commission offers [AB52 tribal consultation training](#).

### **3. Recap of 2021 annual tribal planning meeting; review of Commission tribal projects and priorities for 2022-2023**

Chuck Striplen provided a brief summary of the major discussion topics and outcomes from the 2021 annual tribal planning meeting.

Several tribal representatives made note of issues related to overharvest and DFW enforcement in and around marine protected areas. They suggested that both the public and DFW personnel would benefit from training and education pertaining to tribal rights to resources and appropriate gathering practices (potentially via permit conditions), as well as training for tribal citizens on code compliance; this could be viewed as a measure to start reflecting traditional ecological knowledge in regulatory and management processes. DFW staff expressed appreciation for the feedback and will follow up individually.

A tribal representative also suggested that the Commission should explore updating its co-management vision and definition to ensure consistency with related policy initiatives at CNRA and Governor's office. Many tribes are currently engaged in various forms of co-management, which could inform an improved definition, vision, or policy. Commissioner Hostler-Carmesin highlighted how the Commission has been a trailblazer on the subject of co-management and agreed that revisiting the topic would be appropriate in the context of Governor Newsom's policy initiative; she also requested that Geneva E.B. Thompson be part of the conversation.

### **4. Roundtable discussion about tribal priorities and issues of concern**

Commissioner Hostler-Carmesin moderated a lengthy discussion with tribal representatives who were invited to share current priorities and issues of concern, and to help identify potential opportunities for collaboration with or action by the Commission.

A representative from the Karuk Tribe described the complexity of issues facing tribes and salmonids on the Klamath River in the context of looming dam removal and recent federal court decisions affecting tribal sovereignty – highlighting the need to get thoughtful co-management agreements on track.

Representatives from Graton, Kashia, and Resighini spoke about the need for support for tribal resource management programs. Tribes are engaged more and more in monitoring everything from kelp to black bears, and rely on competitive, ephemeral funding sources to maintain program staffing and productivity. The process to craft agreements with DFW or FGC is not clear to some tribes, especially in multi-jurisdictional contexts (e.g., Point Reyes). DFW staff committed to following up on this matter.

Representatives from Dry Creek and United Auburn Indian Community spoke about challenging effects from COVID and wildfires. Dry Creek, in spite of being especially hard hit by COVID, continues to expand its creek and river restoration efforts, and Auburn is focused on building tribal capacity in traditional fire management in collaboration with other tribes. The representative from the Karuk Tribe spoke of legislation designed to recognize tribes' sovereign right to manage their ancestral lands (e.g., with fire), and the tribe's work in support of that effort (<https://karuktribeclimatechangeprojects.com/good-fire/>).

Geneva E.B. Thompson and Mike Esgro introduced opportunities for tribal consultation:

- Governor's Fifth Climate Change Assessment – an effort to integrate tribal priorities and tribal ecological knowledge into the assessment for climate change. A research grant program and tribal advisory group are being developed, and nominations for the advisory committee are currently being sought. Also see survey below.
- CNRA Outdoors for All Initiative: Tribal Roundtable Listening Sessions  
Listening Session 1: August 17, 2022, at 10:00 a.m. – 12:00 p.m.  
Listening Session 2: August 18, 2022, at 5:30 – 7:30 p.m.
- OPC's draft tribal engagement strategy is currently released for tribal review.
- [OPC survey](#) for the Fifth Climate Change Assessment – designed to gather input on California-specific research priorities that will inform the scope of climate adaptation and resilience research conducted as a part of the national assessment being led by the U.S. Global Change Research Program.

## **5. Closing thoughts and adjourn**

Based on the discussions, Commissioner Hostler-Carmesin suggested Commission and DFW staff follow up on elk management agreements, coastal gathering permit conditions, and Klamath River salmonids. Any proposed changes to the Tribal Committee work plan will be discussed internally and with the Commission.

**California Fish and Game Commission**  
**Co-Management Vision Statement and Definition**

*February 2020*

**Vision Statement**

The vision of tribes, the California Fish and Game Commission, and the California Department of Fish and Wildlife is to engage in a collaborative effort between sovereigns to jointly achieve and implement mutually agreed upon and compatible governance and management objectives to ensure the health and sustainable use of fish and wildlife.

**Definition**

A collaborative effort established through an agreement in which two or more sovereigns mutually negotiate, define, and allocate amongst themselves the sharing of management functions and responsibilities for a given territory, area or set of natural resources.

**California Fish and Game Commission Tribal Committee**  
**Definition of “Tribal Subsistence Harvest”**  
**and Related Management Mechanisms Project**  
*Revised December 7, 2022*

**Issue Statement**

California Native American tribes have long expressed concern about the ability of their citizens under California law to access, harvest, hold, consume, and otherwise manage an array of species, natural resources, and marine and terrestrial areas within their respective historic territories, in manners consistent their traditional cultures and lifeways. Tribes have expressed their concerns verbally and in writing to the California Fish and Game Commission (Commission), the California Department of Fish and Wildlife (Department), the California Natural Resources Agency (CNRA), and other state entities via government-to-government consultations, during Commission, and other public meetings, and in field contexts. Identifying and implementing a solution to these concerns, in whole or in part, may be within the authority of the Commission.

**Goal**

Identify opportunities to develop in state statute and/or regulation an actionable definition of California Native American subsistence activities that is distinct from “commercial” or “recreational”.

**Background**

California regulates human interactions with fish and wildlife species, natural areas, and other public resources primarily under the auspices of the terms “commercial” and “non-commercial,” with the latter including uses referred to as “recreational,” “sport,” “scientific,” “educational,” etc. The term “commercial,” in reference to natural resources, is referenced in statute and regulation in over 1,350 instances, including in the California Food and Agricultural Code, the California Fish and Game Code, and Title 14 of the California Code of Regulations. In order to begin to provide the Tribal Committee with a foundational understanding of the issue, this background provides an initial, brief survey of how some of these terms are defined or referenced in California laws and regulations.

***Food and Agricultural Code***

*Section 23.5. Commercial production of aquatic life*

The commercial production of aquatic plants and animals propagated and raised by a registered aquaculturist pursuant to Section 15101 of the Fish and Game Code in the state is a growing industry and provides a healthful and nutritious food product, and, as a commercial operation, utilizes management, land, water, and feed as do other agricultural enterprises. Therefore, the commercial production of that aquatic life shall be considered a branch of the agricultural industry of the state for the purpose of any law that provides for the benefit or

protection of the agricultural industry of the state except those laws relating to plant quarantine or pest control.

### ***Fish and Game Code***

#### *Section 7600. Taking and possession of fish for commercial purposes*

The provisions of this part apply to the taking and possession of fish for any commercial purpose.

#### *Section 7709. Regulations for taking for educational and scientific purposes*

The commission may establish rules and regulations for the commercial taking of fish for educational and scientific purposes.

#### *Sections 8031, 8040. Definitions*

“Commercial fisherman” means a person who has a valid, unrevoked commercial fishing license issued pursuant to *Section 7850*.

#### *Section 16518. “Commercial fishing”*

“Commercial fishing” means the taking of fish by qualified Indian tribal members of the Klamath River Indian Tribes, for sale or to be offered for sale within California.

For the terms “recreational” and “sport” it appears that there are currently no formal statutory or regulatory definitions in California. As such, pursuant to the State’s recognition that jurisdiction over the protection and development of wildlife resources is of great importance to both it and California Indian tribes (California Fish and Game Code, *Section 16000*), the state has committed to strengthening and sustaining effective relationships between it and tribes by working to develop partnerships (Executive Order B-10-11 and N-15-19). The Commission and the Department maintain authority and responsibility for administering the public trust for wildlife resources within the state of California (California Fish and Game Code, *Sections 711.7, 1802*).

### ***Relationship with Tribal Co-management and Indigenous Knowledge***

Relating these terms to future possible implementation actions or activities, and an eventual definition related to tribal subsistence harvest, recent policies and actions related to tribal co-management and indigenous knowledge could also be considered in this process. In its October 2014 Tribal Communication and Consultation Policy, the Department encourages collaborative relationships with California tribes and recognizes the potential need for memoranda of agreement to establish cooperative relationships with tribes. In October 2018, the Commission adopted a co-management vision statement:

*The vision of tribes, the California Fish and Game Commission, and the California Department of Fish and Wildlife is to engage in a collaborative effort between sovereigns to jointly achieve and implement mutually agreed upon and compatible governance and management objectives to ensure the health and sustainable use of fish and wildlife.*

And in February 2020, the Commission defined “co-management” as:

*A collaborative effort established through an agreement in which two or more sovereigns mutually negotiate, define, and allocate amongst themselves the sharing of management functions and responsibilities for a given territory, area or set of natural resources.*

In September 2020, Governor Gavin Newsom adopted the “Native American Ancestral Lands” policy, with the stated purpose:

*“To partner with California tribes to facilitate tribal access, use, and co-management of State-owned or controlled natural lands and to work cooperatively with California tribes that are interested in acquiring natural lands in excess of State needs.”*

The ancestral lands policy reflects not only new opportunities for tribal nations related to natural lands and potential harvest activities under existing governance structures, but also a positively evolving relationship with the State that creates a stronger foundation for pursuing a potential definition and/or related programmatic mechanisms for tribal subsistence harvest.

The ancestral lands policy also calls for the state to “improve the ability of California Native Americans to engage in traditional and sustenance gathering, hunting and fishing”, and to “partner with California tribes on land management and stewardship utilizing Traditional Ecological Knowledges.” Specific implementation guidance is still being developed at the state level, but recently the federal Office of Science and Technology Policy (OSTP) and Council on Environmental Quality (CEQ) issued a memorandum (November 30, 2022), recognizing indigenous knowledge as “one of the many important bodies of knowledge that contributes to the scientific, technical, social, and economic advancements of the United States, and to our collective understanding of the natural world.” In the context of acknowledging historical injustices and respect for different processes and world views, this guidance provides federal basis for “understanding indigenous knowledge”, “indigenous knowledge as evidence”, “co-production of knowledge”, and “co-management and co-stewardship structures”. The guidance also provides a list of federal statutes where indigenous knowledge may be relevant, including the federal Endangered Species Act and National Environmental Policy Act.

### ***California Code of Regulations***

The Commission has on at least one occasion created a regulatory definition for “tribal take” in the context of marine protected areas (MPA), offering one example of a successful strategy that may be applicable in other contexts to consider when evaluating various options for defining tribal subsistence harvest.

#### *Title 14, Subsection (a)(11) of Section 632. Tribal Take*

For purposes of this regulation, “federally recognized tribe” means any tribe on the *List of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs*, published annually in the Federal Register. Any member of a federally recognized tribe authorized to take living marine resources from an area with area-specific take restrictions in subsection 632(b), when engaging in take within an authorized area shall possess on his person, in his immediate possession, or where otherwise specifically required by law to be kept, any valid license, report card, tag, stamp, validation, permit, or any other

entitlement that is required in the Fish and Game Code, or required by other state, federal, or local entities, in order to take living marine resources. Members shall possess a valid photo identification card issued by a federally recognized tribe that contains expiration date, tribal name, tribal member number, name, signature, date of birth, height, color of eyes, color of hair, weight, and sex; and display any of the items listed above upon demand to any peace officer. Members taking living marine resources under this provision are subject to current seasonal, bag, possession, gear and size limits in existing Fish and Game Code statutes and regulations of the commission, except as otherwise provided for in subsection 632(b). No member, while taking living marine resources pursuant to this section, may be assisted by any person who does not possess a valid tribal identification card and is not properly licensed to take living marine resources. Nothing in the regulation is intended to conflict with, or supersede, any state or federal law regarding the take of protected, threatened or endangered species.

### **Work Plan**

The project work plan is a separate document, updated December 7, 2022.

**California Fish and Game Commission Tribal Committee  
Definition of “Tribal Subsistence Harvest” and  
Related Management Mechanisms Project – Staff Work Plan Summary**

*Revised December 5, 2022*

**Issue Statement**

California Native American tribes have long expressed concerns about the ability of their citizens under California law to access, harvest, hold, consume, and otherwise manage an array of species, natural resources, and marine and terrestrial areas within their respective historic territories, in manners consistent their traditional cultures and lifeways. Tribes have expressed their concerns verbally and in writing to the California Fish and Game Commission (Commission), the California Department of Fish and Wildlife, the California Natural Resources Agency, and other state entities via government-to-government consultations, during Commission and other public meetings, and in field contexts. Identifying and implementing a solution to these concerns, in whole or in part, may be within the authority of the Commission.

**Goal**

Identify opportunities to develop in state statute and/or regulation an actionable definition of California Native American subsistence activities that is distinct from “commercial” or “recreational.”

**Proposed Workgroup Invitees**

Tribes: All California tribes are invited to attend and participate.

State agencies: California Department of Fish and Wildlife, California Ocean Protection Council, California State Lands Commission, California State Parks

Specialists: Attorneys with related expertise and others may be invited to participate as appropriate.

**Proposed Milestones – 2022-2023**

Proposed modifications anticipated to be recommended at the December 13, 2022 Commission Tribal Committee (TC) meeting are in ~~strikeout (for deletion)~~ and underline (for additions).

Statewide tribal letter re: workgroup participation	late May
Workgroup kickoff meeting (virtual)	June 28
Workgroup meeting II (Loleta)	August 16 (a.m.)
TC meeting (report out)	August 16 (p.m.)
Workgroup meeting III (San Diego)	December 12
TC meeting (report out)	December 13
<del>Workgroup meeting IV-</del>	<del>Apr 17, 2023</del>
<u>Workgroup meeting IV at TC meeting (Fresno/Bakersfield)</u>	April 18, 2023

<u>Workgroup meeting V at TC meeting (Fortuna)</u>	August 21, 2023
<u>Final workgroup meeting at TC meeting (San Diego)</u>	<u>December 12, 2023</u>
	<del>August 2023</del>
<u>Workgroup summation/recommendations to TC</u>	<u>December 2023</u> <del>August 2023</del>
<u>Finalize white paper</u>	<u>January 2024</u>
<u>Recommendations to TC/Possible Commission consideration</u>	<u>April 2024</u> <del>October 2023</del>

### **Informal Workgroup Process (as proposed at Meeting I)**

- Informal work group meetings will be goal-oriented, working discussions geared toward making substantive progress on the stated goal within a reasonable time frame.
- There is no fixed or regulated time frame associated with the work of this informal group.
- All California tribes, interested agencies, and invited specialists are welcome to attend, with no formal appointments by the Commission
- Staff will convene a minimum of ~~six~~five workgroup meetings; if tribes or other parties believe additional discussion or information is required to achieve the stated goals, additional time, meetings, or requests for information may be accommodated.
- The workgroup meeting schedule ~~is expected to~~will coincide with TC meetings, with regular updates at ~~TC and~~ Commission meetings.

#### Proposed topics include:

- Terminology: consider and discuss related terminology (tribal “subsistence”, “take”, “harvest”, “tending”, etc.)
- Authorities: discuss what authorities the Commission and California Department of Fish and Wildlife do and do not have relative to regulating activities associated with traditional and customary California tribal subsistence practices
  - Review and discuss existing related provisions in current state law or regulations, and examples from other jurisdictions
- Approaches/strategies to establishing a definition
- Management mechanisms (program applications)
- Any needs for legislative solutions

Outcomes of this process are designed to inform possible actions by the Commission, the California Department of Fish and Wildlife, and other interested state agencies.

### **Public Workgroup Process (expected to be proposed by TC at December 2022 meeting)**

TC is expected to propose moving the workgroup process into a public setting starting in April 2023, as part of the regular TC meeting agendas. In addition, in response to tribal input at early meetings, the workgroup will develop a white paper related to the stated goal.

- The duration of TC meetings will be extended to accommodate full workgroup discussions.
- Tribes are welcome and encouraged to caucus privately before, during, or after TC workgroup discussions. TC will provide remote meeting capabilities for tribal caucuses, if desired.
- Commission staff will work with a subset of the workgroup to develop white paper draft language and circulate drafts to the full workgroup prior to TC meetings.
- All or some elements of the white paper may be incorporated into formal recommendations to TC, the Commission, and/or the California Department of Fish and Wildlife

~~Outcomes of this process are designed to inform possible actions by the Commission, the California Department of Fish and Wildlife, and other state entities.~~

# **California Fish and Game Commission Tribal Committee Tribal Subsistence Harvest Workgroup**

## **Questions and Concepts for Discussion: Tribal Access and Use of State Lands and Resources for Subsistence Purposes**

*December 5, 2022 Draft*

**1. What is the goal of this work?**

Current charge from the Commission: “Identify opportunities to develop in state statute and/or regulation an actionable definition of California Native American subsistence activities that is distinct from ‘commercial’ or ‘recreational’.”

**2. How is tribal subsistence being managed now – in federal, state, tribal and local jurisdictions?**

**3. Should State regulations, policies or statutes set terms and conditions for tribal use, access and management – or – authorize agreements with departments for negotiated terms and conditions?**

**4. Could the state’s tribal consultation obligations be strengthened to provide for enhanced tribal use and access?**

**5. Should a policy, regulatory, or legislative approach be taken?**

Assume “regulatory” for the purposes of this workgroup; create record of issues that can only be resolved through legislation.

**6. Develop factual statements and document sources to provide adequate basis for policies, regulations or legislative changes**

Examples:

- (a) California Indian Tribes have used and stewarded their ancestral territories, resources and waters for millennia, relying on the resources those places provide for food, culture, ceremonies, education and religious practices.
- (b) The ancestral territories and waters of California Indian Tribes are located on lands and waters the State of California owns and controls.
- (c) The richness and diversity of the biological species found in California are due in large part to the management and protection of those places by Indian Tribes.
- (d) It is the policy of the State of California to support California tribes’ co-management of and access to natural lands that are within portions of tribal ancestral territories now under ownership and control of California State agencies.
- (e) There is a federal legal basis for off-reservation subsistence rights.

# California Fish and Game Commission Marine Resources Committee (MRC) Work Plan

Updated Dec 5, 2022

Note: Proposed changes to topics/timing are shown in blue underscore or strike-out font.

TOPICS	CATEGORY	Jul 2022	Nov 2022	Mar 2023
<b>Planning Documents &amp; Fishery Management Plans (FMPs)</b>				
MLMA Master Plan for Fisheries – Implementation Updates	Plan Implementation		X*	
Red Abalone FMP / Abalone Recovery Management Plan Update	FMP	X/R	X/R	
California Halibut Fishery Management Review	Management Review			
California Halibut Bycatch Evaluation for Fishery Management Review	Management Review	X*	X	X
Market Squid Fishery Management and FMP Review	Management/ FMP Review	X*		
Kelp Recovery and Management Plan development	Management Plan			
Marine Protected Area Network 2022 Decadal Management Review	Management Review		X*	X/R
<b>Regulations</b>				
California Halibut Trawl Grounds Review	Commercial Take	X*		
Kelp and Algae Commercial Harvest – Sea Palm ( <i>Postelsia</i> )	Commercial Take			
California Spiny Lobster FMP Implementing Regulations Review	Implementing Regulations	X/R		
Implementation of 365-Day Sport Fishing License	Recreational Take	X		
<b>Marine Aquaculture</b>				
Aquaculture Program Planning (State Aquaculture Action Plan)	Planning Document			X
Aquaculture State Water Bottom Leases: Existing & Future Lease Considerations	Current Leases / Planning			
<i>Public Interest Determination Criteria</i> for New State Water Bottom Aquaculture Lease Applications	FGC Policy – New Leases	X	X/R	<u>X/R</u>
Aquaculture Lease Best Management Practices Plans (Hold, TBD)	Regulatory			
<b>Emerging Management Issues</b>				
Kelp Restoration and Recovery Tracking	Kelp			X
Invasive Non-native Kelp and Algae Species	Kelp / Invasive Species			
<b>Special Projects</b>				
California's Coastal Fishing Communities Project	MRC Special Project			
Coastal Fishing Communities Policy	FGC Policy	X*	X	X/R
Box Crab Experimental Fishing Permit (EFP) Research Project	EFP			

**Key:** X = Discussion scheduled X/R = Recommendation may be developed and may move to Commission  
\* = Written agency update

**California Fish and Game Commission**  
**Wildlife Resources Committee (WRC) Work Plan**  
**Scheduled Topics and Timeline for Items Referred to WRC**  
*Updated December 7, 2022*

TOPICS	CATEGORY	Sep 2022	Jan 2023	May 2023
<b>Periodic Regulations</b>				
Upland (Resident) Game Birds	Regulatory	X/R		X
Mammal Hunting	Regulatory	X/R		X
Waterfowl Hunting	Annual Regulatory	X/R		X
Central Valley Sport Fishing	Annual Regulatory	X/R		X
Klamath River Basin Sport Fishing	Annual Regulatory	X/R		X
Inland Sport Fishing	Regulatory	X/R	X/R	X
<b>Regulations &amp; Legislative Mandates</b>				
Falconry	Referral for Review			
Preference Points and Refunds for Hunting Tags	Regulatory	X/R	X/R	
Restricted Species	Regulatory			
Wildlife Rehabilitation	Regulatory	X	X/R	
Upland Game Hunting Draws	Regulatory	X	X/R	
Chronic Wasting Disease	Regulatory		X/R	
Wildlife Areas/Public Lands	Regulatory		X	
<b>Special Projects</b>				
American Bullfrog and Non-native Turtle Stakeholder Engagement Project	Referral for Review	X	X	X
Bear Management Plan Development	Information	X	X	X
<b>Regulation Change Petitions</b>				
Petition 2021-017	Referral for Review	X/R	X/R	

**KEY: X Discussion scheduled X/R Recommendation developed and moved to FGC**

**California Fish and Game Commission**  
**Potential Agenda Items for the February 2023 Commission Meeting**  
*December 6, 2022*

The next Commission meeting is scheduled for February 8-9, 2023 in Sacramento and via webinar/teleconference. This document identifies potential agenda items for the meeting, including items to be received from Commission staff and the California Department of Fish and Wildlife (Department).

**Wednesday, February 8: Wildlife- and inland fisheries-related and administrative items**

1. General public comments for items not on the agenda (day 1)
2. Election of Commission president and vice president
3. Committee assignments
4. Commission executive director and Department reports (Department director's report and Law Enforcement Division report)
5. Final consideration of the petitioned action to list western Joshua tree as threatened under CESA
6. Notice: Central Valley sport fishing (annual)
7. Notice: Klamath River Basin sport fishing (annual)
8. Discuss: Waterfowl hunting (annual)
9. Discus: Elk hunting
10. Adopt: Electronic display of licenses via mobile application
11. Approve: Game fish contests
12. Action on wildlife and inland fisheries petitions for regulation change
13. Action on wildlife and inland fisheries non-regulatory requests from previous meetings
14. Items of interest from previous meetings (wildlife)
15. Committee and Department reports (Wildlife Resources Committee, Department Wildlife and Fisheries Division, and Ecosystem Conservation Division)
16. Executive (closed) session

**Thursday, February 9: Marine-related and administrative items**

17. General public comment for items not on the agenda (day 2)
18. Justice, equity, diversity and inclusion
19. Receive and consider approving The Cultured Abalone Farm, LLC's updated five-year kelp harvest plan (2023-2027)
20. Receive decadal management review of the statewide network of marine protected areas
21. Receive and consider Sub Sea Sonics Experimental Fishing Permit (EFP) application to test timed and acoustic release pop-up gear systems in the California Dungeness crab fishery

22. Consider approving request from Lance (Jeff) Maassen to renew permit for commercial harvest of *Sargassum horneri*
23. Discuss: Commercial and Recreational Take of California Spiny Lobster; Recreational Hoop Net Requirements for Take of Crustaceans
24. Adopt: Recreational hoop net regulations emergency (first 90-day extension)
25. Action on marine petitions for regulation change
26. Action on marine non-regulatory requests from previous meetings
27. Items of interest from previous meetings (marine)
28. Committee and Department reports (Marine Resources Committee, Department Marine Region, and Tribal Committee)
29. Administrative items (legislation and other agency regulations, rulemaking timetable, next meeting)

# California Fish and Game Commission: Perpetual Timetable for Anticipated Regulatory Actions

December 5, 2022

Items proposed for change are shown in blue underlined or strikeout font

Regulatory Change Category	Title 14 Section(s)	FGC San Diego Dec 14, 2022	FGC San Diego Dec 15, 2022	WRC Los Angeles Area January 12, 2023	FGC Sacramento February 8, 2023	FGC Sacramento February 9, 2023	MRC Monterey / Santa Cruz Area March 16, 2023	TC Fresno / Bakersfield Area April 18, 2023	FGC Fresno / Bakersfield Area April 19, 2023	FGC Fresno / Bakersfield Area April 20, 2023	FGC Teleconference May 17, 2023	WRC Monterey / Santa Cruz Area May 17, 2023	FGC Sacramento June 14, 2023	FGC Sacramento June 15, 2023	MRC Sonoma / San Francisco Bay Area July 20, 2023	TC Smith River Area / North Coast August 21, 2023	FGC Smith River Area / North Coast August 22, 2023	FGC Smith River Area / North Coast August 23, 2023	WRC Chico Area September 21, 2023	FGC San Jose Area October 11, 2023	FGC San Jose Area October 12, 2023	MRC San Diego Area November 16, 2023	TC San Diego Area December 12, 2023
Central Valley Sport Fishing (Annual)	7.40(b)(4), (43), (66), (80)				N				D		A				E 7/16								
Klamath River Basin Sport Fishing (Annual)	7.40(b)(50)				N				D		A					E 8/15							
Waterfowl (Annual)	502		N		D				A						E 7/1								
Harvesting of Kelp and Other Aquatic Plants, Commercial Marine Algae Management Policies	165, 165.5, 705.1			E 1/1																			
Low Flow Fishing Restrictions Due to Drought Conditions Emergency (90-day Extension)	7.40(b)(40)(A)1., 8.00(a), 8.00(b)																						
Game Fish Contests	230																						
Sport Fishing Regulation Updates	2.00, 2.25, 2.30, 5.00, 5.15, 5.20, 5.41, 5.75, 5.79, 5.85, 5.87, 5.88, 7.00, 7.40, 7.50, 8.00, 29.85			E 1/1																			
Recreational Fishing Regulations for Federal Groundfish and Associated Species	1.91, 27.20, 27.25, 27.30, 27.35, 27.40, 27.45, 27.50, 27.51, 28.26, 28.27, 28.28, 28.29, 28.47, 28.48, 28.49, 28.54, 28.55, 28.56, 28.58, 28.65, 28.90			E 1/1																			
Recreational Sub-Bag Limits for Vermilion, Copper and Outback Rockfishes Emergency (Second 90-Day Extension)	28.55			EE 1/2																			
Pre-Existing Structures in Marine Protected Areas (MPAs), Marine Managed Areas (MMAs), and Special Closures	632									N				D									
Implementation of AB 817 (Electronic Display of Licenses)	700.4		D		A										E 7/1								
Recreational Hoop Net Regulations Emergency	29.80										EE 4/29 5/2												
Recreational Hoop Net Regulations Emergency (First 90-Day Extension)	29.80					A					E 4/29 5/2									EE 7/28 7/31			
Recreational Hoop Net Regulations Emergency (Second 90-Day Extension)	29.80													A						E 7/28 7/31			
Commercial and Recreational Take of California Spiny Lobster; Recreational Hoop Net Requirements for Take of Crustaceans	29.80, 29.90, 29.91, 121, <u>121.5</u> , 122, 122.1, 122.2, <u>705</u>		N			D				A											E 9/1		
Elk Hunting	364, 364.1		N		D					A					E 7/1								
Bighorn Sheep Hunting	<u>362</u>		<u>N</u>		<u>D</u>					<u>A</u>					<u>E 7/1</u>								
Southern California Steelhead 2084 Emergency	749.13																						
Southern California Steelhead 2084 Emergency (First 90-day extension)	749.13					EE 2/13																	
Southern California Steelhead 2084 Emergency (second 90 day extension)	749.13		A		E 2/13						EE 5/14												

Rulemaking Schedule to be Determined	Title 14 Section(s)	FGC San Diego Dec 14, 2022	FGC San Diego Dec 15, 2022	WRC Los Angeles Area January 12, 2023	FGC Sacramento February 8, 2023	FGC Sacramento February 9, 2023	MRC Monterey / Santa Cruz Area March 16, 2023	TC Fresno / Bakersfield Area April 18, 2023	FGC Fresno / Bakersfield Area April 19, 2023	FGC Fresno / Bakersfield Area April 20, 2023	FGC Teleconference May 17, 2023	WRC Monterey / Santa Cruz Area May 17, 2023	FGC Sacramento June 14, 2023	FGC Sacramento June 15, 2023	MRC Sonoma / San Francisco Bay Area July 20, 2023	TC Smith River Area / North Coast August 21, 2023	FGC Smith River Area / North Coast August 22, 2023	FGC Smith River Area / North Coast August 23, 2023	WRC Chico Area September 21, 2023	FGC San Jose Area October 11, 2023	FGC San Jose Area October 12, 2023	MRC San Diego Area November 16, 2023	TC San Diego Area December 12, 2023
Santa Cruz Harbor Salmon Fishing (FGC Petition 2016-018)	TBD																						
European Green Crab (FGC Petition 2017-006)	TBD																						
Wildlife Areas/Public Lands <sup>4</sup>	TBD																						
Possess Game / Process Into Food	TBD																						
American Zoological Association / Zoo and Aquarium Association	671.1																						
Night Hunting in Gray Wolf Range (FGC Petition #2015-010)	474																						
Shellfish Aquaculture Best Management Practices	TBD																						
Ban of Neonicotinoid Pesticides on Department Lands (FGC Petition 2017-008)	TBD																						
Ridgeback Prawn Incidental Take Allowance	120(e)																						
North Yuba River Special Fishing Regulations (FGC Petition 2021-020) <sup>8</sup>	TBD																						
Commercial Take of Pacific Herring; Lampara Bait Nets <sup>7</sup>	163, 163.1																						

**KEY**  
 FGC = California Fish and Game Commission MRC = FGC Marine Resources Committee WRC = FGC Wildlife Resources Committee TC = FGC Tribal Committee OAL = Office of Administrative Law  
 EM = Emergency EE = Emergency Expires E = Anticipated Effective Date RED "X" = expedited OAL review EUF = Effective Upon Filing w/ Secretary of State  
 N = Notice Hearing D = Discussion Hearing A = Adoption Hearing V = Vetting R = Committee Recommendation  
 4 = Includes FGC Petition 2018-003 6 = Includes FGC Petition 2019-012 7 = Includes FGC Petition 2020-015 8 = To be included in a future sportfishing regulations update

# California Fish and Game Commission Tribal Committee (TC) Work Plan

*Updated December 2, 2022*

Topic / Goal	Type / Lead	Aug 2022	Dec 2022	Apr 2023
<b>Special Projects</b>				
FGC justice, equity, diversity and inclusion plan	FGC Project	X		X
Tribal subsistence definition and related management mechanisms	TC Project	X	X	X
Co-management roundtable discussion	TC Project	X	X	X
Coastal Fishing Communities Project: Updates	MRC Project	X		X
<b>Regulatory / Legislative</b>				
Kelp and algae harvest management regulations: Updates and then recommendation and guidance	DFW Project and Regulation Change	X	X	X
<b>Management Plans</b>				
Sheep, deer, antelope, trout, abalone, kelp/seaweed: Updates and guidance (timing as appropriate for each)	DFW	X	X	X
<b>Informational Topics</b>				
Agency updates OPC – MPA Statewide Leadership Team; tribal outreach strategy; Tribal Marine Stewards Network DFW – Possible items include: – Marine protected areas decadal management review, update on tribal participation – Drought/wildfire impacts and state response – Climate adaptation, mitigation, science – Statewide kelp and abalone recovery efforts – Proposition 64 (cannabis) implementation – Other items as identified by DFW Other agencies, as appropriate or requested	OPC DFW	X	X X	X
Cross-pollination with MRC and WRC: Identify tribal concerns and common themes with MRC and WRC	FGC Committees	X	X	X
FGC regulatory calendar: Update	FGC staff	X	X	X

**Key:** X = Discussion scheduled      X/R = Recommendation developed and moved to FGC

*FGC = California Fish and Game Commission*

*MRC = FGC's Marine Resources Committee*

*DFW = California Department of Fish and Wildlife*

*WRC = FGC's Wildlife Resources Committee*

*OPC = California Ocean Protection Council*