

AMENDED IN SENATE MAY 31, 2011  
AMENDED IN SENATE APRIL 25, 2011  
AMENDED IN SENATE MARCH 24, 2011  
AMENDED IN SENATE MARCH 21, 2011

**SENATE BILL**

**No. 770**

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**Introduced by Senator Evans**

February 18, 2011

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An act to add Section 2864 to the Fish and Game Code, relating to marine resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 770, as amended, Evans. Marine protected areas: Native American tribes.

The Marine Life Protection Act (MLPA) establishes the Marine Life Protection Program to reexamine and redesign California's marine protected area system. Existing law requires the Department of Fish and Game to prepare, and the Fish and Game Commission to adopt, a master plan that guides the adoption and implementation of the program, including recommended alternative networks of marine protected areas. Under the MLPA, the taking of a marine species in a marine life reserve, a type of marine protected area, is prohibited for any purpose, including recreational and commercial fishing, except as authorized by the commission for scientific purposes.

*The Marine Managed Areas Improvement Act (MMAIA) establishes a uniform classification system for state marine managed areas, prescribing 6 classifications for designating managed areas in the marine and estuarine environments, including marine protected areas. Under the MMAIA, "marine protected areas" include a state marine*

*reserve, a state marine park, and a state marine conservation area. The MMAIA prescribes restrictions and allowable uses for each classification, including making it unlawful in a state marine reserve to injure, damage, take, or possess any living, geological, or cultural marine resource, except under a permit or specific authorization from the managing agency for research, restoration, or monitoring purposes.*

*Existing law requires that any proposals for marine protected areas made after January 1, 2002, follow the guidelines set forth in the MMAIA and that specified areas and reserves be designated, deleted, or modified by the commission pursuant to the MMAIA, and the restrictions and allowable uses applicable to those areas be as set forth in the MMAIA.*

This bill would authorize Native American tribes to submit proposals for comanagement of marine species within marine protected areas that are designated or proposed to be designated under the ~~MLPA~~ MMAIA. The bill would require comanagement proposals to include prescribed information, and would require submission of the proposals to the Secretary of the Natural Resources Agency. The bill would authorize the secretary to request additional information before determining that a proposal is complete, and upon ~~a determination that a proposal is complete~~ receipt of a proposal from the secretary, would require the Director of Fish and Game to consult with the tribe to develop memoranda of understanding or other agreements to, among other things, provide access to the tribe for traditional hunting and gathering and cultural activities. ~~The bill would require that tribes be permitted to continue traditional fishing, gathering, and cultural practices within a marine protected area without interruption prior to, and during the development of, a memorandum of understanding or other agreement. If multiple tribal governments or groups submit proposals to the secretary, the bill would require the secretary to prioritize the proposals for negotiation, as provided.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 2864 is added to the Fish and Game Code,
- 2 to read:
- 3 2864. (a) Any federally recognized Native American tribe or
- 4 nonfederally recognized Native American tribe listed on the

1 California Tribal Consultation List maintained by the Native  
2 American Heritage Commission, through its governing body, may  
3 submit a proposal for limited or full comanagement of marine  
4 species within marine protected areas designated or proposed to  
5 be designated ~~under this chapter~~ pursuant to Sections 1590, 1591,  
6 or the Marine Managed Areas Improvement Act (Chapter 7  
7 (commencing with Section 36600) of Division 27 of the Public  
8 Resources Code) to the Secretary of the Natural Resources Agency.  
9 Two or more tribal governments may jointly submit a unified  
10 comanagement proposal.

11 (b) A comanagement proposal shall include, but shall not be  
12 limited to, all of the following:

13 (1) A description of the geographic boundaries of the area over  
14 which comanagement authority is sought.

15 (2) A complete list of the species of interest to the tribe over  
16 which comanagement authority is sought.

17 (3) A description of the proposed roles of the tribe and the State  
18 of California in identifying and sharing scientific data about the  
19 species of interest or their habitats.

20 (4) A description of the proposed roles of the tribe and the State  
21 of California in recommending joint management policies.

22 (5) A description of the proposed role of the tribe in enforcing  
23 the provisions of the comanagement agreement with its members.

24 (6) A dispute resolution mechanism in the event of unresolved  
25 conflicts over obtaining or evaluating scientific data, enforcement  
26 mechanisms, and other matters that arise during the consultation  
27 undertaken pursuant to subdivision ~~(d)~~ (e).

28 (c) The Secretary of the Natural Resources Agency shall  
29 consider the comanagement proposal and may require additional  
30 or clarifying information before determining that the proposal is  
31 complete.

32 (d) (1) *If multiple tribal governments or groups of tribal*  
33 *governments submit proposals to the Secretary of the Natural*  
34 *Resources Agency, the secretary shall prioritize the proposals for*  
35 *negotiation by the extent to which a proposal includes multiple*  
36 *tribal governments, the overall importance of the species covered*  
37 *by the proposal to the implementation of this chapter, and other*  
38 *criteria identified by the secretary.*

39 (2) *By July 1, 2012, the secretary shall forward the first proposal*  
40 *for negotiation to the director.*

1 (3) *The director shall enter into negotiations pursuant to this*  
2 *section for only one memorandum of understanding or other*  
3 *agreement at a time.*

4 (4) *Upon completion of an agreement or a determination by the*  
5 *secretary that negotiations have ceased, the secretary shall forward*  
6 *the next proposal in order of priority to the director for negotiation.*

7 ~~(d) Upon the secretary's determination that a proposal is~~  
8 ~~complete~~

9 (e) *Upon receipt of a proposal from the Secretary of the Natural*  
10 *Resources Agency, the director shall consult with the tribal*  
11 *governing body, or the tribe's officially designated representative,*  
12 *on the tribe's request for comanagement of the resources that are*  
13 *the subject of the proposal. The objective of the consultation shall*  
14 *be to develop memoranda of understanding or other agreements*  
15 *between the tribe and the state that accomplish all of the following:*

16 (1) *Provide access to the tribe for traditional hunting and*  
17 *gathering and cultural activities, recognizing that there may be*  
18 *other public use of the comanagement areas.*

19 (2) *Establish protocols for comanagement of the comanagement*  
20 *areas.*

21 (3) *Establish conservation strategies to ensure the preservation*  
22 *and enhancement of the resources of the comanagement areas to*  
23 *assist in meeting the science-based goals of this chapter.*

24 ~~(e) Notwithstanding any other provision of state law, traditional~~  
25 ~~fishing, gathering, and cultural practices of a tribe shall be~~  
26 ~~permitted to continue within a marine protected area without~~  
27 ~~interruption prior to, and during the development of, a~~  
28 ~~memorandum of understanding or other agreement pursuant to~~  
29 ~~subdivision (d).~~