



National
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TRIBAL GOVERNANCE INNOVATION SPOTLIGHT



YUROK TRIBE



Food Sovereignty

YUROK TRIBE

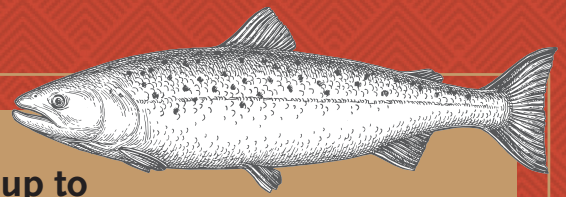


WHAT'S INSIDE

Facing a looming new threat to the already endangered salmon upon which its culture, society, and economy depend, the Yurok Tribe passed its Genetically Engineered Organism Ordinance, believed to be the first tribal law of its kind in the country. Enacted as a “preventative measure against future harm,” the ordinance is a necessary step to protect Yurok’s food sovereignty and ensure the spiritual, cultural, and physical health of its people. Through its community-driven legislative process, the Tribe also created a comprehensive Pesticide Ordinance, and is deploying ongoing public education campaigns to effectively enforce both laws.



An NCAI Case Study



“ From the beginning of time, salmon stood up to feed humans. Now is a really critical time for us to stand up for them and protect them. — Georgiana Gensaw, Yurok Tribal member¹ ”

Known historically as the Pohlik-lah, Ner-er-ner, and Petch-ik-lah peoples,² the Yurok Tribe today is the largest federally recognized tribal nation in California, counting more than 6,200 tribal members.³ The Tribe’s present-day reservation covers a long, narrow swath of rural northern California high country measuring roughly 44 miles long by two miles wide. A small fraction (55,890 acres) of the Tribe’s ancestral territory (490,000 acres), it is bisected by the Klamath River, which the Yurok people have considered their “grocery store, church, and highway” since time immemorial (see Figure 1).⁴

The U.S. government established what is now the Yurok Reservation in 1891 as an expansion of the Hoopa Valley Indian Reservation, originally created for Hoopas, Yuroks, and other local Native people.⁵ In 1988, Congress passed the Hoopa-Yurok Settlement Act, which formally partitioned the two reservations and enabled the Yurok Tribe and Hoopa Valley Tribe to separately govern themselves. Emerging “strong and proud...from the tragedies and wrongs of the years since the arrival of the non-Indians into our land,” the Yurok people methodically worked to adapt and codify its traditional system of governance, a process culminating in the ratification of the Yurok Tribe Constitution in November 1993.⁶ Through this constitution, Yurok governance today consists of a tribal chairman and vice chairman elected at-large and seven council members elected on a district basis.⁷ The chairman serves as the Tribe’s chief executive officer and principal spokesperson, while the Council holds the legislative authority of the Tribe. Meanwhile, the judicial power of the Tribe is vested in the Yurok Tribal Court, which “whenever possible, shall give full recognition and weight to Tribal customs, including traditional methods of mediation and dispute resolution.”⁸

The constitution also codifies in written form Yurok’s solemn obligations as “World Renewal People.”⁹ The Tribe fulfills these obligations by exercising its inherent sovereignty to, among other things, “restore, enhance, and manage

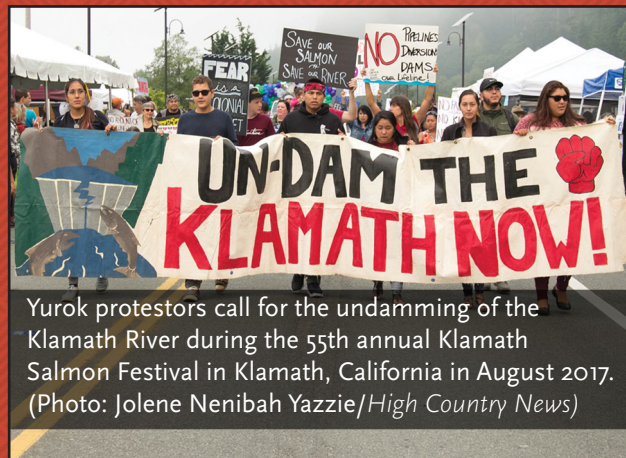
the tribal fishery, tribal water rights, tribal forests, and all other natural resources,” and “preserve forever the survival of our Tribe and protect it from forces which threaten its existence.”¹⁰ Central to this existence is the ney-puy (salmon), which is vital to the Tribe’s spiritual, cultural, and physical sustenance.¹¹ Explaining the relationship between the Yurok people and the salmon, Abby Abinanti, Chief Judge of the Yurok Tribal Court, explains, “We really believe that we are linked together, that we belong together, that we have responsibility to each other. They come back, they feed us, they go up the river, and it’s our job to protect them and to protect the river and that is sometimes really difficult.”¹²

A Strained Relationship of Reciprocity

For millennia, the Yurok ably carried out their obligations as “World Renewal People,” caring for the natural world around them – including the salmon – in a deliberate, holistic manner. In the mid-1800s, however, settlers rushing into Yurok territory seeking gold and other valuable natural resources disrupted Yurok’s ability to serve as the exclusive stewards of their place. Meanwhile, the State of California attempted to outlaw subsistence fishing by Yurok people on the Klamath River, which sparked legal battles and violent conflicts that continued through the 1970s and 1980s.¹³ Much of Yurok’s once vast ancestral territory quickly passed into non-Native hands; the remaining fraction

that became the Yurok Reservation today is predominantly owned by non-Natives, notably a large private timber company.

The invasion of non-Natives into Yurok territory “shattered” the delicate social and ecological balance that the Yurok people had spent thousands of years maintaining.¹⁴ Overfishing, excessive timber harvesting, widespread habitat destruction, and declining water levels caused by prolonged droughts and area agricultural operations have placed in great jeopardy the salmon that rely on the Klamath River for their survival.¹⁵ Recently, critically low runs



Yurok protestors call for the undamming of the Klamath River during the 55th annual Klamath Salmon Festival in Klamath, California in August 2017. (Photo: Jolene Nenibah Yazzie/High Country News)

FIGURE 1: Yurok Reservation & Ancestral Territory (Courtesy: Yurok Tribe GIS Program)



left the Tribe no choice but to cancel its commercial fishery on the Klamath for three consecutive years to give the local salmon population the best chance of regenerating.¹⁶ The lack of a commercial fishery not only hurts the ability of many Yurok families to make a living and put food on the table, it “undermines the tribe’s ability to pass on cultural and religious traditions to the next generation.”¹⁷

Despite these challenges and the other governments they must contend with, Yurok has worked tirelessly over the past several decades to reclaim their rightful role as stewards of its stretch of the Klamath River basin ecosystem. Notably, the Tribe forged strategic partnerships with local farmers and other stakeholders to establish a landmark agreement with the states of California and Oregon and the electric utility company PacifiCorp to undam the Klamath River by the year 2020, which will greatly enhance the ability of the salmon to easily travel far upriver to spawn.¹⁸ In addition, a 2017 court order now requires the U.S. Bureau of Reclamation to regularly increase winter and spring water flows into the Klamath River “using the Tribe’s scientific recommendations” to “markedly reduce [disease] infection rates among young salmon.”¹⁹

Yurok also has made land reacquisition and salmon habitat restoration top priorities. Beginning in the mid-2000s,

the Tribe began methodically reconstructing habitat along the Klamath’s tributaries by cultivating the growth of trees and other vegetation key to nursing the river’s ecosystem back to good health.²⁰ Meanwhile, in 2018, it partnered with the Western Rivers Conservancy to purchase 9,000 acres spanning Blue Creek, which will create a permanently protected salmon sanctuary within “some of the best fish habitat in the Pacific Northwest.”²¹ Despite these achievements, according to former Yurok Chairman Thomas P. O’Rourke Sr., the Tribe still faces a long road ahead: “There is still so much more work to do if we are to restore the struggling Klamath salmon runs to which the health of our people are inextricably intertwined.”²²

“Within Our Inherent Right and Our Sovereignty”²³

Yurok’s mission to return the salmon to vibrancy has become even more daunting with the emergence of a potential new danger in its midst: “Frankenfish,” a term referring to genetically modified or engineered (GE) salmon.²⁴ For years, tribal nations reliant on wild, natural salmon for their physical and cultural sustenance have been deeply concerned about these Frankenfish breeding with and ultimately destroying the genetic integrity of natural wild salmon populations over time.²⁵ But two recent developments have elevated the urgency of the Frankenfish

threat. In 2015, the U.S. Food and Drug Administration deemed GE salmon safe to eat, bolstering the aquaculture industry's efforts to profit from the large-scale farming of these fish.²⁶ Then, in August 2017, a netted enclosure collapsed in Puget Sound, releasing tens of thousands of GE salmon into its waters. The incident prompted several Puget Sound-based tribal nations to declare a state of emergency and assist with the clean-up efforts.²⁷ In Yurok's estimation, if unchecked, the Frankenfish will inevitably "overrun" the natural wild salmon "and they will become the fish on the river, and for us that's not acceptable."²⁸

Heeding a wake-up call from the Tribe's biologists that GE salmon posed a real and present danger to the resident salmon of the Klamath River, Yurok leaders took action. In April 2013, the Tribal Council took an important first step, passing a resolution that declares Yurok's formal opposition to "the approval for production, sale, or consumption of all GE salmon."²⁹ But Yurok soon realized that simply taking an official stance against GE salmon was not adequate for ensuring they never appeared in local waters. The Tribe needed to create a mechanism to neutralize the threat the GE salmon poses before it ever materialized. As Cheyenne Sanders, former Yurok Deputy General Counsel, explained, "We started immediately researching and thinking about ways that we could properly educate as well as stake a claim to the sovereign right that we have to govern our lands."³⁰

To start, tribal staff secured the Yurok Tribal Council's permission to initiate a process to craft a tribal ordinance aimed at addressing the GE salmon issue. Then, with assistance from the Northern California Tribal Courts Coalition (NCTCC), the Tribe researched the efforts of other tribal nations (such as the Navajo Nation) to combat the dangers posed by GEOs, not just salmon but genetically modified crops such as corn and wild rice. Through this endeavor, it soon became apparent that if Yurok was to effectively defend the river against GE salmon, its approach would need to involve the entire tribal government, working in lockstep with Yurok community members. In response, the Tribal Council created a work group comprised of a cross-section of governmental entities to coordinate the ordinance development effort, including the Office of the Tribal Attorney, Yurok Tribal Courts, Yurok Tribe Environmental Program, Yurok Tribal Fisheries Department, and the Yurok Department of Public Safety.

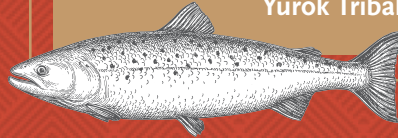
In accordance with Yurok's Public Hearings Ordinance, the work group then conducted a series of widely publicized public meetings in the reservation communities of Wietchpec and Klamath and the nearby town of Eureka over several months to inform tribal members about – and get their thoughts on – the proposed ordinance.³¹ Through several rounds of drafts and revisions, tribal members continually provided feedback, and a specially appointed culture committee composed of elders reviewed the drafts

“ We felt like we had to draw a line in the sand and say, ▲▲▲

NO, this is where it STOPS.

▼▼▼
You can have your hatchery, you can build a swimming pool in your backyard and have as many Frankenfish as you want, but not in our backyard.

— Abby Abinanti, Chief Judge, Yurok Tribal Court³² ”



to ensure that traditional Yurok ecological knowledge, values, and practices gained their rightful place in both the ordinance's language and its implementation.³³

This deliberate process culminated in December 2015 in Yurok's passage of its Genetically Engineered Organism Ordinance, believed to be the first tribal ordinance of its kind in the country.³⁴ Enacted as a "preventative measure against future harm"³⁵, the comprehensive ordinance:

- declares "Yurok Tribal Territory to be a zone kept free from genetically engineered or modified seeds, plants, fish, and animals"³⁶;
- prohibits "any person, corporation, or entity from propagating, rising, growing, spawning, incubating, or releasing genetically engineered organisms within the territory of the Tribe"³⁷;
- designates the Yurok Tribe Environmental Program (YTEP), Department of Public Safety (DPS), and Office of Tribal Attorney (OTA) to coordinate enforcement;
- and enables the Yurok Tribal Court to prosecute offenders and recover the costs of enforcing the ordinance by subjecting them to "civil damages, fines, penalties (including interest), and/or injunctive actions."³⁸

Interestingly, in addition to the Yurok Reservation, the ordinance also applies to "any off-reservation conduct that causes material on-reservation genetic trespass or contamination" by GEOs.³⁹ As Yurok's leadership explained at the time, the ordinance "is a necessary step to protect our food sovereignty and to ensure the spiritual, cultural and physical health of the Yurok People. GMO food production systems, which are inherently dependent on the overuse of herbicides, pesticides and antibiotics, are not our best interest."⁴⁰



Yurok Fisheries Technicians Tawnie Scott and Del Ray monitor the fall salmon run, 2012. (Photo: Matt Mais/Yurok Today)

Pesticides have long plagued the Yurok Reservation, but in recent years their impacts have grown more widespread and severe.⁴¹ Despite the Tribe's "Zero Tolerance Policy toward all drugs, including medical marijuana,"⁴² the number of illegal cannabis grows increased dramatically in the hardest-to-reach parts of the reservation over a recent several-year period, and with them the proliferation of pesticides designed to enhance their cultivation.⁴³ These toxic substances run off into Yurok's waterways, endangering the physical health of Yurok members, in particular youth, elders, those who are sick or have suppressed immune systems, and the many Yurok people who engage in subsistence fishing, hunting, and gathering.⁴⁴ These unlawful grows also damage critical fish and wildlife habitat by diverting vital cold water from Yurok's waterways, and they often interfere with Yurok ceremonies and ceremonial areas. In addition, many Yurok hunters and gatherers have been discouraged from engaging in these subsistence activities in their usual and accustomed places, fearing they will encounter armed cannabis growers.⁴⁵

Yurok initially considered addressing pesticides in the GEO Ordinance, but ultimately decided that the issue warranted the Tribe's creation of a stand-alone yet interconnected ordinance. Utilizing the same community-driven process, the Yurok Tribe developed and ratified the Yurok Pesticide Ordinance in August 2017. Mimicking the GEO ordinance, the Pesticide Ordinance declares Yurok a pesticide-free zone and prohibits "any person, corporation, or other entity to manufacture, produce, transport, sell, apply, administer or dispose of pesticides within the territory and jurisdiction

of the Yurok Tribe."⁴⁶ The Pesticide Ordinance also reaffirms the enforcement roles for YTEP, DPS, OTA, and the Yurok Tribal Court originally laid out in the GEO Ordinance.⁴⁷

Since its ratification of these tandem ordinances, Yurok has been hard at work implementing them. Notably, the Tribe is expanding its human resource capacity to administer these laws and monitor the health of fish populations and the ecosystem upon which they depend, so that Yurok's management plans and associated ordinances are synchronized and based upon the best available science. Yurok also has launched ongoing, comprehensive public education campaigns to inform tribal members, local residents, and other area governments and stakeholders about the new laws and what they mean for them. For example, the Tribe has partnered with the Yurok Economic Development Corporation to educate tribal members about everyday household chemicals that are considered banned toxic substances under the Pesticide Ordinance and the need to dispose of them properly. It also is working with local businesses to gradually phase out the sale of these chemicals in favor of safer alternatives. In addition, YTEP, DPS, and OTA are methodically developing a unified plan that will support seamless enforcement of these ordinances and the efficient routing of offenses through the Yurok court system.⁴⁸ Altogether, as Sanders explains, "When these ordinances are fully in place, we'll be able to say with conviction, 'No, these are not allowed in our lands, this is why, and these are the consequences.' As a result, we'll start seeing a healthier community, a healthier river, and we'll see salmon back in the Klamath."⁴⁹



TRANSFERRABLE LESSONS AND STRATEGIES

1. Close Legislative-Judicial Collaboration: Throughout the various stages of the ordinance development processes, the Yurok Tribal Council regularly communicated with Judge Abinanti and key court and OTA staff to ensure that the ordinance provisions comprehensively addressed the complex nature of the GEO and pesticide issues in all of their current and potential manifestations, and that the ordinance language was carefully crafted to ensure effective and efficient enforcement of those provisions. The ongoing, substantive dialogue between the governmental function that makes law and the function that administers law helped to identify gaps in legal coverage that were then addressed in revisions to the ordinances prior to their ratification, and also helped the Council understand the nuances and challenges involved with enforcing the ordinances.

2. Proactive Laws: Rather than waiting around for offenses to occur before taking action, Yurok structured the two ordinances to preemptively remediate pre-existing violations of the newly passed laws, and deter new violations from taking place. The GEO Ordinance, for example, required all persons, corporations, and other entities possessing or cultivating GEOs to notify the Tribe of this fact within 30 days of the law taking effect; meanwhile, the Pesticide Ordinance gave pesticide users 90 days to disclose their use of the newly banned toxic substances.⁵⁰ Both ordinances then set out a “Transition Plan” that provides said violators the opportunity to “phase out” GEOs and pesticides during a grace period of twelve months.⁵¹ This approach has enabled the Tribe to learn about the location and extent of the current existence of GEOs and pesticides on tribal land and deploy measures to confiscate and safely dispose of them.

3. Legally Mandated Public Education: In a groundbreaking step, the GEO Ordinance mandated the establishment of a “Pesticide and GEO Education Committee,” which features key representatives from YTEP, DPS, OTA, the Tribal Fisheries Department, and Yurok’s Cultural Programs.⁵² The committee’s job is two-fold: (1) continuously educate the Yurok community about the harmful effects of GEOs and pesticides and what the ordinances do to regulate and reduce their prevalence on the reservation; and (2) regularly make policy and regulatory recommendations

to the Tribal Council regarding how the ordinances and their enforcement can be strengthened over time based on lessons learned to date.

4. Community Policing: Given that the sizable Yurok Reservation is situated in a remote area marked by rugged terrain – coupled with the Tribe’s limited capacity to regularly patrol all reaches of the reservation – Yurok law enforcement has gone to great lengths to foster working partnerships with tribal members to provide “community policing,” which has significantly enhanced the Tribe’s ability to identify and prosecute violators of its ordinances, in particular the Pesticide Ordinance.⁵³ Within its community policing framework, participating tribal members sign “voluntary admission” forms granting Yurok law enforcement formal permission to come on to their properties to check for or investigate violations and apprehend wrongdoers.

5. Documenting and Sharing Its Model Approaches: Recognizing that it was in uncharted law-making waters, Yurok made a conscious decision at the outset to document its ordinances and ordinance development processes to serve as models and roadmaps for other tribal nations to customize to their own distinct needs. It also has since committed to taking time to share their experiences and lessons learned regarding ordinance implementation with inquiring tribal nations. To that end, the Tribe has partnered with NCTCC to produce a suite of informative resources, including the Model Tribal GEO Ordinance, Model Tribal Pesticide Ordinance, the Tribal Food Integrity Policy Process Guide, and the “Restoring the Balance” explanatory video, among others. Yurok also hosted a tribal summit on food sovereignty, has been working closely with its neighboring California tribal nations to develop similar ordinances, and has welcomed Indigenous delegates from Brazil, Mexico, Ecuador, Indonesia, and other countries to its reservation to learn more about the approaches it has taken, how, and why.⁵³ Yurok’s documentation of its efforts to combat GEOs and pesticides not only is benefiting other tribal nations, it has created a detailed historical record for the Tribe and its leaders, employees, and members to refer to as they work to administer and strengthen its ordinances over the long haul.



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1. Danovich 2018.
2. Yurok Tribe Constitution, November 1993, p. 1.
3. Sanders, Cheyenne. Interview with NCAI, October 18, 2017.
4. Bacher 2017.
5. Yurok Tribe Constitution, November 1993, p. 2.
6. As the Tribe explains in its 1993 constitution, "Throughout the first 140 years of our tribe's dealings with the United States, we never adopted a written form of government. We had not needed a formal structure and were reluctant to change... Yet we, the Yurok people, know that this is the time to exercise our inherent tribal sovereignty and formally organize under this Constitution" (pp. 2-3).
7. Tillers, p. 365.
8. Yurok Tribe Constitution, November 1993, p. 16.
9. Sanders, Cheyenne. Interview with NCAI, October 18, 2017; Abinanti, Abby. Interview with NCAI, October 24, 2018. See Yurok Tribe, Genetically Engineered Organism (GEO) Ordinance, Section 8003(d), December 2015, p. 3.
10. Yurok Tribe Constitution, November 1993, p. 3.
11. Yurok Tribe. "Yurok Culture/History." Yurok Tribe website (accessed December 10, 2017).
12. Interview with NCAI, January 31, 2018.
13. Yurok Today, "Tribe Buys Sacred Blue Creek," March 2018.
14. Yurok Tribe Constitution, November 1993, p. 2.
15. Yurok Preamble page 3 Ratified November 19, 1993
16. Del Norte Triplicate, September 20, 2018.
17. Bacher 2017.
18. Mais, April 2017.
19. Mais, April 2017.
20. Godoy 2018.
21. Mais, March 2018.
22. Mais, March 2018.
23. Sanders, Cheyenne. Interview with NCAI, October 18, 2017.
24. Abinanti, Interview with NCAI, January 31, 2018; Murphy 2017. Genetically Engineered (GE) salmon is genetically manipulated to accelerate the growth and size of the salmon for the benefit and profit of the aquaculture industry.
25. For example, NCAI passed a resolution in 2014 strongly opposing the "introduction of genetically engineered salmon into the United States for consumption, research or production" stating that "should genetically engineered salmon escape into the wild habitat, those genetically engineered salmon will adversely affect wild salmon upon which Indian people are dependent" (Resolution #ANC-14-037, Anchorage, Alaska, June 11, 2014).
26. The FDA's approval of AquaBounty Technologies' application for its AquAdvantage Salmon marked the first time the FDA had approved a genetically engineered animal intended for food (Houston 2015).
27. High Country News <https://www.hcn.org/issues/50.1/tribal-affairs-when-atlantic-salmon-escape-in-the-Pacific-who-cleans-up>
28. Abinanti, Interview with NCAI, January 31, 2018.
29. Yurok Tribal Council, Resolution No: 13-26, April 11, 2013.
30. Interview with NCAI, October 18, 2017.
31. Yurok Tribe, Public Hearings Ordinance, January 2015, p. 2. The Public Hearings Ordinance "ensures adequate input by interested Tribal members and informed consideration by Council of the best interests of the Tribe and its members prior to adopting legislative acts" (Ibid., p. 1).
32. Interview with NCAI, January 31, 2018.
33. Sanders, Cheyenne. Interview with NCAI, October 18, 2017. Initial outreach to Yurok tribal members regarding development of the GEO Ordinance commenced in February 2015. Drafts of the ordinance were circulated to tribal departments in July 2015 and to tribal membership in October 2015. The comment period closed on November 12, 2015.
34. While other tribal nations have passed resolutions governing GEOs, Yurok is credited with becoming the first tribal nation in the United States to pass a law or ordinance specifically dedicated to dealing with the issue.
35. Yurok Tribe, GEO Ordinance, Section 8003(i), December 2015, p. 3.
36. Ibid., Section 8004(d), p. 3.
37. Ibid., Section 8101(a), p. 6.
38. Ibid., Section 8501, p. 10.
39. Ibid., Section 8005, p. 4.
40. Mais, January 2016.
41. For a broad definition of pesticides, see the "What is a Pesticide?" page on the U.S. Environmental Protection Agency's website (<https://www.epa.gov/minimum-risk-pesticides/what-pesticide>).
42. Yurok Tribe, "Yurok Tribe and law enforcement partners crack down on illegal marijuana cultivation sites," July 17, 2017.
43. Kemp 2018.
44. Yurok Tribe, Pesticide Ordinance, Section 1003(h), August 2017, p. 4.
45. Yurok Tribe, "Yurok Tribe and law enforcement partners crack down on illegal marijuana cultivation sites," July 17, 2017. In 2013, the Tribe initiated Operation Yurok, an aggressive, cross-jurisdictional law enforcement campaign to eradicate large-scale marijuana grows from the reservation. In 2015, the operation
46. Yurok Pesticide Ordinance, Section 10004(b), August 2017, p. 4.
47. As with the GEO Ordinance, the Pesticide Ordinance shall "also apply to any off-reservation conduct that causes material on-reservation chemical trespass or contamination" (Section 10304(d), August 2017, p. 11).
48. Sanders, Cheyenne. Interview with NCAI, October 18, 2017.
49. Ibid.
50. Yurok GEO Ordinance, Section 8204, December 2015, p. 8; Yurok Pesticide Ordinance, Section 10204, August 2017, p. 10.
51. Yurok GEO Ordinance, Section 8205, December 2015, p. 8; Yurok Pesticide Ordinance, Section 10205, August 2017, p. 10; Houston 2015.

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COVER PHOTO

Yurok tribal member Tasheena Natt checks her net in the Klamath River estuary. (Photo: Matt Mais/Yurok Today)

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