

**TITLE 14. Fish and Game Commission
Notice of Proposed Changes in Regulations**

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 205(c), 265, 399, 1590, 1591, 2860, 2861, and 6750 of the Fish and Game Code and sections 36725(a) and 36725(e) of the Public Resources Code and to implement, interpret, or make specific sections 200, 205(c), 265, 399, 2861, 5521, 6653, 8420(e), and 8500 of the Fish and Game Code and sections 36700(e), 36710(e), 36725(a), and 36725(e) of the Public Resources Code, proposes to amend subsections (b)(33), (34), (97), (98), (112) and (117) of Section 632, Title 14, California Code of Regulations (CCR), relating to Marine Protected Areas (tribal take).

Informative Digest/Policy Statement Overview

The Marine Life Protection Act (MLPA) (Fish and Game Code Sections 2850-2863) established a programmatic framework for designating marine protected areas (MPAs) in the form of a comprehensive statewide network. The Marine Managed Areas Improvement Act (Public Resources Code Sections 36600-36900) standardized and clarified the designations of marine managed areas (MMAs), which include MPAs. The overriding goal of these acts is to protect California's valuable marine resources including natural biodiversity and abundance of marine life, sustaining and rebuilding species of economic value, and improving recreational and educational opportunities in areas subject to minimal human disturbance.

Planning for California's coastal network of MPAs occurred through a sequential series of four regional public planning processes. Following planning within each region, the Commission adopted MPA regulations that were implemented along the coast from 2007 to 2012. Background information from previous rulemaking files for regional MPA planning and implementation is found in the initial statement of reasons for Rulemaking File No. 2012-1005-02s, which is available at <http://www.fgc.ca.gov/regulations/2012/632ncisor.pdf>.

Existing regulations in Section 632, Title 14, CCR, provide definitions, and site-specific area classifications, boundary descriptions, commercial and recreational take restrictions, and other restricted/allowed uses, including tribal take regulations for federally recognized tribes [subsection 632(a)(11)].

Proposed Regulation

1. **Boundary Changes.** Amend subsections 632(b)(33)(A) and (34)(A) boundaries for Stewarts Point State Marine Conservation Area (SMCA) and Stewarts Point State Marine Reserve (SMR) at the request of the federally recognized Kashia Band of Pomo Indians of the Stewarts Point Rancheria (Kashia Band of Pomo Indians).

Background

In 2010, the Commission recognized that implementation of the Stewarts Point SMR inadvertently prohibited members of the Kashia Band of Pomo Indians, a federally recognized tribe in Sonoma County, from fishing and gathering for subsistence and ceremonial purposes in their traditional take areas. Thus, the Commission took action to re-designate a portion of the SMR as an SMCA to allow for recreational take of certain species that accommodated the take needs identified by the tribe [subsection (632(b)(33)].

In February 2017, the Kashia Band of Pomo Indians began new discussions with the Commission to modify the existing boundaries of Stewarts Point SMCA and Stewarts Point SMR, in subsections 632(b)(33)(A) and (34)(A), respectively, to align the SMCA more closely with the tribe's traditional take areas. Ultimately, the Kashia Band of Pomo Indians formally petitioned the Commission to adopt boundary modifications to Stewarts Point SMCA and Stewarts Point SMR. The action would shift the northern boundary of the SMCA southward by approximately 1.5 miles, and shift the southern boundary of the SMCA southward by approximately 1.0 mile.

2. **Authorize Tribal Take.** Amend subsections 632(b)(97), (98), (112) and (117), to authorize tribal take for members of the federally recognized Santa Ynez Band of Chumash Indians at Kashtayit SMCA, Naples SMCA, Point Dume SMCA, and Anacapa Island SMCA.

Background

In December 2010, the Commission adopted MPAs in southern California. In 2011, the Santa Ynez Band of Chumash Indians, a federally recognized tribe located in Santa Barbara County, petitioned the Commission to authorize tribal take in all SMCAs and state marine parks in Santa Barbara County. In June 2012, the Commission adopted subsection 632(a)(11), which defines tribal take within an MPA when authorized under 632(b). In April 2017, the Santa Ynez Band of Chumash Indians submitted a modified final request for the Commission to authorize tribal take within four SMCAs: Kashtayit and Naples (Santa Barbara County), Point Dume (Los Angeles County), and Anacapa Island (Ventura County). The tribe provided additional documentation of historic use. No changes are proposed for subsection 632(b)(11), Anacapa Island Special Closure, which overlaps with Anacapa Island SMCA.

Goals and Benefits

1. The Commission took action in 2010 to adopt the Stewarts Point SMCA within the Stewarts Point SMR at the request of the federally recognized Kashia Band of Pomo Indians to allow for recreational take from shore of certain culturally significant species. The proposed boundary modifications would more closely align the Stewarts Point SMCA with historical tribal lands reacquired subsequent to the tribe's 2010 request, thus providing a contiguous connection between terrestrial and marine areas of cultural significance.
2. The proposed regulations will authorize take for members of the federally recognized Santa Ynez Band of Chumash Indians within certain areas of historical use, as supported by the tribe's factual record; in 2012, take within these areas was minimized when certain MPAs were implemented. The proposed regulation for tribal take by the Santa Ynez Band of Chumash Indians is consistent with regulations for federally recognized tribes in north coast MPAs.
3. The proposed action is consistent with the Commission's Tribal Policy which implements the Governor's Executive Order B-10-11 for collaborative government to government consultation with California Indian Tribes to realize sustainably-managed natural resources of mutual interest.

Consistency with Existing State Regulations

The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. The Commission has searched the California Code of Regulations and finds no other State agency regulations pertaining to Stewarts Point SMCA, Stewarts Point SMR, Kashtayit SMCA, Naples SMCA, Point Dume SMCA, or Anacapa Island SMCA.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Resources Building Auditorium, 1416 Ninth Street, Sacramento, California, on Wednesday, June 20, 2018, at 8:00 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the River Lodge Conference Center, 1800 Riverwalk Drive, Fortuna, California, on Wednesday, August 22, 2018, at 8:00 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before 5:00 p.m. on August 9, 2018, at the address given below, or by email to FGC@fgc.ca.gov. Written comments mailed (to Fish and Game Commission, PO Box 944209, Sacramento, CA 94244-2090), or emailed to the Commission office, must be received before 12:00 noon on August 17, 2018. All comments must be received no later than August 22, 2018, at the hearing in Fortuna. If you would like copies of any modifications to this proposal, please include your name and mailing address.

Availability of Documents

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout format can be accessed through the Commission website at www.fgc.ca.gov. The

regulations as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Valerie Termini, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Valerie Termini or Sherrie Fonbuena at the preceding address or phone number. **Environmental Scientist Elizabeth Pope, Department of Fish and Wildlife, (707) 445-5301 or Elizabeth.Pope@wildlife.ca.gov, has been designated to respond to questions on the substance of the proposed regulations.**

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action/Results of the Economic Impact Assessment

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Neither aspect of this proposed rulemaking constitutes a significant change in proposed take of or access to resources, nor to business activities relating to such resources.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission does not anticipate any impacts on creation or elimination of jobs, the creation of new businesses, the elimination of existing businesses or the expansion of businesses in California because these changes will neither increase nor decrease recreational or commercial opportunities within the state of California.

The Commission does not anticipate benefits to the health and welfare of California residents, generally; however, the Commission anticipates benefits to the health and welfare of tribal members by authorizing take of living marine resources from MPAs with specific take restrictions. The proposed amendments do not have foreseeable benefits to worker safety because the regulations do not affect working conditions. Benefits to the environment will remain consistent with the current protections provided by the MPA network as a whole.

- (c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.
- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Dated: April 24, 2018

Valerie Termini
Executive Director