

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend subsections 632(b)(33), (34), (97), (98), (112) and (117)
Title 14, California Code of Regulations
Re: Marine Protected Areas

I. Date of Initial Statement of Reasons: March 7, 2018

II. Dates and Locations of Scheduled Hearings

- (a) Notice Hearing: Date: April 18, 2018
 Location: Ventura, CA

- (b) Discussion Hearing: Date: June 20, 2018
 Location: Sacramento, CA

- (c) Adoption Hearing: Date: August 22, 2018
 Location: Fortuna, CA

III. Description of Regulatory Action

- (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

Background Information/Current Regulations

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 California Fish and Game Commission (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, California Code of Regulations 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

The proposed regulation changes fall under two categories: Boundary changes for two MPAs and authorizing tribal take in four MPAs.

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 (Attachment 1). 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 (figures 1 and 2).

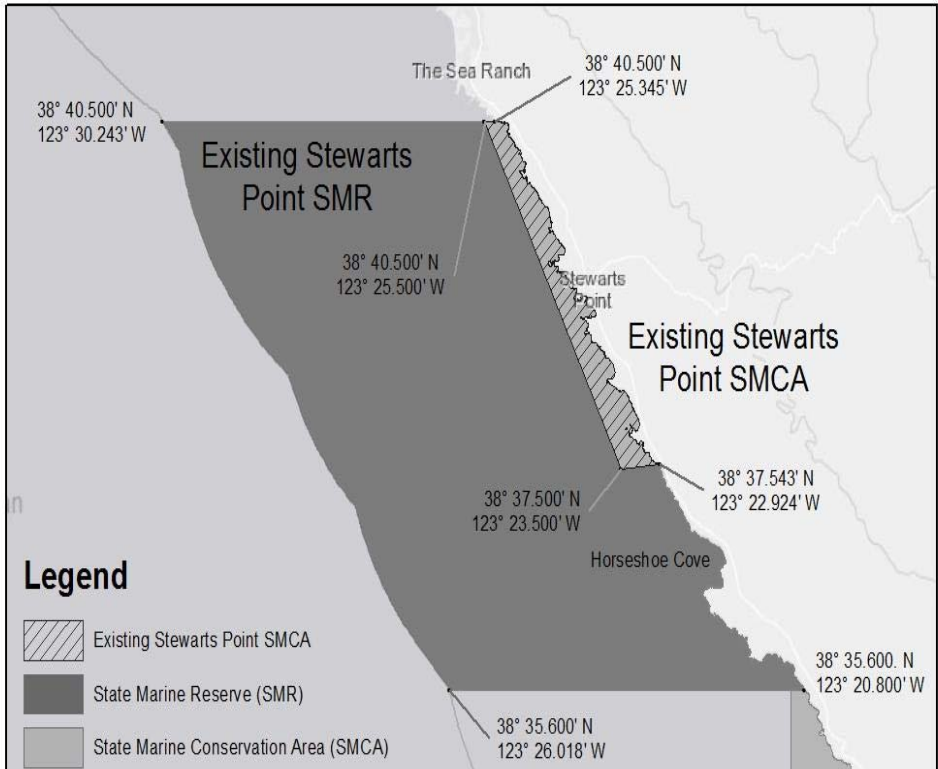


Figure 1. Existing boundaries, Stewarts Point SMCA and SMR

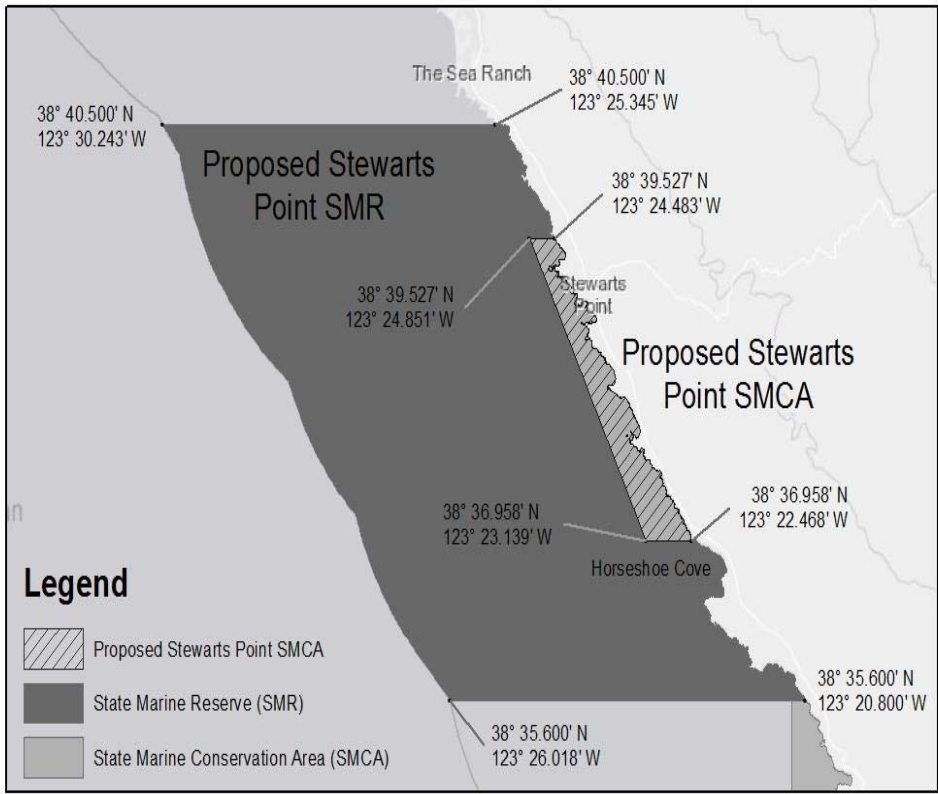


Figure 2. Proposed boundaries, Stewarts Point SMCA and SMR

Rationale

The proposed boundary shift would align the Stewarts Point SMCA with historical tribal lands recently reacquired by the Kashia Band of Pomo Indians, thus allowing members direct access to culturally significant areas of the shoreline and marine resources for ceremonial, cultural and subsistence purposes. Take regulations for Stewarts Point SMCA and Stewarts Point SMR would remain unchanged from the current regulations in subsections 632(b)(33) and (34).

The proposed boundary modifications would have a negligible effect on existing ecological and habitat protections currently afforded by the Stewarts Point SMR (Attachment 2). The boundary shift would effectively make the SMR approximately 0.1 percent smaller and the SMCA approximately 2.3 percent larger. The alongshore span of the SMR would increase by 0.56 statute mile (measured using a straight line distance), with a corresponding decrease for the SMCA. The SMR still meets scientific guidelines for preferred MPA size and spacing and retains Horseshoe Cove, an area of noted ecological value and biodiversity, within the fully protected SMR. The SMCA only allows shore fishing; thus, deeper offshore habitats currently within the SMR will not experience impacts by the southward shift of the SMCA because offshore take is prohibited.

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 (SMP) in Santa Barbara County (Attachment 3). 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) (Figures 3-6, respectively). The tribe provided additional documentation of historic use (Attachments 4 and 5). No changes are proposed for subsection 632(b)(111), Anacapa Island Special Closure, which overlaps with Anacapa Island SMCA.

Rationale

For a tribe to be authorized for “tribal take” within specific MPAs, as defined in subsection 632(a)(11), the tribe must be federally recognized. The Commission has requested that tribes submit a factual record that authenticates historical take within the requested MPA geography. The request for tribal take by the federally recognized Santa Ynez Band of Chumash Indians, including its factual record, are found in attachments 3 and 5.

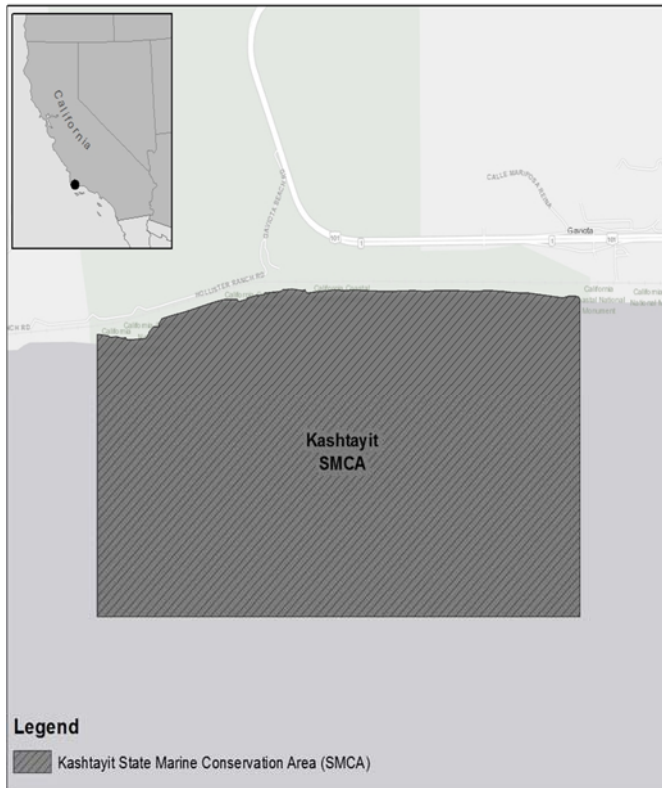


Figure 3. Kashtayit SMCA, Santa Barbara County

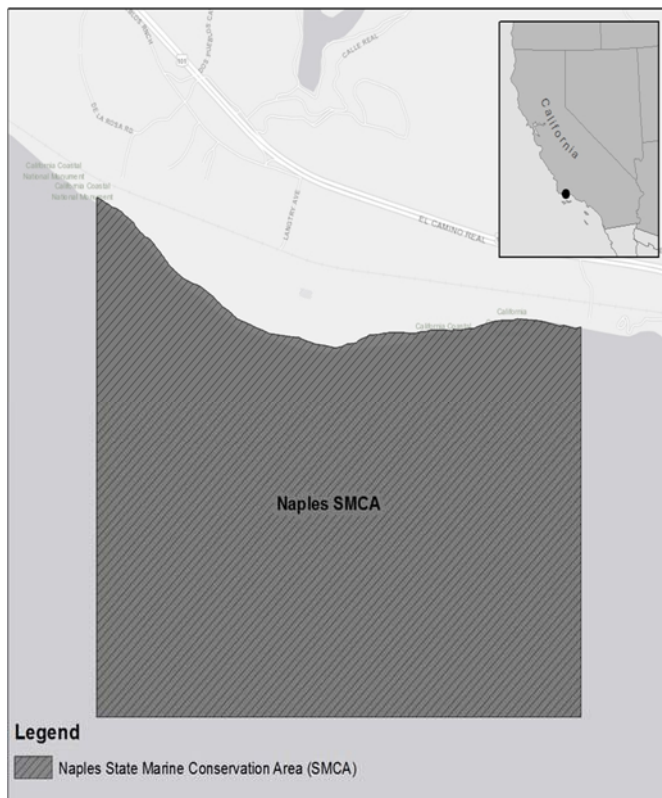


Figure 4. Naples SMCA, Santa Barbara County

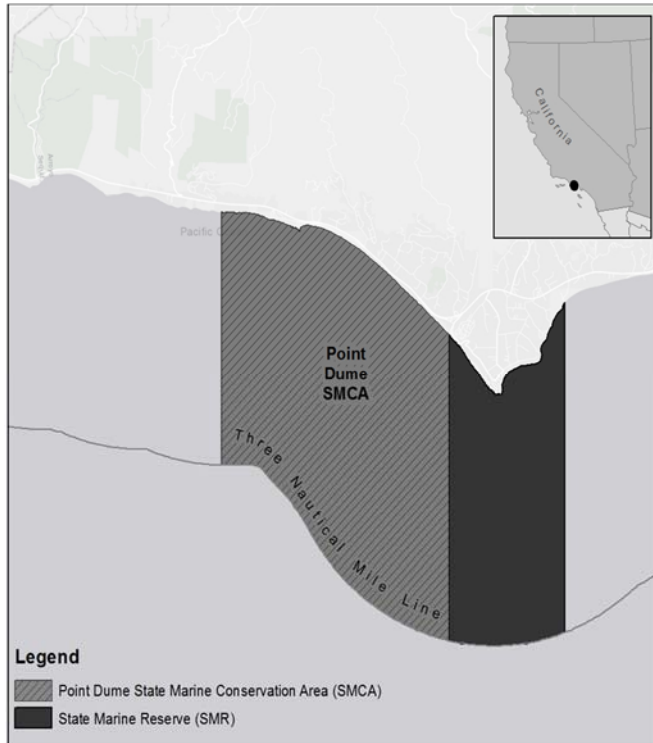


Figure 5. Point Dume SMCA, Los Angeles County

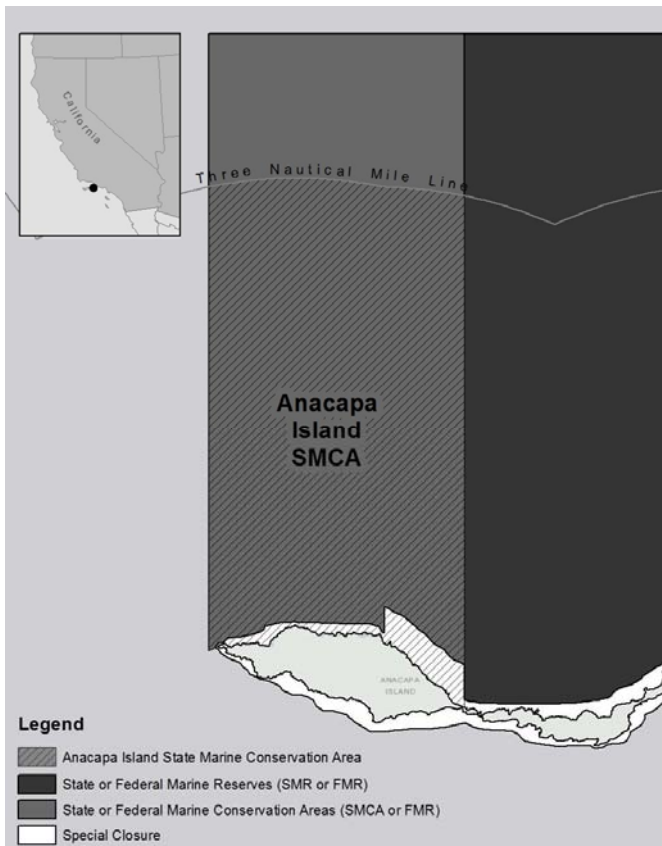


Figure 6. Anacapa Island SMCA, Ventura County
**Proposed tribal take does not apply to Anacapa Island Special Closure*

(b) Goals and Benefits of the Regulation:

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.

(c) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 200, 205(c), 265, 399, 1590, 1591, 2860, 2861 and 6750, Fish and Game Code; and Sections 36725(a) and 36725(e), Public Resources Code.

Reference: Sections 200, 205(c), 265, 399, 2861, 5521, 6653, 8420(e) and 8500, Fish and Game Code; and Sections 36700(e), 36710(e), 36725(a) and 36725(e), Public Resources Code.

(d) Specific Technology or Equipment Required by Regulatory Change: None.

(e) Identification of Reports or Documents Supporting Regulation Change:

Attachment 1: Petition #2017-017 from the Kashia Band of Pomo Indians requesting boundary changes for Stewarts Point State Marine Conservation Area and Stewarts Point State Marine Reserve

Attachment 2: Habitat calculations for Stewarts Point State Marine Conservation Area and Stewarts Point State Marine Reserve

Attachment 3: Letter, dated November 1, 2011, from Santa Ynez Band of Chumash Indians requesting tribal take in SMCAs and SMPs in Santa Barbara County, and transmitting "Factual Record of Current and Historical Uses by the Santa Ynez Band of Chumash Indians within the Proposed State Marine Conservation Areas and Marine Parks of Santa Barbara County"

Attachment 4: Email confirmation to the California Fish and Game Commission's executive director of tribal take request for the Santa Ynez Band of Chumash Indians, February 14, 2017

Attachment 5: April 1, 2017 email message to the California Fish and Game Commission's executive director and document titled "Point Dume and Anacapa Island Chumash Cultural Affiliation to the California State Marine Conservation Areas," dated March 31, 2017

(f) Public Discussions of Proposed Regulations Prior to Notice Publication:

1. The Kashia Band of Pomo Indians conducted outreach to neighboring landowners, including the Sea Ranch housing development and California State Parks, prior to submitting its petition.
2. The Santa Ynez Band of Chumash Indians request for tribal take was included as a discussion item at four meetings of the Commission's Tribal Committee:
 - April 7, 2015 (Santa Rosa)
 - June 9, 2015 (Mammoth Lakes)
 - October 6, 2015 (Los Angeles)
 - February 7, 2017 (Rohnert Park)

The request was also discussed at six Commission meetings:

- October 7-8, 2015 (Los Angeles)
- February 10-11, 2016 (Sacramento)
- April 13-14, 2016 (Santa Rosa)
- June 22-23, 2016 (Bakersfield)
- February 8-9, 2017 (Rohnert Park)
- April 26-27, 2017 (Van Nuys)

In addition, on November 14, 2016, representatives of the Santa Ynez Band of Chumash Indians led a tour of MPAs proposed for tribal take. Commission and California Department of Fish and Wildlife staff, Santa Barbara area non-governmental organization representatives, and a Santa Barbara MPA Collaborative chair participated in the tour. At the Commission's April 26-27, 2017 meeting, tribal representatives provided oral and written comment confirming the final request. (Attachment 4).

IV. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change:

At the Commission Tribal Committee's February 7, 2017 meeting, the Santa Ynez Band of Chumash Indians requested tribal take at four SMCAs: Kashtayit, Naples,

Campus Point, and Goleta Slough. At its February 8-9, 2017 meeting, the Commission approved the request to include Kashtayit and Naples SMCAs, but did not grant inclusion of Goleta Slough and Campus Point SMCAs because they are designated as no-take MPAs.

In 2011, the Santa Ynez Band of Chumash Indians requested tribal take in all Santa Barbara area MPAs. After clarification from Commission, the request for tribal take was modified by the Santa Ynez Band of Chumash Indians to include the four SMCAs outlined in this document. Regarding the original 2011 request there are no SMPs in Santa Barbara County and therefore can't be evaluated as a part of the request.

No additional alternatives were identified by or brought to the attention of Commission staff that would have the same desired regulatory effect as the proposed action.

(b) No Change Alternative:

1. The no change alternative would not modify the existing boundaries for Stewarts Point SMCA and Stewarts Point SMR, and would therefore prohibit the federally recognized Kashia Band of Pomo Indians from traditional tribal activities in marine waters adjacent to recently reacquired tribal lands.
2. The no-change alternative would exclude tribal take, as defined in subsection 632(a)(11), for the federally recognized Santa Ynez Band of Chumash Indians within four SMCAs: Kashtayit, Naples, Point Dume, and Anacapa Island and is inconsistent with the tribal take provision in Title 14, Section 632(a)(11).

V. Mitigation Measures Required by Regulatory Action

For the purpose of this initial statement of reasons, adopting the proposed boundary modification as proposed by the Kashia Band of Pomo Indians would have nominal impact to area protections because take regulations remain unchanged within Stewarts Point SMCA [subsection 632(b)(33)]. There are no anticipated negative impacts on the environment from the proposed regulation amendments proposed by the Santa Ynez Band of Chumash Indians; therefore, no mitigation measures are necessary.

VI. Impact of Regulatory Action

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 Businesses, 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.

VII. Economic Impact Assessment

- (a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State:

The proposed amendments will not create any new jobs or eliminate existing jobs because the proposed regulations will neither substantially increase nor decrease recreational or commercial opportunities within the state of California.

- (b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State:

The proposed amendments will not create any new businesses or eliminate existing businesses because the proposed regulations will neither substantially increase nor decrease recreational or commercial opportunities within the state of California.

- (c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State:

The proposed amendment is not expected to result in the expansion of businesses currently doing business within the state because the proposed regulations will neither increase nor decrease recreational or commercial opportunities within California.

- (d) Benefits of the Regulation to the Health and Welfare of California Residents:

The Commission does not anticipate benefits to the health and welfare of California residents, generally; however, both components of the proposed action will provide benefits to the health and welfare of tribal members with the opening of access to areas of traditional ceremonial and subsistence take that were lost due to MPA restrictions.

- (e) Benefits of the Regulation to Worker Safety:

The proposed amendments do not have foreseeable benefits to worker safety because the regulations do not affect working conditions.

- (f) Benefits of the Regulation to the State's Environment:

The Commission does not anticipate benefits to the State's environment because the regulatory action only affects tribal take of marine species by members of the specified tribes pursuant to current season, bag, possession, gear and size limits. Benefits to the environment will remain consistent with the protections provided by the MPA network as a whole.

- (g) Other Benefits of the Regulation:

The proposed amendments allow both the Kashia Band of Pomo Indians and the Santa Ynez Band of Chumash Indians opportunities to reconnect with marine areas of historical tribal take for traditional subsistence and ceremonial purposes.

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.

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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.
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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 proposed regulations are neither inconsistent nor incompatible 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.