

## STAFF SUMMARY FOR JUNE 20-21, 2018

**12. TRIBAL TAKE IN MPAS****Today's Item****Information** **Action** 

Discuss proposed changes to marine protected area (MPA) regulations.

**Summary of Previous/Future Actions**

- |                                     |                                    |
|-------------------------------------|------------------------------------|
| • Discussions of Chumash request    | Apr 2015-Apr 2017, TC and FGC      |
| • Granted Petition 2017-017         | Feb 7-8, 2018, Sacramento          |
| • Notice hearing                    | Apr 18-19, 2018; Ventura           |
| • <b>Today's discussion hearing</b> | <b>Jun 20-21, 2018; Sacramento</b> |
| • Adoption hearing                  | Aug 22-23, 2018; Fortuna           |

**Background**

See Exhibit 5 for additional background information.

The proposed changes to Section 632 would make boundary changes for two MPAs and add 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).

The action would shift the northern boundary of the Stewarts Point SMCA southward by approximately 1.5 miles, and shift the southern boundary of the SMCA southward by approximately 1.0 mile. The proposed boundary shift would align the SMCA with historical tribal lands recently reacquired by the Kashia Band, thus allowing members direct access to culturally significant areas of the shoreline and marine resources for ceremonial, cultural and subsistence purposes.

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 and Naples SMCAs (Santa Barbara County), Point Dume SMCA (Los Angeles County), and Anacapa Island SMCA (Ventura County).

The action would authorize tribal take within four of the SMCAs for ceremonial, cultural and subsistence purposes. The tribe has provided documentation of historic use.

Tribal take is defined in subsection 632(a)(11) to contain six components:

- A "federally recognized tribe" is any tribe on the List of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs.
- Members of federally-recognized tribes must have a photo identification issued by a federally recognized tribe as described in the regulation.

## STAFF SUMMARY FOR JUNE 20-21, 2018

- In order to take living marine resources, a member of a federally recognized tribe authorized to take living marine resources from a specified area shall possess any valid license, report card, tag, stamp, validation, permit, or other entitlement required by Fish and Game Code or other state, federal, or local entities.
- Members taking living marine resources are subject to all current season, bag, possession, gear and size limits in Fish and Game Code statutes and Title 14 regulations, except as otherwise provided for in subsection 632(b).
- No member may be assisted by anyone who does not possess a valid tribal identification card and is not properly licensed to take living marine resources.
- Tribal take does not supersede any state or federal law regarding the take of protected, threatened or endangered species.

**Significant Public Comments**

1. One request to move only the southern boundary of Stewart's Point SMCA and leave the boundary between the SMCA and the SMR unchanged (Exhibit 3).
2. One comment in support of all proposed changes (Exhibit 4).

**Recommendation (N/A)****Exhibits**

1. [DFW memo, received Mar 20, 2018](#)
2. [Initial statement of reasons](#)
3. [Email from Arch Richardson, received May 21, 2018](#)
4. [Email from Surfrider Foundation, et al., received Jun 6, 2018](#)
5. [Staff summary from Apr 18-19, 2018 meeting, item 10](#)
6. [Initial study/negative declaration](#), dated May 2018 (link to external website)

**Motion/Direction (N/A)**

## Memorandum

2018 MAR 20 AM 8:43

Date: March 13, 2018

To: Valerie Termini  
Executive Director  
Fish and Game Commission

From: Charlton H. Bonham  
Director



Subject: **Submission of Initial Statement of Reasons to Amend Section 632, Title 14, California Code of Regulations, Re: Marine Protected Areas – Tribal Take**

The Department of Fish and Wildlife (Department) requests the Fish and Game Commission (Commission) authorize publishing notice of its intent to amend subsections (b)(33), (34), (97), (98), (112) and (117) of Section 632 of Title 14, California Code of Regulations concerning boundary changes for two marine protected areas (MPAs) and tribal take in four MPAs. Authorization of this request to publish notice will allow for discussion and possible adoption at the June 20 and August 22, 2018 Commission meetings, respectively.

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).
2. Authorize Tribal Take. Amend subsections 632(b)(97), (98), (112) and (117), Kashtayit SMCA, Naples SMCA, Point Dume SMCA, and Anacapa Island SMCA, 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.

Upon publication of the notice of intent to amend Section 632, Title 14, California Code of Regulations, the California Environmental Quality Act (CEQA) process will commence (Pub. Resources Code § 21080.3.1.). The public comment period for the CEQA document is anticipated to begin in May 2018.

If you have any questions regarding this item, please contact Dr. Craig Shuman, Marine Regional Manager at (916) 445-6459. The public notice for this rulemaking should identify Environmental Scientist, Ms. Elizabeth Pope as the Department's point of contact. Her contact information is (707) 445-5301 or [Elizabeth.Pope@wildlife.ca.gov](mailto:Elizabeth.Pope@wildlife.ca.gov).

Valerie Termini, Executive Director  
Fish and Game Commission  
March 7, 2018  
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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).

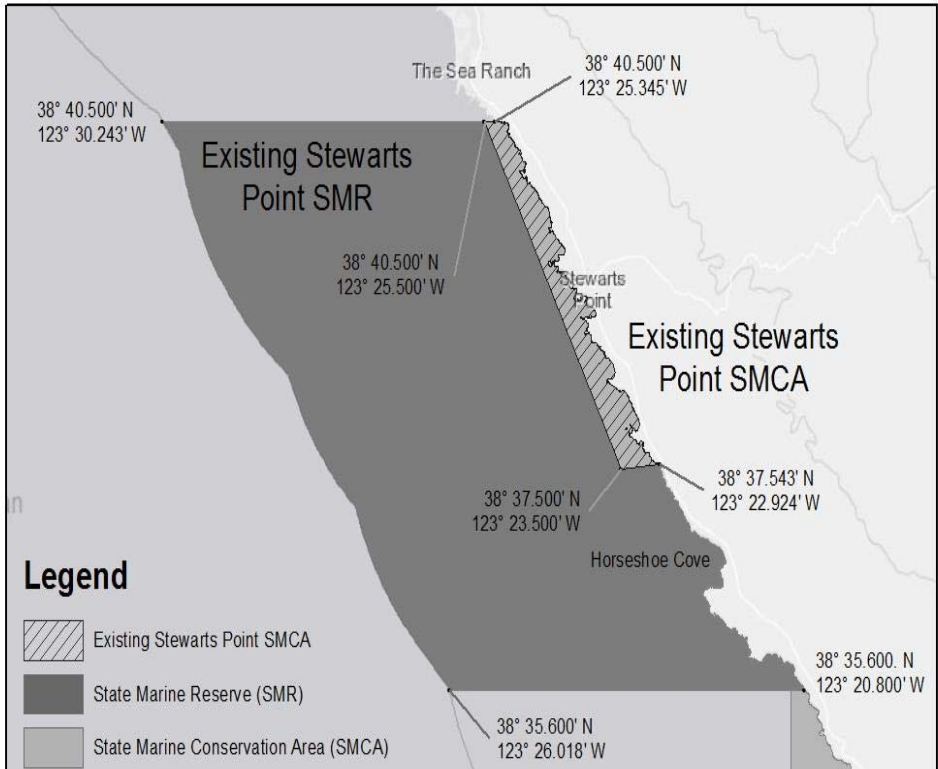


Figure 1. Existing boundaries, Stewarts Point SMCA and SMR

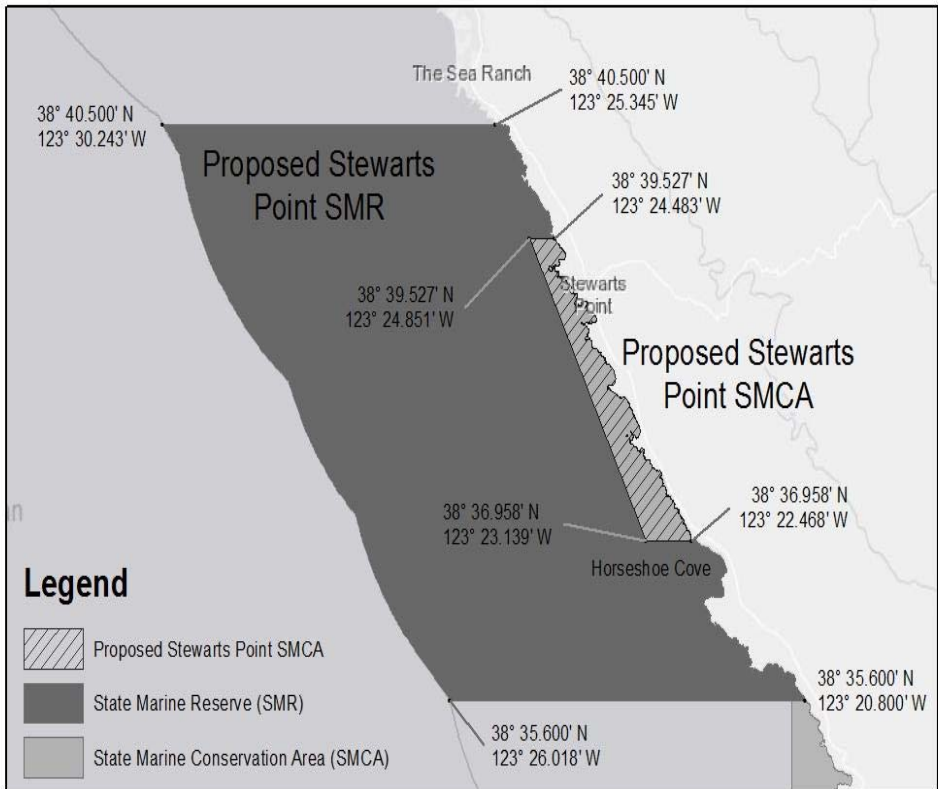


Figure 2. Proposed boundaries, Stewarts Point SMCA and SMR

### 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.

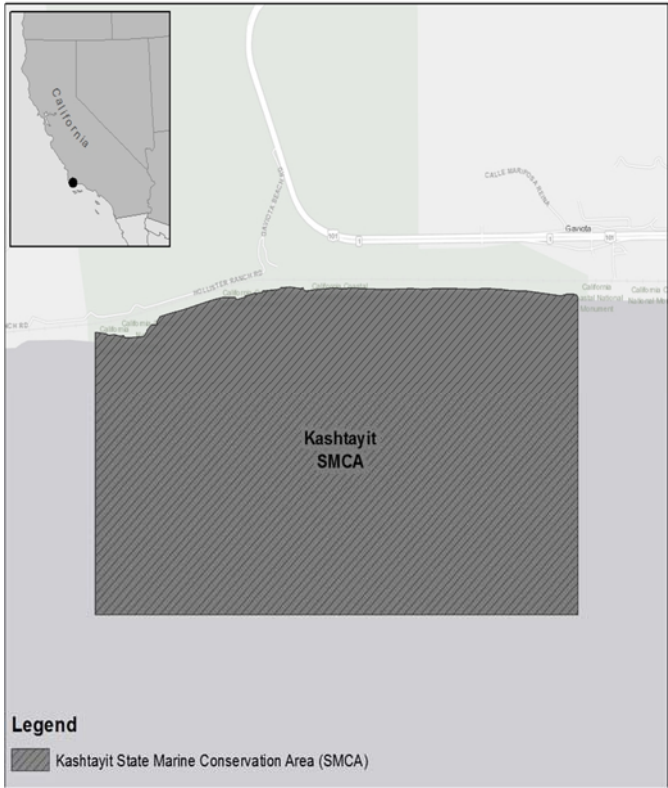


Figure 3. Kashtayit SMCA, Santa Barbara County

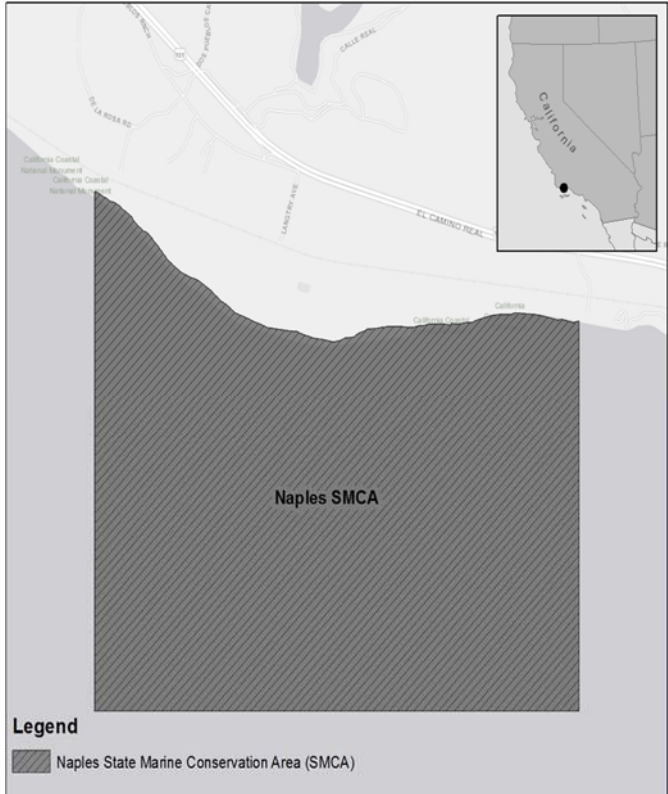
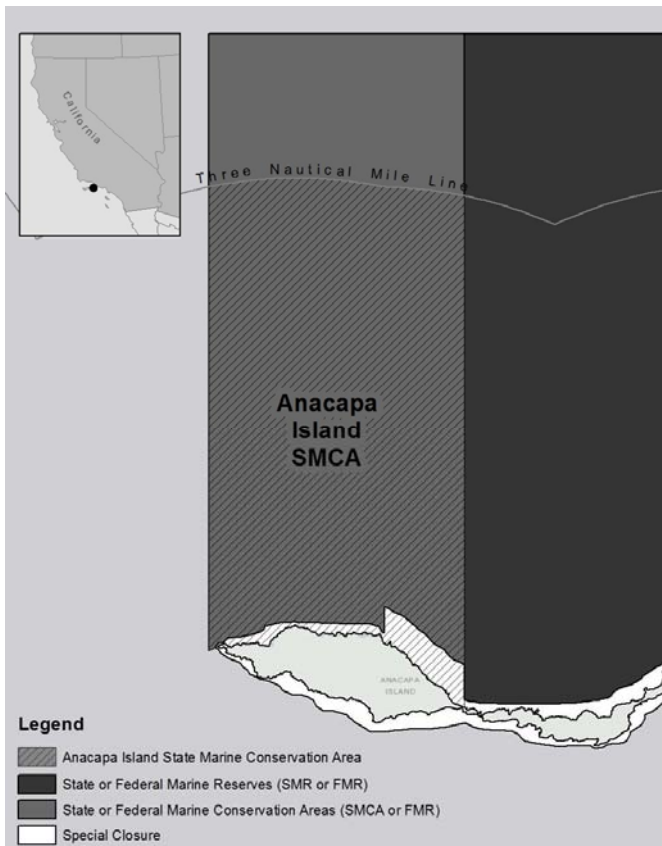
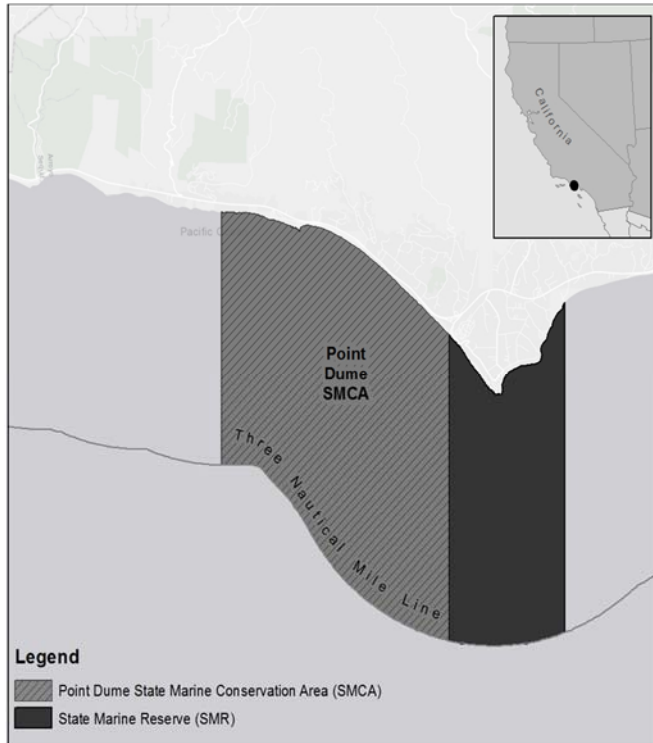


Figure 4. Naples SMCA, Santa Barbara County



(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.

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

*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)].

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### 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.

### 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 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.

## Proposed Regulatory Language

Section 632, Title 14, CCR, is amended to read:

### **§ 632. Marine Protected Areas (MPAs), Marine Managed Areas (MMAs), and Special Closures.**

(a) General Rules and Regulations:

The areas specified in this section have been declared by the commission to be marine protected areas, marine managed areas, or special closures. Public use of marine protected areas, marine managed areas, or special closures shall be compatible with the primary purposes of such areas. MPAs, MMAs, and special closures are subject to the following general rules and regulations in addition to existing Fish and Game Code statutes and regulations of the commission, except as otherwise provided for in subsection 632(b), areas and special regulations for use. Nothing in this section expressly or implicitly precludes, restricts or requires modification of current or future uses of the waters identified as marine protected areas, special closures, or the lands or waters adjacent to these designated areas by the Department of Defense, its allies or agents.

**[No changes to subsections (a)(1) through (a)(10)]**

**[Subsection (a)(11) is provided for context only and no changes are proposed]**

(11) 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.

**[Subsection (a)(12) is provided for context only and no changes are proposed]**

(12) Shore Fishing. Take from shore, or shore fishing, for purposes of this section, means take of living marine resources from shore, including beaches, banks, piers, jetties, breakwaters, docks, and other man-made structures connected to the shore. Unless specifically authorized in subsection 632(b), no vessel, watercraft (motorized or non-motorized), or floating device may be used to assist in the take, transport or possession of species taken while shore fishing, except that a float tube or similar flotation device may be used when taking abalone only.

(b) Areas and Special Regulations for Use. Pursuant to the commission's authority in Fish and Game Code Section 2860 to regulate commercial and recreational fishing and any other taking of marine species in MPAs, Fish and Game Code Sections 10500(f), 10500(g), 10502.5, 10502.6, 10502.7, 10502.8, 10655, 10655.5, 10656, 10657, 10657.5, 10658, 10660, 10661, 10664, 10666, 10667, 10711, 10801, 10900, 10901, 10902, 10903, 10904, 10905, 10906, 10907, 10908, 10909, 10910, 10911, 10912, 10913, and 10932 are superseded as they apply to designations in Subsection 632(b). All geographic coordinates listed use the North American Datum 1983 (NAD83) reference datum:

**[No changes to current regulatory text in subsections 632(b)(1) through (b)(32)]**

(33) Stewarts Point State Marine Conservation Area.

(A) This area is bounded by the mean high tide line and straight lines connecting the following points in the order listed:

~~38° 40.500 ' N. lat. 123° 25.345 ' W. long.;~~

~~38° 40.500 ' N. lat. 123° 25.500 ' W. long.;~~

~~38° 37.500 ' N. lat. 123° 23.500 ' W. long.;~~

~~38° 37.543 ' N. lat. 123° 22.924 ' W. long.~~

38° 39.527 ' N. lat. 123° 24.483 ' W. long.;

38° 39.527 ' N. lat. 123° 24.851 ' W. long.;

38° 36.958 ' N. lat. 123° 23.139 ' W. long.; and

38° 36.958 ' N. lat. 123° 22.468 ' W. long.

(B) Area restrictions defined in subsection 632(a)(1)(C) apply, with the following specified exceptions: the following may be taken recreationally from shore only: marine aquatic plants other than sea palm, marine invertebrates, finfish [subsection 632(a)(2)] by hook and line, surf smelt by beach net, and species authorized in Section 28.80 of these regulations by hand-held dip net.

(34) Stewarts Point State Marine Reserve

(A) This area is bounded by the mean high tide line and straight lines connecting the following points in the order listed except where noted:

~~38° 37.543 ' N. lat. 123° 22.924 ' W. long.~~

~~38° 37.500 ' N. lat. 123° 23.500 ' W. long.;~~

~~38° 40.500 ' N. lat. 123° 25.500 ' W. long.;~~

~~38° 40.500 ' N. lat. 123° 30.243 ' W. long.;~~

~~thence southward along the three nautical mile offshore boundary to~~

~~38° 35.600 ' N. lat. 123° 26.018 ' W. long.;~~ and

~~38° 35.600 ' N. lat. 123° 20.800 ' W. long.~~

38° 40.500' N. lat. 123° 25.345' W. long.; and

38° 40.500 ' N. lat. 123° 30.243 ' W. long.;

thence southward along the three nautical mile offshore boundary to

38° 35.600 ' N. lat. 123° 26.018 ' W. long.; and

38° 35.600 ' N. lat. 123° 20.800 ' W. long.,

except that Stewarts Point SMCA as described in subsection 632(b)(33)(A) is excluded.

(B) Area restrictions defined in subsection 632(a)(1)(A) apply.

**[No changes to current regulatory text in subsections (b)(35) through (b)(96)]**

(97) Kashtayit State Marine Conservation Area.

(A) This area is bounded by the mean high tide line and straight lines connecting the following points in the order listed:

- 34° 28.130' N. lat. 120° 14.460' W. long.;
- 34° 27.300' N. lat. 120° 14.460' W. long.;
- 34° 27.300' N. lat. 120° 12.470' W. long.; and
- 34° 28.230' N. lat. 120° 12.470' W. long.

(B) Area restrictions defined in subsection 632(a)(1)(C) apply, with the following specified exceptions:

1. The recreational take of finfish [subsection 632(a)(2)], invertebrates except rock scallops and mussels, and giant kelp (*Macrocystis pyrifera*) by hand harvest is allowed.
2. The following federally recognized tribe is exempt from the area and take regulations found in subsection 632(b)(97) and shall comply with all other existing regulations and statutes: Santa Ynez Band of Chumash Indians
3. Take pursuant to activities authorized under subsection 632(b)(97)(C) is allowed.

(C) Maintenance of artificial structures and operation and maintenance of existing facilities is allowed inside the conservation area pursuant to any required federal, state and local permits, or as otherwise authorized by the department.

(98) Naples State Marine Conservation Area.

(A) This area is bounded by the mean high tide line and straight lines connecting the following points in the order listed:

- 34° 26.517' N. lat. 119° 58.000' W. long.;
- 34° 25.000' N. lat. 119° 58.000' W. long.;
- 34° 25.000' N. lat. 119° 56.000' W. long.; and
- 34° 26.140' N. lat. 119° 56.000' W. long.

(B) Area restrictions defined in subsection 632(a)(1)(C) apply, with the following specified exceptions:

1. The recreational take by spearfishing [Section 1.76] of white seabass and pelagic finfish [subsection 632(a)(3)] is allowed.
2. The commercial take of giant kelp (*Macrocystis pyrifera*) by hand harvest or by mechanical harvest is allowed.
3. The following federally recognized tribe is exempt from the area and take regulations found in subsection 632(b)(98) and shall comply with all other existing regulations and statutes: Santa Ynez Band of Chumash Indians
4. Take pursuant to activities authorized under subsection 632(b)(98)(C) is allowed.

(C) Operation and maintenance of artificial structures inside the conservation area is allowed pursuant to any required federal, state and local permits, or as otherwise authorized by the department.

(D)

**[No changes to current regulatory text in subsections (b)(99) through (b)(111)]**

(112) Anacapa Island State Marine Conservation Area.

(A) This area is bounded by the mean high tide line and straight lines connecting the following points in the order listed except where noted:

- 34° 00.828' N. lat. 119° 26.623' W. long.;
- 34° 00.800' N. lat. 119° 26.700' W. long.;

34° 03.940' N. lat. 119° 26.700' W. long.; thence eastward along the three nautical mile offshore boundary to

34° 04.002' N. lat. 119° 24.600' W. long.; and

34° 00.411' N. lat. 119° 24.600' W. long.

(B) Area restrictions defined in subsection 632(a)(1)(C) apply, with the following specified exceptions:

1. ~~The~~ recreational take of spiny lobster and pelagic finfish [subsection 632(a)(3)] and the commercial take of spiny lobster is allowed.

2. The following federally recognized tribe is exempt from the area and take regulations found in subsection 632(b)(112) and shall comply with all other existing regulations and statutes:

Santa Ynez Band of Chumash Indians

**[No changes to subsections (b)(113) through (b)(116)]**

(117) Point Dume State Marine Conservation Area.

(A) This area is bounded by the mean high tide line and straight lines connecting the following points in the order listed except where noted:

34° 02.306' N. lat. 118° 53.000' W. long.;

33° 59.140' N. lat. 118° 53.000' W. long.; thence southeastward along the three nautical mile offshore boundary to

33° 56.960' N. lat. 118° 49.200' W. long.; and

34° 00.780' N. lat. 118° 49.200' W. long.

(B) Area restrictions defined in subsection 632(a)(1)(C) apply, with the following specified exceptions:

1. The recreational take by spearfishing [Section 1.76] of white seabass and pelagic finfish [subsection 632(a)(3)] is allowed.

2. The commercial take of swordfish by harpoon [subsection 107(f)(1)]; and coastal pelagic species [Section 1.39] by round haul net [Section 8750, Fish and Game Code], brail gear [Section 53.01(a)], and light boat [Section 53.01(k)] is allowed. Not more than five percent by weight of any commercial coastal pelagic species catch landed or possessed shall be other incidentally taken species.

3. The following federally recognized tribe is exempt from the area and take regulations found in subsection 632(b)(117) and shall comply with all other existing regulations and statutes:

Santa Ynez Band of Chumash Indians

4. Take pursuant to activities authorized under subsection 632(b)(117)(C) is allowed.

(C) Beach nourishment and other sediment management activities are allowed inside the conservation area pursuant to any required federal, state and local permits, or as otherwise authorized by the department.

**[No changes to subsections (b)(118) through (b)(147)]**

Note: Authority cited: 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.

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**From:** Archer Richardson  
**Sent:** Monday, May 21, 2018 10:38 AM  
**To:** FGC  
**Cc:** Mastrup, Sonke@Wildlife; Ashcraft, Susan@FGC  
**Subject:** Boundary Change Stewarts Point SMCA & SMR for "Kashia Coastal Preserve"

Valerie Termini, Executive Director Fish & Wildlife Commission

May 21 2018

REF: Kashia Coastal Preserve

Eric Sklar, President and Commissioners

I have reviewed the proposal before the Commission concerning the relating to the boundary changes of the "Stewarts Point SMCA & SMR" in Sonoma County as proposed by the Kashia Tribe of Pomo Indians. By all means they should have the ability to take in waters boarding the new "Kashia Coastal Preserve". This part of the ribbon was overlooked when the ribbon was proposed years ago. So how about just moving the Southern boundary to accommodate the needs of the Kashia tribe.

I think you also have to consider and realize that moving the Northern boundary 1.5 miles South as proposed would effect 14 property in the Northern section of the SMCA & SMR. The closure of 12 probertites at The Sea Ranch, 1 mile long ranch and 1 small private acre. I believe you should consider just moving the Southern boundary as requested in the proposal There is no great gain by moving the Northern boundary. The 14 properties in question have been great stewards of he SMCA as it stands today., so why change it? The harvest/take adjoining these properties have been minimal. And yes it could affect their property values. Out of the 14 properties at The Sea Ranch, I believe only 2 have bluff access to the waters. I would highly recommend just moving the Southern boundary. I think you will find that my idea/proposal would take less to implement, as you are only moving one line...the Southern boundary of the SMCA. Your decision and concern should be the best for the MLPAL and all property owners effected.

I'm not new to the MLPAL process, as I attended most of the meeting in the North Central Coast section and speaking at all I could, 2007-2010 The information I brought before the Commission and Stakeholder groups was humors, factual and informative, as I have lived in this part of the coast all of my 71 years. I supported the Kashia Tribe of Pomo Indians throughout the process...as I grew up with them, knowing their needs, wants and ways. And spoke on their behalf at every meeting. My history here in Stewarts Point consist of being a Sonoma County Reserve Deputy Sherriff, a sheep rancher, a fisherman, both commercial and sports and a business owner, the Stewarts Point Store, serving the Kashia tribe by 4 generations of Richardson's. So I feel that my knowledge of this part of the coast is far greater than most. I believe if you ask Sonke Mastrup or Susan Ashcraft you will find out that I supported the MLPAL with facts and the truth during decision making for the North Central Coast section of the MLPAL. Hopefully they will vouch for my honesty and ideas within the process and with upcoming changes.

I sincerely hope you take my proposal into consideration, seriously I feel that it is the best for all. Less paper work, less map changes and no drastic change...which means less enforcement problems.

Archer J "Arch" Richardson





June 6, 2018

**Delivered by electronic mail to: [fgc@fgc.ca.gov](mailto:fgc@fgc.ca.gov)**

President Eric Sklar  
Members of the California Fish and Game Commission  
P.O. Box 944209  
Sacramento, CA 94244-2090

**Re: Proposed amendments to regulations concerning tribal take in marine protected areas (Subsections 632(b)(33), (b)(34), (b)(97), (b)(98), (b)(112) and (b)(117), Title 14, CCR)**

Dear President Eric Sklar and Members of the California Fish and Game Commission:

On behalf of the undersigned organizations, we submit the following letter of support for proposed amendments to existing regulations in Section 632, Title 14, California Code of Regulations regarding the boundaries of for Stewarts Point State Marine Conservation Area (SMCA) and Stewarts Point State Marine Reserve (SMR) and 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.

Our organizations were directly involved in the stakeholder driven, science-based process to establish California's landmark network of marine protected areas (MPAs) between 2004 and 2012, and we remain engaged in a wide range of stewardship and community science programs to support effective MPA implementation statewide.

We strongly support the conservation goals of the Marine Life Protection Act and the science guidelines relied upon to help design the state's MPA network and view adherence to these goals and guidelines as critical to the long term effectiveness of the MPA network and its ability to help provide resilience to marine ecosystems in the face of a rapidly changing ocean. Our organizations also recognize and respect the deep cultural and spiritual connections between California tribal communities and the marine and coastal environment that have existed since time immemorial. We believe that the conservation goals of the MLPA and tribal cultural practices can be mutually compatible.

We appreciate the extensive efforts of the Department of Fish and Wildlife and Fish and Game Commission staff to work closely with representatives of the Kashia Band of Pomo Indians and the Santa Ynez Band of Chumash Indians to develop a set of specific proposed regulatory amendments that are carefully crafted to both maximize conservation and consistency with science guidelines, to address critical tribal concerns, and to treat federally recognized tribes throughout the state equitably.

Thank you for your consideration.

Sincerely,

Jennifer Savage  
Surfrider Foundation

Zachary Plopper  
WILDCOAST

Michael Quill  
Los Angeles Waterkeeper

Ray Hiemstra  
Orange County Waterkeeper

Morgan Patton  
Environmental Action Committee

Dennis Long  
California Marine Sanctuary Foundation

Elizabeth Murdoch  
Natural Resources Defense Council

## STAFF SUMMARY FOR APRIL 18-19, 2018

## 10. TRIBAL TAKE IN MPAS

## Today's Item

Information Action 

Authorization to publish notice of intent to change marine protected area (MPA) regulations.

## Summary of Previous/Future Actions

- |                                  |                                 |
|----------------------------------|---------------------------------|
| • Discussions of Chumash request | Apr 2015-Apr 2017, TC and FGC   |
| • Received Petition 2017-017     | Dec 6-7, 2017, San Diego        |
| • Granted Petition 2017-017      | Feb 7-8, 2018, Sacramento       |
| • <b>Today's notice hearing</b>  | <b>Apr 18-19, 2018; Ventura</b> |
| • Discussion hearing             | Jun 20-21, 2018; Sacramento     |
| • Adoption hearing               | Aug 22-23, 2018; Fortuna        |

## Background

In Aug 2009, FGC adopted Stewarts Point State Marine Reserve (SMR) along the north central coast. In 2010, FGC 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, FGC took action to re-designate a portion of the SMR as Stewarts Point State Marine Conservation Area (SMCA) to allow for recreational take of certain species that accommodated the take needs identified by the tribe.

In Dec 2010, FGC adopted MPAs in southern California, including Kashtayit, Naples, Point Dume, and Anacapa Island SMCAs. In 2011, the Santa Ynez Band of Chumash Indians, a federally recognized tribe located in Santa Barbara County, petitioned FGC to authorize tribal take in all SMCAs and state marine parks in Santa Barbara County. However, at that time, there were no regulations allowing for tribal take, other than regulations established for the general public.

In Jun 2012, FGC adopted regulations establishing tribal take provisions in subsection 632(a)(11). For a tribe to be authorized for "tribal take" within specific MPAs, the tribe must be federally recognized. FGC has requested that tribes submit a factual record that authenticates historical take within the requested MPA geography.

In this proposed rulemaking, changes to Section 632 would make boundary changes for two MPAs and add tribal take in four MPAs.

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

In 2017, the Kashia Band began discussions with FGC and ultimately submitted Petition 2017-017 to FGC to modify the existing boundaries of Stewarts Point SMCA and Stewarts Point SMR to align the SMCA more closely with the tribe's traditional take areas. The proposed boundary shift would align the Stewarts Point SMCA with historical tribal lands

## STAFF SUMMARY FOR APRIL 18-19, 2018

recently reacquired by the Kashia Band, thus allowing members direct access to culturally significant areas of the shoreline and marine resources for ceremonial, cultural and subsistence purposes.

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 and Naples SMCAs (Santa Barbara County), Point Dume SMCA (Los Angeles County), and Anacapa Island SMCA (Ventura County).

In Apr 2017, the Santa Ynez Band of Chumash Indians submitted a modified final request for FGC to authorize tribal take within four SMCAs for ceremonial, cultural and subsistence purposes. As requested by FGC, the tribe provided documentation of historic use.

### Significant Public Comments (N/A)

### Recommendation

**FGC staff:** Authorize publication of the notice as recommended by DFW.

**DFW:** Authorize publication of the notice as detailed in the draft initial statement of reasons to change two MPA boundaries and authorize tribal take in four MPAs.

### Exhibits

1. DFW memo, received Mar 20, 2018
2. Draft initial statement of reasons
3. Draft economic and fiscal impact statement (Std. 399)
4. DFW presentation

### Motion/Direction

Moved by \_\_\_\_\_ and seconded by \_\_\_\_\_ that the Commission authorizes publication of a notice of its intent to amend Section 632, related to boundary changes for, and tribal take in, marine protected areas.