

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

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

- I. Date of Initial Statement of Reasons: March 7, 2018
- II. Date of Pre-adoption Statement of Reasons: N/A
- III. Date of Final Statement of Reasons: August 22, 2018
- IV. 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
  - (c) Adoption Hearing: Date: August 22, 2018  
Location: Fortuna, CA

V. Update:

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.

The Fish and Game Commission (Commission) adopted the originally proposed regulatory language at its August 22, 2018 meeting. Non-substantive changes to remove extra spaces and to remove the proposed addition of subsection 632(b)(98)(D), which had no content, were made for clarity and consistency.

VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations:

Seven comments were received on the proposed regulatory changes including six comments in support of the proposed boundary changes at Stewarts Point State Marine Conservation Area (SMCA) and Stewarts Point State Marine Reserve (SMR), as well as tribal take provisions for the Santa Ynez Band of Chumash Indians in four SMCAs: Kashtayit, Naples, Point Dume, and Anacapa

Island without modification. One comment was in general support of the proposed regulations but suggested that only the southern boundary at Stewarts Point be modified.

1. Written comment by Arch Richardson, email received May 21, 2018:
  - a. Supports proposed regulations to move the southern boundary of the Stewarts Point SMCA southward by 1 mile.
  - b. States that there is no gain in moving the northern boundary of the Stewarts Point SMCA south 1.5 miles. Mr. Richardson believes that 14 properties (two with bluff access to the ocean) that abut the proposed SMR will lose value because of increased protection provided by the SMR.

Response a: Support noted.

Response b: The alternative presented by Mr. Richardson would result in a larger SMCA and smaller SMR than the proposed regulation. The proposed boundary changes for the SMCA are designed to accommodate the needs of the petitioning Tribe, for whom the SMCA was originally established, without reducing the net size of the SMR or the habitat and shoreline protection it provides. The alternative presented by Mr. Richardson would increase the length of shoreline available to harvest and thus result in reducing the overall size, habitat, and shoreline protections provided by the SMR; the change would subject this proposal to a new environmental evaluation. It should be noted that, while the location of area available for take would shift southward, the placement of these MPAs will not impact access to the waters from adjacent shoreline areas, as neither MPA designation prohibits entry. Lastly, Mr. Richardson does not provide specific information or data about alleged changes to property values.

2. Written comment by Jennifer Savage, Surfrider Foundation; Zachary Plopper, WILDCOAST; Michael Quill, Los Angeles Waterkeeper; Ray Himestra, Orange County Waterkeeper; Morgan Patton, Environmental Action Committee; Dennis Long, California Marine Sanctuary Foundation; Elizabeth Murdoch, Natural Resources Defense Council received June 6, 2018: Supports proposed regulations.

Response: Support noted.

3. Oral comment by Dino Franklin, Chairman of Kashia Band of Pomo Indians, June 20, 2018 Commission meeting: Supports proposed regulations for the Stewarts Point SMCA/SMR boundary changes.

Response: Support noted.

4. Oral comment by Shirley Laos, representative of Trinidad Rancheria, June 20, 2018 Commission meeting: Supports proposed regulations for the Stewarts Point SMCA/SMR boundary changes.

Response: Support noted.

5. Oral comment by Jennifer Savage, Surfrider Foundation, June 20, 2018 Commission meeting: Supports proposed regulations.

Response: Support noted.

6. Oral comment by Susan Smith, Tribal Council Kashia Band of Pomo Indians, August 22, 2018 Commission meeting: Thanked the Commission and California Department of Fish and Wildlife (Department) staff for the work to adopt the boundary modification.

Response: Support noted.

7. Oral comment by Scott Williams, August 22, 2018 Commission meeting: Thanked the Commission and Department staff for the work to adopt the boundary modification.

Response: Support noted.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:  
California Fish and Game Commission  
1416 Ninth Street  
Sacramento, California 95814

VIII. Location of Department Files:

Department of Fish and Wildlife  
1416 Ninth Street  
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulatory Action:

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 the 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 cannot 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, subsection 632(a)(11).

(c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

X. 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 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.

## Updated 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 can be 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, 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 (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.

*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). The tribe provided additional documentation of historic use **for these areas**. 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.

#### **UPDATE**

**At its August 22, 2018 meeting, the Commission adopted the proposed regulations to modify the existing boundaries at Stewarts Point SMCA and Stewarts Point SMR as well as to allow tribal take for members of the federally recognized Santa Ynez Band of Chumash Indians in four SMCAs: Kashtayit, Naples, Point Dume, and Anacapa Island.**

**Non-substantive changes to remove extra spaces and to remove the proposed addition of subsection 632(b)(98)(D), which had no content, were made for clarity and consistency.**

**There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.**