

NOTICE PUBLICATION/REGULATIONS SUBMISSION

REGULAR

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z. 2018-0424-11	REGULATORY ACTION NUMBER 2018-1004-01S	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

2018 OCT -4 P 4:30

OFFICE OF
ADMINISTRATIVE LAW**ENDORSED - FILED**in the office of the Secretary of State
of the State of California

NOV 15 2018

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NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
Fish and Game Commission

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Marine Protected Areas: Tribal Take	TITLE(S) 14	FIRST SECTION AFFECTED 632	2. REQUESTED PUBLICATION DATE May 4, 2018
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON Sherrie Fonbuena	TELEPHONE NUMBER (916) 654-9866	FAX NUMBER (Optional) (916) 653-5040
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER 2018-18-2	PUBLICATION DATE 5/4/2018	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Marine Protected Areas: Tribal Take and Boundary Changes	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 632
TITLE(S) 14	REPEAL

3. TYPE OF FILING

- Regular Rulemaking (Gov. Code §11346)
- Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)
- Emergency (Gov. Code, §11346.1(b))
- Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
- Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
- Emergency Readopt (Gov. Code, §11346.1(h))
- File & Print
- Other (Specify) _____
- Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
- Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

- Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))
- Effective on filing with Secretary of State
- §100 Changes Without Regulatory Effect
- Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

- Department of Finance (Form STD. 399) (SAM §6660)
- Fair Political Practices Commission
- State Fire Marshal
- Other (Specify) _____

7. CONTACT PERSON Sherrie Fonbuena	TELEPHONE NUMBER (916) 654-9866	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) Sherrie.Fonbuena@fgc.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>David Thesell</i>	DATE October 4, 2018
TYPED NAME AND TITLE OF SIGNATORY David Thesell, Program Manager	

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ENDORSED APPROVED

NOV 15 2018

Office of Administrative Law

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.

[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.