

State of California
Fish and Game Commission
Initial Statement of Reasons for Regulatory Action

Amend subsections 632(b)(9), 632(b)(37), 632(b)(41), 632(b)(42), and 632(b)(91)
Title 14, California Code of Regulations
Re: State Marine Recreational Management Areas

I. Date of Initial Statement of Reasons: February 3, 2022

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing

Date: April 20, 2022

Location: Monterey/Santa Cruz, CA

(b) Discussion Hearing

Date: May 19, 2022

Location: Teleconference/webinar

(c) Adoption Hearing

Date: June 15, 2022

Location: Los Angeles/Orange County, CA

III. Description of Regulatory Action

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

Unless otherwise specified, all references in this document are regarding Title 14 of the California Code of Regulations (CCR). The California Department of Fish and Wildlife (Department) is recommending that the California Fish and Game Commission (Commission) amend Section 632, Marine Protected Areas (MPAs), Marine Managed Areas (MMAs), and Special Closures.

Background Information

The Marine Life Protection Act (MLPA) of 1999 (Fish and Game Code sections 2850-2863) required California to re-examine and redesign California's existing MPA system to increase its coherence and effectiveness at protecting the state's marine life, habitats, and ecosystems. In 2000, the Marine Managed Areas Improvement Act (Public Resources Code sections 36600-36900) standardized and clarified the designations of 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.

From 2004 to 2012, planning to re-design California's existing system of MPAs into a coherent network of MPAs occurred sequentially within four coastal regions. Following planning within each region, the Commission adopted MPA regulations that were implemented along the coast from 2007 to 2012. Three of the four coastal regions included regulations for State Marine Recreational Management Areas (SMRMAs) (Attachments 1, 2, and 3).

In 2015, the Commission adopted a rulemaking package intended to clarify and clean-up regulations associated with MPAs and MMAs (Office of Administrative Law's File #2016-0108-01s, effective March 1, 2016). This rulemaking unintentionally removed the take restrictions intended to be included by regional stakeholders and the Commission within five SMRMAs: South Humboldt Bay SMRMA, Russian River SMRMA, Estero Americano SMRMA, Estero de San Antonio SMRMA, and Morro Bay SMRMA (Attachments 4 and 5).

The 2016 amendments intended to conform regulatory text used for SMRMAs with similar text used for state marine reserves, state marine conservation areas, and state marine parks. However, the SMRMA definition in the Marine Managed Areas Improvement Act [Public Resources Code, subdivision 36710(e)], does not provide the same take restrictions as the other MPA designation definitions. Consequently, the five SMRMAs no longer explicitly specify prohibited take within their boundaries (Attachment 6).

Proposed amendments to subsections 632(b)(9), 632(b)(37), 632(b)(41), 632(b)(42), 632(b)(91)

The proposed amendments will return the regulatory text to similar language used prior to 2016 regarding take of living marine resources. In addition, the new amendments would prohibit take of geological and cultural marine resources to align SMRMAs with state marine reserves and state marine conservation area designation definitions, thereby improving consistency amongst protected areas.

Subsections 632(b)(9)(B) and (C) are also proposed to be renumbered for consistency with other subsections. Additionally, language in subsection 632(b)(91)(B) concerning the hunting of waterfowl in Morro Bay SMRMA is proposed to be revised for consistency with the language concerning hunting of waterfowl in other MMAs.

Necessity and rationale:

According to Public Resources Code subdivision 36710(e), in SMRMAs it is unlawful to perform any activity that would compromise the recreational values for which the area may be designated. California's five SMRMAs were originally designed to protect living marine resources, unless a specific take exemption was identified. However, the areas designated as SMRMAs no longer have any restrictions on take of living marine resources, which is in opposition to their original intent. Additionally, Public Resources Code, subdivision 36602(d) states that a designated MMA can be used to protect living marine resources, as well as cultural or geological resources. The proposed amendment to add cultural and geological resources, along with living marine resources as prohibited take, is in alignment with what SMRMAs are defined to protect. The inclusion of all three marine resource types will improve consistency amongst protected area designations as the definitions of state marine reserves and state marine conservation areas include living, geological, or cultural marine resource in the definitions [Public Resource Code subdivisions 36710(a) and 36710(c)]. Amending the regulations as proposed will return SMRMAs to the condition they were originally designed to exist as, as well as improving consistency amongst protected area designations.

The regulatory text for South Humboldt Bay SMRMA [subsection 632(b)(9)], regarding allowed take of marine resources and take of waterfowl, was written with a different approach than the other four SMRMAs in subsection 632(b). Specifically, South Humboldt Bay SMRMA lists take

of waterfowl as subsection 632(b)(9)(C), while all other SMRMAs lists take of waterfowl within subsection 632(b)(X)(B). Therefore, the Department is proposing to renumber the language for this SMRMA to increase consistency in language, while retaining the original allowable activities for this area.

(b) Goals and Benefits of the Regulation

California's MMAs are one of many tools for resource managers to use for protecting, conserving, and managing the state's valuable marine resources. MMAs can offer many benefits, including protecting habitats, species, cultural resources, and water quality; enhancing recreational opportunities; and contributing to the economy through such activities as increased tourism. MMAs may also benefit fisheries management by protecting representative habitats and reducing extractive uses [Public Resources Code subdivision 36601(a)(3)]. The primary goal of the proposed regulation amendments is to ensure the five SMRMAs are used to protect and conserve the marine resources within their designated area as intended when they were implemented. Additionally, the proposed amendments to improve consistency of regulatory language will help reduce any confusion about regulations that apply to MMAs.

(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. Central Coast Region Initial Statement of Reasons for Regulatory Action, dated January 15, 2007

Attachment 2. North Central Coast Region Amended Initial Statement of Reasons for Regulatory Action, dated June 8, 2009

Attachment 3. North Coast Region Initial Statement of Reasons for Regulatory Action, dated December 12, 2011

(f) Identification of Reports or Documents Providing Background Information

Attachment 4. 2015 Initial Statement of Reasons for Regulatory Action, dated June 4, 2015

Attachment 5. California's Marine Protected Area Network - State Marine Recreational Management Areas

Attachment 6. 2015 Final Adopted Amended 632 Regulations, effective March 1, 2016

(g) Public Discussions of Proposed Regulations Prior to Notice Publication

No public meetings are being held prior to the notice publication. The 45-day comment period provides adequate time for review of the proposed amendments.

IV. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change

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

(b) No Change Alternative

The no change alternative would leave the five SMRMAs without any of protected measures they were intended to have when originally designed.

V. Mitigation Measures Required by Regulatory Action

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

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 because the proposed amendments return SMRMAs to their originally intended design and permitted uses that were established during the MLPA planning process. The proposed action is to remedy an inadvertent omission of take restrictions while also adding language regarding take of geologic and cultural resources for consistency with other protected areas which are central to the intent of the SMRMA habitat protection goals that may also be associated with increased recreational activities and tourism.

(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 the proposed amendments are to return SMRMAs to their originally intended design and permitted uses that were established during the MLPA planning process and to prohibit take of geologic and cultural resources for consistency amongst protected areas.

The Commission does not anticipate any benefits to the health and welfare of California residents or worker safety.

The Commission anticipates benefits to the environment by restoring and adding enhanced protection of marine and estuarine habitats and species within the five areas designated as SMRMAs.

(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 Commission does not anticipate any impacts on creation or elimination of jobs because the proposed change would not directly impact demand for goods or services.

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

The Commission does not anticipate any impacts on the creation of new businesses or the elimination of existing businesses in California because the proposed amendments are to return SMRMAs to their originally intended design and permitted uses that were established during the MLPA planning process and to prohibit take of geologic and cultural resources for consistency amongst protected areas. No change in business activities was observed during the period in which the unintended omission was in place, or is anticipated with the addition of prohibitions on take of geologic and cultural resources.

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

The Commission does not anticipate any impacts on the expansion of businesses in California because the proposed amendments serve to return SMRMAs to their originally intended

design and permitted uses that were established during the MLPA planning process and to prohibit take of geologic and cultural resources for consistency amongst protected areas.

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

The Commission does not anticipate any direct benefits to the health and welfare of California residents.

(e) Benefits of the Regulation to Worker Safety

The Commission does not anticipate any benefits to worker safety.

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

The proposed action is anticipated to benefit the environment by protecting marine and estuarine habitats that support an array of species.

(g) Other Benefits of the Regulation

SMRMAs offer many benefits through the protection of habitat, species, cultural resources, and water quality which may also enhance recreational opportunities, and contribute to the economy through increased tourism. MMAs may also benefit fisheries management by protecting representative habitats and reducing extractive uses.

Informative Digest/Policy Statement Overview

Unless otherwise specified, all references in this document are regarding Title 14 of the California Code of Regulations (CCR).

The Marine Life Protection Act (MLPA) of 1999 (Fish and Game Code sections 2850-2863) required California to re-examine and redesign California's existing Marine Protected Area (MPA) system to increase its coherence and effectiveness at protecting the state's marine life, habitats, and ecosystems. In 2000, the Marine Managed Areas (MMAs) Improvement Act (Public Resources Code sections 36600-36900) standardized and clarified the designations of 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.

The California Fish and Game Commission (Commission) adopted MPA regulations that were implemented, by region, between 2007 to 2012. In 2015, the Commission adopted a rulemaking package intended to clarify and clean-up regulations associated with MPAs and MMAs. The 2015 rulemaking unintentionally removed the take restrictions intended to be included by regional stakeholders and the Commission within five State Marine Recreational Management Areas (SMRMAs): South Humboldt Bay SMRMA, Russian River SMRMA, Estero Americano SMRMA, Estero de San Antonio SMRMA, and Morro Bay SMRMA. As a result, under current regulations (Section 632), SMRMAs no longer have language prohibiting take of marine resources as intended by the regional stakeholders and the Commission. Current regulations for each of the five SMRMAs specify that area restrictions apply as defined in subsection 632(a)(1)(D), however the definition in subsection 632(a)(1)(D) does not have any take restrictions identified.

The proposed amendments will return the regulatory text to similar language used prior to 2016 regarding take of living marine resources. In addition, the new amendments would prohibit take of geological and cultural marine resources to align SMRMAs with state marine reserve and state marine conservation area designation definitions to improve consistency amongst protected areas.

The following is a summary of the proposed language change for Section 632:

- South Humboldt Bay SMRMA and Morro Bay SMRMA
 - Current language to be replaced: "Area restrictions defined in subsection 632(a)(1)(D) apply, with the following specified exceptions"
 - Proposed language to be used: "Take of all living, geological, or cultural marine resources is prohibited except"
- Russian River SMRMA, Estero Americano SMRMA, and Estero de San Antonio SMRMA
 - Current language to be replaced: "Area restrictions defined in subsection 632(a)(1)(D) apply"
 - Proposed language to be used: "Take of all living, geological, or cultural marine resources is prohibited"

In addition, subsections 632(b)(9)(B) and (C) are proposed to be renumbered for consistency with other subsections and language in subsection 632(b)(91)(B) concerning the hunting of waterfowl in

Morro Bay SMRMA is proposed to be revised for consistency with the language concerning hunting of waterfowl in other MMAs.

Benefits of Regulations

California's MMAs are one of many tools for resource managers to use for protecting, conserving, and managing the state's valuable marine resources. MMAs can offer many benefits, including protecting habitats, species, geological and cultural resources, and water quality; enhancing recreational opportunities; and contributing to the economy through such things as increased tourism. MMAs may also benefit fisheries management by protecting representative habitats and reducing extractive uses [Public Resources Code subdivision 36601(a)(3)]. The primary goal of the proposed regulation amendments is to ensure the five SMRMAs are used to protect and conserve the marine resources within their designated area as intended when they were implemented. Additionally, the proposed amendments to improve consistency of regulatory language will help reduce any confusion about regulations that apply to MMAs.

Consistency and Compatibility with Existing Regulations

The proposed regulations are consistent with regulations concerning sport and commercial fishing found in Title 14, CCR. The State Water Resources Control Board may designate State Water Quality Protection Areas and the State Park and Recreation Commission may designate State Marine Reserves, State Marine Conservation Areas, State Marine Recreational Management Areas, State Marine Parks and State Marine Cultural Preservation Areas; however, only the Commission has authority to regulate commercial and recreational fishing and any other taking of marine species in Marine Managed Areas. Department staff has searched the CCR and has found no other regulations pertaining to authorized activities in marine protected areas and therefore has determined that the proposed amendments are neither inconsistent, nor incompatible, with existing state regulations.