

STAFF SUMMARY FOR MAY 19, 2022

6. CLARIFICATION OF ALLOWED AND PROHIBITED USES FOR STATE MARINE RECREATIONAL MANAGEMENT AREAS (SMRMAs)**Today's Item**Information Action

Discuss proposed changes to clarify allowed and prohibited uses for SMRMAs.

Summary of Previous/Future Actions

- Notice hearing Apr 20-21, 2022; Monterey/Trinidad
- **Today's discussion hearing** **May 19, 2022; Teleconference**
- Adoption hearing Jun 15-16, 2022; Los Angeles

Background

The Marine Managed Areas Improvement Act (California Public Resources Code Section 36600 et seq.) authorizes FGC to designate SMRMAs for hunting purposes. Between 2007 and 2012, FGC adopted regulations designating South Humboldt Bay SMRMA [subsection 632(b)(9)], Russian River SMRMA [subsection 632(b)(37)], Estero Americano SMRMA [subsection 632(b)(41)], Estero de San Antonio SMRMA [subsection 632(b)(42)], and Morro Bay SMRMA [subsection 632(b)(91)].

In 2015, FGC adopted a "clean-up" rulemaking which unintentionally removed take restrictions originally established in regulation for the five SMRMAs. Consequently, FGC regulations no longer explicitly prohibit take within the boundaries of the five SMRMAs as originally intended and adopted by FGC.

At its Apr 20-21, 2022 meeting (see Exhibit 3), FGC authorized staff to publish notice of its intent to return the regulatory text to language similar to that used prior to adopting the 2015 clean-up regulations. In addition, the new amendments would prohibit take of geological and cultural marine resources to align authorized uses within SMRMAs with authorized uses within state marine reserves and state marine conservation areas, thereby improving consistency amongst protected areas (see exhibits 1 and 2). Non-substantive amendments are also proposed for consistency with the regulatory text in other subsections of Section 632.

Significant Public Comments (N/A)**Recommendation (N/A)****Exhibits**

1. [DFW memo transmitting draft initial statement of reasons \(ISOR\), received Mar 22, 2022](#)
2. [ISOR and proposed regulatory language, dated Feb 3, 2022](#)
3. [Staff summary from Apr 20-21, 2022 FGC meeting \(for background purposes only\)](#)
4. [California Public Resources Code, Section 36600 et seq., accessed May 11, 2022](#)

Motion (N/A)

Memorandum

Date: March 18, 2022

To: Melissa Miller-Henson, Executive Director
Fish and Game Commission

From: Charlton H. Bonham
Director

Subject: **Submission of Initial Statement of Reasons to 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**

The Department of Fish and Wildlife (Department) requests the Fish and Game Commission (Commission) authorize publishing notice of its intent to amend subsections 632(b)(9), 632(b)(37), 632(b)(41), 632(b)(42), and 632(b)(91) of Title 14, California Code of Regulations to correct an error in regulations established in 2016. The proposed amendment will also prohibit take of geological and cultural marine resources within five state marine recreational management areas. The Department requests authorization of the request to publish notice for the April 20-21, 2022 Commission meeting, discussion at the May 19, 2022 Commission meeting, and adoption at the June 15-16, 2022 Commission meeting.

The primary goal of the proposed regulation amendments is to restore the regulations to their original intent with regards to take prohibition, and to improve consistency of regulatory language and enforceability.

If you have any questions regarding this item, contact Dr. Craig Shuman, Marine Regional Manager, at (916) 215-9694. The public notice for this rulemaking should identify Environmental Scientist, Amanda Van Diggelen as the Department's point of contact. Her contact information is (562) 522-3901 or R7RegionalMgr@wildlife.ca.gov.

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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.

Proposed Regulatory Language

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

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

[Subsections 632(a) through (b) are provided for context only; no changes are proposed]

(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.

(1) Protection of Resources in MPAs and MMAs, as defined in Public Resources Code Section 36710:

(A) State Marine Reserves: In a state marine reserve, it is unlawful to injure, damage, take, or possess any living, geological, or cultural marine resource, except under a scientific collecting permit issued by the department pursuant to Section 650 or specific authorization from the commission for research, restoration, or monitoring purposes.

(B) State Marine Parks: In a state marine park, it is unlawful to injure, damage, take, or possess any living or nonliving marine resource for commercial purposes. Any human use that would compromise protection of the species of interest, natural community or habitat, or geological, cultural, or recreational features, may be restricted by the commission as specified in subsection 632(b), areas and special regulations for use. The department may issue scientific collecting permits pursuant to Section 650. The commission may authorize research, monitoring, and educational activities and certain recreational harvest in a manner consistent with protecting resource values.

(C) State Marine Conservation Areas: In a state marine conservation area, it is unlawful to injure, damage, take, or possess any living, geological, or cultural marine resource for commercial or recreational purposes, or a combination of commercial and recreational purposes except as specified in subsection 632(b), areas and special regulations for use. The department may issue scientific collecting permits pursuant to Section 650. The commission may authorize research, education, and recreational activities, and certain commercial and recreational harvest of marine resources, provided that these uses do not compromise protection of the species of interest, natural community, habitat, or geological features.

(D) State Marine Recreational Management Areas: In a state marine recreational management area, it is unlawful to perform any activity that would compromise the recreational values for which the area may be designated. Recreational opportunities may be protected, enhanced, or restricted, while preserving basic resource values of the area. No other use is restricted unless specified in subsection 632(b), areas and special regulations for use.

(2) Finfish. Finfish, for the purpose of this section, are defined as any species of bony fish or cartilaginous fish (sharks, skates and rays). Finfish do not include amphibians, invertebrates, plants or algae. The definition of finfish provided in Section 159 does not apply to this Section.

(3) Pelagic Finfish. Pelagic finfish, for the purpose of this section, are a subset of finfish defined as: northern anchovy (*Engraulis mordax*), barracudas (*Sphyraena* spp.), billfishes* (family Istiophoridae), dolphinfish (*Coryphaena hippurus*), Pacific herring (*Clupea pallasii*), jack mackerel (*Trachurus symmetricus*), Pacific mackerel (*Scomber japonicus*), salmon (*Oncorhynchus* spp.), Pacific sardine (*Sardinops sagax*), blue shark (*Prionace glauca*), salmon shark (*Lamna ditropis*), shortfin mako shark (*Isurus oxyrinchus*), thresher sharks (*Alopias* spp.), swordfish (*Xiphias gladius*), tunas (family Scombridae) including Pacific bonito (*Sarda chiliensis*), and yellowtail (*Seriola lalandi*). *Marlin is not allowed for commercial take.

(4) Access. Access into marine protected areas or marine managed areas for non-consumptive uses including but not limited to swimming, surfing, diving, boating, hiking and walking is allowed unless otherwise specified in subsection 632(b), areas and special regulations for use.

(5) Introduction of Species. Unless authorized by the commission or as a result of authorized fishing activities, the release of any fish or wildlife species, including domestic or domesticated species, or the introduction of any plant species, is prohibited. The department may reintroduce endemic species to marine protected areas or marine managed areas for management purposes.

(6) Feeding of Fish and Wildlife. The feeding of fish and wildlife is prohibited except permitted scientific collection pursuant to Section 650 or as a result of authorized fishing within state marine conservation areas, state marine parks, and state marine recreational management areas, or unless feeding of fish is specifically authorized in subsection 632(b) for purposes of marine life viewing.

(7) Anchoring. Vessels shall be allowed to anchor in any marine protected area or marine managed area with catch onboard unless otherwise specified in subsection 632(b), areas and special regulations for use. Fishing gear shall not be deployed in the water while anchored in a state marine reserve. Fishing gear, except legal fishing gear used to take species identified as allowed for take in subsection 632(b), shall not be deployed in the water while anchored in a state marine recreational management area, state marine park or state marine conservation area. Anchoring regulations shall be consistent with federal law and allowances made for anchoring required by emergency or severe weather.

(8) Transit or Drifting.

(A) Vessels shall be allowed to transit through MPAs and MMAs with catch onboard. Fishing gear shall not be deployed in the water while transiting through a state marine reserve. Fishing gear, except legal fishing gear used to take species identified as allowed for take in subsection 632(b), shall not be deployed in the water while transiting through a state marine recreational management area, state marine park or state marine conservation area.

(B) Spearfishermen with or without catch shall be allowed to transit through MPAs and MMAs. While transiting MPAs and MMAs that prohibit spearfishing or while in possession of species not identified as allowed for take in the MPA or MMA being transited, spearfishing gear shall be in an unloaded condition, not carried in hand, and the diver shall remain at the surface.

(9) Water Quality Monitoring. Sampling of water, sediment and marine life, for water quality monitoring or pollution research, or as required in a Monitoring and Reporting Program of a National Pollutant Discharge Elimination System (NPDES) Permit and Waste Discharge Requirements issued by the State or Regional Water Boards pursuant to the United States Clean Water Act and the California Water Code, is allowed within state marine reserves, state marine conservation areas, state marine parks, and state marine recreational management areas pursuant to a valid scientific

collecting permit issued by the department.

(10) Public Safety. Public safety activities, including installation, maintenance and/or seasonal placement and removal of safety-related artificial structures, including but not limited to lifeguard towers, are allowed within any MPA classification pursuant to any required federal, state and local permits, or as otherwise authorized by the department.

(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.

(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:

[Subsections 632(b)(1) through (b)(8) remain unchanged]

(9) South Humboldt Bay State Marine Recreational Management Area

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

40° 43.000' N. lat. 124° 15.527' W. long.;

40° 43.000' N. lat. 124° 15.000' W. long.;

40° 42.000' N. lat. 124° 15.000' W. long.; and

40° 42.000' N. lat. 124° 16.141' W. long.

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

~~1. The following federally recognized tribe is exempt from the area and take regulations found in subsection 632(b)(9) of these regulations and shall comply with all other existing regulations and statutes:~~

~~Wiyot Tribe.~~

~~(C)(B) Waterfowl may be taken in accordance with the general waterfowl regulations (Sections 502, 550, 551, and 552).~~

~~(C) Take of all living, geological, or cultural marine resources is prohibited except~~

~~1. The following federally recognized tribe is exempt from the area and take regulations found in subsection 632(b)(9) of these regulations and shall comply with all other existing regulations and statutes:~~

~~Wiyot Tribe.~~

[Subsections 632(b)(10) through (b)(36) remain unchanged]

(37) Russian River State Marine Recreational Management Area.

(A) This area includes the waters below the mean high tide line eastward of the mouth of the Russian River estuary defined as a line connecting the following two points:

38° 27.160' N. lat. 123° 07.910' W. long.;

38° 27.010' N. lat. 123° 07.740' W. long.

and westward of the Highway 1 Bridge.

(B) Waterfowl may be taken in accordance with the general waterfowl regulations (Sections 502, 550, 551, and 552).

~~(C) Take of all living, geological, or cultural marine resources is prohibited. Area restrictions defined in subsection 632(a)(1)(D) apply.~~

[Subsections 632(b)(38) through (b)(40) remain unchanged]

(41) Estero Americano State Marine Recreational Management Area.

(A) This area includes the waters below the mean high tide line within Estero Americano westward of longitude 122° 59.250' W.

(B) Waterfowl may be taken in accordance with the general waterfowl regulations (Sections 502, 550, 551, and 552).

~~(C) Take of all living, geological, or cultural marine resources is prohibited. Area restrictions defined in subsection 632(a)(1)(D) apply.~~

(42) Estero de San Antonio State Marine Recreational Management Area.

(A) This area includes the waters below the mean high tide line within Estero de San Antonio westward of longitude 122° 57.400' W.

(B) Waterfowl may be taken in accordance with the general waterfowl regulations (Sections 502, 550, 551, and 552).

~~(C) Take of all living, geological, or cultural marine resources is prohibited. Area restrictions defined in subsection 632(a)(1)(D) apply.~~

[Subsections 632(b)(43) through (b)(90) remain unchanged]

(91) Morro Bay State Marine Recreational Management Area.

(A) This area includes the area below mean high tide within Morro Bay east of the Morro Bay entrance breakwater and west of longitude 120° 50.340' W.

(B) Waterfowl may be taken in accordance with the general waterfowl regulations ~~Recreational hunting of waterfowl is allowed unless otherwise restricted by hunting regulations (sections~~ Sections 502, 550, 551, and 552).

(C) Take of all living, geological, or cultural marine resources is prohibited except ~~Area restrictions defined in subsection 632(a)(1)(D) apply, with the following specified exceptions~~ activities are allowed north of latitude 35°19.700' N:

1. The recreational take of finfish.
2. Aquaculture pursuant to a valid state water bottom lease and permit.
3. Storing finfish taken outside the Morro Bay State Marine Recreational Management Area in a receiver for bait purposes.
4. Dredging for the purpose of harbor and channel operations and pursuant to required and valid permits and approvals.
5. Harbor operations and maintenance and cleaning of vessel hulls and other man-made structures, including removal of living marine resources for these purposes.

[Subsections 632(b)(92) through (b)(124) remain unchanged]

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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5. CLARIFICATION OF ALLOWED AND PROHIBITED USES FOR STATE MARINE RECREATIONAL MANAGEMENT AREAS (SMRMAs)

Today's Item

Information

Action

Consider authorizing publication of notice of intent to amend regulations to clarify allowed and prohibited uses for SMRMAs.

Summary of Previous/Future Actions

- | | |
|---|--|
| <ul style="list-style-type: none"> • Today's notice hearing • Discussion hearing • Adoption hearing | <p>Apr 20-21, 2022; Monterey/Trinidad</p> <p>May 19, 2022; Teleconference</p> <p>Jun 15-16, 2022; Los Angeles/Orange County areas</p> |
|---|--|

Background

The Marine Life Protection Act (MLPA) of 1999 (California Fish and Game Code sections 2850-2863) required California to re-examine and redesign the state's existing marine protected area (MPA) system to increase its coherence and its effectiveness protecting the state's marine life, habitats, and ecosystems. In 2000, the Marine Managed Areas Improvement Act (Public Resources Code sections 36600-36900) consolidated and standardized area designations into six types of MMAs. The MMAs include a subset of three MPA types and three other MMA types, one of which is a SMRMA. The overriding goal of these acts is to protect California's valuable marine resources, including natural biodiversity and abundance of marine life, sustain and rebuild species of economic value, and improve recreational and educational opportunities in areas subject to minimal human disturbance.

Following planning within each of four coastal regions, FGC adopted regulations in each region that were implemented along the coast between 2007 and 2012. The regulations primarily addressed MPAs, but also included regulations designating SMRMAs in five areas that overlap with waterfowl hunting; the SMRMAs were designed to provide marine life protections consistent with MPA designations without conflicting with waterfowl hunting managed through separate FGC regulations. The five SMRMAs – South Humboldt Bay SMRMA, Russian River SMRMA, Estero Americano SMRMA, Estero de San Antonio SMRMA, and Morro Bay SMRMA – are spread across three of the four coastal regions.

In 2015, FGC adopted a rulemaking to clarify and clean-up regulations associated with MMAs. The clean-up rulemaking unintentionally removed take restrictions originally established in regulation for the five SMRMAs. Consequently, FGC regulations no longer explicitly prohibit take within the boundaries of the five SMRMAs as originally adopted and intended by FGC.

In Feb 2022, DFW brought this concern to FGC and proposed that FGC act rapidly to rectify the inadvertent omission through a rulemaking to commence with a notice hearing in Apr 2022 (this meeting).

The proposed amendments (see exhibits 1 and 2) to subsections 632(b)(9), 632(b)(37), 632(b)(41), 632(b)(42), and 632(b)(91) will return the regulatory text to similar language used

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prior to the adoption of the 2015 “clean-up” regulations. In addition, the new amendments would prohibit take of geological and cultural marine resources to align authorized uses within SMRMAs with authorized uses within MPAs (specifically state marine reserves and state marine conservation areas), thereby improving consistency amongst protected areas.

In addition, non-substantive amendments are proposed for consistency with the regulatory text in other subsections of Section 632.

Significant Public Comments (N/A)

Recommendation

FGC staff: Authorize publication of a notice of intent to adopt regulations as described in the initial statement of reasons (ISOR), consistent with DFW’s recommendation.

DFW: Authorize publishing notice of FGC intent to amend subsections 632(b)(9), 632(b)(37), 632(b)(41), 632(b)(42), and 632(b)(91) to correct an error in regulations established in 2016 and to prohibit take of geological and cultural marine resources within five state marine recreational management areas.

Exhibits

1. DFW memo transmitting draft ISOR, received Mar 22, 2022
2. Draft ISOR and proposed regulatory language, dated Feb 3, 2022
3. Draft economic and fiscal impact statement (std 399)
4. DFW presentation

Motion

Moved by _____ and seconded by _____ that the Commission authorizes publication of a notice of its intent to amend subsections 632(b)(9), 632(b)(37), 632(b)(41), 632(b)(42), and 632(b)(91), related to state marine recreational management areas.

PUBLIC RESOURCES CODE - PRC

DIVISION 27. OCEAN RESOURCES MANAGEMENT [36000 - 36995]

CHAPTER 7. Marine Managed Areas Improvement Act [36600 - 36900]

ARTICLE 1. General Provisions [36600 - 36620]

36600.

This chapter shall be known, and may be cited, as the Marine Managed Areas Improvement Act.

36601.

(a) The Legislature finds and declares all of the following:

(1) California's extraordinary ocean and coastal resources provide a vital asset to the state and nation. These resources are important to public health and well-being, ecological health, and ocean-dependent industries.

(2) The ocean ecosystem is inextricably connected to the land, with coastal development, water pollution, and other human activities threatening the health of marine habitat and the biological diversity found in California's ocean waters. New technologies and demands have encouraged the expansion of fishing and other activities to formerly inaccessible marine areas that once recharged nearby fisheries. As a result, ecosystems throughout the state's ocean waters are being altered, often at a rapid rate.

(3) California's marine managed areas (MMAs), such as refuges, reserves, and state reserves, 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 things as increased tourism and property values. MMAs may also benefit fisheries management by protecting representative habitats and reducing extractive uses.

(4) The array of state MMAs in California is the result of over 50 years of designations through legislative, administrative, and statewide ballot initiative actions, which has led to 18 classifications and subclassifications of these areas.

(5) A State Interagency Marine Managed Areas Workgroup was convened by the Resources Agency to address this issue, bringing together for the first time all of the state agencies with jurisdiction over these areas. This group's report indicates that California's state MMAs have evolved on a case-by-case basis, without conforming to any plan for establishing MMAs in the most effective way or in a manner which ensures that the most representative or unique areas of the ocean and coastal environment are included.

(6) The report further states that California's MMAs do not comprise an organized system, as the individual sites are not designated, classified, or managed in a systematic manner. Many of these areas lack clearly defined purposes, effective management measures, and enforcement.

(7) To some, this array of MMAs creates the illusion of a comprehensive system of management, while in reality, it falls short of its potential to protect, conserve, and manage natural, cultural, and recreational resources along the California coast. Without a properly designed and coordinated system of MMAs, it is difficult for agencies to meet management objectives, such as maintaining biodiversity, providing education and outreach, and protecting marine resources.

(8) Agency personnel and the public are often confused about the laws, rules, and regulations that apply to MMAs, especially those adjacent to a terrestrial area set aside for management purposes. Lack of clarity about the manner in which the set of laws, rules, and regulations for the array of MMAs interface and complement each other limits public and resource managers' ability to understand and apply the regulatory structure.

(9) Designation of sites and subsequent adoption of regulations often occur without adequate consideration being given to overall classification goals and objectives. This has contributed to fragmented management, poor compliance with regulations, and a lack of effective enforcement.

(10) Education and outreach related to state MMAs is limited and responsibility for these activities is distributed across many state agencies. These factors hamper the distribution of information to the public regarding the benefits of MMAs and the role they can play in protecting ocean and coastal resources.

(11) There are few coordinated efforts to identify opportunities for public/private partnerships or public stewardship of MMAs or to provide access to general information and data about ocean and coastal resources within California's MMAs.

(12) Ocean and coastal scientists and managers generally know far less about the natural systems they work with than their terrestrial counterparts. Understanding natural and human-induced factors that affect ocean ecosystem health, including MMAs, is fundamental to the process of developing sound management policies.

(13) Research in California's MMAs can provide managers with a wealth of knowledge regarding habitat functions and values, species diversity, and complex physical, biological, chemical, and socioeconomic processes that affect the health of marine ecosystems. That information can be useful in determining the effectiveness of particular sites or classifications in achieving stated goals.

(b) With the single exception of state estuaries, it is the intent of the Legislature that the classifications currently available for use in the marine and estuarine environments of the state shall cease to be used and that a new classification system shall be established, with a mission, statement of objectives, clearly defined designation guidelines, specific classification goals, and a more scientifically-based process for designating sites and determining their effectiveness. The existing classifications may continue to be used for the terrestrial and freshwater environments of the state.

(c) Due to the interrelationship between land and sea, benefits can be gained from siting a portion of the state's marine managed areas adjacent to, or in close proximity to, terrestrial protected areas. To maximize the benefits that can be gained from having connected protected areas, whenever an MMA is adjacent to a terrestrial protected area, the managing agencies shall coordinate their activities to the greatest extent possible to achieve the objectives of both areas.

36602.

The following definitions govern the construction of this chapter:

(a) "Committee" is the State Interagency Coordinating Committee established pursuant to Section 36800.

(b) "Designating entity" is the Fish and Game Commission, State Park and Recreation Commission, or State Water Resources Control Board, each of which has the authority to designate specified state marine managed areas.

(c) "Managing agency" is the Department of Fish and Game or the Department of Parks and Recreation, each of which has the authority to manage specified state marine managed areas.

(d) "Marine managed area" (MMA) is a named, discrete geographic marine or estuarine area along the California coast designated by law or administrative action, and intended to protect, conserve, or otherwise manage a variety of resources and their uses. The resources and uses may include, but are not limited to, living marine resources and their habitats, scenic views, water quality, recreational values, and cultural or geological resources. General areas that are administratively established for recreational or commercial fishing restrictions, such as seasonal

or geographic closures or size limits, are not included in this definition. MMAs include the following classifications:

- (1) State marine reserve, as defined in subdivision (a) of Section 36700.
- (2) State marine park, as defined in subdivision (b) of Section 36700.
- (3) State marine conservation area, as defined in subdivision (c) of Section 36700.
- (4) State marine cultural preservation area, as defined in subdivision (d) of Section 36700.
- (5) State marine recreational management area, as defined in subdivision (e) of Section 36700.
- (6) State water quality protection areas, as defined in subdivision (f) of Section 36700.

(e) "Marine protected area" (MPA), consistent with the Marine Life Protection Act (Chapter 10.5 (commencing with Section 2850) of Division 3 of the Fish and Game Code) is a named, discrete geographic marine or estuarine area seaward of the mean high tide line or the mouth of a coastal river, including any area of intertidal or subtidal terrain, together with its overlying water and associated flora and fauna that has been designated by law or administrative action to protect or conserve marine life and habitat. MPAs are primarily intended to protect or conserve marine life and habitat, and are therefore a subset of marine managed areas (MMAs). MPAs include the following classifications:

- (1) State marine reserve, as defined in subdivision (a) of Section 36700.
- (2) State marine park, as defined in subdivision (b) of Section 36700.
- (3) State marine conservation area, as defined in subdivision (c) of Section 36700.

36620.

The mission of the state MMA system is to ensure the long-term ecological viability and biological productivity of marine and estuarine ecosystems and to preserve cultural resources in the coastal sea, in recognition of their intrinsic value and for the benefit of current and future generations. In support of this mission, the Legislature finds and declares that there is a need to reexamine and redesign California's array of MMAs, to establish and manage a system using science and clear public policy directives to achieve all of the following objectives:

- (a) Conserve representative or outstanding examples of marine and estuarine habitats, biodiversity, ecosystems, and significant natural and cultural features or sites.
- (b) Support and promote marine and estuarine research, education, and science-based management.
- (c) Help ensure sustainable uses of marine and estuarine resources.
- (d) Provide and enhance opportunities for public enjoyment of natural and cultural marine and estuarine resources.

ARTICLE 2. Classifications, Designations, Restrictions, and Allowable Uses [36700 - 36900]

36700.

Six classifications for designating managed areas in the marine and estuarine environments are hereby established as described in this section, to become effective January 1, 2002. Where the term "marine" is used, it refers to both marine and estuarine areas. A geographic area may be designated under more than one classification.

(a) A "state marine reserve" is a nonterrestrial marine or estuarine area that is designated so the managing agency may achieve one or more of the following:

- (1) Protect or restore rare, threatened, or endangered native plants, animals, or habitats in marine areas.

(2) Protect or restore outstanding, representative, or imperiled marine species, communities, habitats, and ecosystems.

(3) Protect or restore diverse marine gene pools.

(4) Contribute to the understanding and management of marine resources and ecosystems by providing the opportunity for scientific research in outstanding, representative, or imperiled marine habitats or ecosystems.

(b) A "state marine park" is a nonterrestrial marine or estuarine area that is designated so the managing agency may provide opportunities for spiritual, scientific, educational, and recreational opportunities, as well as one or more of the following:

(1) Protect or restore outstanding, representative, or imperiled marine species, communities, habitats, and ecosystems.

(2) Contribute to the understanding and management of marine resources and ecosystems by providing the opportunity for scientific research in outstanding representative or imperiled marine habitats or ecosystems.

(3) Preserve cultural objects of historical, archaeological, and scientific interest in marine areas.

(4) Preserve outstanding or unique geological features.

(c) A "state marine conservation area" is a nonterrestrial marine or estuarine area that is designated so the managing agency may achieve one or more of the following:

(1) Protect or restore rare, threatened, or endangered native plants, animals, or habitats in marine areas.

(2) Protect or restore outstanding, representative, or imperiled marine species, communities, habitats, and ecosystems.

(3) Protect or restore diverse marine gene pools.

(4) Contribute to the understanding and management of marine resources and ecosystems by providing the opportunity for scientific research in outstanding, representative, or imperiled marine habitats or ecosystems.

(5) Preserve outstanding or unique geological features.

(6) Provide for sustainable living marine resource harvest.

(d) A "state marine cultural preservation area" is a nonterrestrial marine or estuarine area designated so the managing agency may preserve cultural objects or sites of historical, archaeological, or scientific interest in marine areas.

(e) A "state marine recreational management area" is a nonterrestrial marine or estuarine area designated so the managing agency may provide, limit, or restrict recreational opportunities to meet other than exclusively local needs while preserving basic resource values for present and future generations.

(f) A "state water quality protection area" is a nonterrestrial marine or estuarine area designated to protect marine species or biological communities from an undesirable alteration in natural water quality, including, but not limited to, areas of special biological significance that have been designated by the State Water Resources Control Board through its water quality control planning process. "Areas of special biological significance" are a subset of state water quality protection areas, and require special protection as determined by the State Water Resources Control Board pursuant to the California Ocean Plan adopted and reviewed pursuant to Article 4 (commencing with Section 13160) of Chapter 3 of Division 7 of the Water Code and pursuant to the Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters

and Enclosed Bays and Estuaries of California (California Thermal Plan) adopted by the state board.

36710.

(a) In a state marine reserve, it is unlawful to injure, damage, take, or possess any living geological, or cultural marine resource, except under a permit or specific authorization from the managing agency for research, restoration, or monitoring purposes. While, to the extent feasible, the area shall be open to the public for managed enjoyment and study, the area shall be maintained to the extent practicable in an undisturbed and unpolluted state. Access and use for activities including, but not limited to, walking, swimming, boating, and diving may be restricted to protect marine resources. Research, restoration, and monitoring may be permitted by the managing agency. Educational activities and other forms of nonconsumptive human use may be permitted by the designating entity or managing agency in a manner consistent with the protection of all marine resources.

(b) In a state marine park, it is unlawful to injure, damage, take, or possess any living or nonliving marine resource for commercial exploitation purposes. Any human use that would compromise protection of the species of interest, natural community or habitat, or geological, cultural, or recreational features may be restricted by the designating entity or managing agency. All other uses are allowed, including scientific collection with a permit, research, monitoring, and public recreation, including recreational harvest, unless otherwise restricted. Public use, enjoyment, and education are encouraged, in a manner consistent with protecting resource values.

(c) In a state marine conservation area, it is unlawful to injure, damage, take, or possess any living, geological, or cultural marine resource for commercial or recreational purposes, or a combination of commercial and recreational purposes, that the designating entity or managing agency determines would compromise protection of the species of interest, natural community, habitat, or geological features. The designating entity or managing agency may permit research, restoration, monitoring, education, and recreational activities, and certain commercial and recreational harvest of marine resources.

(d) In a state marine cultural preservation area, it is unlawful to damage, take, or possess any cultural marine resource. Complete integrity of the cultural resources shall be sought, and no structure or improvements that conflict with that integrity shall be permitted. No other use is restricted.

(e) In a state marine recreational management area, it is unlawful to perform any activity that, as determined by the designating entity or managing agency, would compromise the recreational values for which the area may be designated. Recreational opportunities may be protected, enhanced, or restricted, while preserving basic resource values of the area. No other use is restricted.

(f) In a state water quality protection area, waste discharges shall be prohibited or limited by the imposition of special conditions in accordance with the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) and implementing regulations, including, but not limited to, the California Ocean Plan adopted and reviewed pursuant to Article 4 (commencing with Section 13160) of Chapter 3 of Division 7 of the Water Code and the Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries of California (California Thermal Plan) adopted by the state board. No other use is restricted.

36711.

The classifications contained in Section 36710 may not be inconsistent with United States military activities deemed mission critical by the United States military.

36725.

(a) The Fish and Game Commission may designate, delete, or modify state marine recreational management areas established by the commission for hunting purposes, state marine reserves, and state marine conservation areas. The Fish and Game Commission shall consult with, and secure concurrence from, the State Parks and Recreation Commission prior to modifying or deleting state marine reserves and state marine conservation areas designated by the State Parks and Recreation Commission. The Fish and Game Commission shall not delete or modify state marine recreational management areas designated by the State Parks and Recreation Commission.

(b) The State Parks and Recreation Commission may designate, delete, or modify state marine reserves, state marine parks, state marine conservation areas, state marine cultural preservation areas, and state marine recreational management areas. The State Parks and Recreation Commission may not designate, delete, or modify a state marine reserve, state marine park, or state marine conservation area without the concurrence of the Fish and Game Commission on any proposed restrictions upon, or change in, the use of living marine resources.

(c) If an unresolved conflict exists between the Fish and Game Commission and the State Parks and Recreation Commission regarding a state marine reserve, state marine park, or state marine conservation area, the Secretary of the Resources Agency may reconcile the conflict.

(d) The State Water Resources Control Board may designate, delete, or modify state water quality protection areas.

(e) The Fish and Game Commission, State Parks and Recreation Commission, and State Water Resources Control Board each may restrict or prohibit recreational uses and other human activities in the MMAs for the benefit of the resources therein, except in the case of restrictions on the use of living marine resources. Pursuant to this section, and consistent with Section 2860 of the Fish and Game Code, the Fish and Game Commission may regulate commercial and recreational fishing and any other taking of marine species in MMAs.

(f) (1) The Department of Fish and Game may manage state marine reserves, state marine conservation areas, state marine recreational management areas established for hunting purposes and, if requested by the State Water Resources Control Board, state water quality protection areas.

(2) The Department of Parks and Recreation may manage state marine reserves, state marine parks, state marine conservation areas, state marine cultural preservation areas, and state marine recreational management areas. Department authority over units within the state park system shall extend to units of the state MMAs system that are managed by the department.

(3) The State Water Resources Control Board and the California regional water quality control boards may take appropriate actions to protect state water quality protection areas. The State Water Resources Control Board may request the Department of Fish and Game or the Department of Parks and Recreation to take appropriate management action.

36750.

Any MMA in existence on January 1, 2002, that has not been reclassified in accordance with the Marine Life Protection Act (Chapter 10.5 (commencing with Section 2850) of Division 3 of the Fish and Game Code), shall be reclassified under the classification system described in Section 36700 by January 1, 2003, based upon the management purpose and level of resource protection at each site on January 1, 2002. Upon the reclassification of existing sites, but no later than January 1, 2003, the use of all other classifications shall cease for the marine and estuarine environments of the state, though the classifications may continue to be used for the terrestrial and freshwater environments where applicable. The reclassification process shall be the responsibility of the State Interagency Coordinating Committee established pursuant to

Section 36800, and shall occur to the extent feasible in conjunction and consistent with the MMA master planning process created pursuant to the Marine Life Protection Act (Chapter 10.5 (commencing with Section 2850) of Division 3 of the Fish and Game Code).

36800.

The Secretary of the Resources Agency shall establish and chair the State Interagency Coordinating Committee, whose members are representatives from those state agencies, departments, boards, commissions, and conservancies with jurisdiction or management interests over marine managed areas, including, but not limited to, the Department of Fish and Game, Department of Parks and Recreation, California Coastal Commission, State Water Resources Control Board, and State Lands Commission. The Secretary of the Resources Agency shall designate additional members of the committee. The committee shall review proposals for new or amended MMAs to ensure that the minimum required information is included in the proposal, to determine those state agencies that should review the proposal, and to ensure consistency with other such designations in the state. The committee shall also serve to ensure the proper and timely routing of site proposals, review any proposed site-specific regulations for consistency with the state system as a whole, and conduct periodic reviews of the statewide system to evaluate whether it is meeting the mission and statement of objectives.

36850.

Designation guidelines based on the classification goals adopted for the state system of MMAs shall be developed jointly by the appropriate managing agencies in cooperation with the committee on or before January 1, 2002. These guidelines shall be used to provide a general sense of requirements for designating a site in any particular classification, and may include characteristics such as uniqueness of the area or resource, biological productivity, special habitats, cultural or recreational values, and human impacts to the area. These designation guidelines shall be provided on a standard set of instructions for each classification.

36870.

On or before January 1, 2002, the committee shall establish a standard set of instructions for each classification to guide organizations and individuals in submitting proposals for designating specific sites or networks of sites. On or before January 1, 2003, the relevant site proposal guidelines shall be adopted by each designating entity.

(a) At a minimum, each proposal shall include the following elements for consideration for designation as an MMA:

- (1) Name of individual or organization proposing the designation.
- (2) Contact information for the individual or organization, including contact person.
- (3) Proposed classification.
- (4) Proposed site name.
- (5) Site location.
- (6) Need, purpose, and goals for the site.
- (7) Justification for the manner in which the proposed site meets the designation criteria for the proposed classification.
- (8) A general description of the proposed site's pertinent biological, geological, and cultural resources.
- (9) A general description of the proposed site's existing recreational uses, including fishing, diving, boating, and waterfowl hunting.

(b) The following elements, if not included in the original proposal, shall be added by the proposed managing agency in cooperation with the individual or organization making the proposal, prior to a final decision regarding designation:

- (1) A legal description of the site boundaries and a boundary map.
- (2) A more detailed description of the proposed site's pertinent biological, geological, cultural, and recreational resources.
- (3) Estimated funding needs and proposed source of funds.
- (4) A plan for meeting enforcement needs, including on-site staffing and equipment.
- (5) A plan for evaluating the effectiveness of the site in achieving stated goals.
- (6) Intended educational and research programs.
- (7) Estimated economic impacts of the site, both positive and negative.
- (8) Proposed mechanisms for coordinating existing regulatory and management authority, if any exists, within the area.
- (9) An evaluation of the opportunities for cooperative state, federal, and local management, where the opportunities may exist.

36900.

Individuals or organizations may submit a proposal to designate an MMA directly through the committee or an appropriate designating entity. Proposals submitted to a designating entity shall be forwarded to the committee to initiate the review process. Proposals for designating, deleting, or modifying MMAs may be submitted to the committee or a designating entity at any time. The committee and scientific review panel established pursuant to subdivision (b) shall annually consider and promptly act upon proposals until an MPA master plan is adopted pursuant to subdivision (b) of Section 2859 of the Fish and Game Code, and thereafter, no less than once every three years. Upon adoption of a statewide MPA plan, subsequent site proposals determined by the committee to be consistent with that plan shall be eligible for a simplified and cursory review of not more than 45 days.

(a) The committee shall review proposals to ensure that the minimum required information is included in the proposal, to determine those state agencies that should review the proposal, and to ensure consistency with other designations of that type in the state. After initial review by the coordinating committee and appropriate agencies, the proposal shall be forwarded to a scientific review panel established pursuant to subdivision (b).

(b) The Secretary of the Resources Agency shall establish a scientific review panel, with statewide representation and direction from the committee, to evaluate proposals for technical and scientific validity, including consideration of such things as site design criteria, location, and size. This panel, to the extent practical, shall be the same as the master plan team used in the process set forth in the Marine Life Protection Act (Chapter 10.5 (commencing with Section 2850) of Division 3 of the Fish and Game Code). Members shall maintain familiarity with the types and effectiveness of MMAs used in other parts of the world for potential application to California. Members shall be reimbursed reasonable costs to participate in the activities of the panel. Where feasible, advice shall be sought from the appropriate federal agencies and existing regional or statewide marine research panels and advisory groups. After review by the scientific review panel, the committee shall forward the proposal and any recommendations to the appropriate designating entity for a public review process.

(c) Designating entities shall establish a process that provides for public review and comment in writing and through workshops or hearings, consistent with the legal mandates applicable to designating entities. All input provided by the committee and scientific review panel shall be

made available to the public during this process. Outreach shall be made to the broadest ocean and coastal constituency possible, and shall include commercial and sport fishing groups, conservation organizations, waterfowl groups and other recreational interests, academia, the general public, and all levels of government.

(d) This process does not replace the need to obtain the appropriate permits or reviews of other government agencies with jurisdiction or permitting authority.

(e) Nothing in this section shall be construed as altering or impeding the process identified under the Marine Life Protection Act (Chapter 10.5 (commencing with Section 2850) of Division 3 of the Fish and Game Code) or the actions of the master plan team described in that act.