

State of California
Fish and Game Commission
Final 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. Dates of Statements of Reasons

- (a) Initial Statement of Reasons Date: February 3, 2022
- (b) Final Statement of Reasons Date: June 22, 2022 **(updated August 18, 2022)**

II. Dates and Locations of Scheduled Hearings

- (a) Notice Hearing
Date: April 20, 2022 Location: Monterey and Trinidad, CA/Webinar
- (b) Discussion Hearing
Date: May 19, 2022 Location: Teleconference/Webinar
- (c) Adoption Hearing
Date: June 16, 2022 Location: Los Angeles and Trinidad, CA/Webinar

III. Update

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

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

A public comment from the Environmental Action Committee of West Marin, received May 16, 2022, was described in the Pre-adoption Memo of Summarized Concerns and Responses. The Environmental Action Committee of West Marin reiterated its written comment in support of the rulemaking at the June 15, 2022 adoption hearing.

Response: Support noted. The Commission adopted the regulation as proposed.

V. 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 the protected

measures they were intended to have when originally designed.

(c) Consideration of Alternatives

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

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 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

Any impacts would not be significant or statewide since the regulations only address the five distinct areas designated as state marine recreational management areas (6.04 square miles). 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.

There have not been any reports of commercial fishing or commercial passenger fishing vessels operating in these areas. Some sport fishing has occurred in the areas, but in general, the public has believed the areas to be closed to take of living marine resources so there has not been much fishing activity. Non-consumptive activities on these areas have continued as before the 2016 amendment. Any monies spent on gear, hotels, meals, etc., specifically to fish in these areas is not expected to amount to a significant amount since there are so few people who took advantage of the inadvertent removal of restrictions. 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.

(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 **direct** 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. **The addition of restrictions for cultural and geological resources will not result in any change from the existing level of monitoring and enforcement in the affected SMRMA areas; therefore, no additional enforcement costs are anticipated.**

(e) Nondiscretionary Costs/Savings to Local Agencies

None.

(f) Programs Mandated on Local Agencies or School Districts

None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code

None.

(h) Effect on Housing Costs

None.

Updated Informative Digest/Policy Statement Overview

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.

Update: On June 15, 2022, the Commission adopted the proposed regulations set forth in the Initial Statement of Reasons (ISOR) dated February 3, 2022. The adopted regulations prohibit take of living, geological, or cultural marine resources within SMRMAs, as well as non-substantiative amendments to improve consistency within the regulatory text.

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