

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

Amend Section 632; Add subsections 632(a)(1)(E), (a)(13), (a)(14), and (a)(15)
Title 14, California Code of Regulations

Re: Incidental Take Authorization for Work on Pre-Existing Artificial Structures in Marine Protected
Areas and Marine Managed Areas

I. Date of Initial Statement of Reasons: April 11, 2023

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing

Date: June 15, 2023

Location: Sacramento, CA

(b) Discussion Hearing

Date: August 23, 2023

Location: Fortuna, CA

(c) Adoption Hearing

Date: December 14, 2023

Location: San Diego, 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

Implemented in 1999, the Marine Life Protection Act (MLPA) (Fish and Game Code sections 2850-2863) required California to reevaluate all existing MPAs, which were at that time largely ineffective and disconnected, and design new MPAs that together function a comprehensive statewide ecologically connected network. In 2000, the Marine Managed Areas Improvement Act (Public Resources Code sections 36600-36900) standardized and clarified the designations of MMAs. MMAs include three MPA designations (state marine reserve [SMR], state marine conservation area [SMCA], and state marine park [SMP]) and state marine recreational management areas (SMRMAs). While MPAs are a subset of MMAs, throughout this document the more common term “MPA” is used as an umbrella to refer to all types of protected areas. The overriding goal of these acts is to protect California’s valuable marine resources including natural biodiversity and abundance of marine life, sustaining and rebuilding species of economic value, and improving recreational and educational opportunities in areas subject to minimal human disturbance.

Planning for California's coastal network of MPAs occurred through a sequential series of four regional public planning processes. Following planning within each region, the Commission adopted MPA regulations that were implemented along the coast from 2007 to 2012. Ultimately, the Commission adopted 124 new and revised MPAs across the four planning regions to complete the statewide Network. Background information regarding the regional design and implementation process can be found in Appendix A of the 2016 Master Plan for MPAs (<https://wildlife.ca.gov/Conservation/Marine/MPAs/Master-Plan>).

The intent of the planning process was to consider existing entitlements such as California State Lands Commission (CSLC) bottom leases, Commission administrative kelp bed leases, tide and submerged lands grants, private tidelands, and any other legal entitlements (Attachment 1). During the planning process in the north and south coast regions, it was recognized that some of the areas being considered for an MPA had pre-existing artificial structures within them (Attachment 2 and Attachment 3, respectively). The continued operation and maintenance of these pre-existing artificial structures would result in incidental take of marine resources, so regulations were specifically written to allow for their continued operation and maintenance as an allowed take activity within these specific MPAs.

However, following implementation of the MPA Network, it was learned that not all structures were identified at the time of regional MPA planning. As such, there remain pre-existing artificial structures throughout the statewide MPA Network requiring operation and maintenance activities that conflict with current individual MPA regulations. This situation is at odds with a September 24, 2019, memo released by the CSLC regarding limits on impairment of leases (Attachment 4).

Discussions with other state agencies such as the California Coastal Commission (CCC), California Department of State Parks (CDSP), and the CSLC has shed light on confusion about the ability of a lease holder(s) or permittee(s) of a pre-existing artificial structure to perform operation and maintenance activities under existing regulations. To allow for continued operation, maintenance, repair, removal, and replacement of artificial structures that existed prior to establishment of MPAs, the Department is proposing to add three new subsections to section 632:

- 1) define what qualifies as a pre-existing artificial structure,
- 2) define what is an incidental take buffer zone around pre-existing artificial structures for maintenance and repair, and
- 3) identification and permit or lease requirements for pre-existing artificial structure activities.

In addition, the Department is proposing to designate areas within SMRs where pre-existing artificial structures occur and accompanying buffer zone will exist as SMCAs to allow for incidental take during maintenance activities. The Department is also proposing to add a single subsection to reference when citing any MPA take violation.

These proposed amendments would not affect current fishing regulations within MPAs, and all take regulations implemented following the designation process will remain in place.

Proposed Amendments to Subsection 632(a)(1)

Subsection 632(a) provides definitions and allowable uses for each designation type.

The proposed amendment to subsection 632(a)(1)(A) will specify that any area within a SMR that surrounds a pre-existing artificial structure is excluded from the SMR definition when that structure is being actively maintained, repaired, or operated by the leaseholder(s), permittee(s) or their agent(s).

A proposed amendment to subsection 632(a)(1)(C) specifies any area within a SMR that is excluded from the boundaries of the SMR pursuant to subsection 632(a)(1)(A)(1) is a SMCA.

Proposed amendments to subsections 632(a)(1)(B), 632 (a)(1)(C)(2), and 632(a)(1)(D) will amend existing definitions for SMPs, SMCAs, and SMRMAs to allow for incidental take of marine resources during the operation, maintenance, repair, removal, and replacement of “pre-existing artificial structures,” pursuant to any required federal, state, and local permits. The proposed amendments to these sections will also specify that no marine resources can be retained or possessed as a result of pre-existing artificial structure incidental take.

Necessity and rationale:

Sections 632(a)(1)(A)(1) and 632(a)(1)(C)(1)

SMRs do not allow for take 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. Unless the definition of a SMR is changed in the Marine Managed Areas Improvement Act (Public Resources Code section 36600-36900), only take related to research, restoration, and monitoring may be permitted in SMRs. However, a pre-existing artificial structure within an MPA could be actively maintained if it is located within a SMCA, SMP, or SMRMA, and has specific regulatory allowances for incidental take related to maintenance activities.

During the south coast planning process, MPAs that were initially intended to be SMRs were later designated as no-take SMCAs because they included pre-existing artificial structures (Attachment 3). These south coast no-take SMCAs only allow for incidental take resulting from maintenance activities and are therefore the model for this regulatory package. Thus, designating the immediate area around a pre-existing artificial structure within a SMR as a SMCA is necessary to allow incidental take of marine resources related to the operation, maintenance, repair, removal, or replacement of a pre-existing artificial structure for the lease duration without specific authorization from the Commission.

Sections 632(a)(1)(B), 632 (a)(1)(C)(2), and 632(a)(1)(D)

Current regulations allow for operation and maintenance of pre-existing artificial structures within a limited number of individually specified MPAs. This amendment would update all designation definitions to allow for incidental take of a marine resource in discrete areas related to the operation, maintenance, repair, removal, and replacement of a pre-existing artificial structure located within an MPA, without having to amend individual MPA designations and take regulations. This is in alignment with the Draft Environmental Impact Report for the south coast region where it was identified that certain SMCA designations “...would not prohibit maintenance and operation activities associated with existing structures and facilities such as outfall pipes, jetties, aquaculture operations, dredging, sand replenishment, or other

permitted operations” (Attachment 5) and is consistent with the approach taken in the south and north planning regions.

This amendment will also prohibit the retention or possession of a marine resource taken incidentally during the operation, maintenance, repair, removal, and replacement of a pre-existing artificial structure. This prohibition will ensure that leaseholders, permittees, and/or their agents do not take advantage of working on a pre-existing artificial structure to illegally take marine resources for their own personal use.

Additionally, the authorizations for these pre-existing artificial structures were reviewed and approved by other state agencies (i.e., CCC, CDSP, and CSLC) prior to MPA implementation. Any environmental impact is anticipated to be minimal and within the bounds of the original lease, grant, permit, or other authorization entailment approved by the oversight agency.

Proposed Additions to Subsection 632(a)

Proposed new subsection 632(a)(1)(E) will add a section that can be used by wildlife officers to cite violations within any MMA designation. It will be unlawful to injure, damage, take, retain, or possess and living, geological, or cultural marine resource in any MMA unless otherwise specified in the text.

Proposed new subsection 632(a)(13) will add a definition for what qualifies as a “pre-existing artificial structure” within California’s MPA Network. Any structure that was manufactured, created, or constructed in state waters, and installed or constructed pursuant to any required federal, state, and local authorizations prior to the specified regional MPA implementation dates, or constructed and installed after MPA implementation pursuant to public health and safety concerns, will be considered a “pre-existing artificial structure.”

Proposed new subsection 632(a)(14) will add a definition for what qualifies as an “incidental take buffer zone for pre-existing artificial structures.” A maximum distance of 250-feet in any direction from the pre-existing artificial structure, including the entirety of the surrounding water column, not including areas above the mean high tide line, in which incidental take due to the operation, maintenance, repair, removal, and replacement of an artificial structure located within an MPA that would otherwise be prohibited, is allowed.

Proposed new subsection 632(a)(15) will add a definition for “identification and permit or lease requirement for pre-existing artificial structure activities.” Any leaseholder(s), permittee(s), or their agent(s) are required to have a valid government-issued form of identification, as well as a digital or printed copy of the permit or lease. Acceptable forms of identification will include driver’s licenses, U.S. state photo identification cards, federally recognized tribal photo identification card, or an international passport. Valid identification and a copy of the lease or permit shall be exhibited immediately upon demand by any person authorized by the department to enforce this regulation.

Necessity and rationale:

Section 632(a)(1)(E)

Currently there is no consistent method for wildlife officers to cite MPA violations. Some wildlife officers may cite a specific MPA, while others may cite the general MPA designation. The proposed incidental take buffer zone definition could add an additional layer of citing

complexity, since the area within an SMR where a pre-existing artificial structure exists will be considered an SMCA when that structure is being maintained. Adding this proposed subsection will simplify issuing citations and provide direction to enforcement officers to ensure incorrect code subsections are not referenced if the violation is reviewed in court.

Subsection 632(a)(13)

For certain MPAs, current regulations do not provide a mechanism to maintain, operate, repair, remove, or replace, pre-existing artificial structures that were in place prior to MPA implementation statewide (Table 1). In these areas, maintenance of pre-existing artificial structures is only permitted in the case of a structural emergency and for health and safety considerations. Specific definitions for what qualify as a pre-existing artificial structure and an incidental take buffer zone are needed to allow routine maintenance within certain MPAs, without needing to constantly approve work on a case-by-case basis.

Since the MPA designation process intended to account for existing leases, grants, and any other legal entitlements (Attachment 1) any structure that existed prior to MPA implementation should be allowed to operate per the lease conditions without limitation due to regulations. Additionally, artificial structures constructed or modified due to public health and safety concerns, which will be considered pre-existing artificial structures regardless of installation date. These regulations do not expand opportunities to install new structures in MPAs.

Subsection 632(a)(14)

To limit incidental-take of marine resources protected within an MPA, a buffer zone will be established around the pre-existing artificial structure. This buffer zone will allow incidental take related to work on the artificial structure to occur while still maintaining the integrity of the surrounding MPA regulations. The buffer zone will include the immediate area surrounding a pre-existing artificial structure, but will not include areas above the mean high tide line, which is where the onshore boundary of MPAs ends. The buffer zone surrounding a pre-existing artificial structure shall be 250-feet in any direction, not including areas above the mean high tide line. California law provides that the State owns all land below the “ordinary high-water mark” (California Civil Code Section 670). The “ordinary high-water mark” is to be determined by the average height of all high tides at a given location over a period of 18.6 years (Borax Consolidated, Ltd. v. Los Angeles, 296 U.S. 10, 1935) — this is referred to as the mean high tide line. The buffer zone cannot extend beyond the mean high tide line because that is outside of the area encompassed by an MPA.

A buffer zone of 250-feet is adequate for most maintenance work on artificial structures. On large structures such as piers and seawalls, if a barge is used for maintenance work, a typical barge size is around 250-feet by 70-feet (Attachment 6). Given piers and seawalls comprise the largest structures located within MPAs, creating a buffer zone that accommodates larger structures means smaller structures should have more than enough space to do their work while still maintaining the integrity of the surrounding MPA.

Subsection 632(a)(15)

Official identification is necessary to enable law enforcement and/or wildlife officers’ ability to verify the identity of individuals conducting authorized activities related to operation, repair, maintenance, removal, or replacement of pre-existing artificial structures. It is also necessary

to require a copy of the lease or permit to verify the activities are pursuant to a valid lease or permit. This subsection informs leaseholder(s), permittee(s), or their agent(s) the specific types of government-issued identification required when conducting activities around pre-existing artificial structures, as well as the expectation that the identification should be accompanied by a copy of the permit or lease to confirm they are allowed to be working in the area.

Table 1. California State Lands Commission leases that currently conflict with current MPA regulations that were unknowingly overlooked during the MLPA design process. Listed alphabetically by name.

Number of Leases in MPA	MPA Name	Structure type	Region
1	Anacapa Island SMR	Pier	South Coast
3	Arrow Point to Lion Head Point SMCA	Moorings, piers, floating docks, gangways, finfish grow-out pens, floating barge	South Coast
1	Bodega Head SMR	Water intake pipelines	North Central Coast
2	Cambria SMCA	Saltwater intake pipelines, outfall pipelines	Central Coast
3	Carmel Bay SMCA	Pier, seawalls, buoys, floating boat docks	Central Coast
1	Carrington SMR	Pier	South Coast
1	Estero Americano SMRMA	Saltwater intake pipelines, outfall pipelines	North Central Coast
1	Laguna Beach SMR	Marker buoys, swimmer safety lines	South Coast
3	Morro Bay SMR	Pier	Central Coast
1	Natural Bridges SMR	Saltwater intake pipelines, outfall pipelines	Central Coast
2	Navarro River Estuary SMCA	Bridge, electric transmission lines, fiber optic cables	North Coast
1	Piedras Blancas SMR	Rock slope protection	Central Coast
1	Point Buchon SMCA	Ocean bottom seismometers, power transfer cable	Central Coast
1	Point Lobos SMCA	Fiber optic cable, steel conduits	Central Coast
2	Russian River SMRMA	Bridge, boat launch ramp, bank protection, silt curtain	North Central Coast
1	Scorpion SMR	Pier	South Coast
1	Vandenberg SMR	Power cable, crude oil pipeline, natural gas pipeline, wastewater pipeline	Central Coast

Source: Department review of California State Lands Commission data.

(b) Goals and Benefits of the Regulation

The proposed regulations will address maintenance needs for infrastructure in place prior to MPA designation without seeking exemptions on a case-by-case basis. The proposed regulations will also align MPA regulations with original design intention to consider existing leases, permits, and any other legal entitlements that current regulations may impair. The proposed regulations will simplify citing process for wildlife officers enforcing MPA regulations.

(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

N/A

(e) Identification of Reports or Documents Supporting Regulation Change

Attachment 1: California Department of Fish and Game Memorandum to the Marine Life Protection Act North Central Coast Regional Stakeholder Group, January 31, 2008. Subject: Private Land Ownership and Marine Protected Areas.

Attachment 2: State of California Fish and Game Commission Initial Statement of Reasons for Regulatory Action to Amend Title 14 Section 632 Re: Marine Protected Areas. December 12, 2011.

Attachment 3: State of California Fish and Game Commission Initial Statement of Reasons for Regulatory Action to Amend Title 14 Section 632 Re: Marine Protected Areas. April 21, 2010.

Attachment 4: California State Lands Commission Memorandum to Jennifer Mattox, Science Policy Advisor, from Benjamin Johnson, Staff Counsel, September 24, 2019. Subject: Constitutional Limits on Impairment of State Lands Commission Leases.

Attachment 5: South Coast Marine Protected Areas Project Draft Environmental Impact Report Section 3.0: Project Description.

Attachment 6: Diab, B. and Tahan, N. 2005. Offshore Installation. In *Handbook of Offshore Engineering*, S. Chakrabarti (Ed.). Elsevier.

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

The Department first presented the issue to the Marine Resources Committee at its July 29, 2020 meeting, and again at its November 10, 2020 meeting. Reminders about this issue were presented by the Department at Commission meetings on December 16, 2021 and December 14, 2022.

IV. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change

Alternative 1: Implement a buffer zone that is contingent upon the size of the pre-existing artificial structure. Any structure that is smaller than or equal to 100 square feet, could have a maximum buffer zone of 100-feet. Any structure that is greater than 100 square feet could have a maximum buffer zone of 250-feet. While this alternative may help to decrease incidental take of the surrounding area, most projects are limited on the size of the equipment needed to do the work, not the size of the structure itself.

Alternative 2: Implement a buffer zone restricted to the minimum size necessary to meet the needs of the lease holder's maintenance requirements. This alternative would make it difficult for law enforcement to regulate maintenance work occurring within an MPA. A set buffer zone for all projects helps to ensure that at any given time law enforcement personnel can determine if a larger than permitted area is at risk of incidental take due to maintenance, operation, repair, replacement, or removal of an artificial structure.

(b) No Change Alternative

The no change alternative would leave many MPAs that currently have pre-existing artificial structures in conflict with current regulations when operation, maintenance, repair, removal, or replacement arise. Without changing the regulations either 1) a legislative amendment to the existing definitions of MPAs is needed and/or 2) MPA designation changes, individual exceptions and allowances will need to be written on a recurring basis to allow for maintenance, operation, repair, removal, and replacement of pre-existing artificial structures.

V. Mitigation Measures Required by Regulatory Action

N/A

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. The proposed amendments provide existing lease holders permission for incidental take of marine resources in accordance with operation, maintenance, and repair of their pre-existing structure within an MPA, pursuant to other required federal, state, and local permits. Absent the proposed amendments, pre-existing artificial structures may not have been able to fully sustain their original uses, and more quickly depreciate. This regulatory action minimizes an impediment to the operation, maintenance, and repair of pre-existing structures. It does not impose nondiscretionary compliance costs on affected leaseholders (or parties) and has no effect on any costs incurred by businesses nor other agency's permitting processes. The ability of California businesses to compete with businesses in other states is not affected as the affected businesses are specific to their California location.

- (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 direct impacts on the elimination of jobs or the elimination of existing businesses. While the proposed amendment will not increase or decrease recreational or commercial opportunities, it has the potential to spur the creation of new businesses and jobs or the expansion of existing businesses related to the maintenance and repair of pre-existing artificial structures within MPAs.

The Commission anticipates potential indirect benefits to the health and welfare of California residents, worker safety, and the State's environment as this action removes an impediment to the provision of necessary maintenance and repairs that could lessen potential harm to the public, workers, and to the environment.

- (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. The proposed regulations are anticipated to minimize the potential for less cost-effective means to handle potential limitations on operations that lease holders may have encountered in the future.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State

None. No additional nondiscretionary costs, or savings are anticipated for State agencies as a result of this regulation change. The Department law enforcement costs are not anticipated to change from the existing level of monitoring and enforcement in the affected SMRMA, SMR, or MPA areas.

- (e) Nondiscretionary Costs/Savings to Local Agencies

None. No nondiscretionary costs, or savings are anticipated for local agencies as a result of this regulation change.

- (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

The proposed amendments and subsection additions to Section 632 will allow for incidental take of marine resources in discrete areas related to the operation, maintenance, repair, removal, and replacement of a pre-existing artificial structure located within an MPA, without having to amend MPA designations and take regulations within specific MPAs statewide. These proposed changes would align MPA regulations with original design intention to consider existing leases, permits, and any other legal entitlements that current regulations may impair. These proposed changes would also simplify the citing process for wildlife officers enforcing MPA regulations. This proposed regulatory amendment would not affect fishing regulations in MPAs.

As such, this amendment in itself, does not necessarily induce any new costs to individuals or businesses, nor does it induce or curtail activities in MPAs that would result in economic or fiscal impacts. This proposed regulation amendment would not affect current fishing regulations within MPAs and SMRMAs, and all other take regulations implemented following the designation process will remain in place. This action does not change the permitted extent of recreational or commercial fishing activity.

(a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State

The proposed regulatory action will not eliminate jobs within the state because the proposed additions and amendments provide existing lease holders allowance to operate, maintain, and repair their pre-existing structure. This amendment has the potential to spur the creation of new jobs related to the operation, maintenance, or repair of existing structures within MPAs if an affected party chooses to pursue such activities.

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

The proposed regulatory action will not eliminate existing businesses within the State because the proposed additions and amendments provide existing lease holders allowance to maintain and repair their pre-existing structure. This amendment has the potential to spur the creation of new businesses related to the maintenance of existing structures within MPAs.

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

The proposed amendment may result in the expansion of businesses currently doing business within the state because the proposed regulations will reduce previous impediments to the operation, maintenance, repair, removal, and replacement of pre-existing structures, which may increase demand for products and services for businesses related to marine construction and structure maintenance.

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

The Commission anticipates potential indirect benefits to the health and welfare of California residents as this action removes an impediment to the provision of necessary maintenance and repairs that could lessen the potential for harm to the public who interact with these pre-existing structures.

(e) Benefits of the Regulation to Worker Safety

None. The Commission anticipates potential indirect benefits to worker safety as this action removes an impediment to the provision of necessary maintenance and repairs that could lessen the potential for harm to workers in association with these pre-existing structures.

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

The Commission anticipates potential benefits to the State's environment as this action removes an impediment to the provision of necessary maintenance and repairs that could lessen potential harm to the environment.

Informative Digest/Policy Statement Overview

Implemented in 1999, the Marine Life Protection Act (MLPA) (Fish and Game Code sections 2850-2863) required California to reevaluate all existing marine protected areas (MPAs), which were at that time largely ineffective and disconnected, and design new MPAs that together function as a comprehensive statewide network. While MPAs are a subset of marine managed areas (MMAs) throughout this informative digest the more common term “MPA” is used as an umbrella to refer to all types of protected areas, and include three MPA classifications (state marine reserve [SMR], state marine conservation area [SMCA], state marine park [SMP]) and one MMA classification (state marine recreational management area [SMRMA]). Planning for California’s Statewide MPA Network occurred through a sequential series of four regional public planning processes from 2004 to 2012.

During the designation process in the north and south coast regions it was recognized that some MPAs being considered for designation had pre-existing artificial structures within them. The continued operation and maintenance of these pre-existing artificial structures would result in incidental take of marine resources, so regulations were specifically written to allow for their continued operation and maintenance as an allowed take activity within these specific MPAs.

However, following implementation the MPA Network, it was learned that not all structures were identified at the time of regional MPA planning. As such, there remain pre-existing artificial structures throughout the statewide MPA Network requiring operation and maintenance activities that conflict with their current individual MPA regulations.

To allow for continued operation, maintenance, repair, removal, and replacement of pre-existing artificial structures that existed prior to establishment of MPAs, the Department is proposing to add three new subsections to section 632: 1) define what qualifies as a pre-existing artificial structure, 2) define what is an incidental take buffer zone around pre-existing artificial structures for maintenance and repair, and 3) identification and permit or lease requirements for pre-existing artificial structure activities. In addition, the Department is proposing to designate areas within SMRs where pre-existing artificial structures occur and accompanying buffer zone will exist as SMCAs to allow for incidental take during maintenance activities. The Department is also proposing to add a single subsection to reference when citing any MPA take violation.

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

- Current subsections 632(a)(1)(A) through 632(a)(1)(D) provide definitions and allowable uses for each designation type, which will be amended as follows:
 - Proposed language for SMRs will now include: “Notwithstanding the designation specified in this section, the boundaries of all state marine reserves exclude any pre-existing artificial structure when that structure is being actively maintained, repaired, or operated by the leaseholder(s), permittee(s), or their agent(s).”
 - Proposed language for SMPs, SMCAs, and SMRMAs will now include: “Take of marine resources incidental to the operation, maintenance, repair, removal, and replacement within the existing footprint of pre-existing artificial structures is allowed in [*corresponding designation*] pursuant to any required federal, state, and local permits and leases or if otherwise authorized through any applicable federal, state, and local

law. This subsection does not authorize retention or possession of any marine resource taken pursuant to this subsection.”

- Proposed language for SMCAs will also include: “Any area within a state marine reserve that is excluded from the boundaries of the state marine reserve pursuant to subsection 632(a)(1)(A)(1) is a state marine conservation area.”
- New subsection 632(a)(1)(E) will provide a single code section for wildlife officers to cite violations:
 - Proposed language is as follows: “It is unlawful to injure, damage, take, retain, or possess any living, geological, or cultural marine resource in any marine managed area except as otherwise specified in subsections 632(a)(1)(A)-(D).”
- New subsection 632(a)(13) will define what qualifies as a pre-existing artificial structure:
 - Proposed language is as follows: “For the purpose of this section, “pre-existing artificial structure” refers to any structure manufactured, created, installed, or constructed in state waters pursuant to any required federal, state, and local permits, leases, or other authorizations, including an incidental take buffer zone as defined in subsection 632(a)(14). Any structure constructed and installed pursuant to public safety concerns as defined in subsection 632(a)(10) will be considered a pre-existing artificial structure.”
- New subsection 632(a)(14) will define what is considered an incidental take buffer zone:
 - Proposed language is as follows: “Incidental Take Buffer Zone for Pre-Existing Artificial Structures (Incidental Take Buffer Zones). For the purpose of this section, an “incidental take buffer zone” is established in the peripheral area surrounding a pre-existing artificial structure as defined in subsection 632(a)(13). The incidental take buffer zone shall include the entirety of the surrounding water column within 250 linear feet in any direction from the pre-existing artificial structure, not including areas above the mean high tide line.”
- New subsection 632(a)(15) will define identification and permit or lease requirement for pre-existing artificial structure activities:
 - Proposed language is as follows: “At all times, when conducting any operation, maintenance, repair, removal or replacement activity of a pre-existing artificial structure authorized by a federal, state, or local permit or lease, the leaseholder(s), permittee(s), and their agent(s) shall carry in their possession a valid government-issued form of identification, and a digital or printed copy of the permit or lease. The only acceptable forms of identification are driver’s licenses or other photo identification cards issued by a U.S. state, a valid photo identification card issued by a federally recognized tribe as specified in subsection 632(a)(11), or an international passport. Valid identification and a copy of the lease or permit shall be exhibited immediately upon demand by any person authorized by the department to enforce this regulation.”

Benefits of the Proposed Regulation

The proposed amendments and subsection additions to Section 632 will allow for incidental take of marine resources in discrete areas related to the operation, maintenance, repair, removal, and replacement of a pre-existing artificial structure located within an MPA, without having to amend MPA designations and take regulations within specific MPAs statewide. These proposed changes would align MPA regulations with original design intention to consider existing leases, permits, and any other legal entitlements that current regulations may impair. These proposed changes would also simplify citing process for wildlife officers enforcing MPA regulations. This proposed regulatory amendment would not affect fishing regulations in MPAs.

Consistency and Compatibility with Existing State 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 SMRs, SMCAs, SMRMAs, SMPs 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 MMAs. 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.