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STATE OF CALIFORNIA

## **Fish and Game Commission**

March 15, 2010

TO ALL AFFECTED AND INTERESTED PARTIES:

This is to provide you with a copy of the continuation notice of proposed regulatory action relative to Section 632, Title 14, California Code of Regulations, relating to marine protected areas. The original notice and the June 19, 2009 continuation notice are posted on the Commission's website at [www.fgc.ca.gov](http://www.fgc.ca.gov) and are available upon request by contacting the Commission office at the letterhead address, phone number, facsimile number, or e-mail address.

During the regulatory process to amend Section 632, changes were made in the originally proposed regulatory language, which was adopted at the Commission's August 5, 2009, meeting. Corrections have been made to the latitude and longitude coordinates for Gerstle Cove State Marine Reserve (SMR), Salt Point State Marine Conservation Area (SMCA), Estero de San Antonio State Marine Recreational Management Area (SMRMA), Point Reyes SMR, Point Reyes SMCA, and the Southeast Farallon Island Special Closure. In addition, a variety of other changes were made to the regulations for the purpose of improving the clarity of the regulations.

Because these regulations are different from, yet sufficiently related to, the originally proposed regulations, the Administrative Procedure Act requires that we make these changes available to you for at least a 15-day written comment period.

**Ms. Marija Vojkovich, Regional Manager, Marine Region, Department of Fish and Game, (805) 568-1246 has been designated to respond to questions on the substance of the proposed regulations.**

Sincerely,

Sherrie Fonbuena  
Associate Governmental Program Analyst

Attachments

## **TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations**

**(Continuation of California Notice Register 2009, No. 18-Z,  
and Meetings of October 2, 2008, May 14, 2009, and August 5, 2009.)**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 203.1, 205(c), 219, 220, 1590, 1591, 2860, 2861, and 6750, Fish and Game Code; and sections 36725(a) and 36725(e), Public Resources Code and to implement, interpret or make specific sections 200, 202, 203.1, 205(c), 219, 220, 1580, 1583, 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, proposes to amend Section 632, Title 14, California Code of Regulations, relating to Marine Protected Areas.

### **Updated Informative Digest/Policy Statement Overview**

Please refer to the original notice dated April 21, 2009 and the June 19, 2009 continuation notice for the full description of the proposed regulations.

Development of North Central Coast (NCC) marine protected area (MPA) proposals is a process that relies upon Geographic Information System (GIS) technology. The process involves stakeholders drafting MPA concepts which are captured in real time in GIS, being operated by either the stakeholder or a GIS professional. The MPA boundaries are drawn on a computer while other specific parameters of the MPA are discussed by the stakeholder group (e.g., goals and objectives, allowed take regulations, intended boundaries). Maps of the drawn shapes are used throughout the planning and review phases of the process. Once MPA concepts are formalized as proposals, the Department's GIS team uses the captured map data to generate boundary coordinates for boundaries that were drawn in the planning process and uses descriptions of intended boundaries for reference. Because of the imprecise nature of the mapping tools used in a real-time stakeholder participation GIS workgroup setting, the boundaries created at that time, and thus the coordinates derived from those boundaries, are also imprecise. When preparing initial regulatory documents, edits are made to the coordinates to "snap" the coordinates to the discrete positions that were intended during planning. Intended coordinates are known by the attributes captured or by agreement in planning that a shape should meet Department feasibility guidelines (coordinates expressed to the 1/10 of a minute). All cleaning steps require adjustments of less than 1/10 of minute.

Maps of the preferred alternative were reviewed by the public during the Commission public process, which officially started at the Notice hearing in October 2008, although drafts of the preferred alternative maps and take regulations were circulated for ten months prior to publication of the coordinates in the second amended ISOR (April 2009). These maps accurately depicted the intended boundaries of the various MPAs.

After adoption of the regulations on August 5, 2009, the Department identified coordinate errors for some of the MPAs in the North Central Coast regulatory language. The Commission is proposing to correct the coordinates for six MPAs. These changes are not intended to affect the public's understanding of the MPA boundaries but to more accurately record them in the

regulations. These coordinate changes and other changes to the regulatory text are described below.

Specific MPAs with revised regulatory text:

**Sea Lion Cove SMCA [subsection 632(b)(8)]**

The second amended Initial Statement of Reasons (ISOR) and June 19, 2009 continuation notice contained regulatory sub-options within the Integrated Preferred Alternative (IPA) for this MPA:

- Option 1: Include Sea Lion Cove State Marine Conservation Area with take of all invertebrates and marine aquatic plants prohibited. Take of all other species is allowed.
- Option 2: Remove Sea Lion Cove from the proposed MPA network.

The Commission adopted the IPA on August 5, 2009 and selected Option 1 for this MPA: Include Sea Lion Cove State Marine Conservation Area with take of all invertebrates and marine aquatic plants prohibited. Take of all other species is allowed.

Therefore, non-regulatory text describing Option 2 has been removed and the regulatory text for Option 1 remains unchanged.

**Salt Point SMCA [subsection 632(b)(12)]**

In the second amended ISOR, the southern latitudinal boundary of this SMCA was adjusted to align with State Park boundaries, which resulted in a misalignment of the longitudinal boundary with the mean high tide line. The southern boundary was correctly placed where the latitude line intersects the coastline. However, the longitude error put the end point of the shoreward coordinate 841 meters inland. Therefore, in subsection 632(b)(12)(A), the longitude is corrected from 123° 18.33' W. long. to 123° 18.91' W. long. in order to match the mean high tide line as described in the maps.

In addition, subsequent to the adoption of the preferred alternative, a review of the Salt Point SMCA identified that the boundaries overlap Gerstle Cove State Marine Reserve as defined in subsection 632(b)(13)(A), rather than sharing a boundary as described in the maps and regulation. To improve public understanding, this subsection was reworded to clarify that Gerstle Cove SMR is excluded from Salt Point SMCA.

Punctuation corrections were also made to this subsection.

**Gerstle Cove SMR [subsection 632(b)(13)]**

Changes to coordinates at Gerstle Cove SMR were implemented to more accurately mark the position of the cove. In the originally proposed regulatory language, the preferred alternative for Gerstle Cove retained the boundaries from the existing MPA. However, after coordinates were plotted and reviewed using more precise current GPS technology, it was determined that the existing coordinates did not correctly reflect the maps, and did not align with the mean high tide line. Therefore, in subsection 632(b)(13)(A), the boundary 38° 33.93' N. lat. 123° 19.85' W. long. is corrected to 38° 33.95' N. lat. 123° 19.92' W. long.; and the boundary 38° 33.93' N. lat. 123° 19.65' W. long. is corrected 38° 33.95' N. lat. 123° 19.76' W. long., in order to match the boundaries and mean high tide line as described in the maps.

### **Russian River SMRMA [subsection 632(b)(14)]**

The originally proposed regulatory text erroneously identified the boundary as the US 101 Bridge, which is several miles inland. Therefore, in subsection 632(b)(14)(A), the boundary was corrected from the US 101 Bridge to the Highway 1 Bridge in order to match the boundaries described in the maps.

### **Bodega Head SMR [subsection 632(b)(16)]**

In subsection 632(b)(16)(A), a correction to punctuation was made, and underline format was removed from existing regulatory text at the beginning of the subsection which was inadvertently underlined as “new” text in the originally proposed regulation. Subsections 632(b)(16)(D) and (E) were reworded for the purpose of clarifying the intent of the regulation regarding conditions of access to the SMR.

### **Bodega Head SMCA [subsection 632(b)(17)]**

In subsection 632(b)(17)(B)2., the acronym “FGC” was replaced with “Fish and Game Code”.

### **Estero de San Antonio SMRMA [subsection 632(b)(19)]**

The eastern and western boundaries of this MPA were originally generated by GIS staff. It was later decided that for regulatory purposes the eastern (inland) boundary was the only coordinate necessary. However, the western boundary was placed in the originally proposed regulatory language by mistake. Therefore, in subsection 632(b)(19)(A), the boundary 122° 58.75' W. long. is corrected to 122° 57.40' W. long. in order to match the boundaries described in the maps.

### **Point Reyes SMR [subsection 632(b)(20)]**

In the originally proposed regulatory language, coordinates were transposed during editing, and some coordinates were inadvertently and erroneously identified as the “unsnapped” values. The confusion was compounded by the fact that these replaced values did not complete the entire boundary but effectively duplicated another set of coordinates in the same MPA while inadvertently removing the final coordinate. However, accompanying maps accurately reflected the intended boundaries. Therefore, in subsection 632(b)(20)(A), 37°58.98' N. lat. 123° 02.00' W. long. is removed; and 37° 58.98' N. lat. 122° 57.34' W. long. is corrected to 37° 59.00' N. lat. 122°57.34' W. long.; and 38° 01.75' N. lat. 122° 55.00' W. long. is added, in order to match the boundaries described in the maps.

The boundary that divides Point Reyes SMR and Estero de Limantour SMR was inadvertently omitted from the originally proposed regulatory text of subsections 632(b)(20)(A) and 632(b)(23)(A). Therefore, two latitudinal and longitudinal coordinates (38° 01.783' N. lat. 122° 55.286' W. long.; and 38° 01.954' N. lat. 122° 56.451' W. long.) were added in order to match the boundaries as reflected in the maps.

### **Point Reyes SMCA [subsection 632(b)(21)]**

The northeastern boundary of Point Reyes SMCA is shared with Point Reyes SMR. However, in the originally proposed regulatory language, the coordinates at the boundary with Point Reyes SMR did not coincide because “unsnapped” values were used for the SMR. This created a difference of 37 meters at the widest point. The coordinates have been aligned to close the gap. Therefore, in subsection 632(b)(21)(A), 37° 58.98' N. lat. 122° 57.34' W. long. is corrected to 37° 59.00' N. lat. 122° 57.34' W. long.; and 37° 58.98' N. lat. 123° 02.00' W. long. is corrected to 37° 59.00' N. lat. 123° 02.00' W. long., in order to match the boundaries described in the maps.

### **Point Reyes Headlands Special Closure [subsection 632(b)(22)]**

In the originally proposed regulatory language of subsection 632(b)(22)(A), coordinates for the east and west boundaries of the Point Reyes Headlands Special Closure were described as single points of latitude and longitude. To improve public understanding, subsection 632(b)(22)(A) was modified to reflect that the boundaries extend due south from each of the coordinates, as reflected clearly in the maps.

An inadvertent omission was identified for Point Reyes Headlands Special Closure. All special closures included in the proposed regulation provide an exception to allow for department employees and employees of specified government agencies to enter the area. The special closures also include an allowance for the department to grant permission to access the area at its discretion; however, this provision was inadvertently omitted from the Point Reyes Headlands Special Closure. Therefore, to be consistent with other special closures in the proposed regulation, and as intended, subsection 632(b)(22)(B) is corrected to state that “No person except department employees or employees of the United States Fish and Wildlife Service, National Park Service, or United States Coast Guard, in performing their official duties, **or unless permission is granted by the department**, shall enter this area at any time.”

### **Estero de Limantour State Marine Reserve [subsection 632(b)(23)]**

In subsection 632(b)(23)(A), several changes were made to sentence structure, grammar, punctuation, and strikeout/underline format.

The boundary that divides Point Reyes SMR and Estero de Limantour SMR was inadvertently omitted from the originally proposed regulatory text of subsections 632(b)(20)(A) and 632(b)(23)(A). Therefore, two latitudinal and longitudinal coordinates (38° 01.954' N. lat. 122° 56.451' W. long.; and 38° 01.783' N. lat. 122° 55.286' W. long.) were added in order to match the boundaries as reflected in the maps.

### **Point Resistance Rock Special Closure [subsection 632(b)(25)]**

In several subsections of Section 632, references to special closures within a defined distance from the shoreline are included. Most subsections use the commonly-used reference of “from the mean high tide line to a distance of [specified distance] seaward of the mean lower low tide line...” For purposes of consistency, subsection 632(b)(25)(A), was modified to incorporate the reference to “from the mean high tide line to a distance of 300 feet seaward of the mean lower low tide line of any shoreline” to replace the phrase “in all areas closer than 300 feet from the mean lower low tide line of any shoreline...” The meaning of these two phrases is virtually the same.

### **Double Point/Stormy Stack Rock [subsection 632(b)(26)]**

In several subsections of Section 632, references to special closures within a defined distance from the shoreline are included. Most subsections use the commonly-used reference of “from the mean high tide line to a distance of [specified distance] seaward of the mean lower low tide line...” For purposes of consistency, subsection 632(b)(26)(A), was modified to incorporate the reference to “from the mean high tide line to a distance of 300 feet seaward of the mean lower low tide line of any shoreline” to replace the phrase “in all areas closer than 300 feet from the mean lower low tide line of any shoreline...” The meaning of these two phrases is virtually the same.

### **North Farallon Islands Special Closure [subsection 632(b)(29)]**

In subsection 632(b)(29)(B) the phrase “or as authorized by subsection 632(b)(29)(C),” was added to avoid conflicting regulations between subsections (B) and (C) in subsection 632(b)(29).

In subsection 632(b)(29)(B), a space was added between “St. James,” and “in”. In addition, for clarity and consistency, coordinates were specified to two decimal places: “46’ ” was changed to “46.00’ “ and “06’ “ was changed to “06.00’ “.

A reference in subsection 632(b)(29)(D) to “three southern islets” was corrected to refer to all “islets” of the North Farallon Islands as originally intended.

In several subsections of Section 632, references to special closures within a defined distance from the shoreline are included. Most subsections use the commonly-used reference of “seaward of mean lower low tide line.” For purposes of consistency, subsections 632(b)(29)(D) and (E), were modified to incorporate the reference to “1,000 feet seaward of the mean lower low tide line of any shoreline” to replace “1,000 feet of any shoreline” and “seaward of the mean lower low tide line” to replace the term “offshore”. Due to the geography of the islands, the line that represents “offshore” and “seaward of mean lower low tide line,” or “shoreline” and “mean lower low tide line” are virtually the same.

In subsection 632(b)(29)(E)1., the regulatory text “shall terminate their vessel engine exhaust system...” was changed to “shall have their vessel engine exhaust system terminate...” for the purpose of clarifying the intent of the regulation.

In subsections 632(b)(29)(E)2., the phrase “the air compressor’s” was changed to “their air compressor’s”.

### **Southeast Farallon Special Closure [subsection 632(b)(32)]**

In subsection 632(b)(32)(B), the phrase “or as authorized by subsection 632(b)(32)(C),” was added to avoid conflicting regulations between subsections (B) and (C) in subsection 632(b)(32).

The northern boundary coordinate at Fisherman’s Bay was found to be in error. Department GIS staff accurately depicted the shape of this special closure for all documents. However, an error was made when the coordinate was transferred to the originally proposed regulatory text. This error put the coordinate one (1) minute west of its actual position. In addition, the description of boundaries around Fisherman’s Bay was complex and potentially confusing. To avoid confusion regarding the exact boundaries as described in regulation, the language has been reworded in subsection 632(b)(32)(B) to simplify the regulation and the incorrect coordinate (37° 42.26’ N. lat. 123° 01.16’ W. long.) has been removed.

In several subsections of Section 632, references to special closures within a defined distance from the shoreline are included. Most subsections use the commonly-used reference of “seaward of mean lower low tide line.” For purposes of consistency, subsections 632(b)(32)(D) and (E), were modified to incorporate the reference to “1,000 feet seaward of the mean lower low tide line of any shoreline” to replace “1,000 feet of any shoreline” and “seaward of the mean lower low tide line” to replace the term “offshore”. Due to the geography of the islands, the line that represents “offshore” and “seaward of mean lower low tide line,” or “shoreline” and “mean lower low tide line” are virtually the same.

In subsection 632(b)(32)(E)1., the regulatory text “shall terminate their vessel engine exhaust system...” was changed to “shall have their vessel engine exhaust systems terminate...” for the purpose of clarifying the intent of the regulation.

In subsections 632(b)(32)(E)2., the phrase “the air compressor’s” was changed to “their air compressor’s”.

**Redwood Shores State Marine Park [subsection 632(b)(39)]**

In subsection 632(b)(39)(C) the extra word “in” was removed.

**Montara SMR [subsection 632(b)(42)]**

The second amended Initial Statement of Reasons (ISOR) and June 19, 2009 continuation notice contained regulatory sub-options within the IPA for this MPA:

Option 1: Use the geographic reference name Montara State Marine Reserve with no take allowed.

Option 2: Retain the historic name Fitzgerald State Marine Reserve with no take allowed.

The Commission adopted the IPA on August 5, 2009 and selected Option 1 for this MPA: Use the geographic reference name Montara State Marine Reserve with no take allowed. Therefore, the regulatory text for Option 1 remains unchanged; and the non-regulatory text and regulatory text for Option 2 have been removed.

**Pillar Point SMCA [subsection 632(b)(43)]**

In subsection 632(b)(43)(B)2., the acronym “FGC” was replaced with “Fish and Game Code”.

Maps illustrating the incorrect and corrected coordinates for the MPAs are available on the Commission’s website at [www.fgc.ca.gov](http://www.fgc.ca.gov) or upon request by contacting the Commission office (1416 Ninth Street, Box 944209, Sacramento, California 94244-2090; telephone (916) 653-4899; facsimile (916) 653-5040; or e-mail [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov)). Interested persons may also inspect these documents at the Commission office, 1416 Ninth Street, Suite 1320, Sacramento, California, between the hours of 8:00 am and 5:00 pm, Monday through Friday; except on Friday, March 19, 2010, when the Commission office will be closed pursuant to Executive Order S-13-09.

In the note following the regulatory text, a punctuation correction was made to the statement “Subsequent subsections will be renumbered beginning with (44).”

**NOTICE IS ALSO GIVEN** that, if needed to comply with statutory requirement, a hearing relative to this action will be held at the Beach Resort Monterey, La Grande Room, 2600 Sand Dunes Drive, Monterey, CA, on April 7, 2010, at 8:30 a.m., or as soon thereafter as the matter may be heard. **Written comments on these changes to regulations must be submitted on or before 5:00 pm on April 1, 2010 at the address given below, or by fax at (916) 653-5040, or by e-mail to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov).**

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct

requests for the above mentioned documents and inquiries concerning the regulatory process to John Carlson, Jr., or Sherrie Fonbuena at the preceding address or phone number. **Ms. Marija Vojkovich, Regional Manager, Department of Fish and Game, phone (805) 568-1246, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

The final statement of reasons may be obtained from the address above when it has been received from agency program staff.

FISH AND GAME COMMISSION

Date: March 15, 2010

John Carlson, Jr.  
Executive Director