

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

Amend Section 632
Title 14, California Code of Regulations
Re: Marine Protected Areas

I. Date of Initial Statement of Reasons: January 9, 2014

II. Dates and Locations of Scheduled Hearings:

- | | | |
|-------------------------|-----------|-------------------|
| (a) Notice Hearing: | Date: | December 11, 2013 |
| | Location: | San Diego, CA |
| | | |
| (b) Discussion Hearing: | Date: | February 5, 2014 |
| | Location: | Sacramento, CA |
| | | |
| (c) Adoption Hearing: | Date: | April 16, 2014 |
| | Location: | Ventura, CA |

III. Description of Regulatory Action:

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

Background Information

The Marine Life Protection Act (MLPA) (Fish and Game Code Sections 2850-2863) established a programmatic framework for designating Marine Protected Areas (MPA) in the form of a statewide network. The Marine Managed Areas Improvement Act (MMAIA) (Public Resources Code Sections 36600-36620) standardized the designation of marine managed areas (MMAs), which include MPAs. The overriding goal of these acts is to ensure the conservation, sustainable use, and restoration of California's marine resources. Unlike previous laws, which focused on individual species, the acts focus on maintaining the health of marine ecosystems and biodiversity in order to sustain resources.

Existing regulations in Section 632, Title 14, California Code of Regulations (CCR), provide definitions, and site-specific area classifications, boundary descriptions, commercial and recreational take restrictions, and other restricted/allowed uses. Since implementation of MPA regulations under the MLPA, the Fish and Game Commission (Commission), Department of Fish and

Wildlife (Department), and the public, have identified opportunities to clarify take regulations and correct errors and inconsistencies that are proposed for correction in this rulemaking.

Proposed Amendment to Subsection 632(a)

This subsection will be amended by moving the subsection header (a) General Rules and Regulations up to incorporate the Section 632 introductory paragraph. This proposed amendment will allow the introductory paragraph to be citable.

Proposed Amendment to Subsections 632(a)(1)(A), (B) and (C):

These subsections will be amended to correctly state and clarify that the Department has the authority to issue scientific collecting permits.

Necessity and Rationale: Current regulations incorrectly state that the Commission may issue scientific collecting permits. Pursuant to Section 1002 of the Fish and Game Code, and consistent with Section 650, Title 14, CCR, the Department has the authority to issue scientific collecting permits.

Proposed Amendment to Subsections 632(a)(3) and 632(b):

Subsection 632(a)(3) will be amended to specifically name Pacific bonito in the pelagic finfish definition to clarify that this species is defined as a pelagic finfish under the tuna family. As a result, references to Pacific bonito will be removed when pelagic finfish are allowed to be taken in the area specific regulations [subsections 632(b)(98), (117), (120), (125), (129), (130), (138), and (144)]. When Pacific Bonito are an exception to take, the reference will remain.

Necessity and Rationale: The Department is proposing a change without regulatory effect to the definition of pelagic finfish subsection 632(a)(3) by specifying that Pacific bonito is a species of tuna in the Scombridae family and therefore is included in the current definition of pelagic finfish and subject to the same restrictions.

Proposed Amendment to Subsection 632(a)(8):

This subsection will be amended to clarify that spearfishermen may transit, with or without catch, through MPAs and other MMAs (e.g. State Marine Recreational Management Areas). The proposed regulation will specify that 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. As a result, subsection 632(a)(8) will be modified by creating subsections (A) and (B). The current

transiting by vessel language will be placed in subsection (A) and the proposed transiting with spearfishing gear text will be added in subsection (B).

Necessity and Rationale: Current regulations for transiting through MPAs and other MMAs only address vessels. As a result, there is public confusion about whether spearfishermen transiting an MPA or other MMA with or without catch is a legal activity. The proposed amendment clarifies that this activity is allowed.

Proposed Amendment to Subsection 632(b):

Subsection 632(b) will be amended by stating that certain Fish and Game Code sections listed in subsection 632(b) are “superseded” rather than “made inoperative” as they apply to designations in subsection 632(b). Making a statute inoperative requires clear authority and standards (e.g., Fish and Game Code sections 7078(d), 7078(f) and 7088 [process for declaring statutes inoperative under the Marine Life Management Act]). However, the MLPA does not specify any analogous procedure for accomplishing this. The proposed change avoids this uncertainty and more correctly expresses the operation of existing law.

Proposed Amendments to Subsection 632(b), Generally:

The Department is proposing amendments to improve clarity, compliance, and enforceability of regulations, as listed below:

1. Numerous references to “lobster” and “squid” have been changed to indicate the proper names “spiny lobster” “market squid”. [Subsections 632(b)(68), (108), (112), (131), (133) and 136)]
2. Provisions are added to establish a maximum five percent by weight allowance for the incidental take of non-target species landed or possessed on commercial vessels taking market squid, pelagic finfish, or coastal pelagic species. [Subsections 632(b)(40), (66), (73), (74), (117), (120), (129), (130), (133), (136), and (147)]

Current regulations in subsection 632(b) for some State Marine Conservation Areas (SMCAs) allow the commercial take of market squid, coastal pelagic species or pelagic finfish. Minor incidental landings (less than five percent by weight) are almost certain to occur in the course of commercial fishing for these pelagic species, which would be a violation under current regulations. Not providing an allowance for incidental take was an oversight during the MLPA planning and regulatory process. However, incidental catch was taken into consideration by the MLPA Science Advisory Team (SAT) during the MLPA planning process when they assigned round haul net, the most prevalent gear used to catch these

pelagic species, a high level of protection (Attachment 2). In determining the level of protection for an activity or gear type, the SAT considered both direct and indirect impacts, such as associated catch, habitat disturbance or removal of individuals from the ecosystem, and the consequences those individuals may have on the ecosystem or community dynamics.

In order for the fishery to operate as intended, the proposed regulations provide a maximum five percent by weight allowance for the incidental take of non-target species that is almost certain to occur in the course of commercial fishing for these pelagic species. The proposed regulation for a five percent incidental landings allowance is consistent with the current commercial take regulations for Greyhound Rock SMCA [subsection 632(b)(68)(b)] in the central coast region.

The percent by landing weight of other species taken with round haul nets is nearly always less than five percent. The Department analyzed market receipt data for vessels that reported landings using round haul nets in Southern California from 2007 to 2012. Commercial market receipts only provide data for species that were landed and brought to market. Discarded catch is not reported on market receipts and was not available for this analysis. For each trip in which a given species made up the largest proportion of the catch, those species and all other species reported on the same landing receipts are represented as a percent of the landed catch by weight.

Of the 2,820 reported round haul net landings analyzed, 21 percent (602 landings) contained other species taken incidentally with coastal pelagic species. On average, incidental catch accounted for 0.24 percent plus or minus 1.40 percent (standard deviation) of the landed weight for the 602 landings. The percent incidental catch by weight per landing ranged from 29 percent to less than 0.01 percent; however, only two landings had an incidental catch by weight higher than five percent (Figure 1). The two incidents included a mixed load of Pacific mackerel (71 percent) and Pacific bonito (29 percent) and a mixed load of Pacific sardine (87 percent) and Pacific butterfish (pompano) (13 percent). While the average (0.24 percent) incidental landings of non-target species is much lower than the recommended five percent allowance, the allowance covers 99.7 percent of the landings included in the Department analyses (Figure 1). In addition, consultation with the Department's Law Enforcement Division indicated that anything less than a five percent allowance would be difficult to detect at the dock and enforce.

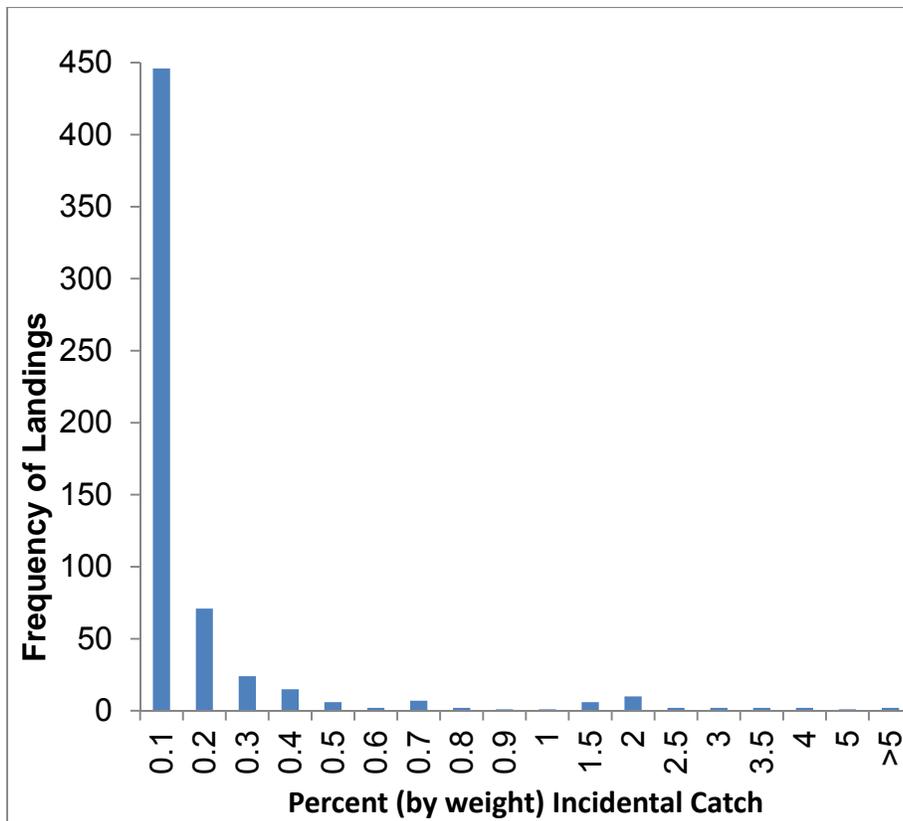


Figure 1. Histogram showing the frequency of reported round haul net landings containing non-target species (n= 602) by the percent landing weight of non-target species. Data source: market receipt data for reported round haul net landings targeting coastal pelagic species made in southern California from 2007 to 2012.

3. Commercial methods of take for coastal pelagic species, which includes market squid, are added to reflect actual fishing practices by allowing the use of brail gear and light boats. [Subsections 632(b)(117), (120), (129), (130), (133), and (136)]

Current regulations in subsection 632(b) for some SMCAs allow the commercial take of coastal pelagic species, which includes market squid, by round haul nets only. However, during the 2009-2010 market squid season 80 percent of the commercial round haul net vessel trips statewide employed the use of lights or light boats [subsection 53.01(k), Title 14, CCR] to attract market squid in sufficient numbers to be harvested with round haul nets. Section 86 of Fish and Game Code defines take as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill”. Light boats are used to pursue market squid via attraction and therefore need to be added as an allowed method of take within these SMCAs. Brail gear [subsection 53.01(a), Title 14, CCR] is also commonly used by light boats and sometimes by round haul vessels to scoop market squid. Allowing these additional gear types for the take of market squid or

coastal pelagic species will increase compliance and allow the commercial fishery to operate in the SMCAs as was intended under current regulations. Not allowing these other gears was an oversight during the MLPA planning process and the resulting regulatory process.

Adding brail gear for the take of coastal pelagic species and market squid will not change the level of protection afforded by these SMCAs. The SAT assigned round haul nets and dip nets (a type of brail gear) a high level of protection during the south coast MLPA planning process. Light boats were not assigned a level of protection by the SAT as this gear is only used to attract market squid. Light boats are required to use shields on the lights to focused the light downward and a maximum wattage limit to reduce impacts to seabirds (Section 149, Title 14, CCR).

Amendments to Subsection 632(b), Specifically:

The following subsections of Section 632(b) are proposed for amendments to clarify the restrictions and allowable activities in these MPAs; provide greater clarity and enforcement; correct boundary descriptions; remove unnecessary regulations; or provide consistency in format:

(30) Sea Lion Cove State Marine Conservation Area.

The existing regulation specifies that the commercial and recreational take of marine invertebrates and marine aquatic plants is prohibited and that the take of all other species is allowed. The proposed regulation will clarify that finfish are an allowed take.

(39) Bodega Head State Marine Reserve.

The existing regulation provides area boundaries, take restrictions, and anchoring and mooring restrictions within the Bodega Head SMR. Section 10502.7 of the Fish and Game Code gives authority to the director of the Bodega Marine Life Refuge to authorize entry into the refuge for the purpose of taking fish, invertebrates, or marine plants for scientific study and to take or possess such species; and to authorize anchoring or mooring of a vessel in the Refuge for the purposes of scientific study. Section 10656 of the Fish and Game Code specifies that except as permitted by federal law or emergency caused by hazardous weather, it is unlawful to anchor or moor a vessel within the Bodega Marine Life Refuge without authorization from the Bodega Marine Life Refuge. In addition, Section 10661 of the Fish and Game Code authorizes regents of the University of California, and all officers, employees and students of the university to take, for scientific purposes, any invertebrate or marine plant within the Refuge, without a permit from the Department.

These provisions were unintentionally applied to the entire Bodega Head SMR in rulemaking file 2010-0413-02SR. During the Marine Life Protection Act planning phase, the North Central Coast Regional Stakeholder Group (NCCRSG) developed MPA proposals for the North Central Coast Study Region. Based on a review of MPA planning records, no documentation specifies intent to expand the no-anchoring and mooring provision or the authority of the director of the Refuge to allow anchoring, mooring or scientific take beyond the existing Refuge.

The proposed regulation specifies that the authority to authorize certain activities lies with the director of the Bodega Marine Life Refuge and applies only to the formerly designated Bodega Marine Life Refuge as granted in Fish and Game Code subsections (b) and (c) of Section 10502, and Section 10656, rather than the entire Bodega Head SMR. A map showing the location (in yellow) of the formerly designated Bodega Marine Life Refuge relative to the Bodega Head SMR (in red) is provided in Figure 2.

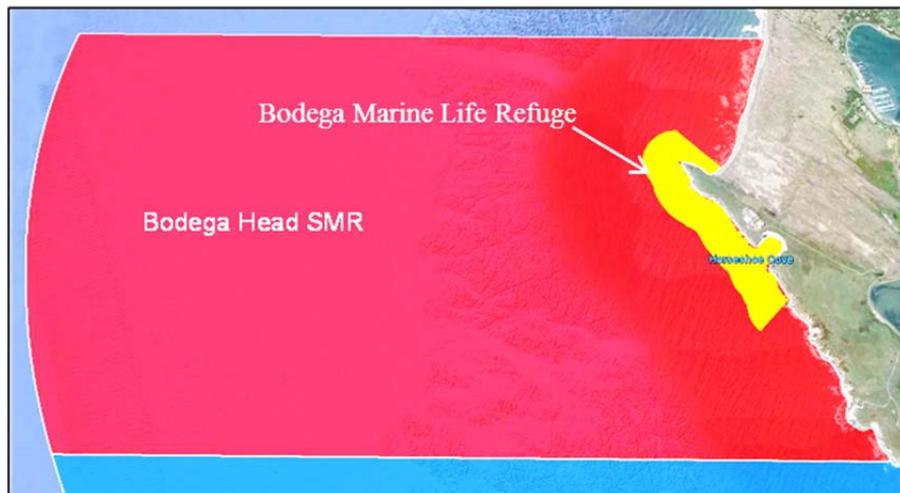


Figure 2. The Bodega Head SMR (red) and the location of the formerly designated Bodega Marine Life Refuge (yellow).

(40) Bodega Head State Marine Conservation Area.

The proposed regulation specifies a maximum five percent by weight allowance for incidental take of non-target species landed or possessed on commercial vessels targeting pelagic finfish or market squid.

(66) Pillar Point State Marine Conservation Area.

The proposed regulation specifies a maximum five percent by weight allowance for incidental take of non-target species landed or possessed on commercial vessels targeting pelagic finfish or market squid.

(68) Greyhound Rock State Marine Conservation Area.

The proposed regulation specifies “market” squid and modifies the language for the five percent by weight allowance for incidental take of non-target species landed or possessed on commercial vessels targeting market squid.

(73) Soquel Canyon State Marine Conservation Area.

The proposed regulation specifies a maximum five percent by weight allowance for incidental take of non-target species landed or possessed on commercial vessels targeting pelagic finfish.

(74) Portuguese Ledge State Marine Conservation Area.

The proposed regulation specifies a maximum five percent by weight allowance for incidental take of non-target species landed or possessed on commercial vessels targeting pelagic finfish.

(76) Lovers Point State Marine Reserve.

The proposed regulation changes the name to “Lovers Point-Julia Platt State Marine Reserve.” As mayor of the City of Pacific Grove in 1931, Julia B. Platt was instrumental in establishing one of the first marine reserves in California, the Hopkins Marine Life Refuge (Section 10901, Fish and Game Code). She also set aside the remainder of the city’s coastline as the Pacific Grove Marine Refuge that later became the Pacific Grove Marine Gardens Fish Refuge (Section 10801, Fish and Game Code). The proposed amendment was recommended by the Pacific Grove City Council and will recognize Dr. Platt for the impacts she has had on the Pacific Grove Coastline.

(98) Naples State Marine Conservation Area.

The proposed regulation

- Clarifies the species that may be taken by recreational spearfishing;
- Removes reference to Pacific bonito which is now included in the definition of pelagic finfish;
- Clarifies the requirements for the commercial take of giant kelp and makes requirements consistent with Section 165, Title 14, CCR,

which requires a copy of the landing record to be maintained onboard the vessel during the harvest control period for that MPA. This SMCA does not have a harvest control period, therefore, the current requirement to maintain a copy of the landing record is not necessary.

(108) Painted Cave (Santa Cruz Island) State Marine Conservation Area.

The proposed regulation specifies the recreational take of “spiny” lobster.

(109) Gull Island (Santa Cruz Island) State Marine Reserve

The boundary description is proposed to include “in the order listed” to be consistent with other MPA boundary descriptions.

(112) Anacapa Island State Marine Conservation Area.

The proposed regulation specifies the recreational take of “spiny” lobster.

(117) Point Dume State Marine Conservation Area.

The proposed regulation

- Removes reference to Pacific bonito which is now included in the definition of pelagic finfish;
- Clarifies the species that may be taken by recreational spearfishing;
- Adds brail gear and light boat as commercial methods of take for coastal pelagic species and specifies a maximum five percent by weight allowance for incidental take of non-target species landed or possessed on commercial vessels targeting coastal pelagic species.

(120) Abalone Cove State Marine Conservation Area.

The proposed regulation

- Removes reference of Pacific bonito, which is now included in the definition of pelagic finfish, from the recreational take allowance;
- Clarifies the species that may be taken by recreational spearfishing;
- Adds brail gear and light boat as commercial methods of take for coastal pelagic species and Pacific bonito and specifies a maximum five percent by weight allowance for incidental take of non-target species landed or possessed on commercial vessels targeting coastal pelagic species and Pacific bonito.

(124) Blue Cavern (Catalina Island) State Marine Conservation Area.

The proposed regulation changes the name to “Blue Cavern (Catalina Island) Onshore State Marine Conservation Area.”

Name changes in subsections 632(b)(124) and (125) for Blue Cavern (Catalina Island) and Bird Rock (Catalina Island) SMCAs are necessary to avoid confusion over the actual location of Bird Rock, which is located inside the Blue Cavern SMCA and not inside the Bird Rock SMCA. Bird Rock (Catalina Island) SMCA will be renamed Blue Cavern (Catalina Island) Offshore SMCA and Blue Cavern (Catalina Island) SMCA will be renamed Blue Cavern (Catalina Island) Onshore SMCA consistent with the naming convention for other adjacent MPAs. A map is provided in Figure 3, below.

(125) Bird Rock (Catalina Island) State Marine Conservation Area.

The proposed regulation

- Removes reference to Pacific bonito which is now included in the definition of pelagic finfish.
- Changes the name to “Blue Cavern (Catalina Island) Offshore State Marine Conservation Area”.

Name changes in subsections 632(b)(124) and (125) for Blue Cavern (Catalina Island) and Bird Rock (Catalina Island) SMCAs are necessary to avoid confusion over the actual location of Bird Rock, which is located inside the Blue Cavern SMCA and not inside the Bird Rock SMCA. Bird Rock (Catalina Island) SMCA will be renamed Blue Cavern (Catalina Island) Offshore SMCA and Blue Cavern (Catalina Island) SMCA will be renamed Blue Cavern (Catalina Island) Onshore SMCA consistent with the naming convention for other adjacent MPAs. A map is provided in Figure 3.

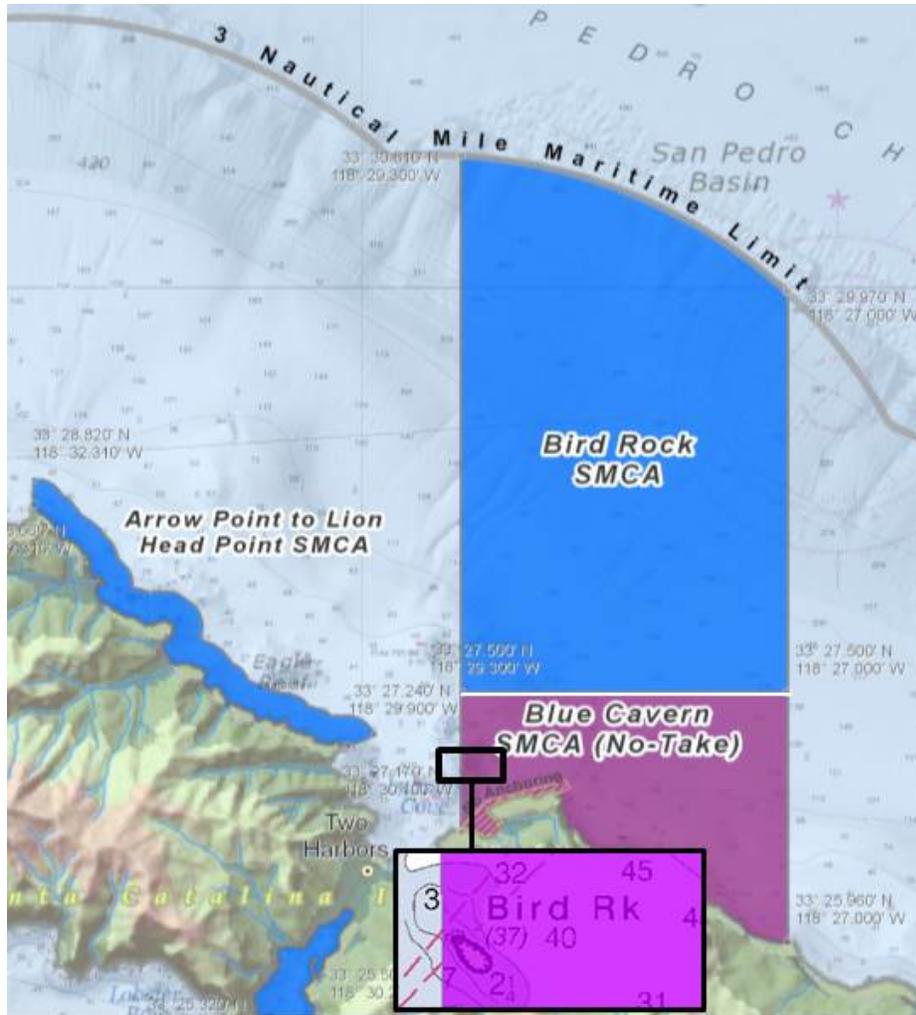


Figure 3. Map of the Two Harbors area of Santa Catalina Island showing the location of Bird Rock (inset) relative to the Bird Rock (Catalina Island) SMCA and Blue Cavern (Catalina Island) SMCA boundaries (indicated by the white line).

(128) Lover's Cove (Catalina Island) State Marine Conservation Area.

The proposed regulation corrects a boundary error and alleviates enforcement concerns over leaving a small portion of the Cabrillo Mole outside the SMCA open to all recreational fishing, while the majority of the Mole inside the SMCA is restricted only to hook-and-line take. The current northern boundary of the SMCA was intended to line up with the end of the Cabrillo Mole at the Catalina Island terminal near Avalon. Field inspections by Department's law enforcement officers indicate that the current latitude and longitude coordinates for this boundary fall short of the end of the Cabrillo Mole leaving the last 65 feet of the Cabrillo Mole outside the SMCA. The proposed boundary extends the northern boundary 65 feet northward to cover the entire Cabrillo Mole. The

proposed boundary will change the size of the SMCA from 0.055 to 0.061 square miles. Maps of the proposed boundary change are provided in Figure 4.

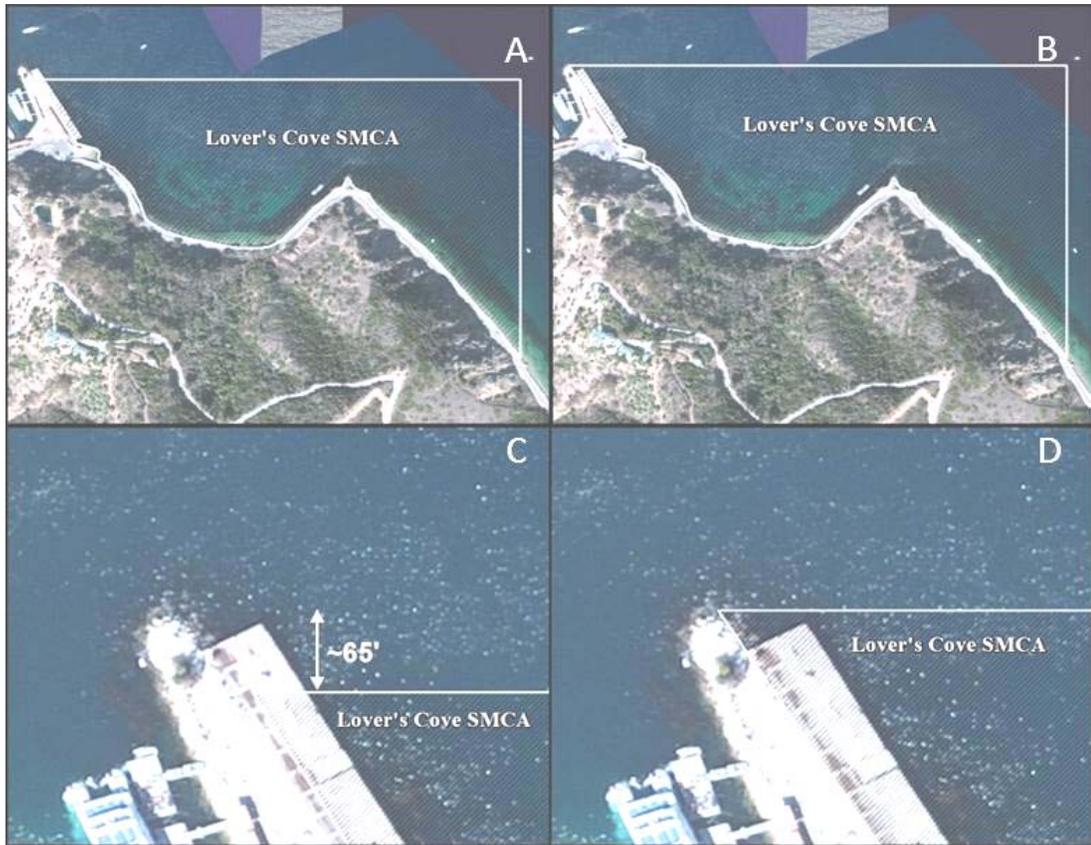


Figure 4. Lover's Cove (Catalina Island) SMCA (outlined in white) in the city of Avalon on Santa Catalina Island showing the location of the current boundary (A and C) and the proposed boundary (B and D).

(129) Farnsworth (Catalina Island) Onshore State Marine Conservation Area.

The proposed regulation

- Clarifies the species that may be taken by recreational spearfishing;
- Removes reference to Pacific bonito which is now included in the definition of pelagic finfish;
- Adds brail gear and light boat as commercial methods of take for coastal pelagic species and specifies a maximum five percent by weight allowance for incidental take of non-target species landed or possessed on commercial vessels targeting coastal pelagic species.

(130) Farnsworth (Catalina Island) Offshore State Marine Conservation Area.

The proposed regulation

- Clarifies the species that may be taken by recreational spearfishing;
- Removes reference to Pacific bonito which is now included in the definition of pelagic finfish;
- Adds brail gear and light boat as commercial methods of take for coastal pelagic species and specifies a maximum five percent by weight allowance for incidental take of non-target species landed or possessed on commercial vessels targeting coastal pelagic species.

(131) Cat Harbor (Catalina Island) State Marine Conservation Area.

The proposed regulation specifies the recreational take of “market” squid and “spiny” lobster.

(133) Crystal Cove State Marine Conservation Area.

The proposed regulation

- Specifies the recreational take of “spiny” lobster;
- Adds brail gear and light boat as commercial methods of take for coastal pelagic species and specifies a maximum five percent by weight allowance for incidental take of non-target species landed or possessed on commercial vessels targeting coastal pelagic species.

(136) Dana Point State Marine Conservation Area.

The proposed regulation

- Specifies the recreational take of “spiny” lobster;
- Adds brail gear and light boat as commercial methods of take for coastal pelagic species and specifies a maximum five percent by weight allowance for incidental take of non-target species landed or possessed on commercial vessels targeting coastal pelagic species;
- Clarifies that trap gear is allowed for the commercial take of spiny lobster;
- Removes the limitation of take “below the mean lower low tide line” for recreational take. This part of the take regulations, which is unique to Dana Point SMCA, is an enforcement issue and is confusing to shore anglers as they need to cast and retrieve their lines across the mean lower low tide line. The original intent of this language was to protect the rocky intertidal marine life and habitat but it is proposed to be removed, as it is unnecessary due to the prohibition of take in tidepools provided in subsection (D) of the regulations for this SMCA. The proposed regulation will make the take regulations more enforceable and consistent with the Crystal Cove SMCA take regulations.

(138) Swami's State Marine Conservation Area.

The proposed regulation clarifies recreational take by spearfishing and removes reference to Pacific bonito which is now included in the definition of pelagic finfish.

(140) San Dieguito Lagoon State Marine Conservation Area.

The proposed regulation

- Adds latitude and longitude coordinates to clarify the western boundary of the SMCA. The addition of the coordinates of the boundary line will not change the existing boundary.
- Removes the fishing allowance from the Grand Avenue Bridge within the SMCA. The Grand Avenue Bridge was converted to a wildlife viewing platform in 2008 and is no longer a bridge. The wildlife viewing platform is privately owned by the San Dieguito River Park Joint Power Authority, which prohibits fishing from the platform.

(144) South La Jolla State Marine Conservation Area.

The proposed regulation removes reference to Pacific bonito which is now included in the definition of pelagic finfish.

(147) Tijuana River Mouth State Marine Conservation Area.

The proposed regulation specifies a maximum five percent by weight allowance for incidental take of non-target species landed or possessed on commercial vessels targeting coastal pelagic species.

Goals and Benefits of the Proposed Regulations

The proposed regulations will provide clarity and consistency within the regulations and will provide consistency with current fishing practices.

(b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 200, 202, 205(c), 220, 240, 1590, 1591, 2860, 2861, and 6750, Fish and Game Code; and Sections 36725(a) and 36725(e), Public Resources Code.

Reference: Sections 200, 202, 205(c), 220, 240, 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.

(c) Specific Technology or Equipment Required by Regulatory Change:

None

(d) Identification of Reports or Documents Supporting Regulation Change:

Attachment 1: [Economic Impact Analysis](#)

Attachment 2: Draft Methods Used to Evaluate Marine Protected Area Proposals in the MLPA South Coast Study Region October 26, 2009, chapter 3 and appendix A. Also available at http://www.dfg.ca.gov/marine/pdfs/binders_sc/b2b.pdf

(e) Public Discussions of Proposed Regulations Prior to Notice Publication:

No public meetings were held prior to the notice publication. The 45-day comment period provides adequate time for public review of the proposed amendments to Section 632.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

No Alternatives were identified.

(b) No Change Alternative:

The no-change alternative would leave existing MPA regulations with errors and inconsistencies, and would not provide for better public understanding and enforcement of MPA regulations.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable 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 proposed regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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 make clarification and consistency changes to the current regulations; make minor boundary adjustments; rename existing MPAs; and add specified methods of take and incidental take allowance consistent with commercial fishing practices.

- (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 is not aware of any impacts the proposed action would have on creation or elimination of jobs or businesses in California or on the expansion of businesses in California.

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

The existing regulations, and proposed amendments, benefit the environment by protecting habitat and biodiversity in MPAs.

- (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.

Informative Digest/Policy Statement Overview

The Marine Life Protection Act (MLPA) (Fish and Game Code Sections 2850-2863) established a programmatic framework for designating Marine Protected Areas (MPAs) in the form of a statewide network. The Marine Managed Areas Improvement Act (MMAIA) (Public Resources Code Sections 36600-36620) standardized the designation of marine managed areas (MMAs), which include MPAs. The overriding goal of these acts is to ensure the conservation, sustainable use, and restoration of California's marine resources. Unlike previous laws, which focused on individual species, the acts focus on maintaining the health of marine ecosystems and biodiversity in order to sustain resources.

Existing regulations in Section 632, Title 14, California Code of Regulations (CCR), provide general provisions, definitions, and site-specific area classification, boundary descriptions, commercial and recreational take restrictions, and other restricted/allowed uses for MPAs, MMAs and special closures.

The proposed regulations will clarify take regulations and correct errors and inconsistencies.

Amendment to Subsection 632(a)

This subsection will be amended by moving the subsection header (a) General Rules and Regulations up to incorporate the Section 632 introductory paragraph.

Amend subsections 632(a)(1)(A), (B) and (C)

These subsections will be amended to correctly state and clarify that the Department (not the Commission) has the authority to issue scientific collecting permits.

Amend subsection 632(a)(3) and subsections 632(b)(98), (117), (120), (125), (129), (130), (138), and (144)

The definition of Pelagic Finfish will be amended to specifically add Pacific bonito and thereby clarify that this species is a pelagic finfish under the tuna family. As a result, references to Pacific bonito will be removed when pelagic finfish are allowed to be taken in the area specific regulations. When Pacific bonito are an exception to take, the reference will remain.

Amend subsection 632(a)(8)

This subsection will be amended to clarify that spearfishermen may transit, with or without catch, through MPAs and other MMAs. The proposed regulation will specify that 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.

Amendments to subsection 632(b)

This subsection will be amended by stating that certain Fish and Game Code sections listed in subsection 632(b) are “superseded” rather than “made inoperative” as they apply to designations in Subsection 632(b).

Numerous references to “lobster” and “squid” will be changed to indicate the proper names “spiny lobster” and “market squid”. [Subsections 632(b)(68), (108), (112), (131), (133) and 136]]

Provisions will be added to establish a maximum five percent by weight allowance for the incidental take of non-target species landed or possessed on commercial vessels targeting market squid, pelagic finfish, or coastal pelagic species. [Subsections 632(b)(40), (66), (73), (74), (117), (120), (129), (130), (133), (136), and (147)]

Commercial methods of take for coastal pelagic species, which includes market squid, will be added to reflect actual fishing practices by allowing the use of brail gear and light boats. [Subsections 632(b)(117), (120), (129), (130), (133), and (136)]

The regulations for the Bodega Head State Marine Reserve (SMR) [subsection 632(b)(39)] will clarify that the director of the Bodega Marine Life Refuge may authorize certain activities and take, pursuant to sections 10502.7 and 10565 of the Fish and Game Code, only within the formerly-designated Bodega Marine Life Refuge, not the entire SMR. The regulation for this SMR will also clarify that pursuant to Section 10661 of the Fish and Game Code, regents, officers, employees and students of the University of California may take, for scientific purposes, any invertebrate or marine plant without a permit from the Department, only within the formerly-designated Bodega Marine Life Refuge, not the entire SMR.

The Lovers Point SMR [subsection 632(b)(76)] will be renamed the Lovers Point-Julia Platt SMR.

Commercial kelp harvesting regulations in the Naples SMCA [subsection (b)(98)] will be clarified and made consistent with Section 165, Title 14, CCR.

Blue Cavern (Catalina Island) SMCA [subsection 632(b)(124)] will be renamed Blue Cavern (Catalina Island) Onshore SMCA, and Bird Rock (Catalina Island) SMCA [subsection 632(b)(125)] will be renamed Blue Cavern (Catalina Island) Offshore SMCA.

The northern boundary of Lover’s Cove SMCA [subsection 632(b)(128)] will be moved to line up with the end of the Cabrillo Mole.

The limitation of take “below the mean lower low tide line” for recreational take in the Dana Point SMCA [subsection 632(b)(136)] will be removed. The commercial fishing regulations for this SMCA will clarify that trap gear is allowed for the commercial take of spiny lobster.

The western boundary of the San Dieguito Lagoon SMCA [subsection 632(b)(140)] will be specified by latitude and longitude coordinates, and take regulations for this SMCA will be modified to remove the fishing allowance from the Grand Avenue Bridge.

In addition, the following subsections under 632(b) will be amended for clarity and consistency:

- (30) Sea Lion Cove State Marine Conservation Area.
- (40) Bodega Head State Marine Conservation Area.
- (98) Naples State Marine Conservation Area.
- (109) Gull Island (Santa Cruz Island) State Marine Reserve.
- (117) Point Dume State Marine Conservation Area.
- (120) Abalone Cove State Marine Conservation Area.
- (124) Blue Cavern (Catalina Island) State Marine Conservation Area.
- (129) Farnsworth (Catalina Island) Onshore State Marine Conservation Area.
- (130) Farnsworth (Catalina Island) Offshore State Marine Conservation Area.
- (138) Swami's State Marine Conservation Area.

Benefits of the Proposed Action

The proposed amendments will clarify the restrictions and allowable activities in these MPAs; provide greater ease of public understanding and enforceability; correct boundary descriptions; remove unnecessary regulations; and provide consistency in format.

Evaluation of Incompatibility With Existing Regulations

The proposed regulations are consistent with regulations concerning sport and commercial fishing and kelp harvest 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 Fish and Game Commission has authority to regulate commercial and recreational fishing and any other taking of marine species in Marine Managed Areas. Commission staff has searched the California Code of Regulations 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.