

California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VIII. Location of Department Files:

Department of Fish and Wildlife
1416 Ninth Street
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

No alternatives were identified by or brought to the attention of Commission staff that would have the same desired regulatory effect.

(b) No Change Alternative:

The no-change alternative would not include Cher-Ae Heights Indian Community of the Trinidad Rancheria and Resighini Rancheria in the list of tribes exempt from the area and take regulations for Reading Rock SMCA. The no-change alternative is inconsistent with the regulations allowing for tribal take exemptions for those tribes in the north coast region that submitted factual records of historic and current uses in specific geographies. In addition, the no-change alternative would not reflect the recent name change of the Smith River Rancheria to Tolowa Dee-Ni' Nation.

(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 adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

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 will neither increase nor decrease recreational or commercial fishing opportunities within marine protected areas.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission does not anticipate any impacts on the creation or elimination of jobs, creation of new businesses, elimination of existing businesses or expansion of businesses in California because these changes will neither increase nor decrease recreational or commercial fishing opportunities within marine protected areas.

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

- (c) Cost Impacts on a Representative Private Person or Business:

The agency 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.

Updated Informative Digest/Policy Statement Overview

The Marine Life Protection Act (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 (Public Resources Code Sections 36600-36900) standardized the designation of marine managed areas (MMAs), which include MPAs. The overriding goal of these acts is to protect, conserve, and help sustain California's valuable marine resources including maintaining natural biodiversity through adaptive management.

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, including exemptions from the area and take regulations for those tribes in the north coast region that submitted factual records of historic and current uses in specific geographies.

Proposed Amendments:

The regulatory text in subsection 632(b)(6) is proposed to be amended to add Cher-Ae Heights Indian Community of the Trinidad Rancheria and Resighini Rancheria to the list of tribes exempt from the area and take regulations for Reading Rock State Marine Conservation Area.

The regulatory text in subsections 632(b)(1) and 632(b)(2) is proposed to be updated to reflect Smith River Rancheria's name change to Tolowa Dee-Ni' Nation.

Other changes are proposed for clarity and consistency

Goals and Benefits of the Proposed Regulations

The proposed regulations will provide clarity and consistency within the regulations and will align current exemptions from the area and take regulations in the north coast region with factual records of historic and current uses submitted by federally recognized tribes to the Fish and Game Commission.

Consistency with Other State 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 MMAs. Fish and Game Commission staff has searched the CCR and has found no other regulations pertaining to authorized activities in MPAs and therefore has determined that the proposed amendments are neither inconsistent, nor incompatible, with existing state regulations.

At its December 7, 2016, meeting in San Diego, the Fish and Game Commission (Commission) adopted the regulatory amendments as described in the Notice of Proposed Action.

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

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
ADDENDUM TO FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

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

Clarification of text in Initial Statement of Reasons, Section III(a) - Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary.

Text on page 2 of the Initial Statement of Reasons (ISOR), under the heading of Tribal Take, states "...For a tribe to be identified as eligible for 'tribal take' within specific MPAs, as defined in subsection 632(a)(11), the tribe must be federally-recognized and submit a factual record of current or historic uses that demonstrates a current or historic use within specified geographies proposed as MPAs." This sentence can be interpreted to mean that the requirement for tribes to submit a factual record is codified in subsection 632(a)(11); however, there is no such regulatory requirement. As described in the ISOR for the original north coast marine protected areas rulemaking, at the Commission's June 29-30, 2011, meeting, the Commission chose to provide for specific non-commercial tribal uses by federally recognized tribes that met the definition in 632(a)(11). The Commission asked the federally recognized tribes that had requested tribal exemptions to submit a factual record of historic and current uses in specific geographies, other than SMRs, in order for tribes to be considered for tribal exemptions.

Updates to Authority and Reference Citations Based on Recent Legislation

Senate Bill 1473 (Stats. 2016, ch. 546) made organizational changes to the Fish and Game Code that became effective January 1, 2017. The changes included moving the Commission's exemptions from specified Administrative Procedure Act time frames from Section 202 to Section 265 of the Fish and Game Code, and moving the Commission's authority to adopt emergency regulations from Section 240 to Section 399 of the Fish and Game Code. These were organizational changes only. In accordance with these changes to the Fish and Game Code, sections 202 and 240 are removed from, and section 265 and 399 are added to, the authority and reference citations for Section 632, Title 14, CCR. Senate Bill 1473 also repealed subdivision (b) of Section 220 of the Fish and Game Code; therefore, Section 220 is removed from the list of authority and reference citations in Section 632.