

Regional Implementation of Marine Life Protection Act

The statewide network was assembled in an incremental series of regional public planning processes, known as the MLPA Initiative, across the coastline of California. The central coast, north central coast, south coast, and north coast regional regulations were implemented on September 21, 2007, May 1, 2010, January 1, 2012, and December 19, 2012, respectively. San Francisco Bay, the final region for consideration under the MLPA, is currently on hold until planning efforts in the Sacramento-San Joaquin River Delta have been completed.

Implementation of Marine Life Protection Act in North Coast Region

North coast regional MPA planning was conducted under the MLPA Initiative. See the Initial Statement of Reasons (ISOR) for Rulemaking File No. 2012-1005-02s (available at <http://www.fgc.ca.gov/regulations/2012/index.aspx#632nc>) for background of the MLPA Initiative process for developing the regional MPAs proposal submitted to the Fish and Game Commission (Commission) for consideration in February 2011. The submitted proposal included, among other things, modifications to accommodate tribal take allowances within select MPAs in recognition of traditional non-commercial tribal take in the north coast region and the need for a potential tribal take category within MPAs.

Tribal take

On June 6, 2012, the Commission adopted regulations that designated 20 MPAs and 7 special closures within the north coast region. The adopted regulations exempted specific federally-recognized tribes from the MPA area and take regulations in specified MPAs. 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.

The originally proposed language in the ISOR for Rulemaking File No. 2012-1005-02s included the 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 State Marine Conservation Area (SMCA) based on their submitted factual records. However, the Commission adopted regulatory language that listed the Yurok Tribe as the only federally-recognized tribe exempt from regulations within Reading Rock SMCA.

Cher-Ae Heights Indian Community of the Trinidad Rancheria and Resighini Rancheria subsequently requested that the Commission reconsider adding an exemption for their respective tribes in the Reading Rock SMCA. Their status as independent, federally recognized sovereign tribal nations and their fulfillment of the Commission's requirement for documentation of historic or current uses of the area through a factual record is the foundation for the request.

In addition, the adopted regulations included a tribal take exemption for Smith River Rancheria in two SMCAs. In 2015, Smith River Rancheria changed its name to Tolowa Dee-ni' Nation and has requested that the regulations be updated to reflect the name change.

Proposed Amendments:

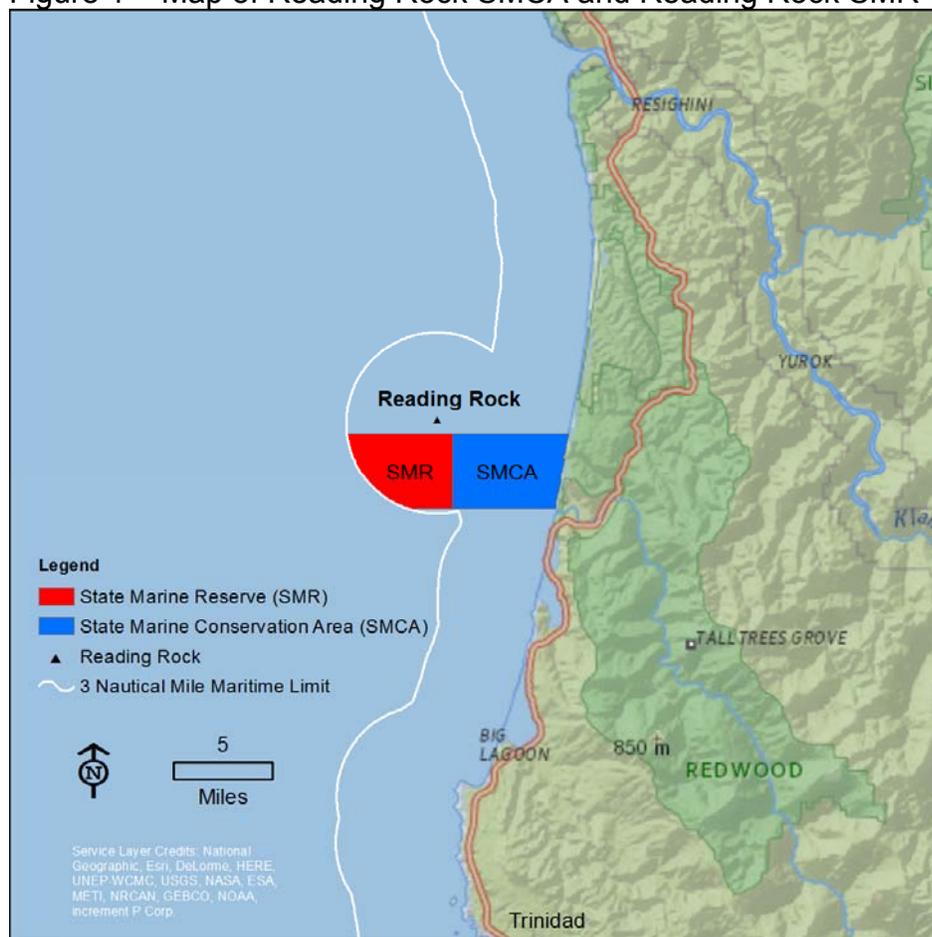
Tribal Take in Reading Rock SMCA: The regulatory text in subsection 632(b)(6) is proposed to be amended to add Cher-Ae Heights Indian Community of the Trinidad Rancheria and Resighini Rancheria to the list of tribes exempt from the area and take regulations for Reading Rock SMCA^a (Figure 1), consistent with Rulemaking File No. 2012-1005-02s.

Tribal Name Change: 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. Other changes are proposed for clarity and consistency.

^a Reading Rock SMCA is located shoreward from Reading Rock State Marine Reserve to the mainland coast, and does not encompass the geographic feature called Reading Rock.

Figure 1 – Map of Reading Rock SMCA and Reading Rock SMR



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 Commission.

- (b) Authority and Reference Sections from Fish and Game Code and Public Resources 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:

Marine Life Protection Act, North Coast Study Region, Final EIR,
California Fish and Game Commission/California Department of Fish and
Game, May 2012.

(Available at http://www.dfg.ca.gov/marine/mpa/impact_nc.asp)

Factual Record of Current and Historical Uses by the Cher-Ae Heights
Indian Community of the Trinidad Rancheria Submission to the California
Fish and Game Commission, August 29, 2011.

Letter received October 31, 2011, from the Resighini Rancheria to the
California Fish and Game Commission: Resighini Rancheria Factual
Record of Historic or Current Uses in North Coast Marine Protected
Areas.

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

The topic of tribal take in MPAs was discussed during the following
meetings of the Commission's Tribal Committee:

- April 7, 2015, Santa Rosa
- June 9, 2015, Mammoth Lakes
- October 6, 2015, Los Angeles

The topic was also discussed at the following Commission meetings:

- October 7, 2015, Los Angeles: received the Tribal Committee's
recommendation
- December 9, 2015, San Diego: received and discussed draft
regulations
- February 10-11, 2016, Sacramento: received update on proposed
draft rulemaking
- April 13-14, 2016, Santa Rosa: directed staff to initiate a rulemaking
- June 22-23, 2016, Bakersfield: received an update on the progress
of the rulemaking

IV. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change:

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 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 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.

VII. Economic Impact Assessment:

The proposed regulations will 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 SMCA, and will reflect Smith River Rancheria's name change to Tolowa Dee-Ni' Nation.

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

The Commission does not anticipate any significant impacts on the creation or elimination of jobs, because the regulatory action only affects tribal take of marine species by members of the specified tribes.

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

The Commission does not anticipate any significant impacts on the creation of new business or the elimination of existing businesses in California, because the regulatory action only affects tribal take of marine species by members of the specified tribes.

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

The Commission does not anticipate any significant impacts on the expansion of businesses currently doing business in California, because the regulatory action only affects tribal take of marine species by members of the specified tribes.

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

The Commission does not anticipate benefits to the health and welfare of California residents, generally; however, members of the affected tribes may realize health and welfare benefits related to consumption of seafood.

- (e) Benefits of the Regulation to Worker Safety:

The Commission does not anticipate any benefits to worker safety because this regulatory action will not impact working conditions or worker safety.

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

The Commission does not anticipate any benefits to the State's environment because the regulatory action only affects tribal take of marine species by members of the specified tribes pursuant to current seasonal, bag, possession, gear, and size limits in Fish and Game Code statutes and regulations of the Commission.

- (g) Other Benefits of the Regulation:

The Commission anticipates benefits to federally-recognized tribes with a factual record showing in specified areas historic and current traditional fishing, gathering, and harvesting uses, because the regulatory action will allow continued take, including for ceremonial, cultural and stewardship uses.

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.