STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR PROPOSED 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: June 4, 2015

II. Dates and Locations of Scheduled Hearings:

(a) Notice Hearing: Date: August 4, 2015
Location: Fortuna, CA

(b) Discussion Hearing: Date: October 7, 2015
Location: Los Angeles, CA

(c) Adoption Hearing: Date: December 9, 2015
Location: San Diego, 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 (MPAs) in the form of a statewide network. The Marine Managed Areas Improvement Act (Public Resources Code [PRC] 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.

Since implementation of MPA regulations Section 632, Title 14, California Code of Regulations, the Fish and Game Commission (Commission), Department of Fish and Wildlife (Department), and the public, have identified opportunities to clarify the regulations in subsequent administrative regulatory packages. This regulatory package proposes: an MMA designation change, renaming MMAs, correcting aquaculture allowances, refining MMA boundaries to improve compliance and enforceability, and correcting errors and inconsistencies in regulations. For a complete listing of proposed changes to specific MMAs and special closures refer to Attachment 1: Table 1- Summary of proposed language amendments to Title 14, Section 632, California Code of Regulations, and Attachment 2: Table 2- Summary of proposed boundary refinement

amendments to Title 14, Section 632, California Code of Regulations. To view proposed boundary refinement images refer to Attachment 3: California State Marine Protected Areas Proposed Boundary Refinements.

Proposed Amendment to Subsection 632(a):

The proposed regulation identifies the origin of the MMA definitions by adding the following text to subsection 632(a)(1): "in MPAs and MMAs, as defined in Public Resources Code Section 36710:"

Necessity and Rationale: The current definitions within subsection 632(a)(1) were placed there verbatim from PRC, Section 36710, for each type of MMA, so users of MMAs could quickly reference what type of protection is afforded to a given marine area. For the accessibility of users, it is necessary to add the citation to help clarify the origin of the definitions.

Proposed Amendment to Subsection 632(b), Generally:

The MMAs indicated on Attachment 1, within the "Allowable Activities" column, are proposed for the following amendment.

The existing regulations of subsection 632(b) specify that the take of any living marine resource is prohibited in state marine reserves (SMRs), and that the take of any living marine resource is prohibited, except species explicitly listed, for the remaining MMA designations.

In an effort to clarify the intent of the MMA designations and avoid confusion regarding allowable uses, the proposed regulation amendment replaces the existing text with new text, as follows:

Area	Existing text	New text
State Marine Reserve	"Take of all living marine resources is prohibited"	"Area restrictions defined in subsection 632(a)(1)(A) apply"
State Marine Park (SMP)	"Take of all living marine resources is prohibited except…"	"Area restrictions defined in subsection 632(a)(1)(B) apply with the following specified exceptions…"
State Marine Conservation Area (SMCA)		"Area restrictions defined in subsection 632(a)(1)(C) apply with the following specified exceptions…"

State Marine Recreational Management Area (SMRMA)	"Take of all living marine resources is prohibited" OR "Take of all living marine resources is prohibited except…"	"Area Restrictions defined in subsection 632(a)(1)(D) apply" OR "Area restrictions defined in subsection 632(a)(1)(D) apply with the following specified exceptions…"

Necessity and Rationale: According to PRC, Section 36710, SMRs and SMCAs prohibit the take of any living, geological, or cultural marine resource; SMPs prohibit the take of any living or nonliving marine resource; and in SMRMAs it is unlawful to perform any activity that would compromise the recreational values for which the area may be designated. To better reflect the intent of PRC 36710 for protecting both living and non-living marine resources there is a need to clarify allowed and prohibited uses under subsection 632(b), as proposed above.

<u>Proposed Amendments to Subsection 632(b), Specifically:</u>

The following subsections of subsection 632(b) are proposed for amendments to clarify the restrictions and allowable activities in these MMAs or special closures; provide greater clarity and enforcement; or correct boundary descriptions.

The MMAs indicated on Attachment 1, within the "Clarify Take" column, are proposed for the following amendments.

1. In an effort to streamline language and reduce redundancies within the regulatory text, the following MMAs are proposed to have their current regulations rewritten:

   MacKerricher SMCA, subsection 632(b)(22)(B), Russian Gulch SMCA, subsection 632(b)(24)(B), and VanDamme SMCA, subsection 632(b)(26)(B) are proposed to have the existing text "All other commercial and recreational take is allowed in accordance with current regulations" deleted. These MMAs are also proposed to have two subsections added identifying allowable recreational and commercial take as follows: "1. All recreational take is allowed in accordance with current regulations. 2. All commercial take is allowed in accordance with current regulations, except the commercial take of bull kelp (*Nereocystis luetkeana*) and giant kelp (*Macrocystis pyrifera*) is prohibited".

   Arrow Point to Lion Head Point (Catalina Island) SMCA, 632(b)(123)(B) is proposed to have the existing text "Take of other living marine resources is allowed" deleted. This MMA is also proposed to have two subsections added to the regulations identifying allowable recreational and commercial

take as follows: “1. All recreational take is allowed in accordance with current regulations, except the recreational take of invertebrates is prohibited. 2. All commercial take is allowed in accordance with current regulations.”

Necessity and Rationale: The regulatory text for these four MMAs, regarding allowable activities within their respective areas, was written with a different approach than the other 132 MMAs in subsection 632(b). Specifically, these areas indicate the prohibited activities rather than the allowable activities. Therefore, the Department is proposing to rewrite the language for these MMAs to increase consistency, while retaining the original allowable activities for these respective areas.

2. Excluding the four aforementioned MMAs. The Department is proposing to add the text “is allowed” to the regulations of the remaining 41 MMAs identified on Attachment 1, within the “Clarify Take” column.

   Necessity and Rationale: When rewriting the regulatory text as outlined in the previous “Allowable Activities” category, the 41 abovementioned MMAs allowable activities would lose their original intent if the text “is allowed” is not added to the same subsection. Therefore, in order to maintain the original regulatory intent, it is necessary to add “is allowed” to the allowable activities text.

3. The Department is proposing to clarify text for Point Lobos SMCA, subsection 632(b)(82), and Big Creek SMCA, subsection 632(b)(86), to clarify that albacore may be taken both recreationally and commercially.

   Necessity and Rationale: The regulatory text is unclear whether albacore may be taken commercially, recreationally or both commercially and recreationally in these MMAs. Therefore, to maintain the original regulatory intent, the regulations have been simplified, and now stipulate which species are permitted for either recreational or commercial harvest.

The MMAs indicated on Attachment 1, within the “Aquaculture” column, are proposed for the following amendment.

1. The Department is proposing to remove the allowance for aquaculture activities within Drakes Estero SMCA, subsection 632(b)(47)(B). To do so, the existing subsection 632(b)(47)(B)2. with the text “2. Aquaculture of shellfish, pursuant to a valid State water bottom lease and stocking permit.” would be deleted. The text “the recreational take of clams” would then be integrated into subsection 632(b)(47)(B), dissolving subsection 632(b)(47)(B)1. along with the remaining text. Finally, the text “is allowed” would be added to finish the newly structured regulation.

   Necessity and Rationale: In 1972, the Johnson Oyster Company (JOC) sold its property to the U.S. Government subject to a 40 year reservation of use and occupancy. In 1976, Congress designated Drakes Estero as potential

wilderness under the 1976 Point Reyes Wilderness Act (Public Law 94-544). In 2005, the JOC sold the aquaculture operation to the Drakes Bay Oyster Company (DBOC). On January 1, 2015 DBOC closed its business permanently, and the National Park Service proceeded with the conversion to wilderness area. Since commercial activities are prohibited in the wilderness area, the reference to aquaculture operations is outdated and needs to be deleted.

2. The Department is proposing to make the aquaculture activities language for Morro Bay SMRMA, subsection 632(b)(91)(C)2., dependent upon lease conditions rather than a set list of species by deleting the text "of oysters" from subsection 632(b)(91)(C)2.

   Necessity and Rationale: Currently, there are two companies in Morro Bay operating under three state water bottom leases which were in place at the time of MMA designation. The SMRMA regulations were designed to accommodate these pre-existing lease agreements, but only specified the aquaculture of Pacific oyster, the only actively-grown species at the time, as permitted in the SMRMA. However, these lease agreements are approved for the production of Pacific oysters, quahog and Manila clams, mussels, ghost shrimp, and innkeeper worms. To legally allow the lease to continue as intended, subsection 632(b)(91)(C)2. needs be amended to include the aquaculture of the additional species allowed identified in the current leases. Therefore, the Department is proposing to generalize the language for aquaculture to be dependent upon the lease conditions, rather than a set list of species.

The MMAs indicated on Attachment 1, within the "Troll Gear" column, are proposed for the following amendment.

1. The Department is proposing to delete the outdated troll gear reference, subsection 182.1(l) from the existing regulations for Bodega Head SMCA, subsection 632(b)(40)(B).

   Necessity and Rationale: The current regulation referenced in the regulatory text, subsection 182.1(l), was repealed as of April 30, 1989. An updated reference for commercial troll fishing gear for pelagic finfish has not been drafted. Therefore, the Department is proposing to delete the obsolete reference.

2. Excluding the previously mentioned Bodega Head SMCA, the Department is proposing to update the regulation reference pertaining to the commercial take of salmon by troll fishing gear for the remaining nine MMAs indicated on Attachment 1, within the "Troll Gear" column. This update will occur by replacing the outdated regulation reference, subsection 182.1(l), with the correct regulation reference, subsection 182(c)(4).

   Necessity and Rationale: The current regulatory text pertaining to the commercial take of salmon with troll fishing gear was repealed as of

April 30, 1989. This obsolete reference, subsection 182.1(l), needs to be replaced with the current salmon troll gear reference, subsection 182(c)(4), to maintain consistency and enforceability of the regulations.

The one MMA indicated on Attachment 1, within the "Designation" column, is proposed for the following amendment.

The Department is proposing to remove the commercial harvest of kelp as an allowable activity from Año Nuevo SMCA, subsection 632(b)(67). The Department is also proposing to change the designation of the Año Nuevo SMCA to a SMR.

Necessity and Rationale: During the central coast planning process, the regional stakeholders intended to establish a SMR around Año Nuevo. However, before the MMAs were implemented, it was learned that a kelp bed was being leased within the boundaries of the proposed Año Nuevo SMR permitting commercial take of giant kelp (*Macrocystis pyrifera*) by hand harvest. During MMA adoption, the Commission voted to change Año Nuevo from the proposed SMR to a SMCA to allow for the commercial take of kelp by hand harvest. However, the commercial harvest was only for the existing leaseholder in the area until the lease expired. With the expiration of the commercial kelp lease in 2010, the Department is proposing to change the MMA designation from an SMCA to the originally planned SMR.

The MMAs indicated on Attachment 1, within the "Name Change" column, are proposed for the following amendment.

In order to simplify the names of the 21 MMAs indicated on Attachment 1 within the "Name Change" column, the Department is proposing to strike the parenthesized text within the MMA's name.

Necessity and Rationale: The naming format for 21 MMAs includes the geographic location of the MMA within parentheses. The geographic location does not make the MMA name any more or less unique, and is not consistent with the naming format for the rest of the statewide network. To make the regulations consistent, and simplify the names of the 22 MMAs, the Department is proposing to strike the geographic location from each MMA name.

The MMAs and special closures indicated on Attachment 2, within the "1/100th to 1/1000th" column, are proposed for the following amendment.

In an effort to improve consistency and accuracy, the 76 MMAs and 8 special closures with coordinates currently ending at 1/100th of a minute are proposed to be refined by adding a third decimal place to the current coordinates so they then end at 1/1000th of a minute.

Necessity and Rationale: During the MLPA planning process MMA boundaries were selected remotely using satellite imagery in a Geographical Information System and/or similar mapping programs. The MMAs and special closures

identified on Attachment 2 within the "1/100th to 1/1000th" column have coordinates which end at two decimal places (1/100th of a minute), equating to an accuracy of plus/minus 60 feet for Global Positioning System (GPS) users in the field. By amending the current boundary coordinates to end at three decimal places (1/1000th of a minute), boundary accuracy increases to plus/minus 6 feet for GPS users in the field; thereby improving the clarity, compliance and enforceability of regulations.

The MMAs and special closures indicated on Attachment 2, within the "Point of Reference" column, are proposed for the following amendment.

In an effort to improve accuracy and enforceability, 61 MMAs and 3 special closures within subsection 632(b) are proposed to have one or more of the coordinates moved towards an intended point of reference established during the planning process. The proposed movements are depicted in Attachment 3.

Necessity and Rationale: Department staff visited all MMAs and special closures in the statewide network to confirm the location of boundary coordinates. Going out to each location with a handheld GPS, Department staff assessed where a boundary coordinate landed, and compared that coordinate to where the boundary was proposed to land during the planning process. Upon groundtruthing each MMA, it was found that not all coordinates were set as accurately as possible to their intended point of reference. These proposed amendments will move the boundary coordinates of the 61 MMAs and 3 special closures closer to their intended point of reference, such as a headland, bridge, or mean high tide line, and make it easier for a user to identify whether they are within an MMA.

Most MMAs proposed to undergo this boundary refinement will have a net change in area of 0.00 square miles (Attachment 2). Any point of reference boundary amendment that yields a percent area change greater than plus/minus 0.00 percent to 0.01 percent, or a change in area larger than 0.00 square miles is explained below.

1. Big River Estuary SMCA, subsection 632(b)(25), is proposed to have a minor shape change at its southwest coordinate (Attachment 3). The coordinate currently lands on the river bank next to the bridge. However, in order to capture fluctuations in the river, this coordinate has been moved upslope, onto more stable ground, and ensures that the MMA captures the mean high tide line during flood events. This proposed change would increase the MMA by 0.07 percent, but yield a change in area of 0.00 square miles.

2. Navarro River Estuary SMCA, subsection 632(b)(27), is proposed to have a small shape change at its southwestern boundary to anchor the coordinates on more prominent features and encompass the mouth of the estuary (Attachment 3). This proposed change would decrease the MMA by 0.10 percent, but yield a change in area of 0.00 square miles. Of the MMA's two

southern coordinates, the more northwestern coordinate is proposed to move to a prominent rock nearer the ocean, while the southeastern coordinate is proposed to move up shore near the parking lot as an easier reference location for constituents. Changes to the two northern coordinates yielding an area change less than 0.01 percent are also proposed for this SMCA.

3. Estero de Limantour SMR, subsection 632(b)(46), will increase in size by 0.03percent, but have a 0.00 square mile change in area, if the proposed amendments are adopted. This increase is caused by the relocation of current boundaries, which land subtidally near shore (Attachment 3). These coordinates are proposed to be relocated closer to the mean high tide line to capture the extent of the MMA originally proposed by stakeholders during the planning process.

4. Natural Bridges SMR, subsection 632(b)(69), will decrease in size by 0.07percent, with a 0.00 change in square miles, if the proposed amendments are adopted. This decrease occurs due to the movement of the eastern boundary of Natural Bridges SMR to a more distinguishable shore location (Attachment 3). The current boundary lands due east of a prominent sand stone bluff. The Department is proposing to move the current coordinate onto the sand stone bluff to provide users with an identifiable reference point, so they know if they are within or outside of the SMR. This proposed move will shift the boundary slightly west and slightly decrease the overall SMR size. A change to the western coordinate yielding an area change less than 0.01 percent is also proposed for this SMR.

5. Edward F. Ricketts SMCA, subsection 632(b)(75), will decrease in size by 0.74percent, with a 0.00 square mile change in area, if the proposed amendments are adopted. The eastern most coordinate currently lands beyond the coast guard jetty. However, when this SMCA was designed this eastern coordinate was supposed to land at the end of the coast guard jetty. Therefore, the Department is proposing to relocate said coordinate from beyond the jetty, and anchor it to the end of the jetty as originally designed (Attachment 3). A change to the western most coordinate yielding an area change less than 0.01 percent is also proposed for this SMCA.

6. Carmel Bay SMCA, subsection 632(b)(80), is proposed to have its northern coordinate anchored on the mainland, as this coordinate currently lands in the subtidal zone (Attachment 3). In order to meet the original design criteria provided by the regional stakeholders during the planning process, this coordinate needs to be moved northwest, and anchored on shore to capture the mean high tide line. The proposed amendment to move this coordinate out of the subtidal zone, would anchor the coordinate just north of noticeable wash rocks, and would increase the size of Carmel Bay SMCA by 0.54 percent, or add 0.01 square miles to the SMCA due to the angle of the boundary.

7. Bolsa Bay SMCA, subsection 632(b)(121), is proposed to have all four of its current coordinates relocated in order to capture the mean high tide within the bay (Attachment 3). This proposed change would increase the size of the MMA by 0.20 percent, with a change in area of 0.00 square miles. The two northern most boundaries of Bolsa Bay SMCA are anchored under an overpass for a road way. These two boundaries are proposed to move up on the bank of the bay beneath this overpass in order to capture the actual size of the MMA beneath this roadway. The two southern most boundaries are proposed to undergo similar changes to encompass the true extent of the bay, but the new coordinates will be anchored beneath the overlying pedestrian bridge which is the current point of reference.

8. If the proposed boundary refinement is adopted for Cat Harbor ~~(Catalina Island)~~ SMCA, subsection 632(b)(131), the MMA will increase by 0.86 percent, but yield a 0.00 change in square miles. When this boundary was reassessed, Department staff found that the northeastern coordinate landed more inland than the stakeholders intended when designing the MMA (Attachment 3). In order to set this boundary as accurately as possible, the Department is proposing to relocate the coordinate to the southern end of a bluff, and closer to the water to both encompass the mean high tide line, and provide a discernable point of reference.

9. Four of the current coordinates defining Upper Newport Bay SMCA, subsection 632(b)(132), are proposed to be amended to improve the accuracy of the SMCA's boundaries (Attachment 3). The two southern most coordinates were proposed to land just before Pacific Coast Highway. However, when groundtruthed the current coordinates landed north of the intended location. The Department is proposing to move these two coordinates closer to Pacific Coast Highway, on the bank of the bay, in order to maintain the original shape designed by the stakeholders. Similarly, the northeast boundary was designed to land just before Jamboree Road, but the current boundary lands due east, beneath the road. Therefore the Department is proposing to move both of the coordinates which define the northeastern boundary slightly west, so the boundary lines up along the bay before meeting the roadway. These proposed changes would increase the size of the MMA by 0.04 percent, with a 0.00 square mile change in area.

The MMAs indicated on Attachment 2, within the "Mean High Tide Line" column, are proposed for the following amendment.

1. The existing regulations of subsections 632(b)(79)(A), 632(b)(84)(A), and 632(b)(88)(A) define the boundaries for Carmel Pinnacles SMR, Point Sur SMCA, and Piedras Blancas SMCA, respectively. The proposed regulation change will delete unnecessary text pertaining to the "mean high tide line" currently used to describe the boundaries for these three MMAs.

   Necessity and Rationale: Each of these three MMAs occurs offshore, and their boundaries are not influenced by the tide. However, the current

regulatory text defining the boundaries for these MMAs states: “This area is bounded by the mean high tide line and straight lines connecting the following points in the order listed”. Given the offshore location of Carmel Pinnacles SMR, Point Sur SMCA, and Piedras Blancas SMCA, the Department is proposing to delete the text “the mean high tide line and” due to its irrelevance.

2. The existing regulations of subsection 632(b)(100)(A) define the boundaries for Goleta Slough SMCA. The existing Goleta Slough State Marine Conservation Area boundary is proposed to be removed and replaced by the mean high tide line.

   Necessity and Rationale: This is the only remaining MMA slough in the statewide network to not have its tidally influenced boundary defined by the mean high tide line. Due to the transient nature of water and tidal cycles, it is more effective to have slough boundaries set by the mean high tide line than a distinct set of coordinates. Additionally, this particular slough is an embayment with only one entrance and exit point for water transfer. By using the mean high tide as a boundary any future fluctuations in the Slough’s water level will be protected, while set coordinates cannot successfully encompass the Slough’s waters consistently. For these reasons the Department is proposing to replace the sole coordinate boundary of this MMA with the mean high tide line.

The MMAs indicated on Attachment 2, within the “Shift” column, are proposed for the following amendment.

The existing regulations of subsections 632(b)(134)(A) and 632(b)(135)(b) define the boundaries for the Laguna Beach SMR and Laguna Beach no-take SMCA, respectively. The proposed regulations adjust the boundary between Laguna Beach SMR and Laguna Beach no-take SMCA south to the city beach/county beach line near Aliso Creek to address municipality concerns. The proposed movements are depicted in Attachment 3.

Necessity and Rationale: During the south coast planning process, it became apparent that the proposed Laguna Beach SMR had an outfall pipe running through the MMA which would require maintenance. A regulatory package was created to address this issue (and others) in 2010. The Department presented the Commission with five distinct amendment options to account for the outfall pipe. Four of the amendment options were intended to have the southern boundary of the Laguna Beach SMR at the city beach/county beach line near Aliso Creek just north of an outfall pipe. However, when presented to the Commission, the agreed upon southern Laguna Beach SMR boundary was erroneously only addressed in three of the five proposal options. When adopted, the option selected by the Commission did not have the southern Laguna Beach SMR boundary at the city beach/county beach line. Instead the boundary coordinates were placed north of the city beach/county beach boundary. This placement split a prominent location, Treasure Island, in half

creating city and county jurisdictional concerns for Laguna Beach. Pursuant to requests from representatives of local agencies, the Department is now proposing to shift the shared boundary between the Laguna Beach SMR and the Laguna Beach no-take SMCA south to align with the city beach/county beach line.

This proposed amendment would move 0.38 square miles from the Laguna Beach no-take SMCA into the Laguna Beach SMR, however the overall size of the protected areas together would remain the same (see Attachment 2). As indicated in Attachment 2, this shift of area would result in a change in the individual size of each area relative to their original sizes, with a 6.08 percent increase in size of the Laguna Beach SMR, and an 11.07 percent decrease in size of the Laguna Beach no-take SMCA. These size changes will not impact fishermen, enforcement, or science guidelines as the shift is between two no-take MMAs.

The MMAs indicated on Attachment 2, within the "NOAA State Line" column, are proposed for the following amendment.

To improve offshore boundary accuracy, 25 MMA boundaries within subsection 632(b) are proposed to have one or more of their coordinates moved to the National Oceanic and Atmospheric Administration's (NOAA) revised 3 nautical mile (nm) state line to improve clarity, compliance, and enforceability of regulations. The proposed movements are depicted in Attachment 3.

Necessity and Rationale: When Department staff reassessed all MMA coordinates for accuracy, a subset of MMAs which reach offshore revealed discrepancies between reported MMA coordinates and NOAA's 3 nm state line. For many of the central coast MMAs this misplacement of the coordinate to NOAA's 3 nm state line occurred during the central coast planning process. When the central coast MMAs were designed, regional stakeholders used the then-current 3 nm state line generated by NOAA to establish MMAs' western most boundaries. However, just as the central coast MMAs were implemented, NOAA released updated navigational charts, which relocated the state's 3 nm line in some areas. Due to the timing overlap, the western boundaries of the central coast MMAs were anchored to the previous reporting of the state's 3 nm line. To ensure accuracy, the Department is now proposing to anchor these coordinates to NOAA's current 3 nm state line as originally intended during the central coast planning process. If implemented, the area for a given MMA will not change because the Department has always used NOAA's 3 nm state line as the western boundary. While it may appear that a large area is now made unavailable for fishing within the central coast MMAs, the Department has always used the 3 nm state line as the western boundary when describing these locations, and is proposing to anchor these coordinates to the new 3 nm state line location to maintain accuracy and consistency.

The remaining statewide MMA adjustments to the 3nm state line will undergo minimal movement in order to anchor the coordinates more accurately on

NOAA's 3 nm state line thereby increasing accuracy and enforceability of these MMAs throughout the state.

With the exception of Judith Rock ~~(San Miguel Island)~~ SMR, subsection 632(b)(104), all MMAs within the "NOAA State Line" column of Attachment 2 have a net area change of 0.00 square miles which means there is no significant change in the size of the given MMA. However, if the proposed amendments are adopted, Judith Rock SMR will decrease in size by , 0.39 percent of its original size, or 0.02 square miles, because the current extent of the MMA lies beyond NOAAs 3 nm state line (Attachment 3). If the new coordinates are adopted as proposed, the coordinates will be moved onto the 3 nm state line, closer to San Miguel Island, which will cause a slight decrease in the reported area of the MMA. However, the MMA was designed to have the 3 nm state line be the furthest offshore boundary so this size decrease will not impact the condition of the SMR in any way.

The MMAs indicated on Attachment 2, within the "Added Position" column, are proposed for the following amendments.

1. The Department is proposing to add two additional coordinates to the existing regulations of Stewarts Point SMR, subsection 632(b)(34)(A) to improve clarity, compliance, and enforceability of regulations. One added coordinate will be placed at the same coordinate location of Stewarts Point SMCA's southern mainland location, and the other additional proposed coordinate will be placed at the same location as Stewart's Point SMCA's southern offshore coordinate. These added coordinates will make Stewarts Point SMR independent of Stewarts Point SMCA, as the boundaries of these two MMAs currently overlap. The new proposed coordinates are depicted in Attachment 3, as positions 34_1 and 34_2.

   In addition to these proposed additional coordinates, to make Stewarts Point SMCA and Stewarts Point SMR independent of one another, the text: "except that Stewarts Point State Marine Conservation Area as described in subsection 632(b)(33)(A) is excluded" will be deleted from the current regulations of subsection 632(b)(34)(A).

   Necessity and Rationale: Currently, the boundaries of Stewarts Point SMCA and Stewarts Point SMR overlap one another. The Department is proposing to make these two MMAs independent of one another, mirroring the approach used for Big Creek SMR, subsection 632(b)(85)(A) and Big Creek SMCA, subsection 632(b)(86)(A). Separating the Stewarts Point SMR and Stewarts Point SMCA will simplify the regulations, and improve the overall consistency of designating boundaries throughout the statewide network. To make these two MMAs independent of one another, Stewarts Point SMR will gain two additional coordinate positions, both of which will be identical to Stewarts Point SMCA's two southern most coordinates. Thus, allowing these two MMAs to now share a boundary rather than overlapping one another.

2. The existing regulations of subsection 632(b)(66)(A) define the boundaries for Pillar Point SMCA. The Department is proposing to increase the current number of coordinates for Pillar Point SMCA by adding one position to the MMA's existing boundary regulations. The added coordinate will be placed southeast of the southernmost mainland coordinate to protect a rocky cove. The new proposed coordinate is depicted in Attachment 3, as position 66_6.5.

   Necessity and Rationale: When Department staff reassessed all MMA coordinates for accuracy, it was found that the original coordinate, proposed to land on this rocky headland, landed due west in a subtidal zone. In order to include the mean high tide line and the small alcove within this area of the MMA, an additional point should be added. This will allow the alcove to be within the protection of the MMA, while maintaining the current offshore boundary and line of sight through this rocky headland. This proposed additional position maintains the size and shape of the MMA originally designed by the regional stakeholders during the planning process.

3. The existing regulations of subsection 632(b)(67)(A) and subsection 632(b)(68)(A) define the boundaries for Año Nuevo ~~SMCA~~ SMR and Greyhound Rock SMCA, respectively. The Department is proposing to increase the current number of coordinates for Año Nuevo ~~SMCA~~ SMR and Greyhound Rock SMCA by adding one position to each MMA's boundary regulations. The added coordinate will be anchored on Greyhound Rock which lies on the shared boundary of the two MMAs. The new proposed coordinate is depicted in Attachment 3, as position 67_4.5 and position 68_1.5.

   Necessity and Rationale: When Department staff reassessed all MMA coordinates for accuracy, it was found that the original coordinate, proposed to land on Greyhound Rock, landed due west of the intended location. To maintain the shape originally proposed by the regional stakeholders during the central coast planning process, the current coordinate is being relocated from the water to the mainland shore, and an additional coordinate will be added to Greyhound Rock. Both MMAs which share this boundary will not change in size or shape, but will instead have more accurate and enforceable boundaries to aid users.

4. The existing regulations of subsection 632(b)(77)(A) and subsection 632(b)(78)(A) define the boundaries for Pacific Grove Marine Gardens SMCA and Asilomar SMR, respectively. The Department is proposing to increase the current number of coordinates for Asilomar SMR and Pacific Grove Marine Gardens SMCA by adding one position to each MMA's boundary regulations. The added coordinate will be placed on the rocky point, which currently resides in Asilomar SMR, causing a shift in the shared boundary of Pacific Grove Marine Gardens SMCA and Asilomar SMR. The new proposed coordinate is depicted in Attachment 3, as position 77_4.5 and position 78_1.5.

Necessity and Rationale: When Department staff reassessed all MMA coordinates for accuracy, this location stood out as an area that could be refined to aid users in determining their location within a given MMA. The proposed location for this added position is on a very prominent rocky outcropping which would be easy to spot from shore or when out in the water. Using this outcropping as a point of reference, individuals could quickly identify if they were in Asilomar SMR (to the south or west of the point), or if they were within Pacific Grove Marine Gardens SMCA (to the north or east of the point). By adding this position the shared boundary would change in shape of these MMAs. The size of Pacific Grove Marine Gardens SMCA would increase by 0.03 square miles (3.00 percent of its original size), while Asilomar SMR would decrease by 0.03 square miles (1.87 percent of its original size), as indicated on Attachment 2.

5. The existing regulations of subsection 632(b)(133)(A) and subsection 632(b)(134)(A) define the boundaries for Crystal Cove SMCA and Laguna Beach SMR, respectively. The Department is proposing to add an additional boundary coordinate at the shared boundary between Crystal Cove SMCA and Laguna Beach SMR. The added coordinate will be located on a headland, northeast of the nearest existing coordinate and is depicted in Attachment 3, as position133_4.5 and position 134_0.5.

   Necessity and Rationale: When Department staff reassessed all MMA coordinates for accuracy, it was found that the original coordinate, proposed to land on the rocky mainland point, landed due west of the intended location in the intertidal zone, rather than on the mainland. The Department's intent is to minimize boundary changes made to the MMAs as much as possible. Therefore, this additional boundary position allows the offshore longitude to remain on 2/10ths of a minute (a simple coordinate for fishermen use), while maintaining the line of sight through the prominent rocky outcropping, and anchors the boundary to shore. This proposed additional position yields a net area change of 0.00 square miles (0.0 percent) (Attachment 2) for both MMAs while providing more accurate and enforceable boundaries to aid users.

The proposed regulations correct a printing error in subsection 632(b)(120)(B)1., Abalone Cove SMCA.

Necessity and Rationale: The regulatory text as approved by the Office of Administrative Law (OAL) in rulemaking file 2014-0703-03s is not accurately reflected in the printed version of Title 14, causing ambiguity as to what recreational fishing activities are allowed in this SMCA. The proposed change reflects the language adopted by the Commission and approved by OAL.

Various nonsubstantive changes are also proposed for clarity and consistency.

<u>Goals and Benefits of the Proposed Regulations</u>

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: Table 1- Summary of proposed language amendments to Title 14, Section 632, California Code of Regulations

Attachment 2: Table 2- Summary of proposed boundary refinement amendments to Tile 14, Section 632, California Code of Regulations

Attachment 3: California State Marine Protected Areas Proposed Boundary Refinements

Attachment 4: Comparison of NOAA Nautical Charts

Attachment 5: North Coast Planning Process Intent

Attachment 6: North Central Coast Planning Process Intent

Attachment 7: Central Coast Planning Process Intent

Attachment 8: South Coast Planning Process Intent

(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.

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 leave existing MMA regulations with decreased boundary accuracy and inconsistencies, and would not provide for better public understanding and enforcement of MMA 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; re-designate and rename existing MMAs; and add specified methods of take consistent with existing commercial fishing regulations.

(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 creation or elimination of jobs, the creation of new businesses, the elimination of existing businesses or

the expansion of businesses in California because these changes will neither increase nor decrease recreational or commercial fishing opportunities within MMAs.

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

The proposed amendments may benefit the environment by clarifying the administration of the protection of habitat and biodiversity in MMAs.

(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.

VII. Economic Impact Assessment

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

The proposed amendments will not create or eliminate jobs within the state because the proposed amendments make clarification and consistency changes to the current regulations; make minor boundary adjustments; re-designate and rename existing MMAs; and add specified methods of take consistent with commercial fishing practices. These changes will neither

increase nor decrease recreational or commercial fishing opportunities within MMAs.

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

The proposed amendments will not create any new businesses or eliminate existing businesses because the proposed regulations will neither increase nor decrease recreational or commercial fishing opportunities within MMAs.

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

The proposed amendments are not expected to result in the expansion of businesses currently doing business within the state because the proposed regulations will neither increase nor decrease recreational or commercial fishing opportunities within MMAs.

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

The proposed amendments will not result in benefits to the health and welfare of State residents.

(e) Benefits of the Regulation to Worker Safety:

The proposed amendments do not have foreseeable benefits to worker safety because the regulations do not affect working conditions.

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

The proposed amendments may benefit the state’s environment by clarifying and improving the understanding and enforcement of recreational and commercial fishing regulations in California MMAs.

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 [PRC] 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. Unlike previous laws, which focused on individual species, these acts focus on maintaining the health of marine ecosystems and natural 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 classifications, boundary descriptions, commercial and recreational take restrictions, and other restricted/allowed uses for MPAs, MMAs and special closures.

The proposed regulatory changes will clarify the allowed and prohibited uses for all MMA designations; amend aquaculture activities for two MMAs; and amend troll gear references for ten MMAs. In addition, the proposed regulations change the designation of one MMA; change the names of 21 MMAs; and refine boundary coordinates for 106 MMAs.

The following is a summary of the proposed changes to Section 632, Title 14, CCR.

<u>Amendment to Subsection 632(a):</u>

1. The proposed regulations add a citation to the statute (Public Resources Code Section 36710) which established the MMA definitions in subsection 632(a)(1).

<u>Amendments to Subsection 632(b):</u>

1. The proposed regulations clarify regulatory language, correct existing errors, and update allowable activities within MMAs.

    a. The proposed regulation replaces the existing text with new text, as follows:

Area	Existing text	New text
State Marine Reserve (SMR)	"Take of all living marine resources is prohibited"	"Area restrictions defined in subsection 632(a)(1)(A) apply"
State Marine Park	"Take of all living marine resources is prohibited except…"	"Area restrictions defined in subsection 632(a)(1)(B) apply with the following specified exceptions…"
State Marine Conservation Area (SMCA)		"Area restrictions defined in subsection 632(a)(1)(C) apply with the following specified exceptions…"

State Marine Recreational Management Area (SMRMA)	"Take of all living marine resources is prohibited" OR "Take of all living marine resources is prohibited except…"	"Area Restrictions defined in subsection 632(a)(1)(D) apply" OR "Area restrictions defined in subsection 632(a)(1)(D) apply with the following specified exceptions…"

b. The proposed regulations restructure the regulatory text for MacKerricher SMCA, subsection 632(b)(22)(B), Russian Gulch SMCA, subsection 632(b)(24)(B), Van Damme SMCA, subsection 632(b)(26)(B), and Arrow Point to Lion Head Point (Catalina Island) SMCA, subsection 632(b)(123)(B), in order for their activities language to resemble the remaining MMA descriptions, listing allowable activities instead of prohibited activities.

c. The proposed regulations add the text "is allowed" to the current regulatory text for 41 MMAs.

d. The proposed regulations delete the allowance for aquaculture in Drakes Estero SMCA, subsection 632(b)(47)(B).

e. The proposed regulations amend the current species list for aquaculture within Morro Bay SMRMA, subsection 632(b)(91)(C), to be dependent upon lease conditions rather than a designated list of species.

f. The proposed regulations replace obsolete salmon troll gear reference with the current salmon troll gear reference for nine MMAs.

g. The proposed regulations delete the obsolete pelagic finfish troll gear reference from Bodega Head SMCA, subsection 632(b)(40)(B).

h. The proposed regulations remove commercial harvest of kelp as an allowed activity in Año Nuevo SMCA, subsection 632(b)(67), and redesignate this SMCA as a SMR.

i. The proposed regulations simplify the names of 21 MMAs by striking the parenthesized text which identifies the geographic location of a given MMA.

j. The proposed regulations amend text for Point Lobos SMCA, subsection 632(b)(82), and Big Creek SMCA, subsection 632(b)(86), to clarify that albacore may be taken both recreationally and commercially.

2. The proposed regulations improve boundary accuracy and ease of enforcement for numerous MMAs.

   a. The proposed regulations add a third decimal place to the current coordinates for 76 MMAs and eight special closures.

b. The proposed regulations move one or more of the existing coordinates toward an intended point of reference, such as a headland, bridge or mean high tide line, for 61 MMAs and three special closures.

c. The proposed regulations delete text pertaining to the mean high tide line for Carmel Pinnacles SMR, subsection 632(b)(79)(A), Point Sur SMCA, subsection 632(b)(84)(A), and Piedras Blancas, SMCA 632(b)(88)(A).

d. The proposed regulations replace the sole coordinate boundary at Goleta Slough SMCA, subsection 632(b)(100)(A), with the mean high tide line.

e. The proposed regulations move the shared boundary between the Laguna Beach SMR, subsection 632(b)(134)(A), and Laguna Beach no-take SMCA, subsection 632(b)(135)(A), south to the city beach/county beach line near Aliso Creek.

f. The proposed regulations anchor coordinates for 25 MMAs to the current National Oceanic and Atmospheric Administration's three nautical mile state line.

g. The proposed regulations add one or two positions to the list of coordinates for eight MMAs.

3. The proposed regulations correct a printing error in subsection 632(b)(120)(B)1., Abalone Cove SMCA, and make other nonsubstantive changes for clarity and consistency.

The proposed amendments to section 632 will clarify the restrictions and allowable activities in these MMA's; provide greater ease of public understanding and enforceability; and correct boundary descriptions.

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. Department 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.