State of California
Office of Administrative Law

In re: **Fish and Game Commission**	**NOTICE OF APPROVAL OF EMERGENCY REGULATORY ACTION**
Regulatory Action:	
Title 14, California Code of Regulations	**Government Code Sections 11346.1 and 11349.6**
Adopt sections: **Amend sections: 632** **Repeal sections:**	**OAL File No. 2011-0104-05 EE**

This is a readopt of a prior emergency regulatory action (OAL file no. 2010-0709-02E) that established the Stewarts Point State Marine Conservation Area (SMCA). The general boundaries of the SMCA will be from the mean high tide line to a line that approximates a distance of 1000 feet offshore, and from the northern boundary of the existing Stewarts Point State Marine Reserve to just below Rocky Point, approximately four miles south. All commercial take of living marine resources is prohibited. The recreational take from shore of marine aquatic plants other than sea palm, marine invertebrates, finfish by hook and line, surf smelt by beach net, and species authorized in Section 28.80 (including surf smelt) by hand-held dip net will be authorized consistent with other applicable law. The proposed SMCA would leave three miles of coastline in State Marine Reserve status, which meets the minimum science guidelines for coastal protection of nearshore habitats.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 1/18/2011 and will expire on 4/19/2011. The Certificate of Compliance for this action is due no later than 4/18/2011.

Date: 1/12/2011

Debra M. Cornez

DEBRA M. CORNEZ
Assistant Chief Counsel/Acting Director

Original: Jon Fischer
Copy: Sherrie Fonbuena

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION (See instructions on reverse)

EMERGENCY

STD. 400 (REV. 01-09)

For use by Secretary of State only

8

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-		2011-0104-05EE

ENDORSED FILED
DEPUTY SECRETARY OF STATE

2011 JAN 12 PM 3:17

DEBRA BOWEN
SECRETARY OF STATE

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2011 JAN -4 PM 4:57

OFFICE OF ADMINISTRATIVE LAW

NOTICE | REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY: Fish and Game Commission

AGENCY FILE NUMBER (If any):

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE | TITLE(S) | FIRST SECTION AFFECTED | 2. REQUESTED PUBLICATION DATE

3. NOTICE TYPE: ☐ Notice re Proposed Regulatory Action ☐ Other | 4. AGENCY CONTACT PERSON | TELEPHONE NUMBER | FAX NUMBER (Optional)

OAL USE ONLY — ACTION ON PROPOSED NOTICE: ☐ Approved as Submitted ☐ Approved as Modified ☐ Disapproved/ Withdrawn | NOTICE REGISTER NUMBER | PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S): Stewarts Point SMR and Stewarts Point SMCA

1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S): 2010-0709-02E

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)

ADOPT:

AMEND: 632

REPEAL:

TITLE(S): 14

3. TYPE OF FILING

- ☐ Regular Rulemaking (Gov. Code §11346)
- ☐ Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)
- ☐ Emergency (Gov. Code, §11346.1(b))
- ☐ Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
- ☐ Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
- ☒ Emergency Readopt (Gov. Code, §11346.1(h))
- ☐ File & Print
- ☐ Other (Specify)
- ☐ Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
- ☐ Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

- ☐ Effective 30th day after filing with Secretary of State
- ☐ Effective on filing with Secretary of State
- ☐ §100 Changes Without Regulatory Effect
- ☒ Effective other (Specify) January 18, 2011

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

- ☐ Department of Finance (Form STD. 399) (SAM §6660)
- ☐ Fair Political Practices Commission
- ☐ State Fire Marshal
- ☐ Other (Specify)

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
Sherrie Fonbuena	(916) 654-9866	(916) 653-5040	SFonbuena@fgc.ca.gov

8. **I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.**

SIGNATURE OF AGENCY HEAD OR DESIGNEE: Jon K. Fischer | DATE: 4 January 2011

TYPED NAME AND TITLE OF SIGNATORY: Jon K. Fischer, Acting Executive Director

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JAN 12 2011

Office of Administrative Law

Regulatory Language

Section 632, Title 14, CCR, is amended to read:

. . .

(11) Stewarts Point State Marine Conservation Area.
(A) This area is bounded by the mean high tide line and straight lines connecting the following points in the order listed:
38° 40.500' N. lat. 123° 25.370' W. long.;
38° 40.500' N. lat. 123° 25.500' W. long.;
38° 37.500' N. lat. 123° 23.500' W. long.;
38° 37.535' N. lat. 123° 23.027' W. long.
(B) Take of all living marine resources is prohibited except the following may be taken recreationally from shore only: marine aquatic plants other than sea palm, marine invertebrates, finfish [as identified in subsection 632(a)(2)] by hook and line, surf smelt by beach net, and species authorized in Section 28.80 of these regulations by hand-held dip net.
~~(11)~~(12) Stewarts Point State Marine Reserve.
(A) This area is bounded by the mean high tide line and straight lines connecting the following points in the order listed except where noted:
38° 40.50' N. lat. 123° 25.37' W. long.;
38° 40.50' N. lat. 123° 30.24' W. long.; thence southward along the three nautical mile offshore boundary to
38° 35.60' N. lat. 123° 26.01' W. long.; and
38° 35.60' N. lat. 123° 20.80' W. long., except that Stewarts Point State Marine Conservation Area as described in subsection 632(b)(11)(A) is excluded.
(B) Take of all living marine resources is prohibited.
~~(12)~~(13) Salt Point State Marine Conservation Area.
(A) This area is bounded by the mean high tide line and straight lines connecting the following points in the order listed:
38° 35.60' N. lat. 123° 20.80' W. long.;
38° 35.60' N. lat. 123° 21.00' W. long.;
38° 33.50' N. lat. 123° 21.00' W. long.; and
38° 33.55' N. lat. 123° 18.91' W. long., except that Gerstle Cove as described in subsection ~~632(b)(13)(A)~~632(b)(14)(A) is excluded.
(B) Take of all living marine resources is prohibited except the recreational take of abalone and finfish [subsection 632(a)(2)].

. . .

Subsections 632(b)(13) through 632(b)(14) are renumbered 632(b)(14) through 632(b)(15).

. . .

~~(15)~~(16) Russian River State Marine Conservation Area.
(A) This area is bounded by the mean high tide line, the mouth of the Russian River estuary as defined in subsection ~~632(b)(14)(A)~~632(b)(15)(A), and straight lines connecting the following points in the order listed:
38° 27.38' N. lat. 123° 08.58' W. long.;
38° 26.38' N. lat. 123° 08.58' W. long.;
38° 26.38' N. lat. 123° 07.70' W. long.
(B) Take of all living marine resources is prohibited except:
1. Only the following species may be taken recreationally: Dungeness crab by trap, and surf smelt using hand-held dip net or beach net.
2. Only the following species may be taken commercially: Dungeness crab by trap.
. . .

Subsections 632(b)(16) through 632(b)(28) are renumbered 632(b)(17) through 632(b)(29).

. . .

~~(29)~~(30) North Farallon Islands Special Closure. Special regulations on boating and access apply to the North Farallon Islands as follows.
(A) A special closure is established at the islets comprising the North Farallon Islands.
(B) Except as permitted by federal law or emergency caused by hazardous weather, or as authorized by subsection ~~632(b)(29)(C)~~632(b)(30)(C), no vessel shall be operated or anchored at any time from the mean high tide line to a distance of 1000 feet seaward of the mean lower low tide line of any shoreline of North Farallon Island, or to a distance of 300 feet seaward of the mean lower low tide line of any shoreline of the remaining three southern islets, including the Island of St. James, in the vicinity of 37° 46.00' N. lat. 123° 06.00' W. long.
(C) No person except department employees or employees of the United States Fish and Wildlife Service, National Oceanic and Atmospheric Administration, or United States Coast Guard, in performing their official duties, or unless permission is granted by the department, shall enter the area defined in subsection ~~632(b)(29)(B)~~ 632(b)(30)(B).
(D) All vessels shall observe a five (5) nautical mile per hour speed limit within 1,000 feet seaward of the mean lower low tide line of any shoreline of the islets defined in subsection ~~632(b)(29)(B)~~ 632(b)(30)(B).
(E) In an area bounded by the mean high tide line and a distance of one nautical mile seaward of the mean lower low tide line of any of the four islets comprising the North Farallon Islands, the following restrictions apply:
1. All commercial diving vessels operating in the defined area shall have their vessel engine exhaust system terminate either through a muffler for dry exhaust systems, or below the vessel waterline for wet exhaust systems.
2. All commercial diving vessels equipped with an open, deck-mounted air compressor system, while operating in the defined area, shall have their air compressor's engine exhaust system terminate below the vessel waterline.
. . .

Subsections 632(b)(30) through 632(b)(31) are renumbered 632(b)(31) through 632(b)(32).

. . .

~~(32)~~(33) Southeast Farallon Island Special Closure. Special regulations on boating and access apply to the Southeast Farallon Island as follows.
(A) A special closure is established at the Southeast Farallon Island.
(B) Except as permitted by federal law or emergency caused by hazardous weather, or as authorized by subsection ~~632(b)(32)(C)~~632(b)(33)(C), no vessel shall be operated or anchored at any time from the mean high tide line to a distance of 300 feet seaward of the mean lower low tide line of any shoreline EXCEPT north of a line at 37° 42.26' N. lat., and inside Fisherman's Bay south of 37° 42.26' N. lat. and north of 37° 42.05' N. lat., and at East Landing, between a line extending due east from 37° 41.83' N. lat. 122° 59.98' W. long. and a line extending from 37° 41.72' N. lat. 123° 00.05' W. long. to 37° 41.68' N. lat. 123° 00.07' W. long. This closure exists year round, except for the southeast side of Saddle (Seal) Rock, between a line extending from 37° 41.76' N. lat. 123° 00.16' W. long. to 37° 41.64' N. lat. 123° 00.16' W. long. and a line extending from 37° 41.60' N. lat. 123° 00.26' W. long. to 37° 41.60' N. lat. 123° 00.32' W. long., which is closed only from December 1 through September 14 of each year.
(C) No person except department employees or employees of the United States Fish and Wildlife Service, National Oceanic and Atmospheric Administration, or United States Coast Guard, in performing their official duties, or unless permission is granted by the department, shall enter the area defined in subsection ~~632(b)(32)(B)~~ 632(b)(33)(B).
(D) All vessels shall observe a five (5) nautical mile per hour speed limit 1,000 feet seaward of the mean lower low tide line of any shoreline of the Southeast Farallon Island.
(E) In an area bounded by the mean high tide line and a distance of one nautical mile seaward of the mean lower low tide line of any of the islands and islets comprising the Southeast Farallon Island, the following restrictions apply:
1. All commercial diving vessels operating in the defined area shall have their vessel engine exhaust system terminate either through a muffler for dry exhaust systems, or below the vessel waterline for wet exhaust systems.
2. All commercial diving vessels equipped with an open, deck-mounted air compressor system, while operating in the defined area, shall have their air compressor's engine exhaust system terminate below the vessel waterline.

. . .

Subsections 632(b)(33) through 632(b)(105) are renumbered Subsections 632(b)(34) through 632(b)(106).

. . .

~~(106)~~(107) Dana Point State Marine Conservation Area.
(A) This area is bounded by the mean high tide line, a distance of 1200 feet seaward of mean lower low water, and the following points:
33° 27.74' N. lat. 117° 42.95' W. long.;

33° 27.74' N. lat. 117° 43.18' W. long.;
33° 27.47' N. lat. 117° 42.28' W. long.; and
33° 27.63' N. lat. 117°42.45' W. long.
(B) Take of all living marine resources is prohibited except:
1. Only the following species may be taken recreationally below the mean lower low-water mark: lobster, rockfish (family Scorpaenidae), greenling, lingcod, cabezon, yellowtail, mackerel, bluefin tuna, kelp bass, spotted sand bass, barred sand bass, sargo, croaker, queenfish, California corbina, white seabass, opaleye, halfmoon, surfperch (family Embiotocidae), blacksmith, Pacific barracuda, California sheephead, Pacific bonito, California halibut, sole, turbot, and sanddab. Finfish shall be taken only by hook and line or by spearfishing gear.
2. Only spiny lobster may be taken commercially.
(C) Except as expressly provided in this section, it is unlawful to enter the intertidal zone in the Dana Point State Marine Conservation Area for the purpose of taking or possessing, or to take or possess, any species of fish, plant, or invertebrate, or part thereof; to use or have in possession any contrivance designed to be used for catching fish; to disturb any native plant, fish, wildlife, aquatic organism; or to take or disturb any natural geological feature. This subdivision does not prohibit persons from entering the intertidal zone for the purpose of entertainment, recreation, and education while having a minimum impact on the intertidal environment and the living organisms therein. For this purpose, minimum impact includes foot traffic; general observation of organisms in their environment with immediate replacement of any unattached organisms to their natural location after temporary lifting for examination; and photography. Minimum impact does not include removal of attached organisms from their environment; gathering of fishing bait; littering, collecting rocks and shells; or turning rocks or other acts destructive to the environment.
(D) The department director may appoint a director of the Dana Point State Marine Conservation Area.
(E) The director of the Dana Point State Marine Conservation Area may issue a special collecting permit authorizing any person to enter the conservation area for the purposes of scientific collecting under the conditions of a scientific collector's permit issued by the department.
(F) Notwithstanding subsections ~~632(b)(89)(B) or 632(b)(89)(C)~~632(b)(107)(B) or 632(b)(107)(C), the director of the Dana Point State Marine Conservation Area, or any person who has a scientific collector's permit from the department and to whom the director of the Dana Point State Marine Conservation Area has issued a special collecting permit may take, for scientific purposes, any fish or specimen of marine plant life under the conditions prescribed by the department.
(G) This section does not prohibit the entry of state and local law enforcement officers, fire suppression agencies, and employees of the department in the performance of their official duties. This section does not prohibit or restrict navigation in the Dana Point State Marine Conservation Area pursuant to federal law.
. . .

Subsequent subsections are renumbered beginning with (108).

Note: Authority cited: Sections 200, 202, 203.1, 205(c), 219, 220, 1590, 1591, 2860, 2861 and 6750, Fish and Game Code; and Sections 36725(a) and 36725(e), Public Resources Code. Reference: Sections 200, 202, 203.1, 205(c), 219, 220, 1580, 1583, 2861, 5521, 6653, 8420(e) and 8500, Fish and Game Code; and Sections 36700(e), 36710(e), 36725(a) and 36725(e), Public Resources Code.