

NOTICE OF AVAILABILITY AND PUBLIC COMMENT OPPORTUNITY FOR A DRAFT ENVIRONMENTAL IMPACT REPORT SUPPLEMENT (DRAFT EIR SUPPLEMENT)

PROJECT TITLE – Regulatory Amendments Allowing Incidental Take During Work on Pre-existing Artificial Structures in Marine Protected Areas: Supplement to the Marine Protected Area Region EIRs

State Clearinghouse No. 2023020567

To comply with the Marine Life Protection Act (MLPA) (Fish and Game Code Sections 2850-2863), planning for a comprehensive statewide network of marine protected areas (MPAs) along the 1,100-mile California coast occurred through a series of regional public planning processes. Marine Managed Areas (MMAs) include three MPA classifications (state marine reserve [SMR], state marine conservation area [SMCA], and state marine park [SMP]) and state marine recreational management areas (SMRMAs) (State of California Public Resources Code [PRC] Section 36710). While MPAs are a subset of MMAs, the more common term “MPA” is used throughout this document as an umbrella to refer to all types of protected areas, including something called a special closure that was also used in developing the MPA network. The MPAs were organized into four planning regions: the North Coast, North Central Coast, Central Coast, and South Coast. The California Fish and Game Commission (Commission) certified an environmental impact report (EIR) for each of the four regions (collectively referred to hereafter as the MPA Region EIRs).

Pursuant to PRC Section 21091(a) and the Guidelines for the Implementation of the California Environmental Quality Act (CEQA Guidelines), the California Department of Fish and Wildlife (CDFW) has released for public review a Draft EIR Supplement to the four MPA Region EIRs on behalf of the Commission for Regulatory Amendments Allowing Incidental Take During Work on Pre-existing Artificial Structures in MPAs (proposed regulatory amendments).

Project Title: Regulatory Amendments Allowing Incidental Take During Work on Pre-existing Artificial Structures in Marine Protected Areas

Draft EIR Supplement Review Period: July 31, 2023, to September 13, 2023, at 5:00 p.m.

Project Location: The project location comprises the MPAs within the four coastal planning regions: North Coast, North Central Coast, Central Coast, and South Coast. The North Coast region covers approximately 1,027 square miles of state waters, from the California/Oregon border south to Alder Creek near Point Arena (Mendocino County). This region includes 20 MPAs and six special closures. The North Central Coast region covers approximately 763 square miles of state waters, from Alder Creek near Point Arena south to Pigeon Point (San Mateo County). This region includes 25 MPAs and six special closures. The Central Coast region covers approximately 1,144 square miles of state waters, from Pigeon Point, south to Point Conception (Santa Barbara County). This region includes 29 MPAs and no special closures. The South Coast region covers approximately 2,351 square miles of state waters, from Point Conception south to the California/Mexico border, including state waters around the Channel Islands. This region includes 50 MPAs and two special closures.

Project Description: Artificial structures with entitlements that existed before establishment of the MPAs are in many MPAs in California’s Network. Although some MPAs have individual regulations allowing for take of marine resources incidental to the operation, maintenance, repair, removal, or replacement (collectively called “O&M”) of these pre-existing artificial structures, other MPAs do not. The Commission is proposing to update state marine

conservation area, state marine park, and SMRMA designation definitions to allow for take of marine resources in the discrete, focused area immediately surrounding pre-existing artificial structures (hereafter referred to as “incidental take buffer zone”) incidental to O&M of the structure when it is being actively serviced for the duration of the structure’s lease or other authorization. The Commission is also proposing to amend regulations to allow for incidental take of marine resources within SMRs when those structures are actively undergoing O&M. These limited regulatory changes avoid the need to amend individual MPA designations. The regulatory amendments would add three new subsections to California Code of Regulations Title 14 Section 632(a) and revise existing Section 632(a)(1). The new subsections would (1) define what qualifies as a pre-existing artificial structure in a designated MPA; (2) define an incidental take buffer zone within which take of any marine resource would be allowed around pre-existing artificial structures incidental to authorized O&M activities; and (3) specify identification and permit or lease requirements for O&M of pre-existing artificial structures. In addition, Section 632(a)(1) would be amended to revise the MPA designation of SMR to SMCA for the proposed incidental take buffer zone around pre-existing artificial structures only when structures in SMRs are being actively operated, maintained, repaired, removed, or replaced to allow take of any marine resources to occur incidental to the authorized O&M activities. A new subsection would also be added to Section 632(a)(1) to clarify that no take of any marine resources other than that specified for each MPA designation type in this section would be lawful. These proposed amendments would not affect current fishing regulations applicable to the different types of MPAs designated in California’s Network, would not expand opportunities to install new structures within MPAs, and all other marine resource protection regulations that were implemented after the MPAs were designated would remain in place.

All O&M activities would occur within the 250-foot incidental take buffer zone immediately surrounding the pre-existing artificial structures. Artificial structures are designed to have long-term life spans, typically remaining in place between 10 and 30 years. Most of the pre-existing artificial structures require little to no regular maintenance. O&M activities for these structures are limited to repair and replacement of the structures or portions of the structures on an as-needed basis. The proposed regulatory amendments would not result in a change in the frequency of operations, maintenance, repair, or removal of any pre-existing artificial structures. In addition, any O&M activities would continue to be subject to federal, state, and local permits, as applicable.

Document Availability: The Draft EIR Supplement is available for review online at: <https://fgc.ca.gov/Regulations/2023-New-and-Proposed>.

Public Meeting: A public meeting will be held on August 31, 2023, beginning at 4:00 pm with a summary presentation followed by an opportunity for public comments on the Draft EIR Supplement. The public meeting will be held virtually via Zoom webinar: <https://wildlife-ca.gov.zoom.us/j/87133185693> or telephone: (215) 446-3656; (888) 363-4734 (US Toll Free); conference code: 179976.

Public Review and Comment Period: A 45-day public review period for the Draft EIR Supplement begins on July 31, 2023, and ends on September 13, 2023, at 5:00 p.m. Please send your written comments via letter or email, with appropriate contact information, to:

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Comments provided via email should include “MPA Artificial Structures Draft Supplement Comments” in the subject line and the full name of the commenter in the body of the email.

Anticipated Significant Environmental Impacts: Based on the environmental analyses in the Draft EIR Supplement for the proposed regulatory amendments, implementation of the project would not result in any significant environmental impacts.

Cortese-Listed Sites: Section 15087 (c)(6) of the CEQA Guidelines requires that this notice disclose whether the project area is listed on any of the lists enumerated under Government Code Section 65962.5 (Cortese List). Because of the size of the project area, the fact that the exact locations of future O&M activities are not known at this time, and the long-term nature of the project, conducting a site-specific search of applicable hazardous waste databases would need to be done on a case-by-case basis. As noted in Chapter 3 of the Draft EIR Supplement, if authorized O&M activities are required on a site included on a list of hazardous materials sites, all applicable federal, state, and local regulations would be complied with to reduce potential exposure of people and the environment to hazards or hazardous materials.