

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 205(c), 265, 399, 1590, 1591, 2860, 2861, and 6750 of the Fish and Game Code and sections 36725(a) and 36725(e) of the Public Resources Code and to implement, interpret, or make specific sections 200, 205(c), 265, 399, 2861, 5521, 6653, 8420(e), and 8500 of the Fish and Game Code and sections 36700(e), 36710(e), 36725(a), and 36725(e) of the Public Resources Code, proposes to amend subsection (b)(17) of Section 632, Title 14, California Code of Regulations (CCR), relating to Marine Protected Areas (Rockport Rocks Special Closure).

Informative Digest/Policy Statement Overview

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. During this designation process, relatively small special closures were used as a management tool to protect seabird rookeries and marine mammal haul-out sites by restricting ocean-based access to these areas seasonally or year-round.

The Rockport Rocks Special Closure was enacted in 2012 to seasonally protect breeding and nesting seabirds from disturbance by prohibiting visitor access closer than 300 feet March 1 to August 31 [Subsection 632(b)(17), Title 14, CCR].

In 2015, the Mendocino Redwood Company, LLC, (MRC) submitted a petition to the Commission requesting the repeal of the Rockport Rocks Special Closure regulations. The petition alleges the Rockport Rocks Special Closure prohibits MRC from accessing its private property.

The proposed amendment will repeal all aspects of the special closure, except for modification of the name from "Rockport Rocks Special Closure" to "Repealed: Rockport Rocks Special Closure".

Benefits of the Proposed Regulation

The proposed amendment to Section 632 corrects inadvertent implementation of regulations that conflict with Department of Fish and Wildlife policy to not establish MPAs or special closures that prohibit access to private lands. Retaining the name with a slight modification will ensure historical tracking of enforcement citations for this area as well as all other MPAs and special closures in the statewide network, avoid costs of reprinting statewide materials, and avoid an amendment of every MPA serial number in subsection 632(b).

Consistency and Compatibility with Existing State Regulations

Commission staff has searched the CCR and has found no other regulations concerning Rockport Rock Special Closure and therefore has determined that the proposed regulations are neither inconsistent, nor incompatible, with existing state regulations.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Resources Building Auditorium, 1416 Ninth Street, Sacramento, California, on Wednesday, June 20, 2018, at 8 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the River Lodge Conference Center, 1800 Riverwalk Drive, Fortuna, California, on Wednesday, August 22, 2018, at 8:00 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before 5:00 p.m. on August 9, 2018, at the address given below, or by email to FGC@fgc.ca.gov. Written comments mailed (to Fish and Game Commission, PO Box 944209, Sacramento, CA 94244-2090), or emailed to the Commission office, must be received before 12:00 noon on August 17, 2018. All comments must be received no later than August 22, 2018, at the hearing in Fortuna, California. If you would like copies of any modifications to this proposal, please include your name and mailing address.

Availability of Documents

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout format can be accessed through the Commission website at www.fgc.ca.gov. The regulations as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Valerie Termini, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Valerie Termini or Rick Pimentel at the preceding address or phone number. **Amanda Van Diggelen, Environmental Scientist, Department of Fish and Wildlife, phone (562) 342-7176, has been designated to respond to questions on the substance of the proposed regulations.**

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action/Results of the Economic Impact Assessment

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 Business, 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 repeal removes an access restriction that may impart limited positive impacts to only one private landowner.

- (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 opportunities within the state of California.

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

- (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.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Valerie Termini
Executive Director

Dated: April 23, 2018