

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR PROPOSED REGULATORY ACTION

Amend subsection (b)(17) of Section 632
Title 14, California Code of Regulations
Re: Marine Protected Areas

I. Date of Initial Statement of Reasons: February 2, 2018

II. Dates and Locations of Scheduled Hearings:

- | | | |
|-------------------------|-----------|-----------------|
| (a) Notice Hearing: | Date: | April 18, 2018 |
| | Location: | Ventura, CA |
| (b) Discussion Hearing: | Date: | June 20, 2018 |
| | Location: | Sacramento, CA |
| (c) Adoption Hearing: | Date: | August 22, 2018 |
| | Location: | Fortuna, 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. 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 (Attachment 1).

On June 6, 2012, the Fish and Game Commission (Commission) adopted regulations establishing Rockport Rocks Special Closure along with six other special closures, 15 MPAs and one marine managed area, and amending regulations for four existing MPAs along California's North Coast MPA region [Section 632, Title 14, California Code of Regulations (CCR)]. The Rockport Rocks Special Closure was enacted 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)] (Figure 1).

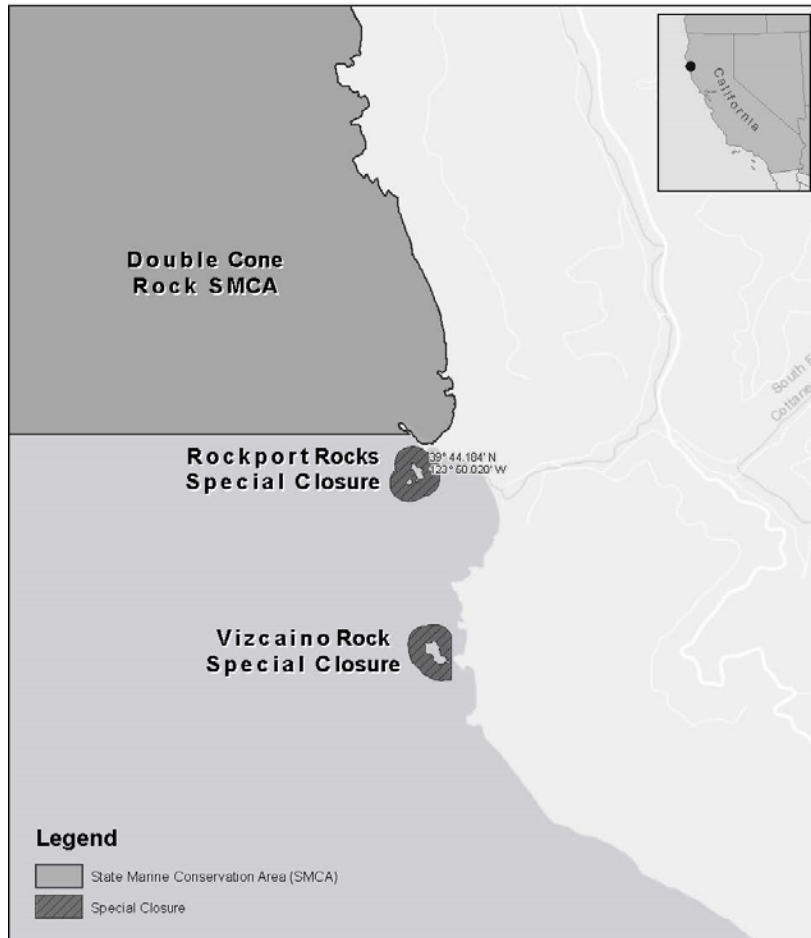


Figure 1. Map of Rockport Rocks Special Closure

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 (Attachment 2).

After reviewing the MRC petition and supporting documents (attachments 3-6) the California Department of Fish and Wildlife (Department) in consultation with the State Lands Commission and US Bureau of Land Management (BLM), confirmed that in 1927 the BLM had patented the area referred to as Rockport Rocks, and deeded ownership to Edgar T. Dusenbury. In 1927, Dusenbury sold the area to Finkbine-Guild Lumber Company, which in 1998, and then known as L-P Redwood, LLC, sold the area to MRC (Attachment 4).

Proposed Amendment to Subsection 632(b)(17):

Subsection 632(b)(17) defines a geographic area surrounding Rockport Rocks as a special closure prohibiting seasonal access to the area from March 1 to August 31. This subsection is proposed for amendment by repealing all aspects of the special closure. The subsection heading will be modified from “Rockport Rocks Special Closure” to “Repealed: Rockport Rocks Special Closure”;

thereby ensuring historical tracking of enforcement citations statewide, avoiding costs of reprinting outreach materials, and avoiding an amendment of every MPA serial number in subsection 632(b).

Necessity and Rationale:

The current regulation inadvertently restricts access to privately owned land. A 2008 Department memorandum about private land ownership and MPAs stated that “the MPA designation process must take into account existing California State Lands Commission leases, California Fish and Game Commission state water bottom and kelp leases, tide and submerged lands grants, private tidelands, and any other legal entitlements” (Attachment 3). Repeal of the Rockport Rocks Special Closure regulations will address the original intent of the MLPA design criteria to not impact private land ownership.

(b) Goals and Benefits of the Regulation:

The proposed regulations will make the MPA network consistent with original planning criteria regarding private land ownership and MPA implementation.

(c) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 200, 205(c), 265, 399, 1590, 1591, 2860, 2861, and 6750, Fish and Game Code; and Sections 36725(a) and 36725(e), Public Resources Code.

Reference: Sections 200, 205(c), 265, 399, 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.

(d) Specific Technology or Equipment Required by Regulatory Change:

None

(e) Identification of Reports or Documents Supporting Regulation Change:

Attachment 1: Department Memorandum, dated November 1, 2007 - Special Closures as they apply to the Marine Life Protection Act (MLMA)

Attachment 2: Petition No. 2015-006 Remove special closure regulations for Rockport Rocks in 14 CCR § 632(b)(17)

Attachment 3: Department Memorandum, dated January 31, 2008 - Private Land Ownership and Marine Protected Areas

Attachment 4: MRC Land Ownership History

- Patent # 999463 as recorded in Book 22, page 54, of the

- Mendocino County Book of Records
- Record of Patents, Patent # 999463
- Map of Patent Area, Patent # 999463
- Grant Deed as recorded in Book 22, page 55, of the Mendocino County Book of Records
- Pages 1, 92, and 94 of Grant Deed, dated June 24, 1998

Attachment 5: Commission letter, dated July 31, 2017, granting Petition No. 2015-006

Attachment 6: California Marine Life Protection Act North Coast Project – North Coast Special Closure Recommendations, October 26, 2010

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

MRC presented the petition to the Commission at its December 9, 2015, meeting. At its February 10, 2016, meeting, the Commission referred the petition to the Department, and at its June 22, 2017, meeting, the Commission granted the petition, no other public meetings were held addressing the petition 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 Rockport Rocks Special Closure in its current location, and continue to impact the MRC adversely by limiting legal access to its private land. MRC has stated “the special closure is a potential encumbrance to being able to sell the parcel or sell a conservation easement to an interested party.”

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 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.

VII. Economic Impact Assessment

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

The proposed amendment will not create or eliminate jobs within the state because the proposed repeal removes an access restriction that only affects a private landowner, the MRC. This change will neither increase nor decrease recreational or commercial opportunities within California.

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

The proposed amendment will not create any new businesses or eliminate existing businesses because the proposed repeal will neither increase nor decrease recreational or commercial opportunities within California.

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

The proposed amendment is 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 opportunities within California.

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

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

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

The proposed amendment does not have foreseeable benefits to worker safety because the regulation does not affect working conditions.

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

The Commission anticipates benefits to the state's environment will remain consistent with the protections provided by the MPA network as a whole.

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, California Code of Regulations (CCR)].

In 2015, the Mendocino Redwood Company, LLC, (MRC) submitted a petition to the Fish and Game Commission (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 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.