

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, Fish and Game Code; and sections 36725(a) and 36725(e), Public Resources Code and to implement, interpret or make specific 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, proposes to amend subsections 632(b)(9), 632(b)(37), 632(b)(41), 632(b)(42), and 632(b)(91), Title 14, California Code of Regulations, relating to state marine recreational management areas.

Informative Digest/Policy Statement Overview

Unless otherwise specified, all references in this informative digest are regarding Title 14 of the California Code of Regulations (CCR).

The Marine Life Protection Act (MLPA) of 1999 (Fish and Game Code sections 2850-2863) required California to re-examine and redesign California's existing Marine Protected Area (MPA) system to increase its coherence and effectiveness at protecting the state's marine life, habitats, and ecosystems. In 2000, the Marine Managed Areas (MMAs) Improvement Act (Public Resources Code sections 36600-36900) standardized and clarified the designations of MMAs, which include MPAs. The overriding goal of these acts is to protect California's valuable marine resources, including natural biodiversity and abundance of marine life, sustaining and rebuilding species of economic value, and improving recreational and educational opportunities in areas subject to minimal human disturbance.

The Commission adopted MPA regulations that were implemented, by region, between 2007 to 2012. In 2015, the Commission adopted a rulemaking package intended to clarify and clean-up regulations associated with MPAs and MMAs. The 2015 rulemaking unintentionally removed the take restrictions intended to be included by regional stakeholders and the Commission within five State Marine Recreational Management Areas (SMRMAs): South Humboldt Bay SMRMA, Russian River SMRMA, Estero Americano SMRMA, Estero de San Antonio SMRMA, and Morro Bay SMRMA. As a result, under current regulations (Section 632), SMRMAs no longer have language prohibiting take of marine resources as intended by the regional stakeholders and the Commission. Current regulations for each of the five SMRMAs specify that area restrictions apply as defined in subsection 632(a)(1)(D), however the definition in subsection 632(a)(1)(D) does not have any take restrictions identified.

The proposed amendments will return the regulatory text to similar language used prior to the 2015 amendment regarding take of living marine resources. In addition, the new amendments would prohibit take of geological and cultural marine resources to align SMRMAs with state marine reserve and state marine conservation area designation definitions to improve consistency amongst protected areas.

The following is a summary of the proposed language change for Section 632:

- South Humboldt Bay SMRMA and Morro Bay SMRMA
 - Current language to be replaced: "Area restrictions defined in subsection 632(a)(1)(D) apply, with the following specified exceptions"

- Proposed language to be used: “Take of all living, geological, or cultural marine resources is prohibited except”
- Russian River SMRMA, Estero Americano SMRMA, and Estero de San Antonio SMRMA
 - Current language to be replaced: “Area restrictions defined in subsection 632(a)(1)(D) apply”
 - Proposed language to be used: “Take of all living, geological, or cultural marine resources is prohibited”

In addition, subsections 632(b)(9)(B) and (C) are proposed to be renumbered for consistency with other subsections and language in subsection 632(b)(91)(B) concerning the hunting of waterfowl in Morro Bay SMRMA is proposed to be revised for consistency with the language concerning hunting of waterfowl in other MMAs.

Benefits of Regulations

California’s MMAs are one of many tools for resource managers to use for protecting, conserving, and managing the state’s valuable marine resources. MMAs can offer many benefits, including protecting habitats, species, geological and cultural resources, and water quality; enhancing recreational opportunities; and contributing to the economy through such things as increased tourism. MMAs may also benefit fisheries management by protecting representative habitats and reducing extractive uses [Public Resources Code subdivision 36601(a)(3)]. The primary goal of the proposed regulation amendments is to ensure the five SMRMAs are used to protect and conserve the marine resources within their designated area as intended when they were implemented. Additionally, the proposed amendments to improve consistency of regulatory language will help reduce any confusion about regulations that apply to MMAs.

Consistency and Compatibility with Existing Regulations

The proposed regulations are consistent with regulations concerning sport and commercial fishing 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 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 CCR 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

Public Participation

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a webinar/teleconference hearing to be held on Thursday, May 19, 2022 at 8:30 a.m., or as soon thereafter as the matter may be heard. Instructions for participation in the webinar/teleconference hearing will be posted at www.fgc.ca.gov in advance of the meeting or may be obtained by calling 916-653-4899.

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 Los Angeles County or Orange County, California, on

Wednesday June 15, 2022 at 8:30 a.m., or as soon thereafter as the matter may be heard. The exact location of this meeting has not yet been determined. As soon as this information is available but not less than thirty days before the hearing, a continuation notice will be sent to interested and affected parties providing the exact location. The continuation notice will also be published in the California Regulatory Notice Register and will be published on the Commission's website. This meeting will also include the opportunity to participate via webinar/teleconference. Instructions for participation in the webinar/teleconference hearing will be posted at www.fgc.ca.gov in advance of the meeting or may be obtained by calling 916-653-4899.

It is requested, but not required, that written comments be submitted on or before June 2, 2022 at the address given below, or by email to FGC@fgc.ca.gov. Written comments mailed, or emailed to the Commission office, must be received before 5:00 p.m on June 13, 2022. All comments must be received no later than June 15, 2022, at the hearing in Los Angeles/Orange County, California or during the webinar/teleconference. If you would like copies of any modifications to this proposal, please include your name and mailing address. Mailed comments should be addressed to Fish and Game Commission, PO Box 944209, Sacramento, CA 94244-2090.

Availability of Documents

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikethrough 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, Melissa Miller-Henson, Executive Director, Fish and Game Commission, 715 P 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 Melissa Miller-Henson or Sherrie Fonbuena at FGC@fgc.ca.gov or at the preceding address or phone number. **Environmental Scientist, Amanda Van Diggelen, Department of Fish and Wildlife, (562) 522-3901 or R7RegionalMgr@wildlife.ca.gov, 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 amendments return SMRMAs to their originally intended design and permitted uses that were established during the MLPA planning process. The proposed action is to remedy an inadvertent omission of take restrictions while also adding language regarding take of geologic and cultural resources for consistency with other protected areas which are central to the intent of the SMRMA habitat protection goals that may also be associated with increased recreational activities and tourism.

- (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 the proposed amendments are to return SMRMAs to their originally intended design and permitted uses that were established during the MLPA planning process and to prohibit take of geologic and cultural resources for consistency amongst protected areas.

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

The Commission anticipates benefits to the environment by restoring and adding enhanced protection of marine and estuarine habitats and species within the five areas designated as SMRMAs.

- (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

Melissa Miller-Henson
Executive Director

Dated: April 19, 2022