

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 Section 2084 of the Fish and Game Code, interpret or make specific Section 2084 Fish and Game Code, proposes to add Section 749.14, Title 14, California Code of Regulations (CCR), relating to take of Morro manzanita during candidacy under the California Endangered Species Act (CESA).

Informative Digest/Policy Statement Overview

Unless otherwise specified, all section references in this document are to Title 14, CCR.

On April 16, 2025, the Commission determined that listing Morro manzanita under CESA may be warranted pursuant to Section 2074.2, Fish and Game Code. Morro manzanita became a candidate species under CESA, effective upon publication of the notice of findings on May 16, 2025.

It was brought to the Commission's attention that a project that has completed environmental review in San Luis Obispo County was compromised with the candidacy of Morro manzanita. The County of San Luis Obispo proposes to replace the South Bay Boulevard Bridge (No. 49C-0351) ("Project") which spans Los Osos Creek so that it meets current seismic design standards and maintains safe, reliable service of a critical access corridor for the Los Osos and Morro Bay communities.

The proposed regulation adds Section 749.14 to Title 14, CCR aims to create a take allowance pursuant to Section 2084, Fish and Game Code, allowing take of Morro manzanita during the CESA candidacy process for the described Project. The proposed addition of Section 749.14 represents the cumulation of the Department internal discussions with the County Public Works Department staff.

Benefit of the Regulations

The creation of the Morro manzanita mitigation site will be a benefit to recovery by increasing the total area occupied by Morro manzanita within its range by 0.48 acre. The restoration and mitigation areas will be managed under the HMMP finalized in collaboration with the Service. Further, the County will be developing and documenting improved techniques for removal, storage, and reinstallation of Morro manzanita individuals. More knowledge about Morro manzanita preservation and propagation will be a valuable tool to offset future impacts to Morro manzanita throughout its range and support its recovery.

Consistency and Compatibility with Existing Regulations

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. Section 20, Article IV, of the state Constitution specifies that the Legislature may delegate to the Commission such powers relating to the protection and propagation of fish and wildlife as the Legislature sees fit. The Legislature has delegated to the Commission the power to adopt regulations governing the candidacy of species under CESA (California Fish and Game Code sections 2080 *et seq.*). No other state agency has the authority to adopt regulations governing exemption from the take prohibition of candidate species under CESA. The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Commission has searched the CCR for any regulations regarding the adoption of regulations for the exemption from the take prohibition from CESA; therefore, the Commission has concluded that the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

Public Participation

Comments Submitted by Mail or Email

It is requested, but not required, that written comments be submitted on or before **September 25, 2025** 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 on **October 3, 2025**. 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.

Meetings

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a webinar/teleconference hearing originating in the California Natural Resources Building, second floor, 715, P Street, Sacramento, California, which will commence on **Wednesday, August 13, 2025**, and may continue on **Thursday, August 14, 2025**. 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. Please refer to the Commission meeting agenda, which will be available at least 10 days prior to the meeting, for the most current information.

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 at the East End Complex Auditorium, 1500 Capitol Avenue, in Sacramento, California, which will commence on **Wednesday, October 8, 2025**, and may continue at on **Thursday, October 9, 2025**. 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. Please refer to the Commission meeting agenda, which will be available at least 10 days prior to the meeting, for the most current information.

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, 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 Jenn Bacon at FGC@fgc.ca.gov or at the preceding address or phone number. **Kristi Lazar, Native Plant Coordinator, Department of Fish and Wildlife, has been designated to respond to questions on the substance of the proposed regulations. Ms. Lazar can be reached at NativePlants@wildlife.ca.gov.**

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 Commission does not anticipate any adverse economic impacts to businesses that would affect their ability to compete with businesses from other states as a result of these regulations to allow for the discretionary take of Morro manzanita. The proposed regulations impose no costs that would create an adverse economic impact.

(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 from the proposed regulation that would affect the creation or elimination of jobs within the state, the creation or elimination of businesses within the state, or the expansion of businesses within the state as a result of these regulations to allow for the discretionary take of Morro manzanita.

The proposed regulation will benefit the health and welfare of California residents and the state's environment. Allowing the take of Morro manzanita during the candidacy period and during implementation of the South Bay Boulevard Bridge Replacement Project will enable the project to move forward without delay. The regulations are not expected to affect worker safety.

(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. There are no anticipated costs or reporting requirements imposed by the allowance for discretionary take that would affect a private person or business.

(d) **Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:**

The Commission does not anticipate any costs or savings to state agencies or any costs or savings in Federal Funding to the State as a result of these regulations to allow for the discretionary take of Morro manzanita. There are no anticipated changes in enforcement activities for the Department or other state agencies that would increase costs, nor are there any fees that would increase revenue.

Failure to adopt, however, would force San Luis Obispo County to pursue taking Morro manzanita via the Incidental Take Permit (ITP) process. The approximately \$47,000 for the CDFW ITP Application fee with Complexity Fee would cover most of the Department's costs for processing the permit application; however, this would still leave the Department with a deficit of approximately \$12,359.68 that would need to be absorbed in the existing budget.

(e) Nondiscretionary Costs/Savings to Local Agencies:

While the Commission does not anticipate any nondiscretionary costs or savings to local agencies as a result of the proposed regulations, failure to adopt them could force the County to pursue taking Morro manzanita via the Incidental Take Permit (ITP) process, which is more costly and time consuming than the discretionary take approach proposed by these regulations. The ITP process would add costs of approximately \$5.342 million to the County's project and would delay the \$30 million infrastructure project to improve the seismic safety of the Morro Bay and Los Osos transportation corridor.

Additionally, County staff indicate that failing to adhere to the project's current timeline due to a delay would cost the project \$27 million in programmed Federal funding, as well as increase the costs of the project by approximately \$5.45 million. Combined total cost impact to the County from failing to adopt these regulations would be approximately \$10.792 million.

(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.

California Fish and Game Commission

Melissa Miller-Henson
Executive Director

Dated: July 16, 2025