

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

Amend Section 632
Title 14, California Code of Regulations
Re: Southeast Farallon Island Special Closure

I. Date of Initial Statement of Reasons: November 16, 2010

II. Date of Final Statement of Reasons: May 9, 2011

III. Dates and Locations of Scheduled Hearings:

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| (a) | Notice Hearing: | Date: September 16, 2010
Location: McClellan, California |
| (b) | Discussion Hearing: | Date: March 3, 2011
Location: Los Angeles, California |
| (c) | Adoption Hearing: | Date: April 7, 2011
Location: Folsom, California |

IV. Update:

No modifications were made to the originally proposed language of the Initial Statement of Reasons.

At its April 7, 2011 meeting, the California Fish and Game Commission (Commission) adopted the regulations as proposed.

V. Summary of Primary Considerations Raised in Support or Opposition to the Proposed Actions and Reasons for Rejecting those Considerations:

- (1) Written testimony provided by Maria Brown, Superintendent, Gulf of the Farallones National Marine Sanctuary, dated February 24, 2011:
a. Supports the proposed regulation change.

Response:

- a. Support noted.

- (2) Oral testimony provided by Paul Weakland at the March 3, 2011 and April 7, 2011 Commission meetings:

- a. He stated that he was not aware of what was being proposed and requested that the Department provide a presentation of the issue.
- b. He stated that many years ago fishermen did not anchor closer than 300 feet for three months out of each year and stated there is no science to support that the boating restrictions protect sea birds.
- c. He requested that fishermen be allowed to utilize the abalone resources at the Farallon Islands.
- d. He stated that the seasonal closure hinders safe boating activities.

Response:

- a. A Department presentation was provided at the September 16, 2010 meeting. In addition, a notice of the proposed regulatory action was mailed to Mr. Weakland on February 18, 2011.
- b. The restrictions on boating and anchoring were originally established as part of the Farallon Islands State Marine Conservation Area for purposes of noise abatement to protect sea birds. Rationale explaining the biological benefits of special closures in reducing bird disturbance events was included in Attachment 11 for the Amended Initial Statement of Reasons in OAL File 2010-0313-02SR.
- c. This comment is outside the scope of the proposed regulation to change a year-round closure to a seasonal closure.
- d. The Department disagrees. The special closure at the Southeast Farallon Island specifically provides an exception to the restriction on access and anchoring, stating that the restriction is except as permitted by federal law or emergency caused by hazardous weather. Further, it specifically exempts Fisherman's Bay and East Landing from the closure area to allow for mooring and anchoring in two key harbors at the island.

(3) Oral testimony provided by Kaitlin Gaffney at the April 7, 2011 Commission meeting:

- a. Supports the proposed regulation change.

Response:

- a. Support noted.

VI. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:

California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VII. Location of Department Files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

VIII. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

No alternatives were identified.

(b) No Change Alternative:

The no change alternative could potentially have a negative impact on eco-tourism operators that conduct wildlife viewing tours seasonally in the area. This would prohibit access in an area where seasonal access is not considered detrimental to the ecological goals of the Southeast Farallon Island Special Closure. This could lead to potentially unnecessary negative socio-economic impacts.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

IX. 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 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.

Allowing seasonal access to the area from Fisherman's Bay to East Landing, within the Southeast Farallon Island Special Closure, may reduce potential local adverse impacts identified in OAL File 2010-0313-02SR and may benefit the local economy.

- (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:

None.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency 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:

Any additional costs to State agencies for enforcement, monitoring, and management of marine protected areas are difficult to estimate and depend on not only the impacts of the proposed regulation but also other regulations and processes. Given that the proposed activities were previously occurring in the area from Fisherman's Bay to East Landing, within the Southeast Farallon Island Special Closure, it is unlikely that changes to existing enforcement would be required.

- (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.

Updated Informative Digest / Policy Statement Overview

On August 5, 2009, the California Fish and Game Commission (Commission) adopted regulations to implement marine protected areas in the north central coast region of California, the second study region considered under the Marine Life Protection Act (MLPA, Stats. 1999, ch. 1015). These regulations went into effect May 1, 2010. Subsequent to their implementation, an error was identified in the regulations for the special closure established at Southeast Farallon Island.

As originally proposed by the Blue Ribbon Task Force, the Southeast Farallon Island Special Closure specified the area from Fisherman's Bay to East Landing be a seasonal closure only (from December 1 through September 14), thus allowing boat access during the remainder of the year. However, the regulation that was adopted and went into effect on May 1, 2010 did not include this seasonal component for the area, and was instead defined in regulation as a year-round closure. This error was identified through public testimony. A review of supporting documents from the regulation development process verified that the original intent was to make this portion of the special closure seasonal in nature, and that inclusion of a year-round closure in this area was a drafting error. Therefore, subsection 632(b)(33)(B) is proposed to be amended to add a seasonal component to the closure area between Fisherman's Bay and East Landing within the Southeast Farallon Island Special Closure, as originally intended and reflected in the maps and supporting documents.

In addition, feedback from enforcement and the public has highlighted that the complexity of the regulations language describing boundaries and exceptions to year-round closure are confusing as described in the existing regulations. As a result of the confusion, there is heavy reliance on mapped images in order to understand the written boundaries. Therefore, subsection 632(b)(33)(B) is proposed to be modified to improve clarity and ease public understanding by sub-dividing the description of areas that provide exceptions to year-round closure, and modifying only the description of the boundaries without modifying the boundaries.

At its April 7, 2011 meeting, the Commission adopted the regulations as proposed.

