

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

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. 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 |

III. Description of Regulatory Action:

- (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

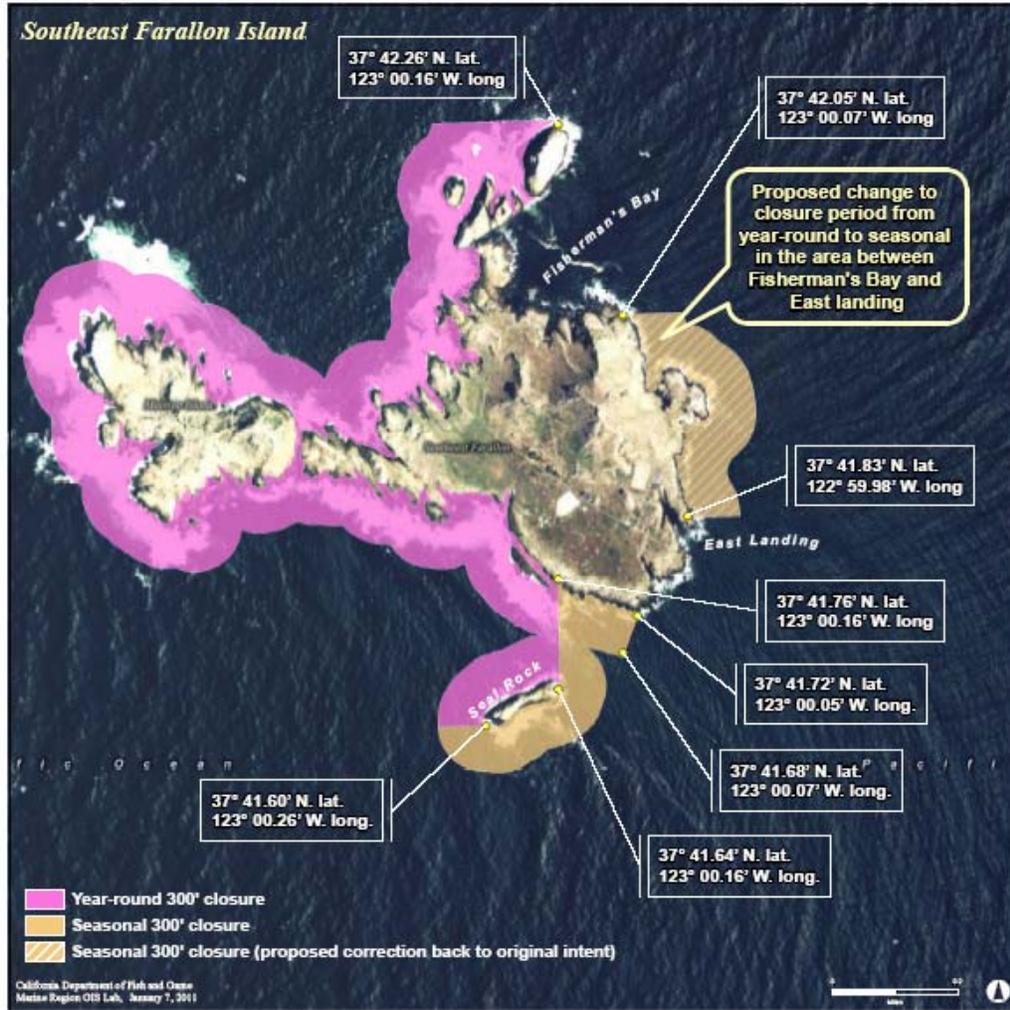
On August 5, 2009, the California Fish and Game Commission (Commission) adopted regulations to implement marine protected areas (MPAs) in the north central coast region of California, the second study region considered under the Marine Life Protection Act (MLPA, Stats. 1999, ch. 1015). These regulations 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 (BRTF), 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 (Attachments 1-3). 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 (Figure 1).

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.

Figure 1. Map showing the special closure at the Southeast Farallon Island. Regulations currently include the portion from Fisherman's Bay to East Landing as a year round closure. The proposed regulation change would modify this portion of the special closure to a seasonal closure which applies from December 1 through September 14 only, as intended by the BRTF.



(b) Authority and Reference Sections from Fish and Game Code and Public Resources Code for Regulation:

Authority: Sections 200, 202, 203.1, 205(c), 219, 220, 1590, 1591, 2860, 2861, and 6750, Fish and Game Code; and Sections 36725(a) and 36725(e), Public Resources Code.

Reference: Sections 200, 202, 203.1, 205(c), 219, 220, 1580, 1583, 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.

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

None.

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

Attachment 1: Blue Ribbon Task Force document describing the Marine Protected Areas in the Integrated Preferred Alternative (May 27, 2008) (Also available at <http://www.dfg.ca.gov/mlpa/pdfs/binders/b4di3.pdf>)

Attachment 2: Maps created for the Blue Ribbon Task Force describing the Marine Protected Areas in the Integrated Preferred Alternative (May 7, 2008) (Also available at <http://www.dfg.ca.gov/mlpa/pdfs/binders/b4di6.pdf>)

Attachment 3: Chapter 2 of the Draft Environmental Impact Report (March 2009) (Also available at <http://www.dfg.ca.gov/mlpa/pdfs/binders/b4di6.pdf>)

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

No public meetings are being held prior to the notice publication. The 45-day comment period provides adequate time for review of the proposed amendment.

IV. 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.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action would have no negative impact on the environment; therefore, no mitigation measures are needed. Allowing the portion of the special closure from Fisherman's Bay to East Landing to be seasonal in nature would seasonally allow the continuation of practices that occurred prior to May 1, 2010.

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. 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 2010-0413-02SR 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 MPAs 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.

Informative Digest / Policy Statement Overview

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