

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

Amend Section 632  
Title 14, California Code of Regulations  
Re: Morro Bay State Marine Recreational Management Area  
and Dana Point State Marine Park

- I. Date of Initial Statement of Reasons: March 15, 2008
- II. Date of Final Statement of Reasons: November 14, 2008
- III. Dates and Location of Scheduled Hearings:

- (a) Notice Hearing:           Date: August 8, 2008  
  Location: Carpinteria, California
- (b) Discussion Hearing:       Date: September 4, 2008  
  Location: Kings Beach, California
- (c) Adoption Hearing:         Date: November 14, 2008  
  Location: Huntington Beach, California

- IV. Update:

On November 14, 2008, the California Fish and Game Commission (Commission) selected the proposed changes for Morro Bay State Marine Recreational Management Area and Dana Point State Marine Park. No changes were adopted for Elkhorn Slough State Marine Reserve.

No modifications were made to the originally proposed language on the Initial Statement of Reasons for the Commission-selected changes.

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

- 1. Linda G. McIntyre, Moss Landing Harbor District, letter dated August 22, 2008
  - (a) Elkhorn Slough: Supports the proposed boundary change.

Department Response

- (a) *Comment noted.*

2. Kaitlin Gaffney, Ocean Conservancy, letter dated August 28, 2008
- (a) Elkhorn Slough: Ms. Gaffney does not support the proposed boundary change. This is not a minor technical correction and would undermine the integrity of the State Marine Reserve (SMR). Changes would directly conflict with the Commission's adopted objective to "provide complete protection...to the entire slough channel."
  - (b) The loss of recreational fishing at Kirby Park was fully discussed by the Central Coast Regional Stakeholder Group (RSG) who concluded that, "the high ecological value of the Slough as well as the availability of numerous alternative adjacent fishing access points justified full SMR protection of this area."
  - (c) Morro Bay: Supports the proposed change to allow for standard harbor maintenance activities.

Department Response

- (a) *The Department does not agree that continued shore fishing at Kirby Park would impact Elkhorn Slough's ecological balance, nor will a boundary adjustment of 550 feet diminish the protections provided by the Elkhorn Slough SMR. The Department reviewed recreational fishing and sampling data from Kirby Park, and found that shore-based catch success is limited and the Harbor District has imposed a restriction on nighttime access after 10:00 p.m.*
  - (b) *The reference made to a RSG conclusion that "the loss of fishing at Kirby Park was discussed by the full RSG" was derived from an external package (Package A-C) that was not forwarded as a recommendation to the Blue Ribbon Task Force (BRTF) or the Commission. The Department recognizes that proposals forwarded from the RSG (Package 1, 2, & 3) generally implied intent for the slough to be protected to the full extent of the channel. However, concern was expressed in at least one package that shore-based fishermen using Elkhorn Slough were not represented in the stakeholder group and that more use patterns should be explored. The Department concurred with this concern*
  - (c) *Comment noted.*
3. Joey Racano, Ocean Outfall Group, e-mail dated September 4, 2008
- (a) Morro Bay: Doesn't support proposed changes for Morro Bay. The Harbor Department wants to dredge and dump and armor the coast to build a marina for yachts right next to the new SMR.

Department Response

- (a) *The proposed language for Morro Bay explicitly states that maintenance dredging and harbor and boat maintenance are permitted; this is a clarification, not a change to allow new activities.*

4. Rick Algert, Harbor Director for the City of Morro Bay, comment to the Commission on September 4, 2008
  - (a) Supports changes proposed for Morro Bay SMRMA to allow maintenance dredging.
  - (b) Requests the Commission reconsider allowing recreational crab fishing within Morro Bay SMRMA. Mr. Algert understands that this was removed from consideration because it was considered a substantive change. He requested that the Commission keep the issue in mind for the future.

Department Response

- (a) *Comment noted.*
- (b) *Comment noted.*

5. Walt Mansell, CA Riffle and Pistol Associations, comment to the Commission on September 4, 2008
  - (a) Supports preserving waterfowl hunting locations in Morro Bay.

Department Response

- (a) *Comment noted.*

6. Samantha Murray, Ocean Conservancy comment to the Commission on September 4, 2008
  - (a) Morro Bay: supports the proposed change.
  - (b) Dana Point SMCA: supports the correction to the designation.
  - (c) Elkhorn Slough: Opposes the proposed change. All RSG proposals included the full slough for protection. The consideration of public uses at Kirby Park was fully discussed by the RSG.

Department Response

- (a) *Comment noted.*
- (b) *Comment noted.*
- (c) *See Department response 2(a) and 2(b).*

7. Steve Shimek, The Otter Project, letter dated September 25, 2008
  - (a) Elkhorn Slough: Does not support the proposed boundary change.
  - (b) Morro Bay: Supports the proposed changes to allow for standard maintenance dredging.

Department Response

- (a) *See Department Response 2(a).*
- (b) *Comment noted.*

8. Rikke Kvist Preisler, University of California Santa Cruz, letter dated October 14, 2008

- (a) Elkhorn Slough: Does not support the proposed boundary change of Elkhorn Slough SMR. There is no reason to allow fishing at Kirby Park which is in an important nursery area and is already heavily impacted. Fishing access exists only a few miles away at Moss Landing Harbor and surrounding areas.

Department Response

- (a) *While RSG packages expressed intention to establish an SMR to the full extent of the slough channel, further information about Kirby Park came to the Department's attention after the RSG process was completed. Public access at Kirby Park was built in 1988-1990 to provide public access to fishing including wheel chair access, boat launch access, and recreational shore fishing opportunities at this remote location (Kirby Park is one of only two public access points on Elkhorn Slough). The project was funded by Sport Fish Restoration Act Funds and Wildlife Conservation Board Funds. Federal aid was contributed with the provision that marine anglers would receive 100% of the benefits from this project. Maintaining the existing boundary will still allow access to the boat launch, although Kirby Park is the only location at Elkhorn Slough where anglers with limited mobility can shore-fish. The second site is approximately five miles away and requires traversing down shore banks or over rocky jetties.*

- 9. Former members of the Central Coast Regional Stakeholder Group: Don Canestro, University of California Ken Norris Rancho Marino Reserve; John Pearce, UC Santa Cruz; Kris Lindstrom, K.P. Lindstrom, Inc. Planning and Environmental Consulting Services; Marc Shargel, Diver and Underwater Photographer; Ron Massengill, Cambria Fishing Club; Marla Morrissey, Steelhead and Stream Recovery Coalition; Jim Webb, Cambria Fishing Club; Gordon Hensley, EPIC; Robin Robinson, Artist; Eric Russell, Aquatic Protection Agency; D'Anne Albers, Friends of the Sea Otter; letter dated October 23, 2008

- (a) Elkhorn Slough: The members are strongly opposed to reducing the size of Elkhorn Slough SMR by excluding Kirby Park. The RSG was, "unanimous in its support for including the entire Elkhorn Slough channel in a state marine reserve." The RSG proposals for the slough were already reduced by the Commission in adopting the Department's preferred alternative, and any further reduction would significantly reduce the conservation value of the MPA and directly contradict the intent of the RSG.

Department Response

- (a) *See Department response 2(a) and 2(b).*

10. Mike Osmond, Laura Kasa, Jim Curland, Sarah Corbin, Kaitilin Gaffney, Karen Garrison, Steve Shimek, letter dated October 28, 2008
- (a) Elkhorn Slough: Does not support the proposed regulatory changes to the Elkhorn Slough SMR. The Commission already allowed fishing in the first 1.4 miles of the slough channel. This change would result in, "a failure to provide meaningful increase in protection for one of the Central Coast's most important and vulnerable habitats."

Department Response

- (a) *See Department response 2(a).*

11. John Pearse, UC Santa Cruz, e-mail dated November 5, 2008
- (a) Elkhorn Slough: Does not support the proposed boundary change to the Elkhorn Slough SMR. As one of the stakeholders on the Central RSG, I object to the notion that the Kirby Park area was "unintentionally" closed. Members of the RSG spent considerable time discussing the boundaries of the reserve. There was concern expressed by the stakeholder group about leaving the southern end of the Reserve (in the area of the Highway 1 Bridge) open to fishing. However, there was never any question about allowing fishing further within the reserve. All the stakeholder packages included the entire slough above the bridge. The intended purpose of the Reserve, as adopted by the Commission, is to protect breeding fish within the entire slough.

Department Response

- (a) *See Department response 2(a) and 2(b).*

12. Kaitlin Gaffney, Ocean Conservancy, comment to Commission on November 14, 2008
- (a) Elkhorn Slough: The central coast RSG did fully discuss the potential impact of lost angling opportunities in the Elkhorn Slough SMR including Kirby Park. However in the end all agreed that due to its ecological importance the slough should be incorporated into an SMR. A compromise has already been reached on this area by making the lower half of the area and SMP where recreational opportunities still exist. Suggests the Commission consider making the area similar to Greyhound Rock where only shore-based angling is allowed.

Department Response

- (a) *See Department response 2(a) and 2(b).*

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:

None.

(b) No Change Alternative:

The no change alternative would potentially impact harbor maintenance and dredging within Morro Bay, would prohibit existing fishing which is not considered detrimental to the ecological goals of the Elkhorn Slough State Marine Reserve and would leave incorrect references to the Dana Point State Marine Park in place. This would lead to potentially unnecessary negative socio-economic impacts which are inconsistent with the stated objectives of the areas and to public confusion regarding the regulations at Dana Point.

(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 was assessed during the original regulatory process and are discussed in the Initial Statement of Reasons for the earlier action (Office of Administrative Law's Notice ID #Z07-0116-12). Continuing to allow dredging within Morro Bay may reduce those potential impacts and

possibly benefit the local economy. There will be no impact from the designation correction at the Dana Point State Marine Conservation Area.

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

None.

- (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:

None.

- (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:

None.

- (h) Effect on Housing Costs:

None.

## **Updated Informative Digest / Policy Statement Overview**

On April 13, 2007, the California Fish and Game Commission (Commission) adopted regulations to implement marine protected areas (MPAs) within the first study region being considered under the Marine Life Protection Act (MLPA, Stats. 1999, ch. 1015). Upon implementation of these regulations, questions were raised regarding potentially unintended consequences of the new regulations and errors in the consistency of one subsection.

Written testimony to the Commission from the City of Morro Bay raised, among other issues, concerns regarding the regulatory impact on necessary harbor maintenance activities including dredging.

Harbor maintenance is required for the continued viability of the working harbor and is consistent with the intent to avoid negative socio-economic impacts. The proposed regulation would specifically state that dredging under existing permitting frameworks is allowed; and allow maintenance and cleaning of vessel hulls and man-made structures including the removal of living marine resources from those structures.

**The Commission adopted the proposed change to allow harbor dredging, and maintenance and cleaning of vessel hulls and man-made structures, in Morro Bay State Marine Recreational Management Area.**

Department of Fish and Game enforcement staff noted after implementation of the new MPAs that by rounding the northern boundary coordinate in the Elkhorn Slough State Marine Reserve to the nearest half minute of latitude, an existing shoreline fishing access point at Kirby Park was unintentionally closed. The existing regulation lists the northern boundary as 36 degrees 50.50' North latitude. The proposed change would move this boundary to its originally intended location of 36 degrees 50.40' North latitude, a change of approximately 550 feet, in order to continue to allow fishing at the only public access point in upper Elkhorn Slough at Kirby Park (Figure 1).

**The Commission did not adopt the proposed change to the northern boundary coordinate in the Elkhorn Slough State Marine Reserve.**

Existing regulations in the Dana Point State Marine Conservation Area include restrictions on entry into the area for the purpose of taking marine life, allow for the appointment of a Director of the Dana Point State Marine Conservation Area, and provide authority for the Director to permit certain activities. The existing regulations, however, were not updated to reflect the current designation as a state marine conservation area. This leads to confusing language that refers to a previous "State Marine Park" designation which is no longer appropriate. The proposed changes remove these incorrect references in subsections 632(b)(89)(C) through (G) and replace them with the correct designation of state marine conservation area.

**The Commission adopted the proposed correction to the designation at Dana Point State Marine Conservation Area.**

Figure 1. Existing and proposed boundary of the Elkhorn Slough State Marine Reserve in order to allow fishing activities to continue from Kirby Park.

