

Department of Fish and Game (Department) 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).

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.

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



- (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:

None were identified.

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

These issues were discussed at the Commission's November 1, 2007 and December 6, 2007 meetings.

IV. 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.

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 dredging and harbor maintenance in the Morro Bay SMRMA and fishing from Kirby Park in Elkhorn Slough would continue existing practices that are already included in environmental reviews by other permitting and regulatory processes. There are no impacts of correcting the designation of the Dana Point State Marine Conservation Area in the subsections listed above.

VI. 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 and recreational fishing from Kirby Park in Elkhorn Slough may reduce those potential impacts and possibly benefit the local economy. There will be no impact of 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:

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.

(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 Morro Bay SMRMA and Elkhorn Slough, 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:

None.

- (h) Effect on Housing Costs:

None.

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.

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