

## **NOTICE OF PROPOSED REGULATORY ACTION**

### **TITLE 2. ADMINISTRATION DIVISION 3. STATE PROPERTY OPERATIONS CHAPTER 1. STATE LANDS COMMISSION ARTICLE 2.9.1 PERMITS FOR GEOPHYSICAL SURVEYS**

The California State Lands Commission (Commission) will decide whether to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

#### **PROPOSED REGULATORY ACTION**

The Commission proposes to adopt Article 2.9.1 within Title 2, Division 3, Chapter 1 of the California Code of Regulations. The sections within this Article would govern the issuance of permits for the conduct of geophysical surveys on State sovereign lands, including granted and ungranted tidelands and submerged lands.

Specifically, the proposed regulatory action will:

- Reserve section 2100.01
- Adopt section 2100.02 to define the purpose and applicability for the provisions of article 2.9.1;
- Adopt section 2100.03 to define specific terms to provide clarity for the provisions of Article 2.9.1;
- Adopt section 2100.04 to establish the types of activities that are, or are not, subject to the requirements of Article 2.9.1 and a fee structure;
- Adopt section 2100.05 to establish the types of permits that the Commission may issue for the conduct of geophysical activities and requirements as they pertain to holding the those permits;
- Adopt section 2100.06 to establish the effective term for each class of permit to be issued by the Commission under the proposed regulatory action;
- Adopt section 2100.07 establishing the pre-survey, operational, and post-survey requirements necessary to the conduct a permitted geophysical survey;
- Adopt section 2100.08 establishing the public notice requirements and procedures prior to conducting a geophysical survey;
- Adopt section 2100.09 establishing the process and procedure for permit suspension or revocation; and,
- Adopt section 2100.10 establishing the Commission's process for enforcing the requirements within the proposed regulations.

The proposed regulatory actions are in accordance with the authority granted by section 6212.3 of the California Public Resources Code.

## **WRITTEN COMMENT PERIOD**

Any interested person or his or her authorized representative may submit written comments relevant to the proposed regulatory action to the Commission. The written comment period closes at 5:00 pm on January 4, 2019. The Commission must receive all written comments by that time. Submit written comments to:

Kelly Keen  
Environmental Scientist  
California State Lands Commission  
100 Howe Ave, Suite 100-South  
Sacramento, CA 95825

Written comments may also be submitted by facsimile to (916) 574-1855 or by email to [cslc.regulations@slc.ca.gov](mailto:cslc.regulations@slc.ca.gov). Please include “**Article 2.9.1 Comments**” in the subject line of the email.

## **PUBLIC HEARING**

Commission staff has scheduled a public hearing on this proposed action on January 4, 2019, at 10:00 AM PST. The location of the hearing is:

California State Lands Commission  
Main Conference Room  
100 Howe Ave, Suite 100-South  
Sacramento, CA 95825

The hearing location is accessible for persons with disabilities. At the hearing, any person may present oral or written statements or arguments relevant to the proposed action. The public hearing will conclude once all who are present and wish to speak have had an opportunity to speak.

## **AUTHORITY AND REFERENCE**

Authority: Public Resources Code sections 6108, 6212.3 and 6218 provide the Commission with the authority to adopt regulations as necessary to implement the provisions of a permit program for geophysical surveys on state sovereign lands, including granted and ungranted tidelands and submerged lands.

Reference: The proposed regulations would implement, interpret, and make specific Public Resources Code sections 6212.3 and 6826.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The purpose of this proposed rulemaking is to establish a permit program for the conduct of geophysical surveys on state lands including granted and ungranted tidelands and submerged lands. The proposed Article 2.9.1 will identify the geophysical survey activities that will require a permit, the terms and operational conditions of each permit, and administrative requirements for both the Commission and permittee.

The Commission has exclusive jurisdiction over all ungranted tidelands and submerged lands owned by the state extending from the mean high tide out to 3 nautical miles. Since the early 1980's the Commission has administered a limited program to permit companies and individuals to conduct offshore geophysical surveys for mapping and exploring the ocean floor and sub-floor. Most geophysical surveys permitted by the Commission were conducted to prospect for mineral resources, mostly oil and gas, utilizing electromagnetic acoustic generating equipment such as towed sonar arrays or pressure generated from airguns or explosives. Over the last two decades, mineral exploration has become a small percentage of geophysical survey activity on state lands with most activity related to infrastructure, archeological and cultural exploration, and scientific exploration of the ocean floor utilizing a variety of acoustic generating equipment of varying frequency and decibel levels. The state of knowledge has begun to identify that geophysical survey activities using equipment previously deemed innocuous, such as sonar, chirps, sparkers, and echosounders, can impact the environment.

In 2015, the California Legislature passed AB 1274 (Chapter 600) codified as Public Resources Code section 6212.3, declaring that "[t]he state has a responsibility to establish conditions to ensure that geophysical surveys performed on state lands under its jurisdiction, including granted and ungranted tidelands and submerged lands . . . do not cause harm or damage to aquatic life or to the marine and coastal environment." This proposed rulemaking intends to carry out the directives of Chapter 600. The objectives of this proposed rulemaking are: (1) to ensure that geophysical surveys are conducted pursuant to a Commission issued permit; (2) ensure that geophysical surveys occur in a manner that is protective of public safety and the environment; (3) and ensure that the public has adequate notice of the occurrence of geophysical surveys and where they occur.

This proposed rulemaking accomplishes the first objective by making specific the scope of activities that require a permit from the Commission and, importantly, what activities do not require a permit. In addition, the rulemaking establishes two permit types based on the planned activity.

This proposed rulemaking accomplishes the second objective by establishing requirements for pre-survey activities, operations, and post-survey activities that will minimize environmental impact and enhance public safety. Proposed permit conditions were developed to mitigate potential significant impacts as identified in the Low-Energy

Offshore Geophysical Permit Program Update Mitigated Negative Declaration, State Clearinghouse No. 2013072021, and a 2014 Addendum.

The proposed rulemaking accomplishes the third objective by establishing a public notification procedure for alerting interested parties when and where a permitted geophysical survey will occur. In addition, a process for communicating permit requirements will be established and a cease and desist procedure identified for increasing permit compliance.

It is anticipated that the proposed rulemaking will benefit the natural environment by ensuring that geophysical surveys are conducted in a manner that minimizes impact to marine mammals from manmade sounds generated from survey activities.

The proposed rulemaking is consistent with existing state law because it is the only regulations addressing the conduct of geophysical activities in state waters. There are no similar existing federal statute or regulation affecting geophysical survey activity in state waters.

### **PRE-RULEMAKING CONSULTATION**

The Commission held an informal comment period from March 7, 2016, through April 6, 2016. The comments received from that informal comment period were considered by Commission staff in drafting the express language within this proposed rulemaking. In addition, Commission staff held two formal technical advisory group meetings on October 18, 2016, and December 12, 2016, to engage with stakeholders. A second draft was distributed to members of the TAG for a second informal comment period held from June 1, 2017 to June 16, 2017. The comments received during this informal comment period were considered in the preparation of the proposed regulations.

### **DOCUMENTS INCORPORATED BY REFERENCE**

The proposed rulemaking incorporates one document by reference in its entirety—the “Pre-Survey Notification Form,” dated September 5, 2018.

### **DETERMINATION ON MAJOR REGULATION DESIGNATION**

Commission staff has determined that this proposed regulatory action is not a major regulation, as defined by Government Code section 11342.548.

### **DETERMINATION ON FEDERAL MANDATE**

This proposed regulatory action is not mandated by federal law. No federal law exists with regards to permitting for geophysical regulations in state waters.

## **DISCLOSURES REGARDING THE PROPOSED ACTION**

Commission staff, acting on behalf of the Commission, has made the following determinations:

### **LOCAL MANDATE**

Commission staff has determined that this proposed regulatory action does not impose any mandates on local agencies or school districts.

### **FISCAL IMPACTS**

Commission staff has determined that this proposed regulatory action imposes no mandates or costs requiring state reimbursement to any local agency or school district pursuant to Government Code sections 17500 *et seq.* No other non-discretionary costs or savings imposed on local agencies are anticipated.

Commission staff determined that certain costs may accrue to the Commission as a result of this proposed action. These costs are included in the state form STD 399 and discussed in the Economic Assumption sheet included as part of the rulemaking record. No costs or savings are anticipated for any other state agency from this proposed action.

Commission staff has determined that this proposed action will have no impact on costs or savings in federal funding to the State.

### **HOUSING COSTS**

Commission staff has determined that this proposed action will have no impact on housing costs.

### **STATEMENT REGARDING ADVERSE ECONOMIC IMPACTS DIRECTLY AFFECTING BUSINESSES, INCLUDING ABILITY TO COMPETE**

Commission staff has determined that the proposed regulations will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

### **STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT**

Through the Economic Impact Assessment, Commission staff has determined that the proposed regulations:

- (1) will have no impact upon the creation or elimination of jobs within the State of California;

- (2) will have no impact upon the creation or elimination of existing businesses within the State of California;
- (3) will have no impact upon the expansion of businesses currently doing business within the State of California; and
- (4) will have no impact upon worker safety within the State of California.

Commission staff has determined that the proposed regulations will benefit:

- (1) the State's environment by:
  - accomplishing the goals of AB 1274, which directs staff to promulgate regulations to ensure that geophysical surveys conducted for scientific and research purposes on state lands under the jurisdiction of the Commission do not cause harm or damage to aquatic life or to the marine and coastal environment; and
  - protect species/resources and facilitate the coordination of Public Trust uses on state lands.
- (2) the regulated community and public by:
  - promoting efficiency and consistency in the application, processing, and administration of permits for geophysical surveys; and
  - providing transparency regarding the requirements for, and the timing and location of, geophysical surveys.

## COST IMPACTS ON REPRESENTATIVE PERSONS OR BUSINESSES

Cost impacts will occur on representative business consisting of companies and organizations that either conduct or sponsor geophysical surveys in state waters. Cost impacts are associated with obtaining the permit and the proposed permit requirements to provide pre-survey information and notification to the Commission and other parties; operational requirements, including the use of a marine wildlife monitor; and post-survey reporting to the Commission. The average costs necessarily incurred in reasonable compliance would be \$34,787 annually to geophysical survey operators, depending on the number of surveys conducted each year. A detail of costs and analysis is included in the state form STD 399 and discussed in the Economic Assumption sheet included as part of the rulemaking record.

## SMALL BUSINESS DETERMINATION

Commission staff finds that the adoption of this proposed action will affect small businesses. This is because a percentage of businesses that conduct or sponsor geophysical surveys in state waters are small businesses as defined under state law.

## BUSINESS REPORT

The proposed action does include a business reporting requirement. Commission staff find that it is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses.

## CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Commission must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention 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. The Commission invites interested persons to submit comments on potential alternatives to the proposed regulations during the written comment period.

## CONTACT PERSONS

Direct inquiries concerning the substance of the proposed regulation to:

Kelly Keen  
Environmental Scientist  
California State Lands Commission  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202  
Telephone: (916) 574-1938  
Facsimile: (916) 574-1950  
Email: [slc.ogpp@slc.ca.gov](mailto:slc.ogpp@slc.ca.gov)

or: Joe Fabel  
Attorney  
California State Lands Commission  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202  
Telephone: (916) 574-0964  
Facsimile: (916) 574-1855  
Email: [joseph.fabel@slc.ca.gov](mailto:joseph.fabel@slc.ca.gov)

Requests for copies of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based should be directed to:

Kelly Keen  
Environmental Scientist  
California State Lands Commission

100 Howe Avenue, Suite 100 South  
Sacramento, CA 95825-8202  
Telephone: (916) 574-1938  
Facsimile: (916) 574-1950  
Email: [slc.ogpp@slc.ca.gov](mailto:slc.ogpp@slc.ca.gov)

## **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

Commission staff will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its Sacramento office, listed above. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, initial statement of reasons, economic impact assessment, and relevant sources of information upon which the proposed rulemaking is based. Interested parties may obtain copies of any of the aforementioned files by contacting Kelly Keen, as listed above, or by visiting the website listed below.

## **AVAILABILITY OF CHANGED OR MODIFIED TEXT OF ORIGINALLY PROPOSED REGULATIONS**

After considering all timely and relevant comments, the Commission may adopt the proposed regulations substantially as described in this notice. If Commission staff makes any substantial and sufficiently related modifications to the proposed text, the modified text with changes clearly indicated will be available to the public for at least 15 days prior to the date that the Commission considers adopting the regulations. Interested parties shall send requests for copies of any modified regulations to the attention of Kelly Keen, at the address indicated above. The Commission will accept written comments on the modified regulations for 15 days after the date that they are available.

## **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, interested parties may obtain a copy of the Final Statement of Reasons by contacting Kelly Keen at the address, telephone number, or email address listed above or by accessing the website listed below.

## **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the notice of proposed rulemaking, the initial statement of reasons, the proposed text of regulations, the economic impact assessment, relevant documents, and any future changes or modifications to the proposed text can be accessed through our website at: <http://www.slc.ca.gov/>.