

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

Amend Section 632
Title 14, California Code of Regulations
Re: Blue Cavern (Catalina Island) State Marine Conservation Area

- I. Date of Initial Statement of Reasons: April 19, 2012
- II. Date of Pre-adoption Statement of Reasons: N/A
- III. Date of Final Statement of Reasons: August 22, 2012
- IV. Dates and Locations of Scheduled Hearings:

- (a) Notice Hearing: Date: May 23, 2012
Location: Monterey, CA
- (b) Discussion/Adoption Hearing Date: August 8, 2012
Location: Ventura, CA

- V. Update:

No changes have been made in the originally proposed regulatory language.

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

One oral comment in support of the proposed action was received by Bill Bernard on August 8, 2012. Support is noted. No comments were received in opposition to the proposed action.

- VII. 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

- VIII. Location of Department Files:

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

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

No alternatives were identified.

(b) No Change Alternative:

The no-change alternative would leave the no-anchoring provision as stated in existing regulations for the Blue Cavern State Marine Conservation Area (SMCA), thereby continuing the risk to public health and safety, and would retain confusing regulations regarding the authority of the director of the Refuge to allow anchoring, mooring, and scientific take.

(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, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

X. 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. The proposed regulation pertains only to the Blue Cavern SMCA offshore of Catalina Island in Los Angeles County.

(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; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The agency is not aware of any impacts the proposed action would have on creation, expansion, or elimination of jobs or businesses in California.

The Commission anticipates benefits to the health and welfare of California residents by minimizing risks to divers in the Blue Cavern SMCA, while preserving the intended purpose of the Blue Cavern SMCA.

The Commission does not anticipate any non-monetary benefits to worker safety.

Existing regulation benefits the environment by protecting habitat and biodiversity in the Blue Cavern SMCA. Minor benefits to air quality may be realized in the implementation of the proposed regulation; however, the Commission does not anticipate any significant benefits to the environment.

(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:

Some unknown level of cost savings will be realized by not having to invest as much time in enforcement of potentially dangerous regulations.

(e) Nondiscretionary Costs/Savings to Local Agencies:

Some unknown level of cost savings will be realized by not having to invest as much time in enforcement of potentially dangerous regulations.

(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

The existing regulation provides area boundaries, take restrictions, and anchoring and mooring restrictions within the Blue Cavern State Marine Conservation Area (SMCA). For public health, safety, and general welfare, the proposed regulation re-opens Blue Cavern SMCA to anchoring and mooring, except within the Catalina Marine Science Center Marine Life Refuge (Refuge). The proposed regulation clarifies that the authority of the director of the Refuge to allow anchoring, mooring or scientific take extends only within the Refuge, not the entire SMCA.

Anchoring and mooring are restricted in the Refuge to protect ongoing scientific studies and the integrity of study sites. The director of the Refuge can authorize anchoring and mooring or take of marine life for scientific purposes, under the conditions prescribed in a scientific collecting permit issued by the Department of Fish and Game (Sections 10655 and 10502.8, Fish and Game Code). These provisions were unintentionally applied to the entire Blue Cavern SMCA in rulemaking file 2011-1101-04SR. During the Marine Life Protection Act planning phase, the South Coast Regional Stakeholder Group (SCRSG) developed Marine Protected Area (MPA) proposals for the South Coast Study Region. Based on a review of MPA planning records, and confirmed through follow-up discussions with SCRSG members, no documentation specifies intent to expand the no-anchoring and mooring provision or the authority of the director of the Refuge to allow anchoring, mooring or scientific take beyond the existing Refuge.

Blue Cavern SMCA is commonly used by experienced and inexperienced divers. Under the current regulation, the live-boating technique is now the only option for dive vessels. This technique involves deploying divers from a vessel into the water while keeping the motor running to remain within sight and easy access of the divers. Because the vessel may need to move constantly, the location of deployed divers can be very difficult for other vessel operators on site to determine, especially with multiple vessels in the same area.

A regulation change is needed to protect the public health, safety, and general welfare while preserving the intended purpose of the SMCA designation. This proposed regulation allows anchoring and mooring within the Blue Cavern SMCA except within the Refuge and clarifies that the authority the Refuge director to allow anchoring, mooring, or take of marine life for scientific purposes applies only within the Refuge. All other existing take restrictions remain in effect throughout the SMCA. The proposed regulation makes permanent the emergency regulation that expires on October 30, 2012.

The proposed regulation will provide benefits to public health and safety by minimizing risk for divers in the Blue Cavern SMCA. Minor benefits to air quality may be realized in the implementation of the proposed regulation; however, the Commission does not anticipate any significant benefits to the environment.

The proposed regulation is neither inconsistent nor incompatible with existing state regulations. No other entity has authority to promulgate regulations concerning these activities within Commission-established State marine conservation areas.

On August 8, 2012, the Commission adopted the regulation as proposed.