

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: Blue Cavern (Catalina Island) State Marine Conservation Area

I. Date of Initial Statement of Reasons: April 19, 2012

II. 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

III. Description of Regulatory Action:

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

The existing regulation provides area boundaries, take restrictions, and anchoring and mooring restrictions within the Blue Cavern State Marine Conservation Area (SMCA) [Section 632(b)(102), Title 14]. The proposed regulation removes the anchoring and mooring restriction from a portion of the recently implemented Blue Cavern SMCA for public health, safety, and general welfare, and clarifies that the authority of the director of the Catalina Marine Science Center Marine Life Refuge (Refuge) to allow anchoring, mooring or scientific take extends only within the Refuge, not the entire SMCA.

The south coast component of the statewide network of Marine Protected Areas (MPAs), defined as state waters between Point Conception in Santa Barbara County and the California/Mexico border, including offshore islands, was implemented on January 1, 2012. Following implementation, the Department of Fish and Game (Department) received numerous inquiries and concerns from its law enforcement division, local enforcement agencies, and the public about safety due to the unintentional expansion, throughout the Blue Cavern SMCA (Figure 1), of the existing Refuge no-anchoring and mooring provision.



Figure 1. Blue Cavern State Marine Conservation Area, including the Catalina Marine Science Center Marine Life Refuge (white outline).

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, mooring, and take of marine life for scientific purposes under the conditions prescribed in a scientific collecting permit issued by the Department [Sections 10655 and 10502.8, Fish and Game Code (FGC)]. 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 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

As stated under general rules and regulations for MPAs [Subsection 632(a)(7), Title 14, California Code of Regulations], “Anchoring. Vessels shall be allowed to anchor in any marine protected area or marine managed area with catch onboard unless otherwise specified in subsection 632(b), areas and special regulations for use. Fishing gear shall not be deployed in the water while anchored in a state marine reserve. Fishing gear, except legal fishing gear used to take species identified as allowed for take in subsection 632(b), shall not be deployed in the water while anchored in a state marine recreational management area, state marine park or state marine conservation area. Anchoring regulations shall be consistent with federal law and allowances made for anchoring required by emergency or severe weather.”

Several prime dive sites that are highly valued for ideal combinations of depth and underwater terrain are found within the Blue Cavern SMCA. The area is commonly used by experienced and inexperienced divers. If vessels are not permitted to anchor in the area outside the Refuge, diving groups will conduct live-boating during diving activities. 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. In contrast, an anchored vessel displaying a dive flag signals to everyone in the vicinity to expect divers in the immediate area. Although live-boating operations also must display a dive flag, the reference point does not remain stationary, so diver safety could be compromised when several vessels with turning propellers are in a relatively small area.

Absent the approval of the proposed regulation, live-boating operations would be the only type allowed by in the Blue Cavern SMCA. Live-boat diving is difficult and could create a significant safety issue for both experienced and inexperienced divers.

Based on testimony at its Eureka meeting on April 11, 2012, the Commission adopted this proposed regulation through an emergency action that expires on October 30, 2012. 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 makes permanent the provisions of the emergency action, allowing anchoring and mooring within Blue Cavern SMCA except within the Refuge and clarifying the authority the Refuge director to allow anchoring, mooring, or take of marine life for scientific purposes within the Refuge. All other existing take restrictions remain in effect throughout the SMCA.

The proposed regulation will provide benefits to public health and safety by minimizing risk for divers in the Blue Cavern SMCA. The proposed regulation may result in minor benefits to air quality.

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

Authority: Sections 200, 202, 203.1, 205(c), 219, 220, 240, 1590, 1591, 2860, 2861, and 6750, FGC; and Sections 36725(a) and 36725(e), Public Resources Code (PRC).

Reference: Sections 200, 202, 203.1, 205(c), 219, 220, 240, 1580, 1583, 2861, 5521, 6653, 8420(e), and 8500, FGC; and Sections 36700(e), 36710(e), 36725(a), and 36725(e), PRC.

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

None.

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

Attachment 1: Economic Impact Analysis: Blue Cavern SMCA--Anchoring.  
(<http://www.fgc.ca.gov/regulations/2012/632bceia.pdf>)

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

April 11, 2012 Commission meeting, Eureka, CA.

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 would leave the no-anchoring provision as stated in existing regulations for the Blue Cavern 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 proposed regulation, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

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. The proposed regulation pertains only to the Blue Cavern State Marine Conservation Area 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.

## **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.