Commissioners
Daniel W. Richards, President
Upland
Michael Sutton, Vice President
Monterey
Jim Kellogg, Member
Discovery Bay
Richard Rogers, Member
Santa Barbara
Jack Baylis, Member
Los Angeles

STATE OF CALIFORNIA
Edmund G. Brown Jr., Governor

Fish and Game Commission

Sonke Mastrup, Executive Director
1416 Ninth Street, Room 1320
Sacramento, CA 95814
(916) 653-4899
(916) 653-5040 Fax
www.fgc.ca.gov

JUN 12 2012

June 6, 2012

TO ALL INTERESTED AND AFFECTED PARTIES:

This is to provide you with a copy of the notice of proposed regulatory action relative to Section 632, Title 14, California Code of Regulations, relating to Blue Cavern State Marine Conservation Area, which will be published in the California Regulatory Notice Register on June 8, 2012.

Please note the dates of the public hearing related to this matter and associated deadlines for receipt of written comments.

Ms. Marija Vojkovich, Marine Region Manager, Department of Fish and Game, phone (805) 568-1246, has been designated to respond to questions on the substance of the proposed regulations.

Sincerely,

Sherrie Fonbuena

Sherrie Fonbuena
Associate Governmental Program Analyst

Attachment

TITLE 14. Fish and Game Commission
Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 203.1, 205(c), 219, 220, 240, 1590, 1591, 2860, 2861, and 6750 of the Fish and Game Code and sections 36725(a) and 36725(e) of the Public Resources Code, and to implement, interpret or make specific sections 200, 202, 203.1, 205(c), 219, 220, 240, 1580, 1583, 2861, 5521, 6653, 8420(e), and 8500 of the Fish and Game Code and sections 36700(e), 36710(e), 36725(a), and 36725(e) of the Public Resources Code, proposes to amend Section 632, Title 14, California Code of Regulations, relating to Blue Cavern State Marine Conservation Area.

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.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Crown Plaza Ventura Beach Hotel, 450 E. Harbor Blvd., Ventura, California, on Wednesday, August 8, 2012 at 8:30 a.m., or as soon thereafter as the matter may be heard. Written comments may be submitted to the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on August 3, 2012. All comments must be received no later August 8, 2012, at the hearing in Ventura, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Sonke Mastrup, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Sonke Mastrup or Sherrie Fonbuena at the preceding address or phone number. **Ms. Marija Vojkovich, Regional Manager, Department of Fish and Game's Marine Region, telephone (805) 568-1246 has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at http://www.fgc.ca.gov.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

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 Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

RECEIVED
BOARD OF SUPERVISORS
COMMISSION SERVICES
2012 JUN 11 PM 3:58
LOS ANGELES COUNTY

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 Commission 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.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, 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.

FISH AND GAME COMMISSION

Sonke Mastrup
Executive Director

Dated: May 29, 2012

RECEIVED
BOARD OF SUPERVISORS
COMMISSION SERVICES
2012 JUN 11 PM 3:57
LOS ANGELES COUNTY