

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

Amend Section 149 and Subsection (a) of Section 149.1
Title 14, California Code of Regulations
Re: Commercial Taking of Market Squid

- I. Date of Initial Statement of Reasons: September 10, 2013
- II. Dates and Locations of Scheduled Hearings:
- (a) Notice Hearing: Date: November 6, 2013
Location: La Quinta, CA
 - (b) Discussion Hearing: Date: December 11, 2013
Location: San Diego, CA
 - (c) Adoption Hearing: Date: February 5, 2014
Location: Sacramento, 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:

Market squid (*Doryteuthis (Loligo) opalescens*) is managed under the California Market Squid Fishery Management Plan (MSFMP). Section 149, Title 14, California Code of Regulations (CCR), governs commercial market squid fishing activities off California, pursuant to the MSFMP. Market squid are important to California's commercial and recreational fisheries and are an important forage species for fish, marine mammals and birds. The market squid population fluctuates due to environmental conditions. Commercial harvest occurs mainly south of San Francisco with the majority taken off southern California.

In 2004, the Fish and Game Commission (Commission) adopted the MSFMP and supporting regulations in Title 14, CCR. Section 149.1, Title 14, CCR, established the market squid fishery restricted access program that specifies permits may be suspended, revoked or cancelled upon conviction of a violation of regulations in Section 149, Title 14, CCR, or violation of the terms and conditions of the permit. Under existing regulations in Section 149, Title 14, CCR, vessels permitted to take market squid for commercial purposes may land up to 118,000 short tons (st) from April 1 to March 31 of the following year [subsection 149 (e)]. In compliance with the MSFMP (Section 3.2.6 Live Bait Fishery and Incidental Catch of Market Squid) which states, "...once the catch limit is

reached, an allowance for incidental catch of market squid from other commercial fisheries is needed. This would prevent the squid being discarded,” the Commission also adopted provisions to allow for market squid to be landed commercially after the catch limit has been reached so long as the amount does not exceed two tons in a calendar day or if the squid will be used for live bait only. Existing regulations also provide for an incidental allowance of up to two tons of squid per trip or per calendar day; however, there is no definition of the term “incidental,” making compliance and enforcement difficult.

It was never the intent, nor is it compatible with the management goals of the MSFMP to have a two ton directed fishery occurring after the catch limit has been reached (MSFMP Section 3.2.6).

During the last three consecutive fishing seasons, a combination of good environmental conditions and an increase in processing and fishing capacity has led to the catch limit being reached mid-season, and consequently, the Department acted to close the fishery prior to the season’s end. During the closed period in each of the three seasons, some vessels continued to deliver pure loads of squid in small volume (two tons or less); indicating the squid catches were not “incidental” to another fishing activity.

Proposed Regulation Changes

In an effort to adhere to the intent of the MSFMP, this rulemaking proposes amendments to Section 149, Title 14, CCR, to clarify that the commercial fishery is closed once the catch limit is reached, and specifies that the incidental take allowance of two tons must be landed or possessed with other species.

The proposed regulations also modify the requirements for forfeiture of illegally taken squid.

Amend subsection 149(h), Title 14, CCR, regarding forfeiture.

The proposed regulation modifies language and broadens the scope of the regulation to specify that squid taken in violation of any commercial squid fishing law or regulation shall be forfeited to the Department. Also, the requirement that squid fishermen or buyers sign a release of property form is proposed to be repealed to be consistent with protocols utilized by law enforcement in forfeiture actions.

Add new subsection 149(i), Title 14, CCR, to clarify incidental take provisions in order to eliminate the small-volume directed fishery that has occurred in seasons when the fishery has closed early.

The proposed text clarifies and more precisely defines incidental take of commercial market squid. Because squid are frequently abundant and

widely distributed, there continues to be a need, both when the squid fishery is open and when it is closed, to allow small amounts of squid to be taken and landed in association with other fisheries. The proposed regulatory text specifies that once the commercial market squid fishery is closed, squid may only be landed or possessed on a vessel engaged in commercial fishing if incidentally taken with other species. The daily limit of market squid allowed to be taken incidentally will remain at two tons.

The proposed regulation would have affected 1.1 percent of all directed market squid landings by volume (st) over the past three seasons. The individuals who have exploited this unintended small-volume directed fishery would continue to have the opportunity, and are entitled, to fish during the open portion of the market squid season. In addition, new language is proposed to further define incidental take as a specified percentage of the total volume by weight of all fish landed or possessed on a vessel.

The proposed regulatory text would amend incidental take provisions such that incidentally taken squid shall meet the following criteria:

- 1) The volume landed or possessed on a vessel cannot exceed two tons per trip;
- 2) The amount of squid incidentally taken cannot exceed a specified percentage of the total volume of the fish landed or possessed on a vessel. The Department is proposing that the Commission consider an incidental take allowance ranging from 0 – 30 percent.

An allowance for incidental catch of market squid from other commercial fisheries is needed. The proposed regulatory text provides a range between 0 and 30 percent. An incidental allowance would prevent the squid and the target species from being discarded. The Department recommends establishing an incidental take allowance of 10 percent. The average incidental take percentage of squid in loads with other species over the past three seasons was 11.6 percent. While this is higher than the recommended allowance, 97.7 percent of the total short tons landed would have been allowed as incidental take under a 10 percent allowance (Figure 1).

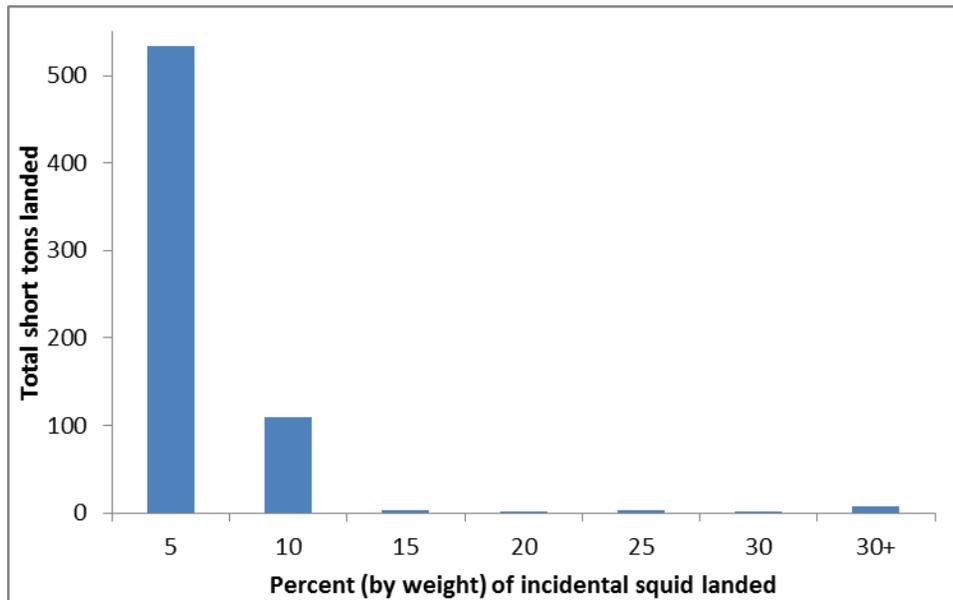


Figure 1. Reported tonnage of landings containing non-target squid and other species by percent weight landed (n= 139). Data source: market receipt data for reported incidental squid (<50%) landings in California from 2010/11 to 2012/13.

Amend Section 149 and subsection (a) of Section 149.1, Title 14, CCR, to make non-substantive changes and to reorganize existing regulatory text for clarity and ease of use.

The Department proposes amending the following subsections:

- Subsection 149(a): Add text referencing the existing permit requirements in Section 149.1 for vessels fishing for market squid, and to clarify that vessels taking or possessing squid incidentally or for live bait are not subject to these permit requirements.
- Subsections 149(a-i): Renumber each subsection due to the proposed addition of the new subsection 149(a).
- Subsection 149(i): Removal of the phrase “or to vessels pursuing squid for live bait purposes only” is proposed because the exemption for live bait is clarified in the proposed opening paragraph of the regulatory language.
- Subsection 149(k): Changes are proposed to clarify that operators and crewmembers on a permitted market squid vessel are exempt from the requirement to possess a Tidal Invertebrate Permit.
- Subsection 149(m): A new subsection 149(m) is proposed to clarify that squid taken for live bait must be used for that purpose and that

take of live squid for bait is exempt from other requirements in Section 149, unless expressly specified.

- Subsection 149.1(a): Update cross reference to current subsection 149(g) to reflect renumbering of subsections in Section 149.

Benefits of Proposed Regulations.

Consistent with Fish and Game Code Section 7055, the proposed regulations benefit persons engaged in the market squid fishery because the changes (1) are aligned with sustainable fishing activities as described in the MSFMP; (2) uphold the purpose of the Seasonal Catch Limit, which is to prevent the fishery from over-expanding; and (3) impart fairness for fishermen who purchased or acquired a commercial market squid permit under Section 149.1, Title 14, CCR, with the understanding that the fishery will be closed when catch trends indicate the Seasonal Catch Limit will be reached.

The environment will benefit from the proposed regulations in the following ways: (1) directed fishing activity will cease when the Seasonal Catch Limit is reached, as intended by the MSFMP; (2) following the closure of the commercial fishery, any commercial take or sale of squid will be both low volume (2 tons or less) and incidental to another target fishery; and (3) ecological interactions or effects would be reduced once the Seasonal Catch Limit is reached because targeted squid fishing activities would end for the season.

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

Authority: Sections 713, 1050, 7078, 7701, 7708, 7923, 8026, 8425, 8428 and 8429.5, Fish and Game Code.

Reference: Sections 1050, 7050, 7071, 7701, 7708, 7852.2, 7923, 8026, 8101, 8425, 8428, 8429.5, 8429.7, 12159 and 12160, Fish and Game Code.

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

None

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

CDFG 2005. Final Market Squid Fishery Management Plan (dated March 25, 2005). California Department of Fish and Game, Sacramento, California. <http://www.dfg.ca.gov/marine/msfmp/>

Economic Impact Assessment

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

California Fish and Game Commission Meeting, December 15, 2011, San Diego, CA.

California Wetfish Producer's Association Annual Meeting, March 23, 2012, Ventura, CA.

California Fish and Game Commission Marine Resources Committee Meeting, April 17, 2012, Monterey, CA.

California Fish and Game Commission Meeting, May 23, 2012, Monterey, 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 retain the existing regulatory loophole allowing directed fishing after the Seasonal Catch Limit has been reached.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purpose 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 regulations continue to allow all actively permitted market squid vessels (vessel, light, and brail) to participate in a directed fishery for market squid during the commercial market squid season until the season closes. The proposed regulations close the loophole, which unintentionally allows directed fishing after the Seasonal Catch Limit has been reached. Allowing directed squid fishing after the season is closed can pose risk to the squid resource and the ecosystems that rely on it, while also creating an unfair market advantage for those who have availed themselves of the loophole in past seasons when the fishery closed early. In addition, the proposed regulations would set limits on the allowable take of squid caught incidentally in landings with other species.

Brail fishermen, like all squid permittees, will be authorized to fish for squid only up until the Seasonal Catch Limit has been reached. The proposed regulations clarify that when the fishery is closed, it is closed for all directed commercial squid fishing activity regardless of gear type. Impacts to individual fishing operations will vary, as some operations may maximize their squid fishing efforts early in the season, while others may not begin squid fishing activity until later in the season. Neither the MSFMP nor existing regulations establish allocations of squid between fishermen or fishery sectors to allow them to select desired fishing dates. Rather, the fishery operates on a single seasonal limit, which has been attained in only four seasons since the limit's inception in 2001.

Under the proposed regulatory amendments, fishermen currently taking advantage of this loophole will no longer be able to take up to two tons of squid per day after the Seasonal Catch Limit has been reached unless it occurs incidentally to another fishery. Therefore the proposed regulation changes are not expected to result in significant statewide adverse economic impacts to businesses. Additionally, if the full seasonal catch limit is attained, there has likely been a great deal of economic success for at least some squid fishing operations and businesses. Market squid fishery permits of all gear types provide authorization to commercially fish for squid during the open season and time periods, but regulations do not provide more refined opportunities for some sectors, gears or individual vessels at the exclusion of others.

Depending on which option is chosen, limits on the percent composition of squid caught incidentally could result in impacts to aggregate ex-vessel revenue potential for the 36 fishermen affected. The estimated, per season aggregate revenue impacts resulting from a zero to 30 percent incidental take limit are \$(804,000) to \$(19,000), respectively. Dis-aggregating these estimates result in a projected average potential revenue impact of \$(7,000) to \$(200), respectively, per fishermen per season. (See Economic Impact Assessment, Calculations Worksheet).

Under the proposed regulations, limits on the percent composition of squid caught incidentally ranging from zero to 30 percent could result in statewide economic impacts of \$(521,000) to \$(13,000), respectively, in total economic output. (See Economic Impact Assessment, Calculations Worksheet). These estimates are on a per season basis, and represent the aggregate impact to all 36 fishermen potentially affected by incidental take limits on squid. In light of the entire landings taken by these fishermen, the zero to 30 percent limits would affect statewide economic output by about -2.1 percent to -0.1 percent, respectively. (See Economic Impact Assessment, Calculations Worksheet).

Overall, the ex-vessel fishing revenue of squid landings after the early season closure averaged only 1.10 percent of total seasonal squid landings ex-vessel fishing revenue from 2010-2013. When viewed as a percentage of landings using brail gear only, landings after the closure constituted a larger proportion of total landings for this gear type, averaging 31.82 percent over the last three years. Compared to average after-season-closure landings over the past three years (2010-2013), the proposed regulatory change to eliminate the two ton directed take of squid could result in the direct loss of ex-vessel fishing revenue of about \$(726,000), indirect losses in the amount of \$(76,000), and the potential loss of up to eight (8.0) jobs. (See Economic Impact Assessment, Calculations Worksheet). It is important to note that there are seasons when the squid fishery does not close early; therefore, the unintended directed fishery during the post-closure period would not occur during these seasons nor would associated income be earned.

The Commission recognizes that some individuals, vessels, and processing plants engaged in the market squid fishery have no other viable alternative fisheries available to them and that a decline or a loss of the market squid resource would cause economic losses to the individuals or corporations engaged in the market squid fishery. However the continued management of this marine resource through the implementation of these regulations will serve to preserve the ongoing viability of market squid fisheries and associated businesses.

- (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 Commission does not anticipate significant adverse impacts on the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses in California. Depending on which option the Commission chooses, potential job losses range from 0.5 to 0.1 for an incidental take allowance from 5 percent to 30 percent, respectively; if the Commission decides not to allow incidental take of squid (zero allowance), then three jobs could be lost.

These estimates are on a per season basis, and represent the aggregate impact arising from all 36 fishermen potentially affected by incidental take limits on squid. (See Economic Impact Assessment, Calculations Worksheet).

Up to eight jobs could be lost if the 2-ton directed fishery is eliminated in years when the fishery closes early. Estimated job losses are for the squid fishery; spending to businesses linked to fishery operations; and for businesses impacted by direct and intermediary employees' spending. Thus, job losses would be shared across an array of associated businesses which would lessen adverse impacts to the viability of individual squid fishery businesses. Additionally, the overall economic effects of eliminating the 2-ton directed fishery are likely to be ameliorated by other revenue sources such as lighting or targeting other species. (See Economic Impact Assessment, Calculations Worksheet).

The Commission anticipates benefits to the environment in the sustainable management of the squid resource and benefits to species dependent upon a healthy squid resource.

The Commission anticipates generalized benefits to the health and welfare of California residents through the protection of the market squid population and the fish and wildlife resources that depend upon them. The Commission does not anticipate any benefits to worker safety because the proposed regulations will not impact worker conditions.

(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:

The state may incur landings tax revenues losses. Depending on which option the Commission selects, the decreases in landings tax revenues could range from \$20,000 to \$195,000 per year. There will be no costs/savings in federal funding to the state.

(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, Government Code:

None

(h) Effect on Housing Costs:

None

Informative Digest/Policy Statement Overview

The Market Squid Fishery Management Plan (MSFMP) was developed under the provisions set forth by the Marine Life Management Act (MLMA) and sets goals and objectives to govern the conservation, sustainable use, and restoration of the market squid resource. Section 149, Title 14, California Code of Regulations (CCR), governs commercial market squid fishing activities off California, pursuant to the MSFMP.

Under current regulations, market squid is allowed to be landed commercially after the catch limit of 118,000 short tons has been reached so long as the amount does not exceed two tons within a calendar day or if the squid will be used for live bait. The regulation also provides for an incidental allowance of up to two tons per calendar day or per trip; however, “incidental” is not defined. The intent of this regulation was to allow for incidental take of market squid in other fisheries. It was never the intent, nor is it compatible with the management goals of the MSFMP to have a two ton directed fishery occurring after the Seasonal Catch Limit has been reached. The Department proposes to clarify regulations defining incidental take to ensure that after the season ends, market squid is only landed or possessed on a vessel incidental to the take of other species or for live bait purposes.

The following changes are proposed:

- Subsection 149(h): Modify language and broaden the scope of the regulation to specify that squid taken in violation of any commercial squid fishing law or regulation shall be forfeited to the Department. Also, the requirement that squid fishermen or buyers sign a release of property form is proposed to be repealed.
- Subsection 149(l): Modify the incidental take provisions specifying that incidentally taken squid shall meet the following criteria:
 - 1) The volume landed or possessed on a vessel cannot exceed two tons per trip;
 - 2) The amount of squid incidentally taken cannot exceed a specified percentage of the total volume of the fish landed or possessed on a vessel. The Department is proposing that the Commission consider an incidental take allowance ranging from 0 – 30 percent.

The Department recommends establishing an incidental take allowance of 10 percent; however, the Commission may select an incidental take allowance within the range between 0 and 30 percent.

The following changes are also proposed to improve the organization, clarity and consistency of the regulations

- Subsection 149(a): Add text referencing the existing permit requirements in Section 149.1 for vessels fishing for market squid, and to clarify that vessels taking or possessing squid incidentally or for live bait are not subject to these permit requirements.

- Subsections 149(a-i): Renumber each subsection due to the proposed addition of the new subsection 149(a).
- Subsection 149(i): Removal of “or to vessels pursuing squid for live bait purposes only” is proposed because the exemption of live bait is clarified in the proposed opening paragraph of the regulatory language.
- Subsection 149(k): Changes are proposed to clarify that operators and crewmembers on a permitted market squid vessel are exempt from the requirement to possess a Tidal Invertebrate Permit.
- Subsection 149(m): Clarify that squid taken for live bait must be used for that purpose and that take of live squid for bait is exempt from other requirements in Section 149, unless expressly specified.
- Subsection 149.1(a): Update cross reference to current subsection 149(g) to reflect renumbering of Section 149 subsections.

Benefits of the Regulation

The proposed regulatory action will benefit fishermen, processors, the State’s economy, and the environment by maintaining a healthy sustainable market squid fishery.

Consistency with State Regulations

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. The proposed regulations are consistent and compatible with regulations concerning the commercial take of market squid in marine protected areas [subsection 632(b), Title 14, CCR] and with regulations concerning squid weighing provisions (sections 4470, 4471, 4472, Title 4, CCR). Commission staff has searched the California Code of Regulations and statutes and has found no other state regulations related to the take of market squid and no other state agency with authority to promulgate commercial squid fishing regulations.