

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

Amend Sections 190 and 195
Title 14, California Code of Regulations

Re: Fishing Activity Records, and Report of Fish Taken To Be Made by Owner of Barge or Vessel for Hire, and Boat Limits.

- I. Date of Initial Statement of Reasons: March 22, 2013
- II. Date of Final Statement of Reasons: July 15, 2013
- III. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: April 17, 2013
Location: Santa Rosa
 - (b) Discussion Hearing Date: May 22, 2013
Location: Los Angeles
 - (c) Adoption Hearing: Date: June 26, 2013
Location: Sacramento
- IV. Update:

1. The following minor editorial changes (indicated by a double-underline) were made to the originally proposed regulatory language in subsection 190(b) based on public comments, and for clarity and consistency:

(b) Fishing activity records shall be kept on the vessel while it is engaged in, or returning from, fishing operations ~~and shall be completed before the end of a trip, at the time of sale of the catch or at the end of each day's fishing.~~ Unless otherwise specified in Title 14, CCR, fishing Fishing activity records shall be completed immediately with all available information when any of the following first occurs:

2. The following minor editorial changes were made to the forms proposed in subsection 195(a) based on public comments, and for clarity and consistency:

Form DFW 195A:

A check box is added on the Central and Northern California CPFV log for Non-Paying (located under Trip Type on the form). Text is removed (the second sentence in Item 1 of the instructions): ~~Logs are required for all fishing trips into Mexican waters originating from CA ports.~~

Form DFW 195B:

A check box is added on the Southern CPFV log for Non-Paying (located under Trip Type on the form). Text is removed (the second sentence in Item 1 of the instructions): ~~Logs are required for all fishing trips into Mexican waters originating from CA ports.~~

The Commission voted to adopt the proposed regulatory changes to CCR T-14 sections 190 and 195.

V. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations:

Written Correspondence Received

- (1) Pleschner-Steele, Diane , Executive Director, CA Wetfish Producers Association, 5/9/13

With regard to Title 14 CCR § 190 - Fishing Activity Records – Ms. Pleschner-Steele, who represents fishermen and processors who land and pack coastal pelagic species and market squid, expressed concern that a new log book would be required to be completed at the end of the calendar day and would create an undue burden on fishermen.

Response:

The market squid vessel log has one line per set, with multiple lines per log page. A new log book page will not have to be filled out at the end of the calendar day, but the fisherman will need to fill out the log with all available information for each set before midnight for each day of fishing activity. The Department believes that this will not create an undue burden on the fisherman due to the fact that they are already required to provide this information on a log book. This proposal only clarifies when the log book needs to be completed.

- (2) D’Anna, Salvatore B., 6/17/13

Would like the Commission to address the new DFW 195B form as being an underground regulation, and that reasonable alternatives are available and should be used. Expressed concern that DFW lacks jurisdiction to require log books for fishing in Mexican waters.

Response:

CPFV logs would be required for that portion of the trip occurring in CA waters. In addition, every person returning to CA would be required to fill out an importation permit for any catch retained from Mexican waters. The industry and the Department have agreed on a protocol that allows the vessel to continue filling out a CPFV log with the fish caught in Mexico reflected on the log. This business practice allows the vessel to fill out the log in lieu of every passenger filling out an importation permit. Industry and

the Department support continuing this practice.

Oral Comments Received

- (1) Joe Exline, 05/22/13 Commission meeting, representing the CA Wetfish Producers Association: Concerned that all of the required log book information may not be available when required to complete log books and the difficulty of small boats completing log books in inclement weather. Would also like to see the use of electronic log books.

Response:

The proposed regulatory language has been amended to require that log books be completed “with all available information.” Additional information can be added to the log book as it becomes available. The Department believes that there are measures that can be taken by the fisherman to protect the log book while at sea (e.g., use of Zip Lock bags to hold log books and keep them dry) without creating an undue burden on the fisherman. The Department is also planning and preparing data systems so that electronic log books may be implemented in the future.

- (2) Bob Bertelli, 05/22/13 Commission meeting, Chairman, CA Sea Urchin Commission: Concerned about completing log books in the wet weather. Also concerned that a log book needs to be completed before anyone departs from a vessel, due to the fact that they will not have all of the required information to complete the log book.

Response:

See response for oral comment number one.

- (3) Paul Weakland, 06/26/13 Commission meeting: Concerned about the accuracy of information. States fishermen not willing to give up fishing spots and the fish move to different locations.

Response:

The fishermen are already obligated to provide true and correct information on their Fishing Activity Records per CCR T-14 190 and 195. Department biologists are aware of the fact that fish may change locations, and take that into account when analyzing data and making management decisions.

- (4) Joe Exline, representing himself, 06/26/13, Commission meeting: Has concerns with the word “completed” and suggests the word “entered” would be better. He is also concerned about when a log book needs to be filled out if they don’t have all of the available information.

Response:

The proposed regulatory language was modified to require that log books be completed “with all available information”. Additional information can be added to the log book as it becomes available.

VI. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:

California Fish and Game Commission
1416 Ninth Street, Room 1320
Sacramento, California 95814

VII. Location of Department Files:

Department of Fish and Wildlife
Law Enforcement Division
1416 Ninth Street, Room 1326
Sacramento, California 95814

VIII. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

No reasonable alternatives were identified.

(b) No Change Alternative:

The no change alternative was considered and rejected because the current language does not address enforcement issues related to: when fishing activity records (logs) should be completed; completing reports of no fishing during the month; and, completing of reports when fishermen are nonpaying guests aboard CPFV.

(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.

IX. 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. This proposal only clarifies wording in the logbook as well as reporting requirements. It does not limit any take of interfere with the ability to make money.

- (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 any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses or the expansion of businesses in California. The proposed amendments to the regulations do not have foreseeable benefits to the health and welfare of California residents or to worker safety. The proposed regulations should benefit the State's environment by improving reporting of fish take in the California waters and the resultant analysis and recommendations that the Department may make. The Commission expects that proposed amendments and additions to the regulations concerning fishing activity records will provide a non-monetary benefit by improving the monitoring and reporting of the take of ocean fish by CPFV.

- (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:

None

- (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

Updated Informative Digest/Policy Statement Overview

Section 190 to be amended.

Currently, Section 190 requires that log books be filled out for specified fisheries (e.g., trawl, trap, live bait, market squid, commercial passenger vessels, etc.). These daily records are turned in monthly to the department and used to assist the management of these fisheries.

Current wording in Section 190, proposed for deletion, requires logs to be completed “before the end of a trip, at the time of sale of the catch or at the end of each day’s fishing.” This language can be confusing for those filling out the records and for the wildlife officer trying to enforce the regulations. Proposed new wording in subsection 190(b) of “immediately when any of the following first occurs: (1) prior to passengers or crew disembarking from the vessel, or (2) at the time of receipt, purchase, or transfer of fish, or (3) at the end of the calendar day (midnight) during fishing activity through the night” provides clear points in time when the records must be completed.

Section 195 to be amended.

The proposed changes in subsection 195(a) will delete and replace the existing Skipper’s Log Book with updated forms entitled “COMMERCIAL PASSENGER FISHING VESSEL LOG” for Southern and Central/Northern California. The instructions explain when and how logs are to be filled out as well as when the logs are to be delivered to the department. The new logs will provide a new box for an entry of “No fishing activities for the month of: _____.” All logbooks are valuable to the management of the fisheries and assist the department in determining catch beneficial to fishermen.

There are times when a licensed Commercial Passenger Fishing Vessel (CPFV) operator may take out nonpaying customers or friends out on a fishing venture. It is recommended in this proposal with the addition of subsection 195(a)(5) that a licensed CPFV be required to keep logbook records when on a fishing trip, whether or not the trip involves paying or nonpaying fishing customers. This would also give a better data base tracking all fish caught on CPFV’s.

Currently in subsection 195(e)(5) the regulation, in part, specifies “operating under authority of a license issued pursuant to”, this language is proposed for deletion and will be replaced by “licensed under” which clarifies the meaning of the provision.

The Commission expects that proposed amendments and additions to the regulations concerning fishing activity records will provide a non-monetary benefit by improving the monitoring and reporting of the take of ocean fish by CPFV. The Commission does not anticipate significant non-monetary benefits to the protection of public health, worker safety, the prevention of discrimination, the promotion of fairness and social equity, or to the increase in openness and transparency in business and government.

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. No other agency has authority to adopt fishing log book regulations.

Update:

1. The following minor editorial changes were made to the originally proposed regulatory language (indicated by a double-underline) in subsection 190(b) based on public comments, and for clarity and consistency:

(b) Fishing activity records shall be kept on the vessel while it is engaged in, or returning from, fishing operations ~~and shall be completed before the end of a trip, at the time of sale of the catch or at the end of each day's fishing.~~ Unless otherwise specified in Title 14, CCR, fishing activity records shall be completed immediately with all available information when any of the following first occurs:

2. The following minor editorial changes were made to the forms proposed in subsection 195(a) based on public comments, and for clarity and consistency:

Form DFW 195A:

A check box is added on the Central and Northern California CPFV log for Non-Paying (located under Trip Type on the form). Text is removed (the second sentence in Item 1 of the instructions): ~~Logs are required for all fishing trips into Mexican waters originating from CA ports.~~

Form DFW 195B:

A check box is added on the Southern CPFV log for Non-Paying (located under Trip Type on the form). Text is removed (the second sentence in Item 1 of the instructions): ~~Logs are required for all fishing trips into Mexican waters originating from CA ports.~~

The Commission voted to adopt the proposed regulatory changes to Sections 190 and 195.

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
ADDENDUM TO FINAL STATEMENT OF REASONS FOR REGULATORY ACTION
Sections 190 and 195
Title 14, California Code of Regulations
Re: Commercial Fishing Activity Reports and Logbooks

Clarification

Form DFW 195A (Rev. 02/13) and Form DFW 195B (Rev. 02/13)

The Department has revised the fish species on the log for which information is recorded in response to specific fishery management needs. The log also contains blank lines to be used for fish species that are not individually noted on the form. All fish species caught, discarded, or lost are to be recorded on the log.

The previous form had XXX noted for coho salmon because the take of coho salmon is prohibited. This was an error and all species caught, whether prohibited from take or not, must be recorded on the log. It is the responsibility of the angler and vessel operator to know what regulations apply to what species when retaining fish caught.

Form F&G 656 (12/02) and Form F&G 623 (12/02)

The forms were amended in 2004 and incorporated by reference in Section 195 (OAL File No. 04-0128-01S) and consisted of only Southern California and Central and Northern California Forms and not the instructions. The forms were inadvertently left out and need to be added behind the Form 400.

Continuation of

V. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations:

Clarification of Summary of Response

(2) D'Anna, Salvatore B. (letter 6/17/2013)

1. Would like the Commission to address the new DFW 195B form as being an underground regulation.
2. Collection of fish taken in Mexican waters is not a requirement of the Marine Life Management Act and should not be included in the statistics used to assess the local fishery.

Response:

We agree with the comment that neither the Department nor the Fish and Game Commission has regulatory authority over the waters or fishery in the country of Mexico. The instruction in question was intended to ensure that all vessels departing from California ports complete a log for any fishing activity that occurs in California waters even if they travel to Mexican waters for fishing activity in Mexico. The instruction was not clear and therefore, it has been deleted. The proposed regulation does not require the forms to be used for fish caught in

Mexican waters, but doing so allows the passengers who have been fishing on the vessel to avoid completing a declaration of importation pursuant to Fish and Game Code 2353 for fish caught in Mexican waters and brought back to California ports.

Pursuant to Fish and Game Code Section 2353 the Commission and the CDFW have regulatory authority over fish imported into California. The Marine Life Management Act of 1999 does not override or contradict Fish and Game Code Section 2353 which states that fish legally taken and legally possessed outside of this state may be imported into California only if declared to the department at or immediately before the time of entry, in the form and manner prescribed by the department, or without a declaration if the shipment is handled by a common carrier under a bill of lading or as supplies carried into this state by common carriers for use as food for the passengers.

One of the MLMA's objectives, Fish and Game Code Section 7050(b)(9), is to coordinate and cooperate with adjacent states, as well as with Mexico and Canada, to encourage regional approaches to management activities and uses that affect marine living resources.

- (3) D'Anna, Salvatore B. (letter July 19, 2013)

The July 19, 2013 letter was included in the rulemaking file, but was received after the public comment period and a response is not required pursuant to Government Code Section 11346.5 paragraph (a)(15).