

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

Amend Subsection (b) of Section 27.65 and
Subsection (b) of Section 28.38,
Title 14, California Code of Regulations
Re: Pacific Bluefin Tuna Daily Bag Limit and Tuna Fillet Procedures
for Consistency with Federal Rules

I. Date of Initial Statement of Reasons: January 13, 2015

II. Dates and Locations of Scheduled Hearings:

(a) Notice Hearing: Date: December 3, 2014
Location: Van Nuys

(b) Discussion Hearing: Date: February 11, 2015
Location: Sacramento

(c) Adoption Hearing: Date: April 8, 2015
Location: Santa Rosa

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 Pacific Fishery Management Council (PFMC) reviews the status of Pacific bluefin tuna and other west coast tuna populations using a biennial management cycle. As part of that process, it recommends fisheries regulations aimed at meeting biological and fishery allocation goals specified in law or established in the West Coast Highly Migratory Species Fishery Management Plan (HMS FMP). These recommendations coordinate west coast management of recreational and commercial highly migratory species fisheries in federal waters from three to 200 miles offshore off Washington, Oregon and California. These recommendations are subsequently implemented as federal fishing regulations by the National Marine Fisheries Service (NMFS).

Under California law (California Fish and Game Code sections 200, 202 and 205), the California Fish and Game Commission (Commission) adopts regulations for the recreational tuna fishery in State waters zero to three miles from shore. Fish and Game Code Section 313 specifies that

the Commission may prohibit the taking or possessing of tuna in the same manner as taking or possessing tuna is prohibited by federal law or by rules or regulations adopted pursuant to the Tuna Conventions Act of 1950.

The Inter-American Tropical Tuna Commission (IATTC) is responsible for the conservation and management of tuna and other species taken by tuna-fishing vessels in the eastern Pacific Ocean. Members of the IATTC include those countries that fish for tunas in the eastern Pacific Ocean. The U.S. became a member the IATTC through the Tuna Conventions Act of 1950.

Pacific bluefin tuna along the west coast of the United States are jointly managed by the PFMC, NMFS and west coast state agencies, utilizing recommendations on the recreational fishery from the IATTC. The PFMC coordinates west coast management of domestic recreational fisheries for highly migratory species, including tunas, through the HMS FMP and the regulations promulgated pursuant thereto [50 Code of Federal Regulations (CFR) Part 660, Subpart K].

In 2012, a stock assessment conducted by the IATTC's International Scientific Committee (ISC) for Tuna and Tuna-Like Species in the North Pacific Ocean estimated the Pacific bluefin tuna stock in the northern Pacific Ocean at less than four percent of its unfished biomass. In April of 2012, the Secretary of Commerce determined the stock was overfished. A stock assessment was again conducted in 2014, which confirmed the prior assessment results that the stock was at very low biomass levels and overfished.

In October 2014, during a special meeting, the IATTC called for member nations to reduce fishing mortality of Pacific bluefin tuna by 20 to 45 percent throughout the species' distribution (IATCC Resolution C-14-06). In response, the U.S., Mexico, and Japan submitted a joint proposal (IATTC-87 I-3A) which outlined a plan to reduce catches of Pacific bluefin tuna in the eastern Pacific Ocean, by reducing the recreational bag and possession limit of Pacific bluefin tuna.

On November 17, 2014, the PFMC recommended changes to the Pacific bluefin tuna daily bag limits and the fillet rules for recreational tuna in California, which are expected to go into effect in May 2015.

Since Pacific bluefin tuna are also commonly caught with other tuna species, changes to the fillet regulations are needed to allow for Pacific bluefin tuna fillets to be differentiated from other tuna species landed by southern California anglers.

It is critical to have consistent State and federal regulations establishing bag limits and other management measures, and also critical that the State and federal regulations be effective concurrently. Consistency with federal regulations is also necessary to maintain State authority over its recreational Pacific bluefin tuna fishery and avoid federal preemption under the Magnuson-Stevens Fishery Conservation Act [16 United States Code (USC) Section 1856 (b)(1)].

Present Regulations

Existing law authorizes the recreational take and possession of Pacific bluefin tuna subject to regulations set forth by federal and State agencies. Current State regulations establish daily bag and possession limits, gear restrictions, and a year-round season [sections 27.15, 27.56, 28.38, 28.65, 28.70, 28.90, 28.91 and 28.95, Title 14, California Code of Regulations (CCR)].

Bag Limits

Present regulations establish a daily bag limit of ten Pacific bluefin tuna in addition to the general daily bag limit of 20 finfish overall of any other species. The maximum possession limit is 30 Pacific bluefin tuna with appropriate documentation for multi-day trips.

Fillet Restrictions

Currently all tuna species may be filleted onboard a vessel, as long as the fillet bears intact a one-inch square patch of skin. Fillets may be of any size.

Proposed Regulation Changes

The Department of Fish and Wildlife (Department) is proposing the following regulatory changes to be consistent with the PFMC recommendations for federal tuna regulations in 2015 and 2016. This approach will allow the Commission to adopt State recreational tuna regulations to timely conform to those taking effect in federal ocean waters in May 2015.

The proposed regulations decrease the Pacific bluefin tuna daily bag limit from 10 to two fish. Pacific bluefin tuna was declared overfished and a decreased bag limit is expected to reduce the recreational catch by 30 percent for 2015 and 2016, within the range recommended by the IATTC.

The proposed reduction to the Pacific bluefin tuna daily bag and possession limit creates a need for law enforcement to differentiate between Pacific bluefin tuna and other tuna species commonly landed by southern California anglers. Filleting of tuna on a vessel is a common

practice, and an important source of revenue for the Commercial Passenger Fishing Vessel (CPFV) fleet. The Department worked with State and federal law enforcement, NMFS biologists, an IATTC tuna expert and representatives of the CPFV fleet, to devise fillet procedures and standards that allow easy differentiation between tuna species.

The proposed regulations would modify the fillet regulations to require tuna filleted on any boat or brought ashore as fillets south of Point Conception be filleted in a manner that allows for identification of the species of tuna. This requirement was limited to south of Point Conception because although Pacific bluefin tuna can occasionally occur as far north as Washington, most recreational angling for the species occurs off southern California and Mexico. The proposed fillet regulations for all species of tuna filleted on a vessel or brought ashore as fillets south of Point Conception, require:

- each fish be cut into six pieces retaining all the skin,
- all pieces of each fish be placed together in one bag, and
- the bag be labeled with the species' common name.

It is the policy of the State to encourage the conservation, maintenance, and utilization of the living resources of the ocean and other waters under the jurisdiction and influence of the State for the benefit of all the citizens of the State. In addition, it is the policy of the State to promote the development of local fisheries and distant-water fisheries based in California in harmony with international law respecting fishing and the conservation of the living resources of the ocean and other waters under the jurisdiction and influence of the State. The objectives of this policy include, but are not limited to, the maintenance of sufficient populations of all species of aquatic organisms to ensure their continued existence and the maintenance of a sufficient resource to support a reasonable sport use, taking into consideration the necessity of regulating individual sport fishery bag limits to the quantity that is sufficient to provide a satisfying sport. Adoption of scientifically-based seasons, size limits, and bag and possession limits provides for the maintenance of sufficient populations of Pacific bluefin tuna to ensure their continued existence.

The benefits of the proposed regulations are consistency with federal regulation, the sustainable management of California's tuna resources, and protection of overfished stocks.

- (b) Authority and Reference Sections from Fish and Game Code for Regulation:
- Authority Sections: 200, 202, 205 and 313, Fish and Game Code.
- Reference Sections: 200, 202, 205, 220, 240, 313, 5508, and 5509, Fish and Game Code.
- (c) Specific Technology or Equipment Required by Regulatory Change:
- None.
- (d) Identification of Reports or Documents Supporting Regulation Change:
- Daily Bag Limits, Possession Limits, and At-Sea Processing of Pacific Bluefin Tuna in California Recreational Fisheries, Draft Environmental Assessment http://www.pcouncil.org/wp-content/uploads/l3a_Att1_PBF_BagLimitsDraftEA_NOV2014BB.pdf
- Highly Migratory Species Management Team Report on Bluefin Tuna Management Measures for 2015-2016 Fisheries http://www.pcouncil.org/wp-content/uploads/l3b_Sup_HMSMT_Rpt_NOV2014BB.pdf
- California Department of Fish and Wildlife Report on Regulatory Options for Filleting of Tuna At-Sea in California Marine Recreational Fisheries http://www.pcouncil.org/wp-content/uploads/l3b_Sup_CDFW_Rpt_NOV2014BB.pdf
- NMFS/CDFW Preliminary Proposal for Consideration on Recreational Bluefin Management Measures for 2015-2016 Fisheries http://www.pcouncil.org/wp-content/uploads/l3b_Sup_NMFS_CDFW_Rpt_NOV2014BB.pdf
- Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species, as Amended, Appendix A, Description of the Fisheries http://www.pcouncil.org/wp-content/uploads/HMS_AppA_pt1.pdf
- 2013 California Marine Recreational Fishing Trip Effort and Preliminary Economic Impact Estimates https://swfsc.noaa.gov/uploadedFiles/Operating_units/FRD/Socio-Economics/SWFSC-CA_2012_Rec_Impact_by_Mode_District.pdf
- (e) Public Discussions of Proposed Regulations Prior to Notice Publication:

Pacific Fishery Management Council meetings where the proposed regulations for recreational tuna were discussed:

- June 20-25, 2014, Garden Grove, CA
- September 12-17, 2014, Spokane, WA
- November 12-19, 2014, Costa Mesa, CA

During the period between the September and November PFMC meetings, two collaborative workshops were held to gather input from experts in science, law enforcement, government and the CPFV fleet on process and procedures to identify filleted tuna by species.

- October 16, 2014, South West Fisheries Science Center, La Jolla, CA
- October 29, 2014, Seaforth Landing, San Diego, CA

No other State public meetings were held prior to publication of the notice. The 45-day public comment period provides adequate opportunity for review and comment on the proposed amendments.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

At the December 3, 2014 Commission meeting, a member of the public requested a change to allow skipjack tuna fillets to be brought ashore as two pieces instead of the required six pieces. This would conflict with the State's conformance with the expected final federal regulations and was not included as an option in this regulatory proposal.

No other alternatives were identified by or brought to the attention of Commission staff that would have the same desired regulatory effect.

(b) No Change Alternative:

Under the No Change Alternative, State law would be inconsistent with federal law. Inconsistency in regulations will create confusion among the public and may result in laws that are difficult to enforce. Further, the goal of a 20 to 45 percent reduction in Pacific bluefin tuna fishing mortality as specified in the IATTC resolution would not be achieved.

It is critical to have consistent State and federal regulations establishing season dates, bag limits and other management measures, and also critical that the State and federal regulations be effective concurrently. Consistency with federal regulations is also necessary to maintain State

authority over its recreational Pacific bluefin tuna fishery and avoid federal preemption under the Magnuson-Stevens Fishery Conservation Act [16 USC Section 1856 (b)(1)].

(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. Negative economic impacts are not expected from a reduction in the Pacific bluefin tuna bag limit as fishers will likely target other tuna species after the Pacific bluefin tuna limit is met. The reduced bag limit is also not expected to substantially reduce the numbers of anglers on CPFV trips and the associated angler spending. The proposed regulations continue to allow recreational anglers to take and possess Pacific bluefin tuna in State waters, and for CPFV anglers to have their tuna catch filleted by crew members while the vessel is still at sea.

(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. No significant changes in fishing effort and recreational fishing expenditures to businesses are expected as a direct result of the proposed regulation changes.

The Commission does not anticipate any benefits to worker safety.

The Commission anticipates benefits to the environment by the sustainable management of California's sport fishing resources, which may result in benefits to the health and welfare of California residents. Participation in sport fisheries opportunities fosters conservation through education and appreciation of California's fish and wildlife.

(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.

VII. Economic Impact Assessment

Recreational fishing activity for Pacific bluefin tuna and other tuna species is primarily conducted from commercial passenger fishing vessels (CPFVs) and privately-owned vessels which fish out of landings, marinas, and launch ramps dotting the southern California coast, from Los Angeles to San Diego [Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species, as amended (July 2011), Appendix A]. Direct expenditures in 2013 on marine recreational fishing trips in southern California, including ports from Los Angeles south through San Diego, totaled roughly \$119 million from CPFV trips. In 2013, this fleet provided 380,000 and 152,000 angler days of fishing effort to U.S. and Mexican fishing grounds, respectively. The employment impacts of these trips supported approximately 1,537 full-time equivalent jobs in 2013 (2013 California Marine Recreational Fishing Trip Effort and Preliminary Economic Impact Estimates).

The proposed regulations will modify State recreational tuna regulations to conform to federal rules. Currently, State regulations for tuna provide for bag limits, retention allowances and rules for filleting. In adopting these conforming regulations the State relies on information provided to the Pacific Fishery Management Council (PFMC) in the Draft Environmental Assessment and the Highly Migratory Species Management Team's Report on Bluefin Tuna Management Measures for 2015-2016 Fisheries, which include an analysis of the economic impacts to California.

The Department of Fish and Wildlife (Department) is proposing the following regulatory changes to be consistent with PFMC recommendations for federal tuna regulations.

The proposed regulations decrease the daily bag limit for Pacific bluefin tuna from ten to two fish. It is estimated that this decrease will reduce approximately 17 percent of Pacific bluefin tuna angler bags in U.S. waters and 13 percent in Mexican waters. Negative economic impacts are not expected from a reduction in the Pacific bluefin tuna bag limit as fishers will likely target other tuna species after the Pacific bluefin tuna limit is met. The reduced bag limit is also not expected to substantially reduce the numbers of anglers on CPFV trips and the associated angler spending.

The proposed regulatory changes modify rules for filleting south of Point Conception. In this area, proposed regulations will require fillets of all tuna species be individually bagged and marked with the species' common name. In addition to clarifying that all skin must be attached, regulations will also specify how the fillets can be cut prior to packaging.

The proposed change to the tuna fillet regulation south of Point Conception was designed in cooperation with southern California CPFV operators and law

enforcement experts, specifically to prevent a negative impact on the deck hands fees and tips, while still allowing easy identification of the processed catch. Therefore, no negative economic impacts are expected to occur as a result of this change.

Effects of the regulation on the creation or elimination of jobs within the State

The Commission does not anticipate any significant impacts on the creation or elimination of jobs within California. The regulatory action does not substantially alter the existing level of economic activity.

Effects of the regulation on the creation of new businesses or the elimination of existing businesses within the State

The Commission does not anticipate any significant impacts on the creation of new businesses or the elimination of existing businesses in California. No significant changes in fishing effort and recreational fishing expenditures to businesses are expected as a direct result of the proposed regulation changes.

Effects of the regulation on the expansion of businesses currently doing business within the State

The Commission does not anticipate any significant impacts on the expansion of businesses currently doing business in California. The regulatory action does not substantially alter the existing level of economic activity.

Benefits of the regulation to the health and welfare of California residents

The Commission anticipates benefits to the health and welfare of California residents through the sustained management of the recreational Pacific bluefin tuna fishery. Participation in recreational fishing is a healthy activity and bluefin tuna is a nutritious food.

Benefits of the regulation to worker safety

The Commission does not anticipate any benefits to worker safety because this regulatory action will not impact working conditions or worker safety.

Benefits of the regulation to the State's environment

Sustainable Management of Marine Resources

It is the policy of the State to encourage the conservation, maintenance, and utilization of the living marine resources under the jurisdiction and influence of the State for the benefit of all its citizens and to promote the development of local California fisheries. Adoption of scientifically-based recreational bag limits provide for the maintenance of sufficient populations of Pacific bluefin tuna to

ensure their continued existence.

The benefits of the proposed regulations are a continuation of sustainable management of sport fishing resources.

Concurrence with Federal Law

The PFMC reviews the status of Pacific bluefin tuna regulations biennially. As part of that process, it recommends regulations aimed at meeting biological and fishery goals specified in law or established in the Highly Migratory Species Fishery Management Plan. These recommendations coordinate management of recreational and commercial Pacific bluefin tuna in the Federal waters (three to 200 miles offshore) off the coasts of Washington, Oregon, and California. These recommendations are subsequently implemented as ocean fishing regulations by the National Marine Fisheries Service.

California's sport fishing regulations need to conform to, or be more restrictive than, federal regulations to ensure that biological and fishery goals are not exceeded.

Informative Digest/Policy Statement Overview

The Pacific Fishery Management Council (PFMC) reviews the status of Pacific bluefin tuna and other west coast tuna populations using a biennial management cycle. As part of that process, it recommends fisheries regulations aimed at meeting biological and fishery allocation goals specified in law or established in the West Coast Highly Migratory Species Fishery Management Plan (HMS FMP). These recommendations coordinate west coast management of recreational and commercial highly migratory species fisheries in the federal fishery management zone (three to 200 miles offshore) off Washington, Oregon and California. These recommendations are subsequently implemented as federal fishing regulations by the National Marine Fisheries Service (NMFS).

For consistency, the California Fish and Game Commission (Commission) routinely adopts regulations to bring State law into conformance with federal law for Pacific bluefin tuna and other federally-managed species.

Summary of Proposed Amendments

The Department of Fish and Wildlife (Department) is proposing the following regulatory changes to be consistent with the PFMC recommendations for federal tuna regulations in 2015 and 2016. This approach will allow the Commission to adopt State recreational tuna regulations to timely conform to those taking effect in federal ocean waters in May 2015.

The proposed regulations decrease the Pacific bluefin tuna daily bag limit from 10 to two fish. Pacific bluefin tuna was declared overfished and a decreased bag limit is expected to reduce the recreational catch by 30 percent for 2015 and 2016, within the range recommended by the IATTC.

The proposed reduction to the Pacific bluefin tuna daily bag and possession limit creates a need for law enforcement to differentiate between Pacific bluefin tuna and other tuna species commonly landed by southern California anglers.

The proposed regulations would modify the fillet regulations to require tuna filleted on any boat or brought ashore as fillets south of Point Conception be filleted in a manner that allows for identification of the species of tuna. The final recommendation for fillet regulations for all species of tuna filleted on a vessel or brought ashore as fillets south of Point Conception requires that each fish be cut into six pieces retaining all the skin, all pieces of each fish be placed together in one bag, and the bag be labeled with the species' common name.

The benefits of the proposed regulations are consistency with federal regulation, the sustainable management of California's tuna resources, and protection of overfished stocks.

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. The Legislature has delegated authority to the Commission to adopt sport fishing regulations (Fish and Game Code, sections 200, 202 and 205) and tuna fishing regulations specifically (Fish and Game Code, Section 313). The proposed regulations are consistent with regulations for sport fishing in marine protected areas (Section 632, Title 14, CCR), general sport fishing regulations in Chapters 1 and 4 of Subdivision 1 of Division 1, Title 14, CCR, and regulations concerning the exchanging of sport-caught fish (Section 231, Title 14, CCR). Commission staff has searched the California Code of Regulations and has found no other State regulations related to the recreational take of Pacific bluefin tuna.

The proposed regulations are neither inconsistent nor incompatible with existing State Department of Health Services regulations concerning canning, inspection and labeling of food and pet food (sections 12660, 12665, 12670, 12675, 12680, 12685 and 19025, Title 17, CCR), and Department of Health Services regulations concerning the California Special Supplemental Food Program for Women, Infants and Children (Section 40740, Title 18, CCR).