

Informative Digest

The new state regulations adopted in Section 111, Title 14, California Code of Regulations will conform to federal regulations made effective on May 4, 2016 to protect unmanaged forage fish species. The state regulations being adopted will apply to state waters which are between zero and three nautical miles from the coast line.

Initiated by the Director of the California Department of Fish and Wildlife (CDFW), this action is taken under the authority of Section 7652 of the Fish and Game Code (FGC), and is necessary to conform state commercial fishing regulations within state waters to the existing federal regulations. This action will aid in achieving optimum yield for these forage fish species in California and is necessary to avoid a substantial and adverse conflict with the federal regulations. This action is consistent by State law or regulation in order to continue state jurisdiction pursuant to Title 16, United States Code Section 1856 of the Magnuson - Stevens Act (P.L. 94-265). Pursuant to FGC Section 7652, subdivision (d), the provisions of the Administrative Procedures Act do not apply to this action.

The federal regulations establish the list of included species (called Shared Ecosystem Component Species), define directed commercial fishing and set vessel-based catch limits for incidental take of those forage fish species to continue within existing commercial fisheries. Species affected by these regulations include round and thread herring, lanternfish, Pacific sand lance, Pacific saury, pelagic squids, plus some atherinid and osmerid smelts including eulachon (also called candlefish). Prohibiting new commercial fisheries for these forage fish species is a proactive measure to protect the food source of many important recreational and commercial species, as well as large marine predators including migratory fishes, sea birds and marine mammals.

The federal regulations were developed for federal waters in partnership with CDFW and other west coast states through the Pacific Fishery Management Council process. They were designed to prohibit the formation of any new directed commercial fisheries for the designated forage fish species, but not affect existing federal commercial activities. Fisheries managed within state waters were considered in the development process so that conforming state regulations would not adversely affect commercial activities in state waters that also encounter these forage fish species.

As part of this action, the CDFW Director has elected to exclude state conformance language for one section of the new federal regulations that pertain specifically to the groundfish trawl fishery for Pacific whiting and at-sea processing (see federal language below) – due to the lack of relevance or need in state waters. Because trawling for groundfish is not allowed in state waters per FGC Section 8841(h), it is unnecessary and erroneous to add further prohibitive regulations.

The newly implemented federal regulations include: defining the list of forage fish species, defining “directed commercial fishing”, and prohibiting directed fishing for these species within the U.S. West Coast Exclusive Economic Zone (EEZ) which occurs from three to 200 miles offshore. The federal regulations are also intended to “prohibit at-sea

processing of Federal Shared Ecosystem Component (EC) Species, except while otherwise lawfully processing groundfish in accordance with 50 Code of Federal Regulations (CFR) part 600, subpart D."

The section(s) of federal regulations that will not be included in this state regulatory action are:

50 Code of Federal Regulations, Part 660, Subpart B:

§ 660.6 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter, and the other prohibitions specified in this part, it is unlawful for any person to:

(a)

(b) At-sea processing. At-sea processing of Shared EC Species is prohibited within the EEZ, except while processing groundfish in accordance with subpart D of this part.

§ 660.112, Trawl fishery—prohibitions.

(d) ...

(16) Retain and process more than 1 mt of Shared EC Species other than squid species in any calendar year; or, retain and process more than 40 mt of any Shared EC squid species in any calendar year.

(e) ...

(10) Retain and process more than 1 mt of Shared EC Species other than squid species in any calendar year; or, retain and process more than 40 mt of any Shared EC squid species in any calendar year.

For a full description of the regulations and a complete list of all included species, please visit the Federal Register website at:

<https://www.federalregister.gov/documents/2016/04/04/2016-07516/fisheries-off-west-coast-states-comprehensive-ecosystem-based-amendment-1-amendments-to-the-fishery>