

STAFF SUMMARY FOR OCTOBER 11-12, 2017

24. COMMERCIAL FISHERIES LANDING REQUIREMENTS**Today's Item**Information ☐Action ☒

Discuss and adopt the proposed regulations related to commercial fisheries landing requirements.

Summary of Previous/Future Actions

- Notice hearing Jun 21-22, 2017; Smith River
- **Today's discussion/adoption hearing Oct 11-12, 2017; Atascadero**

Background

The proposed regulations implement a transition from the current paper-based reporting system to electronic forms via a new electronic reporting system for commercial fisheries landings. DFW proposes these regulations since no regulations exist and activities are currently governed by statutes alone.

DFW is working closely with the Pacific States Marine Fisheries Commission (PSMFC) to streamline and integrate state electronic reporting with the PSMFC electronic reporting system currently in use in Washington, Oregon and California for certain federally-managed fisheries. Integration will allow fish receivers to use one system to meet both federal and state reporting requirements and will transition all state fisheries landings to electronic reporting (see Exhibit 2).

Significant Public Comments

1. Concern that the proposed regulations only allow 24 hours to submit the E-Tix, which is an unreasonable expectation not allowing for breakdowns, weekends or holidays. Reasonable time should be defined as a 24 hour business day. Business days are Mon through Fri, not including legal holidays (Exhibit 3).
2. Concern from a commercial salmon fisherman involved with the fishery for 60 years, opposing the proposed regulations and wanting to continue using the current paper-based reporting system and not be required to use the electronic reporting system (Exhibit 4).

Recommendation

FGC staff: Adopt regulations as proposed by DFW.

DFW: Adopt proposed regulations.

Exhibits

1. [DFW memo, received May 26, 2017](#)
2. [Initial statement of reasons](#)
3. [Email from Mike Lucas, received Jul 25, 2017](#)
4. [Letter from Edward Boitano, received Sep 27, 2017](#)

STAFF SUMMARY FOR OCTOBER 11-12, 2017

Motion/Direction

Moved by _____ and seconded by _____ that the Commission adopts the proposed regulations to add Section 197 related to commercial fisheries landing requirements.

2017 MAY 26 AM 11:28

Memorandum

Date: May 18, 2017

To: Valerie Termini
Executive Director
Fish and Wildlife Commission

From: Charlton H. Bonham
Director



Subject: **Agenda item for the June 21-22, Fish and Game Commission Meeting**
Re: Request to Publish Notice of the Commission's Intent to Add Section 197, Title 14, California Code of Regulations (CCR), Commercial Fisheries Landing Requirements

The Department of Fish and Wildlife (Department) requests that the Fish and Game Commission (Commission) authorize publication of notice of its intent to consider adding regulations for activities associated with commercial fisheries landings and electronic reporting (Section 197, Title 14, CCR).

The Department is proposing these regulations since no regulations exist and activities are currently governed by statutes alone. In addition, the Department is transitioning from a paper-based reporting system to electronic reporting and these regulations will guide that transition. The Department is working closely with the Pacific States Marine Fisheries Commission (PSMFC) to streamline and integrate state electronic reporting with the PSMFC electronic reporting system currently in use in Washington, Oregon and California for certain federally-managed fisheries. This will allow fish receivers to use one system to meet both federal and state reporting requirements and will transition all state fisheries landings to electronic reporting.

If you have any questions regarding this item, please contact Dr. Craig Shuman, Regional Manager, Marine Region, at (805) 568-1246. The public notice for this rulemaking should identify Environmental Program Manager, Katie Perry as the Department's point of contact. Ms. Perry can be reached at (916) 445-6456 or Katie.Perry@Wildlife.ca.gov.

Enclosures

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Fish and Game Commission
May 18, 2017
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STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

Add Section 197
Title 14, California Code of Regulations
Re: Commercial Fisheries Landing Requirements

- I. Date of Initial Statement of Reasons: April 27, 2017
- II. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: June 22, 2017
Location: Smith River, CA
 - (b) Discussion/Adoption Hearing: Date: October 12, 2017
Location: Atascadero, 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:

The purpose of the addition of Section 197 is the management of activities associated with commercial fisheries landings and the reporting of these landings. A "landing" is generally characterized as the transfer or offloading of fish from a vessel for the purpose of selling or delivering those fish to a licensed fish receiver. The proposed regulations are necessary to manage this transaction and to clarify the applicable statutes for the participants and law enforcement. To date, there are no regulations guiding this activity. Statutes authorizing commercial fisheries licenses and landing taxes are found in Article 7 and Article 7.5 of Fish and Game Code. Commercial fish receivers are engaged in business for profit and are required to be licensed and to report all landing receipt records on a form furnished by the Department of Fish and Wildlife (Department) pursuant to Fish and Game Code sections 8043 and 8047. In addition, Fish and Game Code subsection 1050(b) authorizes the Fish and Game Commission (Commission) to determine the forms to be used for commercial fisheries entitlements.

The proposed regulations implement a transition from the current paper-based reporting system to electronic forms via a new electronic reporting system for commercial fisheries landings.

Transitioning from paper landing receipts to electronic fish tickets, as the electronic forms are known, is appropriate at this time as advances in computer and Internet technology and the use of electronic devices by many businesses, including the fishing industry, is widespread. It is necessary that the Department update its processes, including proposing regulations to ensure the benefits of switching from paper landing receipts to electronic fish tickets are realized. Benefits to commercial fishermen, fish receivers and the Department include:

1. Time savings and reduced costs to the Department by reducing the amount of time and money spent designing, printing, packaging and mailing landing receipts to the fish businesses.
2. Transition of Department data entry staff to other priority tasks associated with landings data as data entry of paper forms is eliminated.
3. Ease of record storage and maintenance of electronic records by the Department.
4. Built-in checks and validations in electronic fish tickets will result in more accurate fisheries data on which the Department and the Commission can base management decisions.
5. Use of electronic fish tickets will result in more timely submission of fisheries data for both management and law enforcement.
6. Electronic fish tickets will provide for ease of information storage, data manipulation for research, production for legal reasons and information sharing with other fishery management agencies and law enforcement.
7. Availability of landing data and reporting tools for fish receivers.
8. Provides consistency with federal regulations for certain fisheries that also require electronic reporting via the same web-based application.

Landing receipts are legal documents that are completed and submitted to the Department by licensed fish businesses in California to document the fish they purchase from fishermen and the price paid. The Department uses the data for verification of quarterly taxes paid to the Department and for resource assessment, including the development of fishery management plans for ensuring the sustainable use of marine resources. While statute specifies the information contained on the landing receipt, it also allows for other information the Department may prescribe (Fish and Game Code subsection 8043(b)). The proposed regulations include all the information required on the landing receipt including the additional items.

In some instances, fish must be transported from the point of landing to a fish receiver where the purchase of the fish occurs. In the event that a licensed fish receiver is not available to document the fish landing, a fish transportation receipt is required to transport these fish to a fish receiver to maintain a legal chain-of-custody (Fish and Game Code Section 8047). While statute specifies the information required on the transportation receipt (Fish and Game Code subsection 8047(d)(10)), the information is included in the proposed regulations for completeness and allows the commercial fishermen and fish receivers to find the information in one place. In addition, the proposed regulations describe the additional items for inclusion on the fish transportation receipt when it is used as a dock ticket.

There are currently 17 different paper landing receipt forms, many of which have been used for decades to comply with reporting requirements specified in statute. Each landing receipt is used for a fishery, gear type, and/or area specific to California. There is one fish transportation receipt form, currently in paper format.

The electronic fish tickets will be submitted to the Department through the federal, web-based *E-Tix* system maintained by Pacific States Marine Fisheries Commission. The Department will continue to be the legal custodian of California landing receipt records. *E-Tix* has been a federal requirement for the individual fishing quota groundfish trawl fishery since its inception in 2011 and was expanded to include all sablefish landings as of January 1, 2017. Oregon has adopted *E-Tix* for all fisheries on a voluntary basis and Washington is working towards this as well. The Department's goal is to phase out the use of paper landing receipts and transition to electronic fish tickets using the PSMFC *E-Tix* application for data entry. This eliminates the issue of duplicate electronic reporting systems and provides consistency between federal and State agency reporting requirements. As the functional equivalent of a landing receipt, the electronic fish ticket also constitutes a weighmaster certificate for purposes of California Business and Professions Code Section 12713.

These regulations will provide for a phase-in period for all landing receipts to be submitted electronically via the *E-Tix* system. A phase-in period of 6 months to three years was estimated to be sufficient time to allow fish receivers to transition to electronic reporting. Based on a survey conducted by the Department in December 2016, approximately 74 percent of survey participants (223 responded) preferred a phase-in period of six months to one year to mandate the use of electronic fish tickets, while less than 23 percent of the survey participants preferred a longer phase-in period of up to three years. Phasing in the requirement to use electronic fish tickets is a reasonable approach to implementing a new reporting system, since there will likely be some receivers that need to purchase the hardware, obtain access to the Internet, and learn how to use a new Internet-capable device. The Department has determined that a one year phase-in period to fully adapt to a new system is reasonable and not

burdensome. These regulations are necessary to define the phase-in period and allow sufficient time for participants to fully comply with the requirement to use the *E-Tix* system.

PROPOSED REGULATIONS

Subsection 197(a) Definitions.

This subsection defines specific terms used within the proposed regulations. The definitions are necessary for three interrelated reasons:

1. To clarify to the public how those terms are used on the forms and regulations.
2. To clarify to the public and improve consistency within Department programs overseeing the fisheries using the landing receipts.
3. To clarify to the public the terms and language that make the regulations legally enforceable.

Certain terms and their definitions are consistent with terms and definitions used in federal regulations for electronic reporting (i.e., electronic fish ticket, functional, submit, record, dock ticket). Since these proposed regulations specify the use of the same electronic reporting system, this consistency will avoid confusion for the fish receiver.

Subsection 197(b) Landing receipts; form and contents.

This subsection describes the landing receipt forms that the Department prepares and issues to the fish receivers. It identifies the information to be included on the forms as specified in statute (Fish and Game Code subsection 8043(b)) and includes additional information required by the Department. Information from statute is repeated in the proposed regulations so that all information can be obtained in one place for the ease of the fish receivers. The additional information includes port of landing, condition of fish, use of fish, number of fish, permit number, signatures and note pad area. Port of landing provides information on where the fish are landed and is used in analyses of fishing catch and effort. It is also important information for economic analyses. Condition identifies how the fish are prepared prior to obtaining an accurate weight that is recorded on the landing receipt form. This is needed to compute the correct landing taxes pursuant to Fish and Game Code Section 8042. The information on the use of fish is needed to determine the end use of the fish (e.g., human food, animal food, bait, etc.). Number of fish is needed for certain species for which the number of individuals is needed for management purposes (i.e., salmon and lobster). Signatures of the commercial fisherman and fish receiver verify that each have reviewed and approved the accuracy of the information

contained on the landing receipt. The note pad area is used by fish receivers for their own purposes and for certain required information such as for rock crab used as bait (subsection 125.1(d), Title 14, CCR).

Subsection 197(c) Fish transportation receipts.

This subsection is necessary to clarify reporting requirements when a commercial fisherman or his designee transports fish from the point of first landing to a receiver who buys the fish and completes a landing receipt or electronic fish ticket. Transportation receipts are used to record key data (e.g., species caught, location catch occurred, poundage landed, etc.) and is a legal chain-of-custody document to ensure that the fish offloaded are the fish that are sold or delivered to the fish receiver. This subsection also describes how a fish transportation receipt may be used as a dock ticket for recording the information to be included in an electronic fish ticket. The term “dock ticket” is used in federal regulations and is used in these regulations to maintain consistent terminology and avoid confusion. Using a fish transportation receipt as a dock ticket has been accepted by the federal government for use in California to allow fish receivers to comply with recently enacted federal requirements. These require a paper record of the landing when an electronic fish ticket cannot be submitted immediately, such as when fish are being transferred from point of landing to the fish receiver or when fish are offloaded after hours. This regulation will authorize the use of a fish transportation receipt as a dock ticket, including additional items to be recorded, and eliminates unnecessary duplicative record keeping by commercial fishermen and fish receivers.

Subsection 197(d) Landing receipts and fish transportation receipts.

This subsection describes the use of sequentially numbered paper landing receipts and fish transportation receipts; the handling of voided landing receipts and fish transportation receipts; the return of unused landing receipts or fish transportation receipts and the delivery, distribution and retention of copies of both landing receipts and fish transportation receipts.

Subsection 197(e) Electronic fish tickets; implementation and required information.

This subsection is necessary to describe the timing of the transition from paper landing receipts to electronic fish tickets. It clarifies that during the phase-in period of one year fish receivers must use either a paper landing receipt or an electronic fish ticket, but not both. Once a fish receiver switches to electronic reporting they will no longer submit a paper landing receipt. This avoids duplication of data entry and allows fish receivers to meet both state and federal reporting requirements in one step for those who receive fish species that are also federally managed. This subsection identifies the date by which all fish

landings must be reported using electronic fish tickets. The proposed phase-in period of one year will give fish receivers sufficient time to comply with the requirement to switch from paper landing receipts to electronic fish tickets. This subsection also describes the information contained in the electronic fish tickets, the same information that is required on the paper landing receipts.

This subsection also describes the responsibilities of the fish receiver to use and maintain hardware and software that meets the requirements for submitting electronic fish tickets. The fish receiver must ensure Internet accessibility in a sufficient state to completely and effectively submit the electronic fish ticket. The proposed regulations also include procedures to follow in case of a power outage or device failure that could restrict access to *E-Tix*, including that the landing must be submitted to the *E-tix* system within 24 hours of landing the fish. Access to *E-Tix* is available from any Internet-capable device such as personal computers (desktops or laptops), tablets, or mobile devices. Additionally, a printer is required so that printed copies of the electronic fish tickets can be made for distribution to the commercial fisherman and the fish receiver.

Subsection 197(f) Electronic fish tickets; reporting and submission requirements.

This subsection specifies when an electronic fish ticket or dock ticket is completed, the review of the information prior to submission, the parties who sign the electronic fish ticket or dock ticket prior to submittal, and includes the process for retaining paper copies. All landing information must be recorded immediately either on the electronic fish ticket, or on a dock ticket should the *E-Tix* system not be accessible at the time of landing. In either case, an electronic fish ticket must be submitted within 24 hours of the landing. Fish receivers and state and federal fisheries managers benefit from timely landings information. The 24-hour time frame has been adopted in federal regulations for landings of federally managed species (Code of Federal Regulations Section 660.113(b)(4)(ii)(C)(6), Section 660.213(e)(2)(ii) and Section 660.313(f)(2)(ii)). The same time period is included in these proposed regulations for consistency since fish businesses will be using the same web-based application.

At the time of this Initial Statement of Reasons the Department has been notified that the Pacific Fishery Management Council, a body that recommends management measures for jointly managed fisheries operating in federal waters including electronic reporting, will discuss non-regulatory possibilities for resolving concerns about the 24-hour reporting requirement at their June meeting. Should the Pacific Fishery Management Council make changes to the 24-hour reporting requirement, the Department recommends that the Commission adopt the same reporting requirements. The Department's goal is to maintain consistency with federal regulations to avoid confusion for those using the same web-based application to meet both state and federal reporting requirements.

The dock ticket must include the same information as an electronic fish ticket and must also include the electronic fish ticket number. Receivers with limited to no Internet access at the docks must first obtain the electronic fish ticket number by going through the *E-Tix* system at their home, place of business or other Internet-capable location before they head to the dock to buy fish. This is consistent with federal regulations.

Subsection 197(g) Electronic fish tickets; waiver of submission requirements.

This subsection is necessary to allow for waivers of submission requirements in the event that a fish receiver is unable to submit an electronic fish ticket due to circumstances beyond the control of the fish receiver. The proposed regulations describe the process by which a fish receiver submits a request to the Department for a waiver including the reason for the request and identifies where to submit the request. The Department will either issue or deny the waiver request, and if granted, may include conditions such as the time period for submitting paper landing receipts, or any other criteria the department deems necessary. The waiver must be made available to the Department for inspection when conducting business under the terms of the waiver. This subsection specifies that a paper landing receipt must be sent to the Department within 24 hours of the landing following the instructions in the waiver. The use of a waiver under certain circumstances is consistent with federal regulations.

Subsection 197(h) Retention of electronic fish tickets and dock tickets.

This subsection specifies that electronic fish tickets and dock tickets must be retained for a period of four years and must be made available for inspection at any time by the Department. This is consistent with statutes governing the retention of paper landing receipts.

Subsection 197(i) Electronic fish ticket revisions.

This subsection specifies that final data must be submitted in an electronic fish ticket, but that an exception allows a correction after submission in the event there are data errors found on the fish ticket.

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

Authority Cited: Sections 1050(b)), 8043, 8046, and 8047, Fish and Game Code.

Reference: Sections 1050(b), 8033, 8033.5, 8037, 8031, 8032, 8033, 8033.1, 8033.5, 8034, 8035, 8040, 8043, 8045, 8046, 8046.1, and 8047, Fish and Game Code; 50 CFR 660.113, 50 CFR 660.213 and 50 CFR 660.313.

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

The proposed regulations will require accessibility to Internet enabled devices, such as a mobile device, tablet, or computer. Transitioning from paper landing receipts to electronic fish tickets, as the electronic forms are known, is appropriate at this time as advances in computer and Internet technology and the use of electronic devices by many businesses, including the fishing industry, is widespread. Electronic reporting will improve the Department's ability to meet management needs of commercial fisheries by obtaining more accurate and timely data. However, the mandate to report landings electronically will be phased in over time so this is expected to reduce the burden on the regulated public by giving them time to find ways to access Internet enabled devices.

(d) Identification of Reports or Documents Supporting Regulation Change: None

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

The Department's Marine Region sent out a notice and survey via an insert in the commercial license renewal packet to 1,135 fish businesses in November 2016. However, of these businesses, the Department was targeting the approximate 560 fish receivers that submitted a landing receipt between 2011 and 2015. The insert included two items: advance notification that planning was underway for this rulemaking and a survey. The survey was designed to query a fish receiver's access to the Internet and their ability or preference to comply with the mandate by offering a suite of time frames to phase in the mandatory electronic submissions.

The Department received 223 responses, with the majority of responders (83 percent) reporting Internet availability at their place of business, and 89 percent reporting Internet availability at home. Just over 7 percent of the respondents reported no Internet access at work or at home. Of the 223 fish receivers that responded to the survey, the majority (approximately 74 percent) preferred a phase in period of up to a year to mandate the use of electronic reporting.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

Alternative 1: A requirement to complete and submit electronic fish tickets the next business day.

As stated above, the Pacific Fishery Management Council will be discussing non-regulatory measures to address the requirement for the 24-hour submission of electronic fish tickets. However, a potential regulatory alternative for those fish businesses/receivers that are unable to complete

landings transactions over the weekend is to allow submission on the next business day.

This alternative may benefit some fish businesses/receivers, but may pose difficulties to state and federal agencies responsible for in-season management of certain fisheries that are restricted to specific quotas. Once a quota is reached the fishery is generally closed and a delay greater than 24 hours may result in fishing activity that exceeds the quota. As a precautionary approach, fisheries management agencies may close the fishery early to avoid exceeding the quota which may result in fish left on the table.

Alternative 2: Three-year phase in period.

This alternative would allow for a three year phase in period where fish receivers can use either paper landing receipts or electronic fish tickets after the effective date of these regulations. After this date, all fish receivers will be mandated to use electronic fish tickets through the online system known as *E-tix*. Paper fish transportation receipts would still be required to transport fish. No other modifications to the proposed regulations are included in this alternative.

Results from the survey distributed to commercial fish receivers revealed that few participants felt they needed three years or longer to comply with the mandatory requirement to use the electronic fish ticket system. Due to the fact that the system is already in use by some federal fisheries, and that the majority of survey participants felt they could comply within a year of implementation, waiting more years than necessary to mandate the use would be unnecessary and would add additional burden on the Department, due to the need to have staff to key in the fisheries data from the paper landing receipts. Therefore, the more time that passes, the more costs the Department incurs to handle paper landing receipts.

Alternative 3: Consideration of Performance Standards.

This alternative would create a performance standard of 24-hour reporting using existing paper-based system. This would require that fish receivers mail in their paper landing receipts within 24 hours of the landing to ensure that the landing data is received in a timely fashion.

This alternative would place a greater burden on fish receivers to ensure that landing receipts are mailed in daily. It would also pose a cost burden to the Department which currently pays for the postage to mail in those landing receipts as well as the cost of printing the envelopes. The Department would also still have staff overhead costs for entering and editing landing receipts. While changing from twice a month to daily submission of paper landing

receipts will reduce the time lag, there would still be delays due to mailing in the landing receipts and the time needed to edit and enter the landing receipts. This alternative also conflicts the requirement in Fish and Game Code section 8046(a) that landing receipts be delivered to the Department on or before the 16th or last day of the month.

(b) No Change Alternative:

If the new regulations are not adopted, fish receivers will continue to use paper landing receipts and fish transportation receipts to record their activities as required in Fish and Game Code and submission of data will remain twice a month. For many fish receivers this will mean complying with two separate reporting systems, an electronic one for the National Marine Fisheries Service and a paper one for the Department. The Department would continue to incur the costs associated with preparing, printing and mailing landing receipts and envelopes to fish receivers and entering the data manually.

(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.

(d) Description of Reasonable Alternatives that would lessen adverse impact on small business:

No alternatives were identified by or brought to the attention of Commission staff that would lessen the adverse impact on small businesses and be equally effective in implementing the proposed time- and cost-saving electronic reporting method. The Department has determined that a one year phase-in period to fully comply with the requirement to use the *E-Tix* system is reasonable and not burdensome.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulations 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 electronic application can be used on any Internet capable device, including personal computer, mobile device, or tablet. Such devices are common tools used to conduct business, so there should be minimal expense to an individual commercial fisherman who sells fish to persons not licensed as fish receivers and to fish businesses. If a commercial fisherman or fish business needs to maintain and/or upgrade their device or Internet connection, that will be their responsibility and they may incur some costs. Internet browsers can be downloaded onto an existing Internet-capable device free of charge (e.g., Google Chrome, Mozilla Firefox). The costs of purchasing an Internet-capable mobile device (e.g., cell phone) may range from free of charge with commitment to a service contract to several hundred dollars depending on the mobile device and service plan. The cost of a tablet ranges from \$50 to \$400. The cost of purchasing a computer starts at about \$200 for a basic model. The costs of an internet service provider vary depending on whether or not a phone is purchased, but generally runs about \$90 per month without any promotions. Offsetting these potential costs are the benefits to fish receivers with improved timeliness of catch data and ability by the Department to manage the fisheries. In addition, eliminating the requirement to complete paper receipts and for some to complete electronic fish tickets for both state and federally managed species at one time is a benefit. Finally, such expenditures are tax deductible business expenses.

(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 Department does not anticipate any 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. The Department does not anticipate any benefits to the health and welfare of California residents or worker safety. The Department anticipates benefits to the environment in the sustainable management of commercial fisheries.

(c) Cost Impacts on a Representative Private Person or Business:

See (a) above.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The *E-Tix* is a federal application, and is owned and maintained by PSMFC. Therefore, the expense to the Department for implementation should be nominal. The cost savings by not printing landing receipt books, providing return reply envelopes, and postage would be significant. The average cost to the Department for printing, providing prepaid envelopes and return postage averages about \$100,000 per year. Additional cost savings would occur for the State due to the cessation of manually entering the fish ticket information into a data management system from the paper receipts.

- (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 Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.

- (h) Effect on Housing Costs: None

VII. Economic Impact Assessment:

The proposed regulations will revise procedures currently in place to report commercial landings.

- (a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State:

The proposed action will not affect the creation or elimination of jobs in the State because the proposed regulations only revise procedures currently in use by commercial fishermen and fish businesses. These changes are not expected to increase the time spent to complete a landing receipt and will not change the volume of economic activity. This change is administrative in nature and will not impact the volume of fishing activity or the purchasing of fish.

- (b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State:

The proposed regulations are not anticipated to result in the elimination of existing businesses in the State, nor spur the creation of new businesses because the proposed regulations only revise procedures currently in use by commercial fishermen and fish businesses. These changes are not expected to increase the time spent to complete landing receipts and will not change

the volume of economic activity. This change is administrative in nature and will not impact the volume of fishing activity or the purchasing of fish.

(c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State:

The proposed regulations are not anticipated to result in the expansion of businesses currently doing business in the State because the proposed regulations only revise procedures currently in place. These changes are not expected to increase the time spend to complete a landing receipt and will not change the volume of economic activity. This change is administrative in nature and will not impact the volume of fishing activity or the purchasing of fish.

(d) Benefits of the Regulation to the Health and Welfare of California Residents:

The Department anticipates generalized benefits to the health and welfare of California residents through the improved reporting of commercial landings data. The proposed regulations are intended to modernize reporting procedures and guide the transition from paper reporting to electronic reporting of commercial landings. The proposed regulations provide administrative clarity that should help to fulfill the goals set forth in the Marine Life Management Act (MLMA) of 1999 (Fish and Game Code Section 7050 et seq.).

(e) Benefits of the Regulation to Worker Safety:

The proposed regulations represent a neutral effect, offering neither benefits nor detriment to worker safety in the State.

(f) Benefits of the Regulation to the State's Environment:

The proposed regulations are consistent with the goals set forth in the MLMA; "to allow and encourage only those activities and uses of marine living resources that are sustainable and manage marine living resources on the basis of the best available scientific information and other relevant information on which to base management decisions (Fish and Game Code subsection 7050(b)). The Department anticipates benefits to the environment in the sustainable management of the commercial fisheries resources. The proposed regulations further support the MLMA which requires that "conservation and management programs prevent overfishing, rebuild depressed stocks, ensure conservation, facilitate long term protection and, where feasible, restore marine fishery habitats" (Fish and Game Code subsection 7055(b); see also subsections 7056(b) and (c)).

(g) Other Benefits of the Regulation:

The use of current information technology and web-based applications rather than paper-based reporting systems is consistent with the State of California's 'Going Green' initiative and the Department's policies to reduce the state's environmental footprint.

Informative Digest/Policy Statement Overview

The purpose of the addition of Section 197, Commercial Fisheries Landing Requirements, is the management of activities associated with commercial fisheries landings and the reporting of these landings. A “landing” is generally characterized as the transfer or offloading of fish from a vessel for the purpose of selling or delivering those fish to a licensed fish receiver. The proposed regulations are necessary to manage this transaction and to clarify the applicable statutes for the participants and law enforcement. To date, there are no regulations guiding this activity. Statutes authorizing commercial fisheries licenses and landing taxes are found in Article 7 and Article 7.5 of Fish and Game Code. Commercial fish receivers are engaged in business for profit and are required to be licensed and to report all landing receipt records on a form furnished by the Department of Fish and Wildlife (Department) pursuant to Fish and Game Code sections 8043 and 8047. In addition, Fish and Game Code subsection 1050(b) authorizes the Fish and Game Commission (Commission) to determine the forms to be used for commercial fisheries entitlements.

The proposed regulations implement a transition from the current paper-based reporting system to electronic forms via a new electronic reporting system for commercial fisheries landings.

Transitioning from paper landing receipts to electronic fish tickets, as the electronic forms are known, is appropriate at this time as advances in computer and Internet technology and the use of electronic devices by many businesses, including the fishing industry, is widespread. It is necessary that the Department update its processes, including proposing regulations to ensure the benefits of switching from paper landing receipts to electronic fish tickets are realized.

The electronic fish tickets will be submitted to the Department through the federal, web-based *E-Tix* system maintained by Pacific States Marine Fisheries Commission (PSMFC). *E-Tix* has been a federal requirement for the individual fishing quota groundfish trawl fishery since its inception in 2011. Oregon has adopted *E-Tix* for all fisheries on a voluntary basis and Washington is working towards this as well. The Department’s goal is to phase out the use of paper landing receipts and transition to electronic fish tickets using the PSMFC *E-Tix* application for data entry. This eliminates the issue of duplicate electronic reporting systems and provides consistency between federal and State agencies.

These regulations will provide for a phase in period of one year for all landing receipts to be submitted electronically via the *E-Tix* system. Phasing in the mandate to use electronic fish tickets is a reasonable approach to implementing a new reporting structure, since there will be a portion of the buyers or receivers that will have an adjustment period which will include a learning curve to learn the electronic program, and provides time for those that do not have access to the Internet or Internet capable devices to obtain access.

PROPOSED REGULATIONS

- Defines specific terms used within the proposed regulations.
- Includes information included on a paper landing receipt, fish transportation receipt and electronic fish ticket.
- Includes information on the transition from paper landing receipts to electronic fish tickets via the web-based application known as *E-Tix*, including the phase-in period until full implementation of electronic reporting. During the phase-in period either paper landing receipts or electronic fish tickets can be used, but not both.
- Includes procedures on fish transportation receipts from the point of landing to the fish receiver who buys the fish and fills out a paper landing receipt or electronic fish ticket.
- Describes the hardware and software requirements to fill out electronic fish tickets, the requirements to ensure Internet accessibility in a sufficient state to completely and effectively submit the electronic fish ticket, as well as what to do in case of a power outage or device failure that could restrict access to the *E-Tix* system.
- Provides details on when the electronic fish ticket should be submitted - specifically within 24 hours of the landing, who should review and verify the information by providing signatures prior to submission, and includes the process for retaining copies of the receipt to verify the signatories.
- Allows fish receivers to request a waiver from electronic reporting when circumstances exist that prevent a fish receiver from reporting landings via *E-Tix* and provides details on how to obtain a waiver from the Department.
- Ensures that submitted electronic fish tickets can be revised after submission in the event that data errors are found on the receipt.

BENEFITS OF THE PROPOSED REGULATIONS

The proposed regulatory action will benefit fishermen, fish receivers, the State's economy, and the environment by maintaining healthy and sustainable commercial fisheries. Specific benefits include:

1. Time savings and reduced costs to the Department by reducing the amount of time and money spent designing, printing, packaging and mailing landing receipts to the fish businesses.
2. Transition of Department data entry staff to other priority tasks associated with landings data as data entry of paper forms is eliminated.
3. Ease of record storage and maintenance of electronic records by the Department.
4. Built-in checks and validations in electronic fish tickets will result in more accurate fisheries data on which the Department and the Commission can base management decisions.
5. Use of electronic fish tickets will result in more timely submission of fisheries data for both management and law enforcement.

6. Electronic fish tickets will provide for ease of information storage, data manipulation for research, production for legal reasons and information sharing with other fishery management agencies and law enforcement.
7. Availability of landing data and reporting tools for fish receivers.
8. Provides consistency with federal regulations for certain fisheries that also require electronic reporting via the same web-based application.

CONSISTENCY WITH STATE REGULATIONS

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. Commission staff has searched the California Code of Regulations and statutes and has found no other State regulations related to the completion of landing receipt records and no other State agency with authority to promulgate regulations concerning landing receipt records.

Regulatory Text

Section 197, Commercial Fisheries Landings and Receipts, is hereby added to Title 14, California Code of Regulations:

Section 197. Commercial Fisheries Landing Requirements.

(a) Definitions. The following definitions apply to this section:

(1) "Commercial fisherman" has the same meaning as found in Fish and Game Code Section 8040.

(2) "Dock ticket" means written documentation that is legible and in English, for landing data as described in subsection (e)(3) of these regulations, and is used when submission of the electronic fish ticket cannot be performed immediately upon landing.

(3) "Electronic fish ticket" means a web-based form that is used to send landing data to the department via the Pacific States Marine Fisheries Commission. The web-based form is accessed at <https://etix.psmfc.org>.

(4) "Fish business" has the same meaning as found in Fish and Game Code section 8032.

(5) "Fish receiver" has the same meaning as found in Fish and Game Code Section 8033.

(6) "Fish transportation receipt" means a paper form provided by the department for recording commercial catch that is transported from the point of first landing to a fish receiver.

(7) "Functional" means that the software and hardware requirements are met and submission to Pacific States Marine Fisheries Commission can be executed effectively by the equipment.

(8) "Land" or "Landing" means to begin transfer of fish, offloading fish, or to offload fish from any vessel. Once transfer of fish begins, all fish aboard the vessel are counted as part of the landing.

(9) "Landing receipt" means a paper form provided by the department for recording the sale or delivery of commercial catch.

(10) "Record" means the action of documenting electronic fish ticket information on a dock ticket.

(11) "Submit" means to transmit via a web-based form final electronic fish ticket information.

(b) Landing receipts; form and contents. The department prepares and issues upon request landing receipt forms.

(1) Landing receipts shall be completed at the time of the receipt, purchase, or transfer of fish, whichever occurs first and shall include the following information:

(A) Accurate weight of the species;

(B) Common name of the fish species received;

(C) Date of the receipt;

(D) Department origin block number where the fish were caught;

(E) Department registration number of the vessel and name of the vessel;

(F) Name of the fish business and fish business license identification number;
(G) Name of the fisherman and the fisherman's commercial fishing license identification number;
(H) Number of individual fish, as applicable;
(I) Price paid; and
(J) Type of gear used.
(2) Additional information the department requires includes:
(A) Port of landing;
(B) Condition of the fish, as applicable;
(C) Use of the fish, as applicable;
(D) Fishery permit number, as applicable;
(E) Note pad area that may be used by the fish receiver at their discretion; and
(F) Signatures of the fisherman and the fish receiver.
(c) Fish transportation receipts; form and contents. The department prepares and issues on request fish transportation receipt forms.
(1) A commercial fisherman or his designee shall fill out a fish transportation receipt to transport fish to a licensed fish receiver, unless he is licensed as a fish receiver or acting under the authority of a fisherman's retail license.
(2) Fish transportation receipts shall be completed at the time of the receipt, purchase, or transfer of fish, whichever occurs first, and shall contain the following information:
(A) Accurate weight of the species;
(B) Common name of the fish species received;
(C) Date of the receipt;
(D) Department origin block number where the fish were caught;
(E) Department registration number of the vessel and name of the vessel;
(F) Name of the fish business and fish business license identification number;
(G) Name of the fisherman and the fisherman's commercial fishing license identification number;
(H) Port of landing.
(I) Name of the person transporting the fish;
(J) Corresponding landing receipt number or electronic fish ticket number issued by the fish business to the commercial fisherman; and
(K) Signature of the fisherman authorizing transportation.
(3) To use a fish transportation receipt as a dock ticket, the following information shall be added to the information contained in subsection (c)(2):
(A) Fishery permit number, as applicable; and
(B) Signature of the fish receiver.
(d) Landing receipts and fish transportation receipts.
(1) All numbered landing receipts and fish transportation receipts shall be completed sequentially.
(2) Any voided landing receipt or fish transportation receipt shall have the word "VOID" written across the face of the receipt and shall be submitted to the department with all other completed landing receipts.

(3) A fisherman or fish receiver who is no longer conducting business shall return all unused landing receipts or fish transportation receipts and receipt books to the department immediately upon terminating the business.

(4) The delivery, distribution and retention of copies of landing receipts is described in Fish and Game Code Sections 8046 and 8046.1.

(5) The delivery, distribution and retention of fish transportation receipts is described in Fish and Game Code Section 8047.

(e) Electronic fish tickets; implementation and required information.

(1) Beginning on July 1, 2018 any fish receiver or fisherman with a fisherman's retail license shall record the landing information as provided herein using either a paper landing receipt or an electronic fish ticket, but not both.

(2) Beginning on July 1, 2019 electronic fish tickets shall be the sole method of submitting the information as provided herein.

(3) Electronic fish tickets or dock tickets shall be completed at the time of the receipt, purchase, or transfer of fish, whichever occurs first, and shall contain the following information:

(A) Accurate weight of the species;

(B) Common name of the fish species received;

(C) Date of the receipt;

(D) Department origin block number where the fish were caught;

(E) Department registration number of the vessel and name of the vessel;

(F) Name of the fish business and fish business license identification number;

(G) Name of the fisherman and the fisherman's commercial fishing license identification number;

(H) Number of individual fish, as applicable;

(I) Price paid;

(J) Type of gear used;

(K) Port of landing;

(L) Condition of the fish, as applicable;

(M) Use of the fish, as applicable;

(N) Fishery permit number, as applicable;

(O) Note pad area that may be used by the fish receiver at their discretion; and

(P) Signatures of the fisherman and the fish receiver; and

(Q) Transportation receipt number, as applicable.

(4) To complete and submit an electronic fish ticket a fish receiver shall meet the following hardware and software requirements:

(A) A personal computer system, tablet, mobile device, or other device that has software (e.g. web browser) capable of submitting information over the Internet, such that submission to the department via the Pacific States Marine Fisheries Commission can be executed effectively; and

(B) A printer capable of printing copies of the electronic fish tickets submitted via a personal computer system, tablet, or mobile device.

(5) The fish receiver is responsible for:

(A) Maintaining Internet access sufficient to access the web-based interface and submit completed electronic fish tickets; and

(B) Insuring that all hardware and software required under this subsection are fully operational and functional whenever they receive, purchase, or transfer fish species for which an electronic fish ticket is required.

(C) In the event of an internet outage or failure of the device it is the responsibility of the fish receiver to record the landing on a dock ticket pursuant to subsection (f)(3) of these regulations. The electronic fish ticket shall be submitted within 24 hours of the landing, except as provided in subsection (g).

(f) Electronic fish tickets; reporting and submission requirements.

(1) At the time of the landing the fish receiver shall either immediately complete an electronic fish ticket or record on a dock ticket the information that will be used to complete the electronic fish ticket for submission within 24 hours.

(2) If the landing information is entered on an electronic fish ticket the following is required prior to submittal:

(A) The information shall be reviewed by the commercial fisherman or the person who transported the fish;

(B) After review, the fish receiver and the commercial fisherman or the person who transported the fish shall sign a printed hard copy of the electronic fish ticket documenting that both have verified the accuracy of the information contained therein; and

(C) The fish receiver shall keep the original paper hard copy and provide a copy to the commercial fisherman.

(3) If the landing information is recorded on a dock ticket for later submission as an electronic fish ticket, the following is required:

(A) The electronic fish ticket number, which can be generated remotely via any device with a web browser and internet connection prior to the landing;

(B) The information shall be reviewed by the commercial fisherman or the person who transported the fish;

(C) After review, the fish receiver and the commercial fisherman or the person who transported the fish shall sign the dock ticket documenting that both have verified the accuracy of the information contained therein; and

(D) The fish receiver shall keep the original paper hard copy and provide a copy to the commercial fisherman.

(E) The electronic fish ticket shall be submitted within 24 hours of the landing.

(g) Electronic fish tickets; waiver of submission requirements.

(1) Under a temporary waiver granted by the department, a fish receiver may submit electronic fish ticket information on paper when there are circumstances beyond the control of the fish receiver resulting in their inability to submit landing data using the electronic fish ticket system.

(2) A request for a waiver has been submitted in writing to the department's Marine Region, Regional Manager, c/o Marine Fisheries Statistical Unit, 4665 Lampson Avenue, Suite C, Los Alamitos, CA 90720, or via facsimile at 562-342-7137, or via email at ElectronicFishTicket@wildlife.ca.gov. The waiver shall include:

- (A) Reason the fish receiver cannot comply with the electronic submission requirements.
- (B) The name of the person making the request and their position within the company.
- (C) The name of the fish business and fish business identification number.
- (D) The physical address, phone number, and facsimile number or email address, as applicable, of the fish receiver, and
- (E) The proposed time period for the waiver to be in effect.
- (3) The department may request other related information prior to granting or denying the waiver.
- (4) The waiver may include conditions such as the time period for submitting paper receipts, or any other criteria the department deems necessary.
- (5) The fish receiver shall immediately make available a copy of the waiver approved by the department for inspection by the department when conducting business under the terms of the waiver.
- (6) Fish receivers that have been granted a temporary waiver from the requirement to submit electronic fish tickets shall submit on paper the same data as is required on electronic fish tickets, pursuant to subsection (e)(3) of these regulations, within 24 hours of the date of landing during the period that the waiver is in effect. Paper fish tickets shall be sent to the department according to the instructions provided in the waiver.
- (h) Retention of electronic fish tickets and dock tickets.
 - (1) The commercial fisherman and the fish receiver shall keep a copy of the electronic fish ticket and dock ticket, as applicable for a period of four years and shall make them available for inspection at any time by the department.
- (i) Electronic fish ticket revisions.
 - (1) Electronic fish tickets shall to be used for the submission of final data.
 - (2) In the event that a data error is found, electronic fish ticket submissions shall be revised by resubmitting the revised form electronically.

Note: Authority cited: Sections 1050(b), 8046, 8046.1, and 8047, Fish and Game Code.
Reference: Sections 8031, 8032, 8033, 8033.1, 8034, 8035, 8040, 8043, 8045, and 8047, Fish and Game Code. Title 50, Sections 660.113, 660.213 and 660.313, Code of Federal Regulations.

From: Mike Lucas <mlucas@northcoastfisheries.com>
Sent: Tuesday, July 25, 2017 8:47 AM
To: FGC
Cc: 'Rob Ross (robbiz@cwo.com)'
Subject: Proposed regulatory action relative to Section 197, Title 14

Dear Commission:

I am writing on behalf of North Coast Fisheries in regards to the proposed legislature to go from paper to paperless fish tickets. We use the E-Tix for Groundfish presently and we do have times (fairly often), where there is maintenance, or other interrupting events that bring the program down for periods of time. This is to be expected with any computer based program I suppose, however the restrictions and rules where applied to the fish dealer are unfair, unjust, and unwarranted.

As the rules are now we only have 24 hours to have the E-Tix entered. ***There is no allowance for weekends, holidays, or even breakdowns on our end.*** However the department has no workers on the other end on weekends or holidays so it is pointless that we are made to do so. ***This new system already brings a financial burden upon us. It relieves one upon the department, but upon the processors it adds more debt load. To further add insult to injury, you demand unreasonable expectations of 24 hour deadlines,*** meaning that if we unload a boat on Friday night, we then have to bring in people on overtime just to enter a fish ticket that could have, and should have, waited until Monday (a regular business day). There is not even an exception for Holidays. ***This is ridiculous and an overly bureaucratic rule that has a zero net gain for the department, while imposing a great financial penalty upon an industry which already faces enough challenges.***

Why should we be forced into overtime and Holiday pay-outs while there is nobody on the other end to interpret the feedback we supply? How in anyone's mind does that make sense? We are not a daily quota fishery and I implore the committee to use some common sense here when implementing these financial burdens upon the industry. While you consider your pocket, please also consider the industry's as well. ***I am asking you to please change the verbiage in the regulations proposed to allow a reasonable time for entry of the data into the E-Tix system.*** Many docks along the coastline are remote and as such either have no internet or very restricted internet access. This means that we still must generate paper tickets at these docks, then the fish moves on a truck into the main plants, the paper tickets travel with the fish, they are then loaded into the E-Tickets but the system must be reasonable. It is not reasonable to assume (wrongly) that we bring the loads of fish into the main plants each and every day. We often leave small deliveries in dock coolers until such time as more fish lands and it makes financial sense to then move it to the main plants.

I am asking for the language to allow "reasonable time". Reasonable time should be defined as a 24 hour business day. Business days are Monday through Friday, not weekends and not legal holidays.

So if a delivery comes into a port on a Friday that E-Tix deadline should be Monday of the following week not Saturday. It is very unfair for you to pass rules and regulations upon us that are intended to save you money, while costing us money, and not play by the same rules as you demand us to play by.

If we must work and pay overtime on weekends and holidays there should be:

1. A valid reason, there is not at this time
2. You also should be working these hours. If you are not than any reason for this stringent entry time of data is unwarranted at best and should be deemed unreasonable and overly burdensome to the fish dealers.



Michael Lucas | President
Desk :707-396-5882
Cell : 707-292-0302
Email: mlucas@northcoastfisheries.com

September 21, 2017

RECEIVED
CALIFORNIA
FISH AND GAME
COMMISSION

To: - VALERIE TERMINI, EXEC DIRECTOR
1418 NINTH STREET ROOM 1320
SACRAMENTO CA. 95814

2017 SEP 27 AM 9:10

HAVE RECEIVED YOUR NOTICE REGARDING CHANGES IN
THE COMMERCIAL FISHERIES LANDING REQUIREMENTS -
NAMELY GOING FROM PAPER LANDING RECEIPTS TO E-TIX -

AS KATIE DERRY DID NOT RETURN MY CALL I HAVE
INITIATED THIS LETTER - I AM NOT IN FAVOR OR WILLING
(FOR SEVERAL REASONS) TO CONDUCT THIS BUSINESS
USING ELECTRONIC FISH TICKETS -

I AM NOW APPROACHING 84 AND THE GAME FOR
ME IS CHANGING - MOST FISH I TAKE IS FOR MY OWN
PERSONAL USE - IF THE E-TIX SYSTEM IS FORCED
UPON ME AND I AM UNABLE OR WILLING TO COMPLY -
HOW WILL I LAND MY FISH? - IS THIS THE END OF
MY 60+ YEARS OF INVOLVEMENT IN THE COMMERCIAL
SALMON FISHERY?

WHY CAN'T WE DO WHAT OREGON AND WASHINGTON
ARE DOING? - WHATS THE MATTER WITH A
VOLUNTARY SYSTEM USING PAPER AND/OR E-TIX?

THOSE THAT PREFER PAPER CAN BE CHARGED
EXTRA FOR THE PAPER IF MONEY IS THE ISSUE -

SINCERELY

EDWARD R BOITANO (TONY B-40307)

NOTE

I NEVER DID LEARN TO TYPE - ALWAYS HAD A
SKILLED SECRETARY AVAILABLE -