

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

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. Date of Final Statement of Reasons: October 18, 2017
- III. 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

IV. Update:

At its October 12, 2017, meeting in Atascadero, the California Fish and Game Commission (Commission) adopted the regulations as proposed in the Initial Statement of Reasons (ISOR).

The duplication of Fish and Game Code Section 8047(d)(10) in the regulation is necessary for completeness and clarity, and allows commercial fishermen and fish receivers to find the relevant information in one place.

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

Comment by Mr. Paul Weakland, oral testimony at October 12, 2017 Commission meeting: Mr. Weakland commented on landing taxes.

Response: The comment regarding taxes was outside the scope of this rulemaking.

Comment by Mr. Edward Boitano, letter received September 27, 2017: Mr. Boitano suggested the Department should consider retaining paper landing receipts and have voluntary electronic fish tickets for those unwilling to complete electronic fish tickets.

Response: Retaining a paper reporting system will not address the timeliness and accuracy of data needed for fisheries management and the cost savings to the Department from eliminating paper forms and everything associated with

managing paper forms. The proposed regulations have sufficient flexibility to accommodate all fish receivers using any kind of internet-capable device. One-on-one training will be available for those who need it. Other materials such as a User Guide will also be available. The mandatory electronic reporting date of July 1, 2019, allows sufficient time for all fish receivers to adapt to electronic reporting.

Comment by Mr. Mike Lucas, email received July 25, 2017: Mr. Lucas expressed concern about his ability to submit landings data within 24 hours of the landing, specifically landings made on weekends. The commenter recommended a 24 hour business day requirement, specifically Monday to Friday, excluding weekends and holidays.

Response: There are options available to the fish receiver to enable submission of landing receipt information within 24 hours of the landing. These options include: (1) taking a picture of a dock ticket with a cell phone and sending it to someone offsite that can complete an electronic fish ticket via an authorized *E-Tix* account, or (2) submitting the information for the electronic fish ticket using a cell phone's web browser. The state regulations are consistent with federal regulations with regard to 24 hour reporting and these same options are available to those fish receivers submitting landings information to either agency.

Comment by Kenyon Hensel, commercial fisherman selling fish, oral testimony at June 22, 2017 Commission meeting. Mr. Hensel expressed concern that equipment will not be available to him at the time fish are landed (he mentioned a swipe card). Mr. Hensel also spoke to the issue of commercial fishermen and the general public paying for management costs.

Response: Electronic submission does not require a swipe card or special equipment, just an internet capable device (i.e., computer, tablet, or mobile device). Additionally, there is the option to fill out a paper dock ticket at the dock and submit the electronic fish ticket within 24 hours. The comments about paying for management costs are outside the scope of this rulemaking.

Comment by Paul Weakland, oral testimony at June 22, 2017 Commission meeting. Mr. Weakland suggested that those collecting for science (e.g., medical, schools and universities) should also have to fill out landing receipts. Mr. Weakland also suggested that there be no penalty for missed deadlines.

Response: Requiring landings receipts for scientific collecting is outside of the scope of these regulations. Additionally, assessing penalties is outside the scope of this rulemaking.

Comment by Alexis Jackson, Nature Conservancy, oral testimony at June 22, 2017 Commission Meeting. Ms. Jackson said she was encouraged by the Department's efforts to go electronic, but had concerns about the timeliness of collecting signatures. Ms. Jackson also reminded the Commission of the need to move towards more electronic logbooks to improve the timeliness of that data.

Response: The dock ticket can be signed immediately when fish are being offloaded and the electronic fish ticket can be signed the next time the fisherman gets to the dock. The comment about moving to electronic logbooks for commercial fishermen (not receivers) is outside the scope of this rulemaking.

VI. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VII. Location of Department Files:

Department of Fish and Wildlife
1416 Ninth Street
Sacramento, California 95814

VIII. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternative 1: 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. It 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 2: 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.

IX. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses,

Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

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. **It is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses.**

- (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 Pacific States Marine Fisheries Commission (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 be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None
- (h) Effect on Housing Costs: None

Updated Informative Digest/Policy Statement Overview

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 – **pursuant to Fish and Game Code Section 8046**, 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.

UPDATE

The Commission adopted the regulations as proposed in the Initial Statement of Reasons, at its October 12, 2017, meeting in Atascadero.

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.