

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

Amend Subsection (b) of Section 27.65  
Title 14, California Code of Regulations  
Re: Filleting of Fish on Vessels; California Sheephead

I. Date of Initial Statement of Reasons: October 8, 2018

II. Dates and Locations of Scheduled Hearings:

(a) Notice Hearing: Date: October 17, 2018  
Location: Fresno

(b) Discussion Hearing: Date: December 12, 2018  
Location: Oceanside

(c) Adoption Hearing: Date: February 7, 2019  
Location: Sacramento

III. Description of Regulatory Action:

(a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

**Present Regulations**

Section 27.65, Title 14, California Code of Regulations (CCR) defines fillet; lists the fillet requirements for, and specifies those fish that may be filleted on a boat or brought ashore as fillets; and prohibits the filleting, steaking, or chunking of any species with a size limit unless a fillet size is otherwise specified. Section 28.26, Title 14, CCR, specifies the bag limit, size limit, open areas, seasons and depth constraints for the recreational take of California sheephead (*Semicossyphus pulcher*).

Almost all finfishes with a recreational minimum size limit also have a corresponding fillet length. However, a fillet length regulation for California sheephead, a popular recreational fishery in southern California, has not been created since the implementation in 2001 of a minimum size limit of 12 inches (subsection 28.26(c), Title 14, CCR).

**Proposed Regulation Changes**

The proposed regulation will amend subsection 27.65(b) to add California sheephead to the list of fish that may be filleted, and will specify that fillets must be a minimum of 6 and three-quarter inches in length and bear the entire skin intact. The proposed amendment would list the California sheephead fillet regulation under subsection (b)(12) and the previously listed subsection (b)(12) would be renumbered to subsection (b)(13).

### **Necessity of Proposed Regulation**

Recreational anglers and the sport fishing industry, including the Sportfishing Association of California (SAC), have been requesting a fillet length regulation permitting California sheephead to be filleted at sea. Most recreational anglers prefer to take home fresh fillets, rather than whole fish. In addition, California sheephead are difficult to fillet, so many anglers prefer to have experienced deck hands fillet their fish at sea for them. The proposed regulation would meet angler preferences for transport of cleaned fish.

It is necessary for the entire California sheephead skin to remain intact, since there could be difficulty in species identification if just a patch of skin was left on the fillet. Other species that could be confused with California sheephead by a single patch of skin left on the fillet include red-skinned rockfish species (*Sebastes* sp.), such as vermilion (*S. miniatus*), and canary rockfish (*S. pinniger*).

### **Potential Impact of Regulation Change**

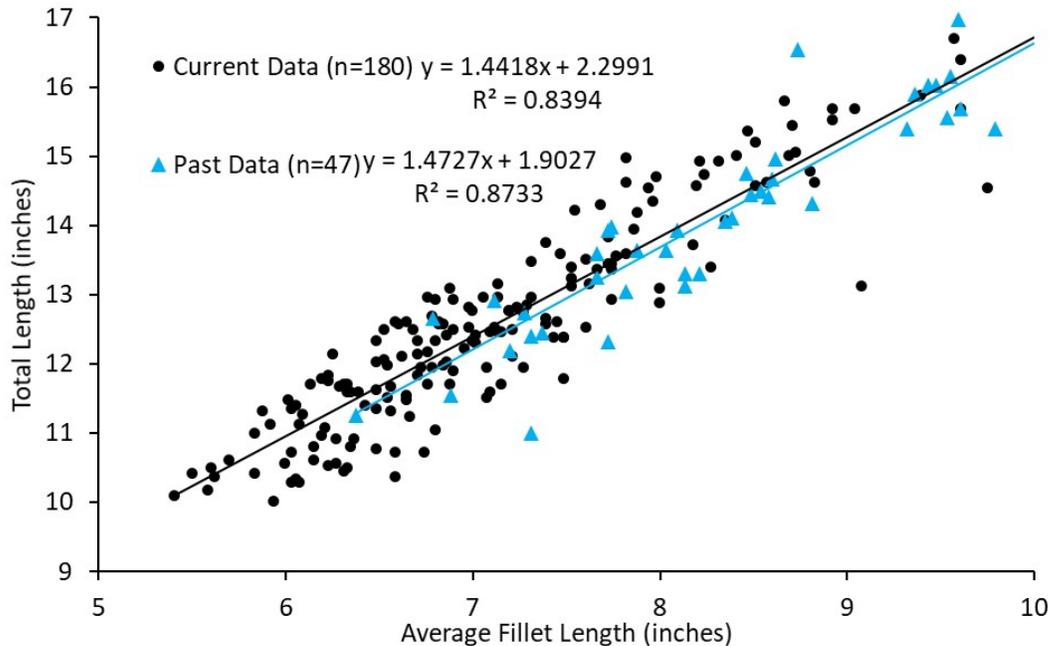
A potential impact of implementing a fillet length regulation is an increase in California sheephead harvest. However, the fishery is managed under a total allowable catch, so any possible increase in harvest will not impact the sustainability of the population. The number of California sheephead that are released because they cannot be filleted at sea is not known. On average, 15 percent of the California sheephead catch is discarded, and although the exact lengths of the discarded catch are not known, the majority are most likely under-sized catch that cannot be retained regardless of the fillet length regulation. Allowing filleting of California sheephead at sea might lower the number of discards by a small percentage. More importantly, a fillet length regulation would allow carcasses to be disposed of at sea after filleting and recycled back into the marine ecosystem, instead of anglers disposing of carcasses at home.

### **Data Collection and Analysis**

Data necessary to support the proposed regulation have been collected through a collaborative effort between SAC and the California Department of Fish and Wildlife (Department). A total of 180 California sheephead were collected on three sampling trips off commercial passenger fishing vessels (CPFVs) over a wide expanse of reefs in Long Beach, Dana Point and San Diego during April 2018. Commercial fish traps were used to assure that only the appropriate sizes of California sheephead were collected, and all other fish could be released alive. Fish sizes ranged from 10-16 inches, with the majority (66 percent) surrounding the current minimum size of 12 inches (11-13 inches). The deckhands working on each CPFV filleted all the fish aboard the vessels while at sea to ensure realistic conditions of how other fishes are currently filleted. In addition, fish were filleted by six individuals with varying experience to account for possible differences in filleting ability. Department biologists measured the total length of the fish and the corresponding left and right fillet to the nearest millimeter.

The data were analyzed by taking the average of the two fillets in a pair, and then determining the relationship between average fillet length and total length of the fish by a regression analysis. This was also done for data collected in a past Department study in 2002-2003 and compared to the current study. Not only was there a very strong relationship between average fillet length and total fish length, but there was no significant

difference between current and past studies despite differences in filleting experience, sampling locations, and time periods (Figure 1).

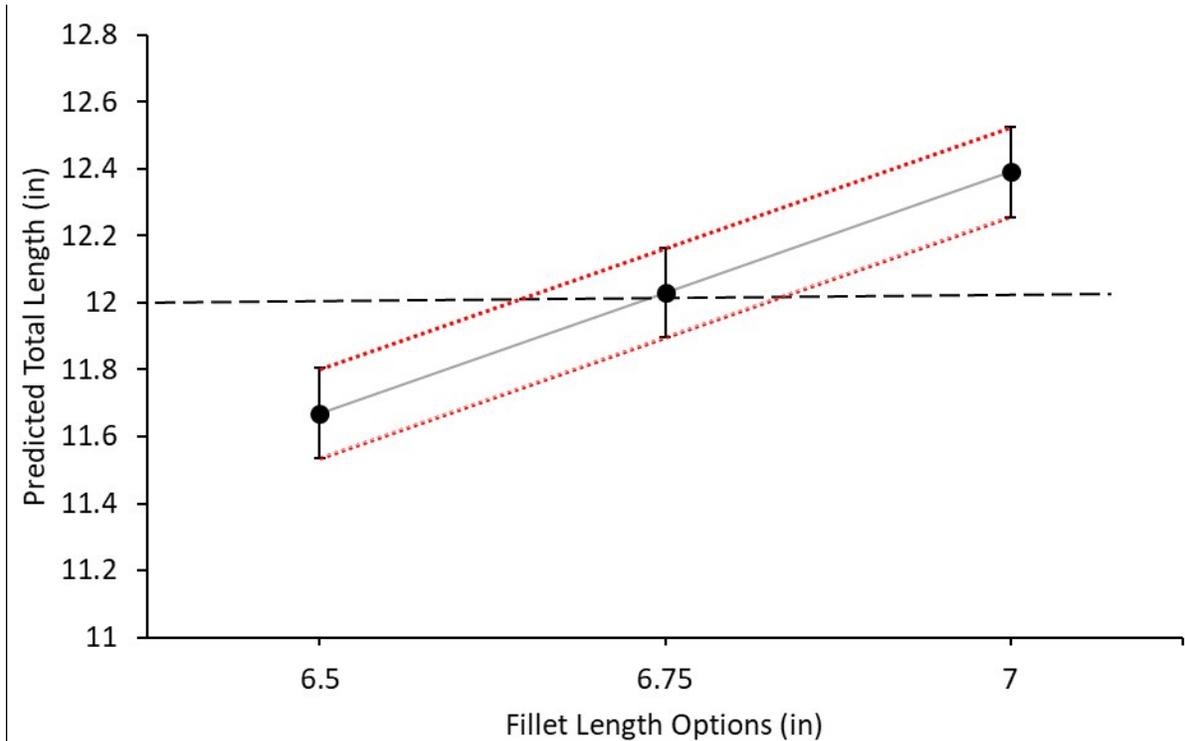


**Figure 1.** The relationship between average fillet length and total length of California sheephead for the current (black circles) and past (blue triangles) Department studies. The equation of the line and  $R^2$  value for each are listed below the respective legend. The equations shown are measurements of the modeled regression line, where “x” is a coefficient that determines how “y” will increase. “ $R^2$ ” ranges between 0 and 1, where an  $R^2$  value closer to 1 means a closer relationship that the data fits to the modeled regression line. The “n” values refer to sample size (180 in the current study; 47 in the past study).

From the results of the analysis, the equation of the line from the current data was used to predict the fillet length from a legal-sized 12-inch fish. Plugging 12 inches into the equation of the line predicts a 6.8-inch fillet length with lower and upper 95 percent confidence intervals of 6.66 and 6.92 inches, respectively. This means that from the 180 samples and varying filleting experience of deckhands the Department analyzed, there’s a 95 percent chance that the true mean of the fillet size from the sampled California sheephead population would be between 6.66 and 6.92 inches. Since fillet lengths are easiest to measure at a minimum of quarter inch intervals, the data portray two fillet length possibilities of either rounding down to 6.75 inches or rounding up to 7 inches. To aid in determining which possible fillet length is the most reasonable for a legal California sheephead, the possible fillet lengths were plugged back into the equation of the line to predict the total length with 95 percent confidence intervals (Table 1, Figure 2). The 7-inch fillet length has a predicted total length of over 12 inches ( $12.39 \pm 0.21$  inches) which reduces the likelihood of cutting a legal-sized fillet from a sublegal fish, but also might make it challenging to achieve a legal-sized fillet from a legal 12-inch fish. Thus, the recommended fillet length is 6.75 inches, as the predicted total length is the closest to 12 inches ( $12.03 \pm 0.21$  inches), which provides an attainable-sized fillet length and should prevent legal-sized fillets to be easily cut from sublegal-sized fish.

Analyzed Fillet Lengths (inches)	Predicted Fish TL (inches)	95% CI
6.5	11.67	11.47-11.88
6.75	12.03	11.83-12.24
7	12.39	12.18-12.6

**Table 1.** The predicted total lengths (TL) and associated 95 percent confidence intervals (CI) for three fillet length options.



**Figure 2.** The predicted total length in inches for the fillet length options of 6.5, 6.75, or 7 inches based on the regression results of average fillet length and total length of fish. The red dotted lines represent the upper and lower 95 percent confidence intervals. The dashed black line at 12 inches denotes the current minimum size limit of California sheephead (Section 28.26, Title 14, CCR).

**Changes to Authority and Reference Citations**

Senate Bill 1473 (Stats. 2016, ch. 546) made organizational changes to the Fish and Game Code that became effective January 1, 2017. In accordance with these changes to the Fish and Game Code, Section 202 is removed from, and Section 265 is added to the authority and reference citations; Section 220 is removed from the reference citations; and Section 240 is removed from, and Section 399 is added to the reference citations.

(b) Goals and Benefits of the Proposed Regulation:

It is the policy of the state ensure the conservation, sustainable use, and where feasible, restoration of California's living marine resources of the benefit of all the citizens of the state. The objective of this policy shall be, among other things, to involve all interested parties in marine living resource management decisions.

The proposed regulation is in response to SAC and the recreational angling community, who have been requesting a fillet length regulation for California sheephead since 2001. As such, the regulation may increase angler satisfaction.

The proposed regulation may benefit the health and welfare of California residents through the increased consumption of nutritious California sheephead, and may benefit the environment through the return of California sheephead carcasses to the sea to be recycled back to the marine ecosystem.

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

Authority: Sections 200, 205, 265, 313, 5508 and 5509, Fish and Game Code.

Reference: Sections 200, 205, 265, 313, 399, 5508 and 5509, Fish and Game Code.

(d) Specific Technology or Equipment Required by Regulatory Change: None.

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

(f) Public Discussions of Proposed Regulations Prior to Notice Publication:

The Department mailed notification letters on July 16, 2018 to tribes that may be impacted or interested in this rulemaking. The Department received responses from two tribes, neither of which expressed concerns on the proposed regulation, or provided any other specific input.

No public meetings are scheduled prior to the notice publication. The 45-day public notice comment period provides adequate time for review of the proposed regulation.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

Two alternatives to the recommended 6.75-inch fillet were analyzed: a slightly smaller (6.5-inch) or larger (7.0-inch) fillet length. A 6.5-inch fillet length was obtained as an alternative by rounding down from the predicted 6.8 inches to the nearest half inch instead of quarter inch interval. A 6.5-inch fillet length has a predicted total length under 12 inches ( $11.67 \pm 0.21$ ; Table 1 and Fig. 2), which means a legal-sized fillet could often be cut from a sublegal-sized fish, so this alternative was rejected. The 7.0-inch fillet length alternative would allow an easily identifiable round number and would reduce the likelihood of cutting a legal-sized fillet from a fish under 12 inches. However, it may also make it challenging to achieve a legal-sized fillet from a legal 12-inch fish, since the expected length of a fish from which a 7.0-inch fillet is cut would be 12.39 inches (per Figure 2). Therefore, this alternative was also rejected. Since there are other fishes with a current fillet length to the closest

quarter inch (e.g., 16.75 inches for California halibut), the 6.75-inch fillet length is the Department's recommended size.

(b) No Change Alternative:

The no change alternative would leave existing regulations in place, and not allow for filleting of California sheephead on board vessels. Some deckhands on CPFVs partially fillet California sheephead so fillets remain attached to the carcass, and the angler only has to make one cut to remove them. However, it is possible that the fillet could become detached from the body, resulting in a violation. In addition, the angler would still need to carry home and discard the carcass. The no change alternative would not lead to any increase in angler satisfaction, nor would it allow California sheephead carcasses to be recycled back into the marine ecosystem.

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, because the proposed regulation will not increase net compliance costs or impact fishing effort and recreational fishing expenditures for recreational fishing related businesses. While not significant or statewide, CPFV businesses may choose to spend an estimated \$60 - \$110 per year on more plastic bags for the additional fillets and for the maintenance of fillet knives. This equates to \$12,660 - \$23,210 in costs for all CPFVs statewide. This will not affect the ability of California businesses to compete with businesses in other states because these small individual expenditures would increase customer satisfaction and be offset by fillet fee revenue.

(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 because the proposed regulation is not likely to increase or decrease recreational fishing opportunities within California. It is possible that the implementation of the proposed regulation may increase workload for deckhands aboard CPFVs as the number of fish that can be filleted in an angler's catch at the end of the day

will increase. However, it is unlikely that the demand will increase so much that additional jobs will be necessary.

The Commission anticipates benefits to the health and welfare of California residents through the consumption of more California sheephead, a nutritious food.

The Commission does not anticipate any benefits to worker safety.

The Commission anticipates some benefit to the state's environment through the return of California sheephead carcasses to the marine ecosystem after being filleted.

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

This regulatory action will allow for the option for individuals to choose to pay \$2 - \$3 per fillet, which may amount to as much as \$10 - \$15 per CPFV trip. Individual CPFV businesses may choose to spend an estimated \$60 - \$110 per year on more plastic bags for the additional fillets and for the maintenance of fillet knives.

(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

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

The Commission does not anticipate impacts on the creation or elimination of jobs within the state because the proposed action is not likely to cause substantial changes in the catch of California sheephead. There is the possibility that an increase in the total number of fish being filleted could cause an increase in the workload of deckhands. It is unlikely that the demand will increase so much that additional jobs will be necessary.

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

The Commission does not anticipate the creation of any new businesses, or elimination of existing businesses, because the proposed regulation is not likely to increase or decrease recreational fishing opportunities within California.

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

The Commission does not anticipate any effects substantial enough to induce the expansion of businesses currently doing business in the state. The implementation of a California sheephead fillet length regulation could cause a small increase in fillet fee revenue to CPFV businesses. Depending on the average price of \$2 - \$3 estimated to be charged for filleting California sheephead, a total annual increase in revenue of \$56,000 to \$85,000 may be received amongst all CPFV businesses, or an estimated \$269 - \$403 per CPFV. These estimates are based on the average annual catch of California sheephead from 2013 to 2017, which can fluctuate depending on a variety of environmental, biological and economic factors

(d) 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 consumption of more California sheephead, a nutritious food.

(e) Benefits of the Regulation to Worker Safety:

The Commission does not anticipate any benefits to worker safety because the proposed regulation does not affect existing working conditions.

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

The Commission anticipates some benefit to the state's environment through the return of California sheephead carcasses to the marine ecosystem after filleting instead of disposing of carcasses on land.

## **Informative Digest/Policy Statement Overview**

Section 27.65, Title 14, California Code of Regulations (CCR) defines fillet; lists the fillet requirements for, and specifies those fish that may be filleted on a boat or brought ashore as fillets; and prohibits the filleting, steaking, or chunking of any species with a size limit unless a fillet size is otherwise specified. Section 28.26, Title 14, CCR, specifies the bag limit, size limit, open areas, seasons and depth constraints for the recreational take of California sheephead (*Semicossyphus pulcher*).

The proposed regulatory change to subsection 27.65(b), Title 14, CCR, adds a 6.75-inch minimum fillet length, and requires that the entire skin remain intact, allowing legal-sized California sheephead to be filleted on board vessels while at sea and brought ashore as fillets.

In addition, authority and reference citations are proposed to be amended in accordance with recent organizational changes to Fish and Game Code.

The proposed regulation is in response to the Sportfishing Association of California and the recreational angling community that have been requesting a fillet length regulation for California sheephead since 2001. As such, the regulation may increase angler satisfaction. Additionally, the proposed regulation may benefit the health and welfare of California residents through the increased consumption of nutritious California sheephead, and may benefit the environment through the return of California sheephead carcasses to the sea to be recycled back to the marine ecosystem.

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. Section 20, Article IV, of the State Constitution specifies that the Legislature may delegate to the Fish and Game Commission (Commission) such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to regulate the recreational take of fish. The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The proposed regulation is consistent with existing state regulations as almost all finfishes with a recreational minimum size limit also have a corresponding fillet length. The Commission has searched the California Code of Regulations and finds no other state agency regulations pertaining to the recreational take of California sheephead or to the filleting of fish on board vessels at sea.