

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

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

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

II. Date of Final Statement of Reasons: February 28, 2019

III. 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 6, 2019
 Location: Sacramento

IV. Update:

At its February 6, 2019 meeting in Sacramento, CA, the Fish and Game Commission (Commission) adopted the regulatory amendments as described in the Notice of Proposed Action.

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.

Update to Section III (e) of the Initial Statement of Reasons: Identification of Reports or Documents Supporting Regulation Change:

Beasley, J. C., Olson, Z. H., and Devault, T. L. (2012). Carrion cycling in food webs: comparisons among terrestrial and marine ecosystems. *Oikos*, 121(7), 1021–1026.

Burkepile, D. E., Parker, J. D., Woodson, C. B., Mills, H. J., Kubanek, J., Sobecky, P. A., and Hay, M. E. (2006). Chemically Mediated Competition between Microbes and Animals: Microbes as Consumers in Food Webs. *Ecology*, 87(11), 2821–2831.

Garthe, S., Camphuysen, C. J., and Furness, R. W. (1996). Amounts of discards by commercial fisheries and their significance as food for seabirds in the North Sea. *Marine Ecology Progress Series*, 136, 1–11.

Holmlund, C. M., and Hammer, M. (1999). Ecosystem services generated by fish populations. *Ecological Economics*, 29, 253–268.

Montevecchi, W. A. (2002). Interactions between Fisheries and Seabirds. In Schreiber, E. A. and Burger, J. (eds.) *Biology of Marine Birds* (pp. 528-547). CRC Press.

Stenhouse, I. J., and Montevecchi, W. A. (1999). Indirect effects of the availability of capelin and fishery discards: gull predation on breeding storm-petrels. *Marine Ecology Progress Series* 184, 303–307.

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

1. Comment by Mr. Ken Franke, President of the Sportfishing Association of California (SAC), oral testimony at the December 12, 2018 Commission meeting:

- a. Strongly supports the collaborative efforts for the proposed regulation as it addresses the industry’s request and demonstrates a successful collaboration between the Department of Fish and Wildlife (Department) and the recreational fishing community.

Response:

- a. The Department and Commission acknowledge the support, and greatly appreciate the collaborative efforts and funding provided by SAC to accomplish the proposed regulation.

2. Comments by Ms. Rebecca Dmytryk, Wildlife Emergency Services, letter received on December 5, 2018: Ms. Dmytryk had five main comments (listed on page 4 of the comment letter), requesting that the Commission:

- a. Conduct an audit of California’s marine fish-cleaning stations and practices, i.e. if sportfishing boats dock and then clean fish, what is done with the fish waste? Document potential negative impacts on wildlife and marine environment, such as the habituation of marine mammals, injury to pelicans and other marine birds from either encounters with seals and sea lions or the spines of the fillet scraps.
- b. Survey sportfishing vessels to document how discarding scraps impacts the marine environment - i.e. if gulls, pelicans, seals and sea lions becoming habituated to the boats because they are essentially being fed? Document any positive impacts to support claim that the practice benefits the ecosystem (more than the potential harm it causes).

- c. Request documentation from California wildlife rehabilitators and rescue entities of the costs related to the response, capture, transport, and rehabilitation of brown pelicans with injuries related directly and indirectly (sea lion bite) to disposal of fish fillet scraps into the marine environment.
- d. Consider increasing the size limit of the California sheephead from 12” to 15.5”, supported by research to promote yield and maintain a healthy population.
- e. Consider prohibiting the dumping of fish scraps into the ocean and encourage responsible disposal of fish processing waste.

Responses:

- a. The commenter’s request for an audit of fish-cleaning stations and practices is beyond the scope of the proposed regulation. The adopted regulations allow California Sheephead to be filleted on vessels at sea and establish a minimum fillet size. The adopted regulations are anticipated to result in the disposal of fish carcasses and entrails upon filleting while at sea. The Commission and Department are not aware of any quantitative studies documenting impacts of filleted fish waste or carcasses to wildlife. On the contrary, there are multiple studies demonstrating the positive effects of fishery scraps on seabird populations (see references below).
- b. There are multiple studies documenting that fish carcasses provide ecosystem services to the marine environment (Beasley et al. 2012, Burkepile et al. 2006, Holmund and Hammer 1999). Carcasses provide a crucial nutrient source to many scavengers, and decomposing carcasses provide carbon sources, which increases production of beneficial algae. These studies suggest the importance of carcasses is often overlooked, and that carcasses are actually a crucial component in marine food web dynamics. There are also multiple studies demonstrating the positive effects of fishery scraps on seabird populations. Many species rely greatly on discarded fish waste when forage fish become scarce, and data suggest that some breeding populations of seabirds grow with increasing fish landings due to their increased consumption of fish scraps (Garthe et al. 1996, Montevecchi 2002, Stenhouse and Montevecchi 1999). Therefore, scientific literature indicates that disposal of carcasses in the marine environment is beneficial, not deleterious, and therefore is not inconsistent with subdivision (a)(6) of Fish and Game Code Section 5650, nor Penal Code Section 374.7.
- c. This request is outside the scope of this proposed regulation, as the disposal of fish scraps into the sea is a long-standing common practice that is not unique to this proposed regulation, and it is not expected that the new practice of disposing of California Sheephead will substantially add to total number of carcasses disposed of at sea.

- d. This request is outside the scope of this proposed regulation. Department analyses indicate that California Sheephead populations are healthy, landings are stable, and the fishery is sustainably managed at this time. The Commission and Department understand recent research has shown that size and maturity of California Sheephead can vary locally and be affected by fishing activities. However, studies also demonstrate that Marine Protected Areas help mitigate these impacts by supporting populations of the full size structure, including an abundance of larger California Sheephead. At this time, the Commission and Department do not have a resource concern for California Sheephead, or see a need for additional regulations, as the fishery is actively managed with a minimum size limit, bag limit, and annual total allowable catch quota.
- e. Based on available science, the Commission and Department consider the discarding of fish scraps into the ocean to be a responsible approach, as the scientific literature supports evidence of benefits to the marine ecosystem.

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) Alternatives to Regulatory Action:

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 a 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 (refer to Table 1 and Figure 2 of the Initial Statement of Reasons (ISOR)), 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, ISOR). 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 Commercial Passenger Fishing Vessels (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.

(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 adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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, 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.

Updated 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.

Benefits of the Proposed Regulation

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.

Consistency and Compatibility with Existing State Regulations

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.

UPDATE

At its February 6, 2019 meeting, the Commission adopted the amendments to subsection (b) of Section 27.65 of Title 14, CCR, concerning Filleting of Fish on Vessels: California Sheephead.

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.