



Tracking Number: (2020-002)

To request a change to regulations under the authority of the California Fish and Game Commission (Commission), you are required to submit this completed form to: California Fish and Game Commission, (physical address) 1416 Ninth Street, Suite 1320, Sacramento, CA 95814, (mailing address) P.O. Box 944209, Sacramento, CA 94244-2090 or via email to FGC@fgc.ca.gov. Note: This form is not intended for listing petitions for threatened or endangered species (see Section 670.1 of Title 14).

Incomplete forms will not be accepted. A petition is incomplete if it is not submitted on this form or fails to contain necessary information in each of the required categories listed on this form (Section I). A petition will be rejected if it does not pertain to issues under the Commission’s authority. A petition may be denied if any petition requesting a functionally equivalent regulation change was considered within the previous 12 months and no information or data is being submitted beyond what was previously submitted. If you need help with this form, please contact Commission staff at (916) 653-4899 or FGC@fgc.ca.gov.

SECTION I: Required Information.

Please be succinct. Responses for Section I should not exceed five pages

1. Person or organization requesting the change (Required)

Name of primary contact person: TERRANCE P HEALEY

Address: [REDACTED]

Telephone number: [REDACTED]

Email address: [REDACTED]

2. Rulemaking Authority (Required) - Reference to the statutory or constitutional authority of the Commission to take the action requested:

FGC 200, 205, 265, 275

3. Overview (Required) - Summarize the proposed changes to regulations:

ATTACHED

4. Rationale (Required) - Describe the problem and the reason for the proposed change:

ATTACHED

SECTION II: Optional Information

5. Date of Petition: 2/7/20

6. Category of Proposed Change

- Sport Fishing
- Commercial Fishing
- Hunting
- Other, please specify: Click here to enter text.

2020 FEB 10 PM 2:00
ACCEPTED
CALIFORNIA
FISH AND GAME
COMMISSION



7. **The proposal is to:** (To determine section number(s), see current year regulation booklet or <https://govt.westlaw.com/calregs>)

Amend Title 14 Section(s): [Click here to enter text.](#) 2775 ATTACHED

Add New Title 14 Section(s): [Click here to enter text.](#)

Repeal Title 14 Section(s): [Click here to enter text.](#)

8. **If the proposal is related to a previously submitted petition that was rejected, specify the tracking number of the previously submitted petition** [Click here to enter text.](#) 2018-001

Or Not applicable.

9. **Effective date:** If applicable, identify the desired effective date of the regulation. If the proposed change requires immediate implementation, explain the nature of the emergency: [Click here to enter text.](#) SENT 2020

10. **Supporting documentation:** Identify and attach to the petition any information supporting the proposal including data, reports and other documents: [Click here to enter text.](#) ATTACHED

11. **Economic or Fiscal Impacts:** Identify any known impacts of the proposed regulation change on revenues to the California Department of Fish and Wildlife, individuals, businesses, jobs, other state agencies, local agencies, schools, or housing: [Click here to enter text.](#) ATTACHED

12. **Forms:** If applicable, list any forms to be created, amended or repealed: [Click here to enter text.](#) ATTACHED

SECTION 3: FGC Staff Only

Date received: [Click here to enter text.](#)

FGC staff action:

- Accept - complete
 - Reject - incomplete
 - Reject - outside scope of FGC authority
- Tracking Number

Date petitioner was notified of receipt of petition and pending action: _____

Meeting date for FGC consideration: _____

FGC action:

- Denied by FGC
 - Denied - same as petition _____
- Tracking Number
- Granted for consideration of regulation change

3. Overview (Required) - Anglers fishing from the shore at the mouth of the Smith, Klamath, and Eel Rivers are subjected to citations by wardens under Title 14, Section 27.75, California Code of Regulations without legal authority to do so. Enacted in 1984, Section 27.75 was an emergency action patterned after California Fish and Game Code Section 8219. Based on limited historical information obtained from the State Law Library and other sources, the intent of both Sections is aimed at controlling ocean fishing vessel activity, not shore anglers fishing at the mouths of the rivers. The historical evidence shows that salmon trollers concentrating their effort in the ocean off the mouths of the rivers were recognized as a threat to salmon runs and the river fisheries they supported.. This became apparent sometime after 1913, following the northward spread of ocean trolling from Monterey Bay, where it began in the late 1880's. However, not until 1933 was ocean salmon trolling legislation enacted by the passage of Fish and Game Code Section 669. It was amended several times and finally reenacted as Section 8219 CFGC.in 1957. This final amendment clarified the intent of Section 8219 to regulate only commercial salmon harvest, while Section 27.75 is intended to prevent both commercial and recreational salmon harvest in the ocean off the mouths of the aforementioned rivers. Shore anglers have never been shown to have been an issue of concern in the development of either of these regulations. Yet, shore anglers may be cited unfairly and illegally, by perhaps well meaning wardens, who misinterpret the intent of Section 27.75. This proposal is to clarify the limitations of Section 27.75 and prevent unauthorized enforcement of Section 27.75 against shore anglers..

Rationale (Required) - To clarify the intent of Section 27.75 (a), (b) and (c) and its limitations, an expressed exemption for shore angling is necessary. From my observations at the mouth of the Smith River, I have learned that people legally fishing from the shore at the Smith River are sometimes being cited for violation of Section 27.75 (a), should they venture near or land a fish in the surf zone at the mouth of the river, which is open to salmon fishing. Very likely, this is also occurring on the Klamath and Eel Rivers (Sub-Sections (b) and (c)) as well.

Section 27.75 (a),(b) and (c) contain no defined boundaries between the mouths of the rivers and the ocean. This makes it impossible for anyone to know where the mouth of the river ends and the "ocean" begins. Without boundaries being described in the text of the regulation, Section 27.75 (a),(b) and (c) can not legally preclude sport fishing and take of salmon from the shore at the mouths of the rivers. The present wording in the regulation can only be **legally** applied to fishing vessel operations. It is totally effective in controlling fishing vessels but is not enforceable against shore anglers.. Despite this reality, one warden and likely others may fail to recognize the limitations built into the law by this boundary omission and arbitrarily decide for themselves where a boundary between river and ocean should be located for the purpose of issuing citations to shore

anglers for “**fishing for salmon in closed area**” (**Attachment 1**). The regulation as written, simply does not provide anyone with authority to make this determination.

The omission of a defined shoreside boundary in the text of the regulation is understandable.. It is impossible to precisely determine the exact location of the mouth of any river because of tidal and out-flow fluctuations. Most importantly salmon harvest in the ocean by shore angling is so insignificant that to make it illegal cannot be justified from a biological standpoint. Additionally the ocean itself prevents encroachment into the closure zones by shore anglers beyond the undefined shore/ocean interface. The regulation is enforceable in the “ocean” proper without the inclusion of a shoreside boundary because the north, south and west boundaries in the ocean are clearly defined and adequate for the purpose of regulating fishing vessels, as intended.

Background

1933 - Section 669. The first ocean salmon trolling closure zone was enacted in 1933 by the 50th session of the State Legislature January 2-July 26, 1933, as part of the Fish and Game Code - Division 6, Fish - Part 3, **Commercial Fishing** - Chapter 2, Particular Varieties of Fish - Article 4, **Salmon** - Section 669 was written as follows:

“The commission may designate salmon spawning areas. It is unlawful to take salmon on any spawning bed or within ten miles of any salmon spawning station or in State waters at the mouth of any interstate stream within three miles north and south of a line drawn due west for three miles from the center of the mouths of said streams”.

Section 669 was amended in 1949 by Assembly Bill No. 2361. After a total of five revisions it read as follows: “The commission may designate salmon spawning areas. It is unlawful to take salmon on any spawning bed or within ten miles of any salmon spawning station or in Districts 6 and 7 at the mouth of the Smith, Klamath and Eel rivers within three **nautical** miles north and south of a line drawn due west for three **nautical** miles from the center of the mouth of each of said streams or during the months of August and September in District 7 at the mouth of the Eel River within two **nautical** miles north and south of a line drawn due west for two **nautical** miles from the center of the mouth of said stream”.(Note: Districts 6 and 7 are defined as ocean waters in the 1933 Fish and Game Code, Sections 72 and 73).

Section 669 was amended again in 1955 by regular session of the Legislature April 8, 1955 and by SB 686, March 7, 1955. and read as follows:

:“The commission may designate salmon spawning areas. It is unlawful to take salmon in any such spawning area or within **250 feet** of any salmon spawning station or in District 6 at the mouth of the Smith and Klamath Rivers within three **nautical** miles north and south of a line drawn due west for three **nautical** miles from the center of the mouth of

each of said streams or during the months of August and September in District 7 at the mouth of the Eel River within two **nautical** miles north and south of a line drawn due west for two **nautical** miles from the center of the mouth of that stream.

Section 669 was amended for the last time in June, 1957 by Legislative action repealing the Fish and Game Code and reenactment of it with various amendments to the laws therein. It became **Section 8219** and now reads: California 2017 Fish and Game Code - Division 6, Fish - **Part 3, Commercial Fishing** - Chapter 2, Particular Varieties of Fish - Article 4, Salmon - **Section 8219**, Taking in District 6 and 7- "Salmon may not be taken for **commercial purposes** in District 6 at the mouths of the Smith and Klamath Rivers within three **nautical** miles north and south of a line drawn due west for three **nautical** miles from the center of the mouths of each of those streams, or during the months of August and September in District 7 at the mouth of the Eel River within two **nautical** miles north and south of a line drawn due west from the center of the mouth of that stream". The word **commercial** and the use of **nautical** terminology in amendments to Sections 669 and 8219 show that both regulations are intended to be understood by commercial fishing vessel operators in the ocean.

Section 27.75 under Title 14 CCR, Chapter 4: Ocean Fishing was an emergency action by the Fish and Game Commission in 1984 and is patterned after **Section 8219** to regulate sport, as well as commercial fishermen, in offshore ocean waters.

The following historical excerpts show the reason for ocean closure laws and are self explanatory: "In 1913 At this time there was no sea trolling for salmon in that part of the state (Klamath River area) to act as an added drain on the river's salmon supply". (Due to the remoteness of the area). "Later came the development of a salmon troll fishery out of Eureka, whose field of operation gradually extended to the north until the Klamath's salmon were being caught in large numbers off the mouth of the river". (Improved roads not only opened the river up to sportsmen, it was already being heavily fished commercially with nets to supply a cannery and distant fresh fish markets. These factors as well as a scarcity of salmon in other regions of the state) "**has added to the zest to which they are sought in the Klamath and the sea outside the mouth. The king run in the river has begun to show signs of depletion. I (the author) am convinced that sea trolling is the principal cause of this depletion and that the salmon in the river would have held their own if it had not been for the development of sea trolling off the mouth of the river**". (California Division of Fish and Game 13th Biennial Report, 1926-1928, page 115) (In this same report it is stated on page 112 "at the last session of the Legislature the Commission was sponsor for a bill which would have eliminated sea trolling for salmon". It did not pass).

Conclusions - Shore angling at the mouths of Smith, Klamath, and Eel Rivers have long been recognized as a legitimate recreational use of these rivers. **The ocean closure zones are clearly aimed at preventing over harvest of salmon in the ocean by fishing vessels** to protect the river fisheries and provide for adequate spawning escapement. ..

My initial proposal (2018-001) was denied by the Commission at its April 18-19, 2018 Meeting in Ventura. The reason for the denial: *“because the existing seasonal closure of these river mouths is intended to protect aggregating salmon from harvest both from vessels and from shore”*. **There is no historical evidence given in your reason for denial, as required pursuant to Government Code Section 11347.3(a), (6) to support the last portion of the statement relating to shore fishing. The evidence I have presented strongly refutes it and shows legislative intent to be aimed only at ocean fishing vessels. The intent of the Fish and Game Commission in past years is stated in some of their early reports. They were concerned only about ocean trolling vessels and their impact on the river salmon fishery, not shore anglers.** I have also presented you with evidence of law enforcement abuse against a shore fisherman for fishing in an undefined ocean fringe zone based on a warden’s invalid opinion. This case went before a judge who dismissed it because it is not enforceable against shore fishermen.

I hereby respectfully propose that five words be added to each sub-section (a), (b), and (c) of Section 27.75 CCR to clearly and concisely reflect the intent of the law and prevent its abuse. This proposal would limit the application of the law to ocean fishing vessels, as originally intended by both the Legislature and the Fish and Game Commission, by expressly exempting shore angling. **The proposal would conform with the precedent already set forth by Title 14, Chapter 4: Ocean Fishing Section 27.20, (b), (1), (C)** which provides for a “shore based” fishing exemption in groundfish management areas because there is no need for that regulation to be overly burdensome to the angling public. The same can be said for Section 27.75.

7. The proposal is to: Amend: Title 14 Section 27.75 (a), (b), and (c).

8. Tracking Number 2018 - 001. Text would read as follows:

27.75 Salmon Closures.

(a) No Salmon may be taken, **except by shore based angling**, at any time in ocean waters at the Smith River Mouth bounded on the north by 41 degrees 59’ 36” N. lat. (approximately 3 nautical miles north of the Smith River mouth), on the west by 124 degrees 16’ 24” W. long (approximately 3 nautical miles offshore), and on the south by 41 degrees 53’ 30” N. lat. (approximately 3 nautical miles south of the Smith River mouth).

(b) No Salmon may be taken, **except by shore based angling**, at any time in ocean waters at the Klamath River mouth bounded on the north by 41 degrees 35' 30" N. lat. (approximately 3 nautical miles north of the Klamath River mouth), on the west by 124 degrees 08' 54" W. long. (approximately 3 nautical miles offshore), and on the south by 41 degrees 29' 24" N. lat. (approximately 3 nautical miles south of the Klamath River mouth). In August, the ocean salmon closure expands into the "Klamath Control Zone." The Klamath Control Zone is defined in federal regulations as the ocean area at the Klamath River mouth bounded on the north by 41 degrees 38' 48" N. lat. (approximately 6 nautical miles north of the Klamath River mouth), on the west by 124 degrees 23' 00" W. long (approximately 12 nautical miles offshore), and on the south by 41 degrees 26' 48" N. lat. (approximately 6 nautical miles south of the Klamath River mouth).

(c) No Salmon may be taken, **except by shore based angling**, at any time in ocean waters at the Eel River Mouth bounded on the north by 40 degrees 40' 24" N. lat. (approximately 2 nautical miles north of the Eel River mouth), on the west by 124 degrees 21' 24" W. long (approximately 2 nautical miles offshore), and on the south by 40 degrees 36' 24" N. lat. (approximately 2 nautical miles south of the Eel River mouth).

9. Effective date: March 1, 2020.

10. Supporting Documentation:

Attachment #1 - Copy of citation and court summons issued to shore angler at mouth of Smith. River in 2017.

Excerpts taken from California Division of Fish and Game 13th Biennial Report, 1926-1928, pages 115 and 112. and referenced in text.

11. Economic or Fiscal Impacts: Without a detailed accounting, the amount of fine money that has been improperly taken from anglers cannot be determined. To allow this practice to continue for the purpose making money would be dishonest from a moral, as well as a legal standpoint.. It would no longer require fishermen to have to take time off from work to contest a baseless citation that is unenforceable in a court of law.

12. Forms: 2020-2021 CALIFORNIA SALTWATER SPORT FISHING REGULATIONS.