

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

Amend Sections 190 and 195
Title 14, California Code of Regulations

Re: Fishing Activity Records, and Report of Fish Taken To Be Made by Owner of Barge or Vessel for Hire and Boat Limits.

- I. Date of Initial Statement of Reasons: March 22, 2013
- II. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: April 17, 2013
Location: Santa Rosa
 - (b) Discussion Hearing: Date: May 22, 2013
Location: Los Angeles
 - (c) Adoption Hearing: Date: June 26, 2013
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:
 - 1. Section 190 currently requires that holders of commercial fishing licenses for specified fisheries (e.g., trawl, trap, live bait, market squid, etc.), and commercial passenger fishing vessels (CPFV), keep and submit a record of fishing activities. The records of fishing activities are prepared on forms provided by the department, referred to as logs or logbooks, and are used to assist the department in managing specific fisheries. The proposed changes will clarify to owners/operators when these logs must be completed.
 - 2. The current wording in subsection 190(b) requires that fishing activity records “be completed before the end of a trip, at the time of sale of the catch or at the end of each day’s fishing.” This language can be confusing for those filling out the records and for the wildlife officer enforcing the regulation. This part of the provision is therefore proposed for deletion. The proposed new wording of “immediately when any of the following first occurs: (1) prior to passengers or crew disembarking from the vessel, or (2) at the time of receipt, purchase, or transfer of fish, or (3) at the end of the calendar day (midnight) during fishing activity through the night” provides clear points in time when the records must be completed.

3. Subsection 195(a) currently specifies the fishing activity records for CPFV as “Skipper's Log Book-Marine Sportfishing - Southern California F&G 656 and Skipper's Log Book-Marine Sportfishing Central and Northern California F&G 623, DFG 195”. These forms are proposed for deletion and will be replaced.

The amended subsection 195(a) provides for new forms entitled “COMMERCIAL PASSENGER FISHING VESSEL LOG, CENTRAL AND NORTHERN CALIFORNIA, DFW 195A (02/13), or COMMERCIAL PASSENGER FISHING VESSEL LOG, SOUTHERN CALIFORNIA,

DFW 195B (02/13).” The accompanying instructions explain when and how logs are to be filled out as well as when the logs are to be turned in to the department. The new forms and instructions will be inserted as part of CCR, Title 14, Appendix A. The Appendix also currently contains an old form (FG 656, DFG 195 (10/89)) which will be deleted with this action.

4. Currently there is no regulatory requirement in Section 195 for reports to be completed and submitted to the department when no fishing activity occurs during a month. However, this has been the practice for all CPFV operators for many years. If no report is received from an owner/operator, it is unknown whether no fishing activity took place or if a fishing report was not submitted. Completed monthly logs improve the department's ability to provide accurate estimates of recreational catch and effort, and subsequent decisions about future catch. The new logs (described above) will provide a box for an entry of “No fishing activities for the month of: _____.” The completed no fishing log is treated the same as any other fishing log: maintained in the logbook, and submitted to the department as directed. (Note: This new ‘no fishing’ log entry will take the place of an envelope report currently in use.)
5. There are times when a licensed CPFV operator may take out non-paying customers or guests on a fishing venture. This activity is legal as long as all of the people fishing on the boat have fishing licenses and all catch limits are followed. When a CPFV is boarded by a wildlife officer, the officer has no way to determine if the customers on the boat are paying or nonpaying and whether the provisions of sections 190 and 195 apply. A new subsection 195(a)(5) provides that a licensed CPFV will be required to keep a logbook whether or not the trip involves paying or nonpaying fishing customers. This would also give a better data base tracking all fish caught on CPFV's.
6. Currently in subsection 195(e)(5) the regulation, in part, specifies “operating under authority of a license issued pursuant to”, this language is proposed for deletion and will be replaced by “licensed under” which clarifies the meaning of the provision.

The Marine Life Management Act mandates that fisheries management decisions are adaptive and are based on the best available science (Fish and Game Code § 7056(g) and § 7072(b)). The Marine Life Management Act also requires that the Department of Fish and Wildlife provide reports that include information on landings, fishing effort, fishing areas and other factors affecting the fishery (Fish and Game Code § 7065(b)). In addition, the Department is mandated to gather and prepare data on the extent of the fisheries for various species, to collect and prepare statistical information necessary for management of fisheries and to investigate the biology and environmental factors that inform management decisions and to ensure an optimum sustainable yield (Fish and Game Code § 8010).

The law requires commercial passenger fishing vessel license holders to keep and submit complete and accurate records of fishing activities on forms provided by the Department (Fish and Game Code § 7923 and

§8026). The law also provides the Commission with the authority to prescribe regulations regarding landing and permit information (Fish and Game Code § 7071, § 7923 and §8587.1). Fishing activity records provide important information to Department scientists and agencies responsible for making fisheries management decisions. These records provide data mandated by Fish and Game Code § 7065(b) and § 8010 including data that help the Department determine management measures to conserve fish populations and expand fishing opportunities. Management measures include, but are not limited to, restrictions based on time, area, depth, type and amount of gear, fishing methods, number of licensed vessels, individual and boat possession limits, and total allowable catch (i.e., quotas). The forms that the Department uses are periodically revised and updated to reflect current data needs and changes in species regulations.

Subsection 195 (a) will be amended to reflect the contents of forms DFW 195A (Rev. 02/13) and DFW 195B (Rev.02/13); as followings:

- 1) Vessel Name: This information is used to confirm the Vessel ID Number. It is important the Vessel ID Number is correct for enforcement purposes and for accurate catch and effort statistics that are mandated by law and used in fisheries management.
- 2) Vessel ID Number: This information is used to confirm current status of the commercial passenger fishing vessel license (issued under Fish and Game Code § 7920) and commercial boat registration (issued under Fish and Game Code § 7881). It is important to know the number of unique vessels participating in the fishery and the extent of their participation for accurate catch and effort statistics that are mandated by law and used in fisheries management.

- 3) Port of Landing: This information is used to confirm the port code. It is important the port code is correct for enforcement purposes and for accurate catch and effort statistics that are mandated by law and used in fisheries management.
- 4) Port Code: This information is used to determine the port where the vessel lands. It allows scientists to evaluate species caught, their distribution, and together with other data allows evaluation of fishing effort. Area specific information is important in understanding the fisheries, crafting regulations and evaluating the impacts of regulations.
- 5) Month, day, year: This information gives the date of fishing activity and is used by law enforcement officers to determine compliance with regulations concerning species fished and seasonal restrictions. It is used by Department scientists to evaluate when fish species are caught, and used in producing estimates of catch and effort for fisheries management.
- 6) Trip Type, Departure Time, and Return Time: This information allows law enforcement officers to determine time spent at sea and the compliance with daily bag and possession limits for fish species. This information is used by Department scientists to determine effort of fishing activity for use in fisheries management.
- 7) No fishing during the month of: This information is used by Department scientists to provide accurate estimates of recreational catch and effort for fisheries management, and assists in determining compliance in submitting logs.
- 8) Hours and Minutes Fished: This information allows Department scientists to evaluate fishing effort and catch rates for use in fisheries management.
- 9) Number of Fishers, Number of crew who fished and number of fish caught by crew: This information is used by law enforcement officers to determine compliance with individual bag limits and boat limits, and by Department scientists in producing estimates of catch rates, effort and total catch for fisheries management.
- 10) Block Where Most Fish Caught: This information allows Department scientists to evaluate the species distribution. Along with catch and effort information, it is used to determine the extent of various fisheries as mandated by law. This information is also used in producing estimates for fisheries management and determining impact of area restrictions.
- 11) Depth (Feet), Sea Surface Temp °F: This information is used by Department scientists to determine depth where species are being

caught and the environmental factors, specifically water temperature that may be influencing fish species distribution. For fisheries management purposes, these data may also aid in determining mortality rates for released fish and determining the impacts of depth restrictions.

- 12) Target Species: This information is used by Department scientists to determine what species are pursued and along with catch information, allows an informal evaluation of success. These data are also used in producing catch and effort estimates for fisheries management.
- 13) Fishing Method: This information is used by Department scientists to evaluate the impacts of different fishing practices, and may be used in developing management measures. In addition, mortality rates of released fish vary by fishing method for some species (e.g., salmon) and this information is used in producing fishing mortality estimates for those species.
- 14) Bait, Live, Dead: This information is used by Department scientists to evaluate the impacts of different fishing practices, for fisheries management.
- 15) Descending Device: Releasing fish with descending devices reduces fishing related mortality. This information is used by Department scientists to evaluate the impact of different fishing practices and provide data necessary for the development of management measures and for the production of more accurate estimates of fishing mortality.
- 16) Bird Interaction: This information is used by Department scientists to evaluate impacts of fishing practices with wildlife.
- 17) Operator's Name, Operator's Signature: This information is used by law enforcement officers to verify the activity record was submitted by the operator of the vessel. It also protects the owner and operator of the vessel by documenting that this is a true record of the vessel's activity.
- 18) Species, Number Kept, Number Thrown Back, Lost to Sea Lions: This information is used by Department scientists to determine species fish caught, discarded and lost to sea lions. Species listed are generally those that are frequently caught, are actively managed by State and federal fisheries agencies or are of biological importance. Discard and loss to sea lion data allows for estimates of incidental mortality. Catch data is used by law enforcement officers to determine compliance with daily bag, possession and boat limits (CCR Title 14 §1.17, §1.59, §195(a)(1),

§195 (e)).

CPFV Logbook will be updated to reflect specific instructions on how to fill out updated forms DFW 195A and DFW 195B.

The instructions for completing the CPFV logs tell the licensee or operator how to fill out the forms to ensure that accurate and consistent data are recorded (CCR Title 14 § 190 and § 195, Fish and Game Code

§ 7923 and § 8010). In addition, to facilitate accurate reporting, form DFW 195A lists the common ports and port codes in central and northern California and form DFW 195B lists the common ports and port codes in southern California. Please see the information above regarding necessity and authority to collect this data.

The updated logbook wording and regulation will improve the reporting requirements for CCR Title 14 § 190 and 195. This updated reporting requirement will make logbook requirements easier to understand by enforcement personnel, commercial fishers and CPFV owners and operators. The reporting data required will assist the department biological staff in managing the fisheries that require logbooks to be filled out.

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

Authority: Sections 7071, 7920, 7923, 7924, 8026 and 8587.1, Fish and Game Code.

Reference: Sections 7055, 7056, 7058, 7060, 7120, 7850, 7923, 7924, 8026 and 8587.1, Fish and Game Code.

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

None

(d) Identification of Reports or Documents Supporting Regulation Change:

Economic Impact Analysis

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

No public meetings are being held prior to the public notice. The 45 day comment period provides adequate time for review of the proposed documents.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

No reasonable alternatives were identified.

(b) No Change Alternative:

The no change alternative was considered and rejected because the current

language does not address enforcement issues related to: when fishing activity records (logs) should be completed; completing reports of no fishing during the month; and, completing of reports when fishermen are non-paying guests aboard CPFV.

(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 the 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.

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. This proposal only clarifies wording in the logbook as well as reporting requirements. It does not limit any take or interfere with the ability to make money.

(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.

The proposed amendments to the regulations do not have foreseeable benefits to the health and welfare of California residents or to worker safety.

The proposed regulations should benefit the State's environment by improving reporting of fish take in the California waters and the resultant analysis and recommendations that the Department may make.

The commission expects that proposed amendments and additions to the regulations concerning fishing activity records will provide a non-monetary benefit by improving the monitoring and reporting of the take of ocean fish by CPFV.

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

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(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

Informative Digest/Policy Statement Overview

Section 190 to be amended.

Currently, Section 190 requires that log books be filled out for specified fisheries (e.g., trawl, trap, live bait, market squid, commercial passenger vessels, etc.). These daily records are turned in monthly to the department and used to assist the management of these fisheries. Current wording in Section 190, proposed for deletion, requires logs to be completed “before the end of a trip, at the time of sale of the catch or at the end of each day’s fishing.” This language can be confusing for those filling out the records and for the wildlife officer trying to enforce the regulations. Proposed new wording in subsection 190(b) of “immediately when any of the following first occurs: (1) prior to passengers or crew disembarking from the vessel, or (2) at the time of receipt, purchase, or transfer of fish, or (3) at the end of the calendar day (midnight) during fishing activity through the night” provides clear points in time when the records must be completed.

Section 195 to be amended.

The proposed changes in subsection 195(a) will delete and replace the existing Skipper’s Log Book with updated forms entitled “COMMERCIAL PASSENGER FISHING VESSEL LOG” for Southern and Central/Northern California. The instructions explain when and how logs are to be filled out as well as when the logs are to be delivered to the department. The new logs will provide a new box for an entry of “No fishing activities for the month of: _____.” All logbooks are valuable to the management of the fisheries and assist the department in determining catch beneficial to fishermen.

There are times when a licensed Commercial Passenger Fishing Vessel (CPFV) operator may take out nonpaying customers or friends out on a fishing venture. It is recommended in this proposal with the addition of subsection 195(a)(5) that a licensed CPFV be required to keep logbook records when on a fishing trip, whether or not the trip involves paying or nonpaying fishing customers. This would also give a better data base tracking all fish caught on CPFV’s.

Currently in subsection 195(e)(5) the regulation, in part, specifies “operating under authority of a license issued pursuant to”, this language is proposed for deletion and will be replaced by “licensed under” which clarifies the meaning of the provision.

The commission expects that proposed amendments and additions to the regulations concerning fishing activity records will provide a non-monetary benefit by improving the monitoring and reporting of the take of ocean fish by CPFV. The commission does not anticipate significant non-monetary benefits to the protection of public health, worker safety, the prevention of discrimination, the promotion of fairness and social equity, or to the increase in openness and transparency in business and government.

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. No other agency has authority to adopt fishing log book regulations.