

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

Amend Section 155
Title 14, California Code of Regulations
Re: Commercial Take of White Seabass

I. Date of Initial Statement of Reasons: July 1, 2009

II. Dates and Locations of Scheduled Hearings:

(a) Notice Hearing: Date: August 6, 2009
Location: Woodland

(b) Discussion Hearing: Date: October 1, 2009
Location: Woodland

(c) Adoption Hearing: Date: November 5, 2009
Location: Woodland

III. Description of Regulatory Action:

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

The current wording of CCR Title -14 Section 155 needs to be more concise and clear in order to make it better enforceable. Current section wording refers to the United States–Mexico International Boundary. This wording differs from the Fish and Game Code (Code) Section 2362 amendment which went into effect January 1, 2008. The border between the United States and Mexico is not an extension of the land-based border. As shown on NOAA charts, the marine boundary line extends into the ocean much differently than the Code describes. Additionally, the Exclusive Economic Zone (EEZ) of the United States extends beyond the maritime boundary line out to 200 miles. The maritime boundary was established in a 1970 treaty between United States and Mexico in 1970, and this line is recognized by both countries. Additionally, the EEZ was established by Proclamation 5030 in 1983. The boundary line for this zone separates our fishing waters from Mexcian fishing waters. The zone is also recognized by both countries. Historically, the Department has told fishermen that the boundary line in Section 2362 is the EEZ line. Since the amendment to Code Section 2362 addresses the international boundary in terms that include the EEZ and as it specifically relates to commercial take of yellowtail, barracuda and white

seabass, CCR Title -14 Section 155 simply needs to reference the area south of Point Conception. CCR Title -14 only regulates what occurs within the jurisdiction of California and therefore “south of Point Conception” would only regulate the area that falls within the area governed by the Fish and Game Code and CCR Title -14. That inference is all that is needed within the section.

The current wording of the closure dates in this section, for the take of white seabass, allows for different interpretations. The use of the word “between” used in conjunction with the two listed dates may lead some to interpret that the listed dates are not inclusive. The amendment instead uses the words “from” and “through”. That wording more clearly indicates the listed dates are inclusive.

Current section wording allows for the landing of white seabass taken in Mexico, if the person landing the fish is in possession of a Mexican fishing permit. According to the current wording the Mexican permit is adequate proof that white seabass were taken in Mexico. Currently, the Department is not aware of any permit issued by the Mexican authorities that would allow for the take of white seabass in Mexico waters, and then be allowed to be landed in California. Fish and Game Code Section 2353 already covers importation requirements for fish brought into California. This wording is not needed for this CCR Title -14 section.

Current wording allows for misinterpretation of the amount of white seabass that can be taken on a multi-day commercial fishing trip. A trip may last three days and the wording referring to “each day” can open the door to the argument that the section allows for three white seabass to be taken, possessed and sold each day.

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

Authority: Section 7071, Fish and Game Code.

Reference: Section 7071, Fish and Game Code.

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

None.

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

None.

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

None.

IV. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change: The alternative would be a legislative change but similar wording within the Fish and Game Code (Section 8383) was deleted on January 1, 2008. It is more appropriate for the wording to be within the CCR Title -14 rather than expect the legislature to directly control the issue. The purpose of CCR Title -14 is to enact the authority provided by the Code and the proposal accomplishes that task in an appropriate and direct manner.
- (b) No Change Alternative: The no change alternative may allow needless confusion as to the closure dates for the take of white seabass, the potential misuse of Mexican fishing licenses to “prove” that white seabass were taken in Mexican jurisdictional waters, the continued use of different wording (Code Section 2362 verses CCR Title -14 Section 155) to describe the boundary between Mexico and California (U.S.) jurisdiction and it may also allow defense attorneys to argue that more than one white seabass may be taken/possessed on a multi-day trip.
- (c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

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. The proposal makes the intent of the section more enforceable and allowing those who are in compliance to more ably compete within this industry.

- (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:

No significant impact.

- (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:

None

- (h) Effect on Housing Costs:

None

Informative Digest/Policy Statement Overview

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