

**TITLE 14. Fish and Game Commission
Notice of Proposed Changes in Regulations**

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by Section 7071, of the Fish and Game Code and to implement, interpret or make specific Section 7071 of said Code, proposes to amend Section 155, Title 14, California Code of Regulations, relating to Commercial Take of White Seabass.

Informative Digest/Policy Statement Overview

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 Mexican 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 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.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Yolo Fliers Club, Ballroom,

17980 County Road 94B, Woodland, California, on Thursday, October 1, 2009, at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Yolo Fliers Club, Ballroom, 17980 County Road 94B, Woodland, California, on Thursday, November 5, 2009, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before October 29, 2009 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on November 2, 2009. All comments must be received no later than November 5, 2009, at the hearing in Woodland, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to John Carlson, Jr., or Sheri Tiemann at the preceding address or phone number. **Mr. Rob Allen, Enforcement Branch, Department of Fish and Game, (916) 651-9953 has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

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 Business, 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, Government Code:

None.

- (h) Effect on Housing Costs:

None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: September 1, 2009

John Carlson, Jr.
Executive Director