

- (2) Joe Exline, private vessel angler, email dated 1/8/15
- a. Acknowledges that an exception for skipjack tuna may cause confusion for enforcement and anglers, skin of fish may discolor when kept in a cooler, and regulatory exceptions may cause complexity in the regulation.
 - b. Expresses concerns regarding the use of previously-caught skipjack tuna as bait since the bait will no longer be in the required six pieces.

Response:

- a. Acknowledgements noted.
- b. Advice on proper actions for this situation was obtained from State law enforcement leadership. In a situation where an angler is using pieces of fish caught on an earlier fishing trip as bait for current fishing activities, the angler will identify to the warden that the fish was taken on a previous fishing trip and the warden uses several determinant factors to identify the fish as previously-caught. These include a change in the color or appearance of the meat and/or skin, the meat may be cured or the meat may be fully or partially frozen.

- (3) James Thompson, Lifetime California fishing license holder, email dated 1/24/15
- a. Objects to fillet provision that all six pieces are to be kept together in one bag.
 - b. Asks what science was used to support the decision to create these regulations.

Response:

- a. This provision was a request by the Department's law enforcement division, to provide accountability for the number of fish in possession. Pieces could be packed in ice inside a large bag, or sealed individually and kept together as one fish in a larger bag.
- b. Federal and international scientists work together through an organization called the International Scientific Committee for Tuna and Tuna-Like Species (ISC) to review and analyze the best available data to assess the status of the population. This organization is made up of scientists from countries who fish for North Pacific migratory tuna and tuna-like species and who collaborate on stock assessments. Using data from commercial and recreational fisheries across the Pacific as well as on-the-water scientific observations, the stock assessment describes the past and current status of the population. Recently, the ISC determined

that the Pacific bluefin tuna population is at historic lows (about four percent compared to the biomass if no fishing had taken place). The amount and rate of all sizes and ages of bluefin harvested each year continues to be too high. As a result, the population is considered to be overfished and subject to overfishing. An international rebuilding effort is underway to reduce fishing impacts, bring the stock back to healthy levels, and ensure the sustainability of future harvests. These proposed regulatory measures are part of the rebuilding effort.

- (4) Richard D. Daybell, licensed California angler and boat owner, email dated 1/29/15
- a. Asks would the bag limit and fillet provisions apply to fish caught in Mexican or international waters.
 - b. Supports the two fish limit for 2015 and 2016, but requests further evaluation regarding catch limits beyond this time period.
 - c. Questions the fillet provisions, specifically the requirement for six pieces. And refers to them as an undue burden to Commercial Passenger Fishing Vessel (CPFV) crews and private boaters who process and fillet fish.
 - d. Questions why there are to be six pieces per bag when there may only be 2 or 4 pieces of fillets.
 - e. Requests only bags containing bluefin tuna are required to be labeled.
 - f. Asks if the proposed regulation applies to albacore tuna.
 - g. Requests an alternative identification to keeping all the skin attached, as other fish only require a one inch square of skin remain attached.
 - h. Questions why regulation only applies to fish caught south of Point Conception as many tuna, including bluefin, have been caught north of the boundary in recent years.
 - i. Asks what restrictions, if any, are being placed on the commercial fishing industry related to the take and processing of tuna using nets and jig gear.

Response:

- a. The adopted rules apply to all tuna possessed in California waters including those caught outside U.S. waters and landed in California.
- b. The adopted regulations are in conformance with federal rules decided as part of a rulemaking process occurring on a two year schedule through the Pacific Fishery Management Council, and will continue until new information, evaluated through the biennial management cycle, warrants a change.

- c. The adopted fillet rules were created in collaboration with the representatives of the recreational fishing industry, law enforcement and scientific experts from the Department, NOAA Fisheries, and the Inter-American Tropical Tuna Commission (IATTC). These parties worked together to develop methods that are as least burdensome as possible, while still allowing law enforcement and scientists to accurately identify filleted tuna by species.
- d. Each fish to be filleted should be cut into the six pieces specified by the adopted fillet rule. These include the four loins, the collar removed as one piece with both pectoral fins attached and intact, and the belly fillet cut to include the vent and with both pelvic fins attached and intact.
- e. Labeling each bag that contains a filleted tuna, makes it clear to law enforcement how many tuna of each species an angler has caught and filleted.
- f. For consistency and clarity, the adopted fillet provisions apply to all tuna of any species caught or possessed south of Point Conception. This includes any albacore tuna caught or possessed south of Point Conception.
- g. Reject. It was determined by scientists and law enforcement that all the skin must remain attached to facilitate proper identification of the filleted tuna by species.
- h. Though bluefin tuna have been caught north of Point Conception in recent years, the fishery is still primarily conducted from this point south. Limiting the fillet provisions to this area alleviates an undue burden on albacore anglers in the northern part of the State.
- i. In 2014 the IATTC, which regulates commercial bluefin tuna in the Pacific, adopted treaty agreements to reduce commercial catch of Pacific bluefin to 20 to 45 percent of the 2002-2004 average among member nations, Pacific wide. Commercial limits for the eastern Pacific Ocean (EPO), namely Mexico and the U.S., have been reduced from 5,000 metric tons (mt) for one year in 2014 to 6,600 mt total for two years in 2015 and 2016 combined – no more than 3,500 mt of the two year limit may be caught in 2015. This represents a decrease of 34 percent. The U.S. commercial catch limit was reduced by 40 percent, from 500 mt in 2014 to 600 mt for 2015 and 2016 combined. This effectively reduces the U.S. annual catch limit to 300 mt. Treaty negotiations allowed for catch limits for the California recreational fishery to remain outside of these catch limit actions with the understanding that federal fishery managers would develop regulations that achieve a comparable reduction in recreational take.

- (5) Kim J. Blakely, email dated 3/5/15
- a. Comments that it is illegal for sport caught bluefin tuna to be sold, and that unless the commercial fishery is stopped nothing will change.
 - b. States that stopping sport fishing for bluefin tuna in California waters will do no good in the long run, since, in most years, not many bluefin are caught north of the U.S./Mexico border.

Response:

- a. The adopted recreational bag limit reduction is expected to reduce the recreational catch by 32 percent for 2015 and 2016, within the range recommended by the IATTC. Similarly, as stated above in Response (4)i., the commercial bluefin tuna catch limit in California will be reduced by 40 percent through international treaty adopted into federal regulation. Significant catch savings in both the commercial and recreational fisheries Pacific wide is necessary to address overfishing for this species.
 - b. Not only does the adopted bag limit reduction affect anglers fishing in U.S. waters, but the limit will be applicable to any Pacific bluefin tuna possessed by anglers in California waters or landing in California ports, even if the fish were caught in Mexico. Treaty member nations, including Mexico, agreed to implement their own plans to reduce recreational catch by 20 to 45 percent, in line with reductions in commercial catch limits implemented Pacific wide.
- (6) Representatives of Center for Biological Diversity, Aquarium of the Bay and The Bay Institute, Blue Frontier, Friends of the Earth, Great Whale Conservancy, Greenpeace, Mission Blue/Sylvia Earle Alliance, Ocean Defenders Alliance, The Safina Center, The Snorkel Bob Foundation, Turtle Island Restoration Network, Sierra Club – San Diego; email dated 4/3/15
- a. Request one-fish daily bag limit or catch and release only.
 - b. States the two-fish daily bag limit will not comply with IATTC resolution for reduction in bluefin catch.

Response:

- a. Reject. The adopted two-fish daily bag limit for bluefin tuna conforms to the proposed federal regulations, PFMC decision and the recommendations of the IATTC for reducing recreational catch of bluefin tuna.
- b. The IATTC recommends that its member nations reduce their recreational catch of bluefin tuna at a comparable rate to the commercial rates specified in the resolution. The resolution specifies a 34 percent reduction of the catch limit for all eastern

Pacific commercial bluefin tuna fishing and a 40 percent reduction to the U.S. catch limit. The Department's bag limit analysis estimates that the adopted two-fish daily bag limit will reduce recreational catch by 32 percent of recent catch rates.

- (7) Catherine Kilduff, Staff Attorney, Center for Biological Diversity, email dated 4/3/15
- a. States the two-fish daily bag limit falls short of what is needed to protect bluefin tuna from extinction.
 - b. Requests possession of bluefin tuna by recreational fishermen be prohibited until the stock has rebuilt or a one-fish daily bag limit.
 - c. States that Pacific bluefin tuna is rapidly approaching extinction and that urgent management action is needed to ensure that juveniles reach maturity and guarantee the persistence of the species.
 - d. States that California Law allows and requires the Commission to set more restrictive limits than recommended by the PFMC.
 - e. States the two-fish daily bag limit will not comply with the IATTC resolution for reduction in bluefin catch.
 - f. States the proposed limit undermines the U.S. negotiating position in advocating for substantial reductions of other countries' catch.

Response:

- a & e. The IATTC recommends that its member nations reduce their recreational catch of bluefin tuna at a comparable rate to the commercial rates specified in the resolution. The resolution specifies a 34 percent reduction of the catch limit for all commercial bluefin tuna fishing in the eastern Pacific and a 40 percent reduction to the U.S. commercial catch limit. The Department's bag limit analysis estimates that the adopted two-fish daily bag limit will reduce California recreational catch by 32 percent of recent catch rates.
- b & c. Reject. State regulations conform to regulations being enacted by NMFS, who was party to the IATTC treaty negotiations and development of the stock assessment and resolution recommendations. The IATTC's 2014 resolution, C-14-06, calls for a 20 to 45 percent reduction in catch across the species' range as recommended by the ISC. The IATTC prescribed a 34 percent reduction of commercial catch in the EPO, and a 40 percent reduction to U.S. commercial catch. The resolution recommends comparable reductions to sport catch in member nations.
- d. While state law gives the Commission authority to set a more restrictive limit than that set by PFMC and NMFS, the proposed rule was well vetted in the federal public rulemaking process and fulfilled the requirements set by the international resolution.

- f. On an international scale the total U.S. bluefin catch, including commercial and recreational sources, constitutes only a small fraction of the bluefin tuna caught by all countries fishing in the EPO. The overall impact of fishing in the Western Pacific is greater (84 percent) compared to the Eastern Pacific fisheries (16 percent), and fishing in the west is increasing at a greater rate. The reduction measures proposed in this rule represent a significant decrease in catch for U.S. fishermen.

VII. 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

VIII. Location of Department Files:

Department of Fish and Wildlife
1416 Ninth Street
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

At the December 3, 2014 Commission meeting, a member of the public requested a change to allow skipjack tuna fillets to be brought ashore as two pieces instead of the required six pieces. This would conflict with the State's conformance with the expected final federal regulations and was not included as an option in this regulatory proposal.

No other alternatives were identified by or brought to the attention of Commission staff that would have the same desired regulatory effect.

(b) No Change Alternative:

Under the No Change Alternative, State law would be inconsistent with federal law. Inconsistency in regulations will create confusion among the public and may result in laws that are difficult to enforce. Further, the goal of a 20 to 45 percent reduction in Pacific bluefin tuna fishing mortality as specified in the IATTC resolution would not be achieved.

It is critical to have consistent State and federal regulations establishing

season dates, bag limits and other management measures, and also critical that the State and federal regulations be effective concurrently. Consistency with federal regulations is also necessary to maintain State authority over its recreational Pacific bluefin tuna fishery and avoid federal preemption under the Magnuson-Stevens Fishery Conservation Act [16 USC Section 1856 (b)(1)].

(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, 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.

X. 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. Negative economic impacts are not expected from a reduction in the Pacific bluefin tuna bag limit as fishers will likely target other tuna species after the Pacific bluefin tuna limit is met. The reduced bag limit is also not expected to substantially reduce the numbers of anglers on CPFV trips and the associated angler spending. The proposed regulations continue to allow recreational anglers to take and possess Pacific bluefin tuna in State waters, and for CPFV anglers to have their tuna catch filleted by crew members while the vessel is still at sea.

(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. No significant changes in fishing effort and recreational fishing expenditures to businesses are expected as a direct result of the proposed regulation changes.

The Commission does not anticipate any benefits to worker safety.

The Commission anticipates benefits to the environment by the sustainable management of California's sport fishing resources, which may result in benefits to the health and welfare of California residents. Participation in sport fisheries opportunities fosters conservation through education and appreciation of California's fish and wildlife.

(d) 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.

(e) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

(f) Nondiscretionary Costs/Savings to Local Agencies:

None.

(g) Programs Mandated on Local Agencies or School Districts:

None.

(h) 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.

(i) Effect on Housing Costs:

None.

Updated Informative Digest/Policy Statement Overview

The Pacific Fishery Management Council (PFMC) reviews the status of Pacific bluefin tuna and other west coast tuna populations using a biennial management cycle. As part of that process, it recommends fisheries regulations aimed at meeting biological and fishery allocation goals specified in law or established in the West Coast Highly Migratory Species Fishery Management Plan (HMS FMP). These recommendations coordinate west coast management of recreational and commercial highly migratory species fisheries in the federal fishery management zone (three to 200 miles offshore) off Washington, Oregon and California. These recommendations are subsequently implemented as federal fishing regulations by the National Marine Fisheries Service (NMFS).

For consistency, the California Fish and Game Commission (Commission) routinely adopts regulations to bring State law into conformance with federal law for Pacific bluefin tuna and other federally-managed species.

Summary of Proposed Amendments

The Department of Fish and Wildlife (Department) is proposing the following regulatory changes to be consistent with the PFMC recommendations for federal tuna regulations in 2015 and 2016. This approach will allow the Commission to adopt State recreational tuna regulations to timely conform to those taking effect in federal ocean waters in May 2015.

The proposed regulations decrease the Pacific bluefin tuna daily bag limit from 10 to two fish. Pacific bluefin tuna was declared overfished and a decreased bag limit is expected to reduce the recreational catch by 32 percent for 2015 and 2016, within the range recommended by the IATTC.

The proposed reduction to the Pacific bluefin tuna daily bag and possession limit creates a need for law enforcement to differentiate between Pacific bluefin tuna and other tuna species commonly landed by southern California anglers.

The proposed regulations would modify the fillet regulations to require tuna filleted on any boat or brought ashore as fillets south of Point Conception be filleted in a manner that allows for identification of the species of tuna. The final recommendation for fillet regulations for all species of tuna filleted on a vessel or brought ashore as fillets south of Point Conception requires that each fish be cut into six pieces retaining all the skin, all pieces of each fish be placed together in one bag, and the bag be labeled with the species' common name.

The benefits of the proposed regulations are consistency with federal regulation, the sustainable management of California's tuna resources, and protection of overfished

stocks.

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. The Legislature has delegated authority to the Commission to adopt sport fishing regulations (Fish and Game Code, sections 200, 202 and 205) and tuna fishing regulations specifically (Fish and Game Code, Section 313). The proposed regulations are consistent with regulations for sport fishing in marine protected areas (Section 632, Title 14, CCR), general sport fishing regulations in Chapters 1 and 4 of Subdivision 1 of Division 1, Title 14, CCR, and regulations concerning the exchanging of sport-caught fish (Section 231, Title 14, CCR). Commission staff has searched the California Code of Regulations and has found no other State regulations related to the recreational take of Pacific bluefin tuna.

The proposed regulations are neither inconsistent nor incompatible with existing State Department of Health Services regulations concerning canning, inspection and labeling of food and pet food (sections 12660, 12665, 12670, 12675, 12680, 12685 and 19025, Title 17, CCR), and Department of Health Services regulations concerning the California Special Supplemental Food Program for Women, Infants and Children (Section 40740, Title 18, CCR).

At its April 8, 2015 meeting, the Commission adopted the regulations as originally proposed.

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

Amend Subsection (b) of Section 27.65 and Subsection (b) of Section 28.38,
Title 14, California Code of Regulations
Re: Pacific Bluefin Tuna Daily Bag Limit and Tuna Fillet Procedures
for Consistency with Federal Rules

Update to Section III(a) of the Initial Statement of Reasons - Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

Section 28.38, subdivision (b), is being amended to include the following language: "This limit applies to all bluefin tuna possessed, regardless of where taken." This language is necessary to clarify that the bag limit applies to all bluefin possessed in California waters, which includes bluefin tuna caught outside California waters (i.e. Mexico) and bluefin tuna caught in California waters. Including this provision ensures that anglers are held to California's two bluefin tuna bag limit for all bluefin tuna possessed in California waters. A possession limit is necessary because the bag analysis performed to estimate catch savings is based on all recreational bluefin tuna catch being landed in California waters. Over 90 percent of the bluefin tuna catch comes from Mexico, so catch must be limited across the board in order for the bag reduction to be effective and achieve the estimated 30 percent savings in line with Inter-American Tropical Tuna Commission (IATTC) resolution requirements. Failure to include this language will result in lack of conformance with federal regulation, which specifies a possession limit for all recreational catch of bluefin landed on the West Coast, and a failure to comply with IATTC treaty requirements to reduce recreational catch in the Eastern Pacific.

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

Two additional documents supporting the regulation change are being added:

- Inter-American Tropical Tuna Commission Resolution C-14-06
- Inter-American Tropical Tuna Commission Proposal IATTC 87 I-3A