

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 Sections 1050(b), 8046, 8046.1, and 8047 of the Fish and Game Code and to implement, interpret or make specific Sections 8031, 8032, 8033, 8033.1, 8034, 8035, 8040, 8043, 8045, and 8047 of said Code, proposes to add Section 197, Title 14, California Code of Regulations, and Title 50, Sections 660.113, 660.213 and 660.313, Code of Federal Regulations, relating to Commercial Fisheries Landing Requirements.

Informative Digest/Policy Statement Overview

The purpose of the addition of Section 197, Commercial Fisheries Landing Requirements, is the management of activities associated with commercial fisheries landings and the reporting of these landings. A “landing” is generally characterized as the transfer or offloading of fish from a vessel for the purpose of selling or delivering those fish to a licensed fish receiver. The proposed regulations are necessary to manage this transaction and to clarify the applicable statutes for the participants and law enforcement. To date, there are no regulations guiding this activity. Statutes authorizing commercial fisheries licenses and landing taxes are found in Article 7 and Article 7.5 of Fish and Game Code. Commercial fish receivers are engaged in business for profit and are required to be licensed and to report all landing receipt records on a form furnished by the Department of Fish and Wildlife (Department) pursuant to Fish and Game Code sections 8043 and 8047. In addition, Fish and Game Code subsection 1050(b) authorizes the Fish and Game Commission (Commission) to determine the forms to be used for commercial fisheries entitlements.

The proposed regulations implement a transition from the current paper-based reporting system to electronic forms via a new electronic reporting system for commercial fisheries landings.

Transitioning from paper landing receipts to electronic fish tickets, as the electronic forms are known, is appropriate at this time as advances in computer and Internet technology and the use of electronic devices by many businesses, including the fishing industry, is widespread. It is necessary that the Department update its processes, including proposing regulations to ensure the benefits of switching from paper landing receipts to electronic fish tickets are realized.

The electronic fish tickets will be submitted to the Department through the federal, web-based *E-Tix* system maintained by Pacific States Marine Fisheries Commission (PSMFC). *E-Tix* has been a federal requirement for the individual fishing quota groundfish trawl fishery since its inception in 2011. Oregon has adopted *E-Tix* for all fisheries on a voluntary basis and Washington is working towards this as well. The

Department's goal is to phase out the use of paper landing receipts and transition to electronic fish tickets using the PSMFC *E-Tix* application for data entry. This eliminates the issue of duplicate electronic reporting systems and provides consistency between federal and State agencies.

These regulations will provide for a phase in period of one year for all landing receipts to be submitted electronically via the *E-Tix* system. Phasing in the mandate to use electronic fish tickets is a reasonable approach to implementing a new reporting structure, since there will be a portion of the buyers or receivers that will have an adjustment period which will include a learning curve to learn the electronic program, and provides time for those that do not have access to the Internet or Internet capable devices to obtain access.

PROPOSED REGULATIONS

- Defines specific terms used within the proposed regulations.
- Includes information included on a paper landing receipt, fish transportation receipt and electronic fish ticket.
- Includes information on the transition from paper landing receipts to electronic fish tickets via the web-based application known as *E-Tix*, including the phase-in period until full implementation of electronic reporting. During the phase-in period either paper landing receipts or electronic fish tickets can be used, but not both.
- Includes procedures on fish transportation receipts from the point of landing to the fish receiver who buys the fish and fills out a paper landing receipt or electronic fish ticket.
- Describes the hardware and software requirements to fill out electronic fish tickets, the requirements to ensure Internet accessibility in a sufficient state to completely and effectively submit the electronic fish ticket, as well as what to do in case of a power outage or device failure that could restrict access to the *E-Tix* system.
- Provides details on when the electronic fish ticket should be submitted - specifically within 24 hours of the landing, who should review and verify the information by providing signatures prior to submission, and includes the process for retaining copies of the receipt to verify the signatories.
- Allows fish receivers to request a waiver from electronic reporting when circumstances exist that prevent a fish receiver from reporting landings via *E-Tix* and provides details on how to obtain a waiver from the Department.
- Ensures that submitted electronic fish tickets can be revised after submission in the event that data errors are found on the receipt.

BENEFITS OF THE PROPOSED REGULATIONS

The proposed regulatory action will benefit fishermen, fish receivers, the State's economy, and the environment by maintaining healthy and sustainable commercial fisheries. Specific benefits include:

1. Time savings and reduced costs to the Department by reducing the amount of time and money spent designing, printing, packaging and mailing landing receipts to the fish businesses.
2. Transition of Department data entry staff to other priority tasks associated with landings data as data entry of paper forms is eliminated.
3. Ease of record storage and maintenance of electronic records by the Department.
4. Built-in checks and validations in electronic fish tickets will result in more accurate fisheries data on which the Department and the Commission can base management decisions.
5. Use of electronic fish tickets will result in more timely submission of fisheries data for both management and law enforcement.
6. Electronic fish tickets will provide for ease of information storage, data manipulation for research, production for legal reasons and information sharing with other fishery management agencies and law enforcement.
7. Availability of landing data and reporting tools for fish receivers.
8. Provides consistency with federal regulations for certain fisheries that also require electronic reporting via the same web-based application.

CONSISTENCY WITH STATE REGULATIONS

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. Commission staff has searched the California Code of Regulations and statutes and has found no other State regulations related to the completion of landing receipt records and no other State agency with authority to promulgate regulations concerning landing receipt records.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the SpringHill Suites by Marriott, 900 El Camino Real, Atascadero, California, on Thursday, October 12, 2017, at 8:00 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 5:00 p.m. on September 28, 2017 at the address given below, or by email to FGC@fgc.ca.gov. Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on

October 6, 2017. All comments must be received no later than October 12, 2017, at the hearing. If you would like copies of any modifications to this proposal, please include your name and mailing address.

Availability of Documents

The Initial Statement of Reasons, text of the regulations, as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Valerie Termini, 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 Valerie Termini or Sheri Tiemann at the preceding address or phone number. **Katie Perry, Environmental Program Manager, Department of Fish and Wildlife, has been designated to respond to questions on the substance of the proposed regulations. Ms. Perry can be reached at (916) 445-6456 or Katie.Perry@wildlife.ca.gov.** Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout can be accessed through our 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. 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/Results of the Economic Impact Assessment

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:

Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

- (a) 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 electronic application can be used on any internet capable device, including personal computer, mobile device, or tablet. Such devices are common tools used to conduct business, so there should be minimal expense to an individual commercial fisherman who sells fish to persons not licensed as fish receivers and to fish businesses. If a commercial fisherman or fish business needs to maintain and/or upgrade their device or internet connection, that will be their responsibility and they may incur some costs. Internet browsers can be downloaded onto an existing internet-capable device free of charge (e.g., Google Chrome, Mozilla Firefox). The costs of purchasing an internet-capable mobile device (e.g., cell phone) may range from free of charge with commitment to a service contract to several hundred dollars depending on the mobile device and service plan. The cost of a tablet ranges from \$50 to \$400. The cost of purchasing a computer starts at about \$200 for a basic model. The costs of an internet service provider vary depending on whether or not a phone is purchased, but generally runs about \$90 per month without any promotions. Offsetting these potential costs are the benefits to fish receivers with improved timeliness of catch data and ability by the Department to manage the fisheries. In addition, eliminating the requirement to complete paper receipts and for some to complete electronic fish tickets for both state and federally managed species at one time is a benefit. Finally, such expenditures are tax deductible business expenses.

- (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 Department does not anticipate any impacts on the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses in California. The Department does not anticipate any benefits to the health and welfare of California residents or worker safety. The Department anticipates benefits to the environment in the sustainable management of commercial fisheries.

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

See (a) above.

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

The E-Tix is a federal application, and is owned and maintained by PFMSC. Therefore, the expense to the Department for implementation should be nominal. The cost savings by not printing landing receipt books, providing return reply envelopes, and postage would be significant. The average cost to the Department for printing, providing prepaid envelopes and return postage averages

about \$100,000 per year. Additional cost savings would occur for the State due to the cessation of manually entering the fish ticket information into a data management system from the paper receipts.

- (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 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, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Dated: July 11, 2017

Valerie Termini
Executive Director