

STAFF SUMMARY FOR AUGUST 7-8, 2019

23. MARINE PETITIONS FOR REGULATION CHANGE**Today's Item**Information Action

This is a standing agenda item for FGC to act on regulation petitions from the public that are marine in nature. For this meeting:

- (A) Action on the petition for regulation change received at the Jun 2019 meeting
- (B) Pending regulation petitions referred to FGC staff and DFW for review

Summary of Previous/Future Actions

- (A)
 - Receipt of new petition Jun 12-13, 2019; Redding
 - **Today's action on petition Aug 7-8, 2019; Sacramento**
- (B)
 - FGC received petition #2018-017 Dec 12-13, 2018; Oceanside
 - FGC referred petition to DFW Feb 6-7, 2019; Sacramento
 - **Today's discussion and possible action Aug 7-8, 2019; Sacramento**

Background

Pursuant to Section 662, any request for FGC to adopt, amend, or repeal a regulation must be submitted on form FGC 1, "Petition to the California Fish and Game Commission for Regulation Change." Petitions received at an FGC meeting are scheduled for consideration at the next business meeting under (A), unless the petition is rejected under 10-day staff review as prescribed in subsection 662(b). A petition may be (1) denied, (2) granted, or (3) referred to committee, staff or DFW for further evaluation or information-gathering. Referred petitions are scheduled for action under (B) once the evaluation is completed and a recommendation made.

- (A) **Petitions for regulation change:** One petition scheduled for consideration today was received at the Jun meeting; it was submitted by the comment deadline and published in the meeting binder.

Petition #2019-012: Prohibit the use of hand operated water pumps to take gaper and other clams (Exhibit A1).

- (B) **Pending regulation petitions:** DFW has completed its review and prepared recommendations for one petition previously referred to DFW in Feb 2019.

Petition #2018-017: Delete minimum fillet size for ocean whitefish and only require the fillet to bear the entire skin intact (Exhibit B1).

Significant Public Comments (N/A)

STAFF SUMMARY FOR AUGUST 7-8, 2019

Recommendation

- (A) **FGC staff:** Refer Petition #2019-012 to DFW for review and recommendation.
- (B) **FGC staff:** Approve DFW's recommendation.
- DFW:** Deny Petition #2018-017 to allow DFW time to gather data to ensure sustainable management measures are in place (Exhibit B2).

Exhibits

- A1. [Petition #2019-012: Prohibit the use of hand operated water pumps to take gaper and other clams](#), received May 30, 2019
- B1. [Petition #2018-017: Delete minimum fillet size for ocean whitefish and only require the fillet to bear the entire skin intact](#), received Nov 27, 2018
- B2. [DFW memo regarding Petition #2018-017](#), received Jul 18, 2019

Motion/Direction

Moved by _____ and seconded by _____ that the Commission adopts the staff recommendation to refer petition #2019-012 to the California Department of Fish and Wildlife for review and recommendation; and to deny Petition #2018-017 for the reasons set forth in Exhibit B2.

OR

Moved by _____ and seconded by _____ that the Commission adopts the following actions for petitions for regulation change:

#2018-017: _____, and #2019-012: _____.



Tracking Number: (2019-012)

To request a change to regulations under the authority of the California Fish and Game Commission (Commission), you are required to submit this completed form to: California Fish and Game Commission, 1416 Ninth Street, Suite 1320, Sacramento, CA 95814 or via email to FGC@fgc.ca.gov. Note: This form is not intended for listing petitions for threatened or endangered species (see Section 670.1 of Title 14).

Incomplete forms will not be accepted. A petition is incomplete if it is not submitted on this form or fails to contain necessary information in each of the required categories listed on this form (Section I). A petition will be rejected if it does not pertain to issues under the Commission's authority. A petition may be denied if any petition requesting a functionally equivalent regulation change was considered within the previous 12 months and no information or data is being submitted beyond what was previously submitted. If you need help with this form, please contact Commission staff at (916) 653-4899 or FGC@fgc.ca.gov.

SECTION I: Required Information.

Please be succinct. Responses for Section I should not exceed five pages

1. Person or organization requesting the change (Required)

Name of primary contact person: Carl W. Vogler

Address:

Telephone number:

Email address:

2. Rulemaking Authority (Required) - Reference to the statutory or constitutional authority of the Commission to take the action requested: FGC §200, 202, 205, 210, 219, and 220

3. Overview (Required) - Summarize the proposed changes to regulations: I propose to prohibit the use of hand operated water pumps to take gaper and other clams.

4. Rationale (Required) - Describe the problem and the reason for the proposed change: In the past a person wanting to get a limit of gaper clams needed a daylight tide lower than 0.5' MLLW in order to dig a hole in the mud no longer covered with water. In any given year no more than 45% of the days would have such an opportunity. Hand operated water pumps have become popular with which to jet out the gaper clams. The pumps not only allow users to access clams on higher tides but actually require that some water be present in order to function. Skilled users are able to get their limits of gaper clams on most days. At Lawson's Landing in Dillon Beach on Tomales Bay, we are seeing an average of 40 people per day getting their 10 clam limits, or about 60,000 clams taken by the end of May this year. One of the clammers told me that he thought that there were about two more years of clams left before he'd have to go somewhere else.

SECTION II: Optional Information

5. Date of Petition: May 29, 2019

6. Category of Proposed Change



- Sport Fishing
- Commercial Fishing
- Hunting
- Other, please specify:

7. **The proposal is to:** (To determine section number(s), see current year regulation booklet or <https://govt.westlaw.com/calregs>)

- Amend Title 14 Section(s):29.20
- Add New Title 14 Section(s):
- Repeal Title 14 Section(s):

8. **If the proposal is related to a previously submitted petition that was rejected, specify the tracking number of the previously submitted petition**

Or Not applicable.

9. **Effective date:** If applicable, identify the desired effective date of the regulation. If the proposed change requires immediate implementation, explain the nature of the emergency: February 1, 2020

10. **Supporting documentation:** Identify and attach to the petition any information supporting the proposal including data, reports and other documents: Letter from Carl Vogler of May 13, 2019

11. **Economic or Fiscal Impacts:** Identify any known impacts of the proposed regulation change on revenues to the California Department of Fish and Wildlife, individuals, businesses, jobs, other state agencies, local agencies, schools, or housing:

12. **Forms:** If applicable, list any forms to be created, amended or repealed:

SECTION 3: FGC Staff Only

Date received: [Received by email on Thursday, May 30, 2019 at 8:00 AM.](#)

FGC staff action:

- Accept - complete
- Reject - incomplete
- Reject - outside scope of FGC authority

Tracking Number 2019-012

Date petitioner was notified of receipt of petition and pending action: June 12-13, 2019

Meeting date for FGC consideration: August 7-8, 2019

FGC action:

- Denied by FGC
- Denied - same as petition _____
Tracking Number
- Granted for consideration of regulation change

Received by email on Thursday, May 30, 2019 at 8:00 AM as an attachment to petition 2019-012. -

California Fish and Game Commission

May 7, 2019

Marine Resources Committee

P.O. Box 944209

Sacramento, CA 94244-2090

To Whom It May Concern,

I am one of the owners of Lawson's Landing in Dillon Beach. Lawson's Landing is located at the mouth of Tomales Bay and has been providing access to the California coast since the late 1950's. Fishing, crabbing and clamming have been the major attractions with the plentiful gaper clams on Clam and Seal islands being the original and most consistent draw. On a tide low enough for the islands to be exposed, with a little hard work and a short boat ride, most people can dig enough clams for a tasty dinner. Unfortunately, that looks like it's about to change.

In the last few years a new innovation, the hand operated water pump, has allowed clammers to retrieve their limits of gapers even when the tide isn't low enough for the islands to come out of the water. In fact, the pumps only work while in 6" of water or more. Where clams were only attainable 38% to 45% of the days per year, now attainable days approach 80% of the year. The pumps also limit physical damage to the individual clams, making for a more attractive, and therefore more marketable, product that many are tempted to sell. Gaper clams, as unlikely as it sounds, are becoming the new abalone.

Lawson's Landing operated boats to ferry clammers over to the islands for over forty years, but when we saw the increased number of people clamming and the decreasing catches of clams, we ended a very lucrative part of our business in order to preserve the resource. The clams bounced back in the 2000's, but now a new generation of clammers with cheap inflatable boats and hand pumps paddle across almost every day to collect their ten clams each. I'm writing this now because one of the clammers told me today that he thought that there's about two years of clams left on the islands. When they're gone from here he'll go somewhere else, he said.

I would like to see a change in the regulations that would outlaw hand operated water pumps in the same way that hooked devices are illegal to use. The gapers will have a chance to recover again if the number of opportunities to dig them up remain limited.

Carl W. Vogler

Lawson's Landing Inc.

137 Marine View Dr.

Dillon Beach, CA 94929-0067



Tracking Number: (2018-017)

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Incomplete forms will not be accepted. A petition is incomplete if it is not submitted on this form or fails to contain necessary information in each of the required categories listed on this form (Section I). A petition will be rejected if it does not pertain to issues under the Commission's authority. A petition may be denied if any petition requesting a functionally equivalent regulation change was considered within the previous 12 months and no information or data is being submitted beyond what was previously submitted. If you need help with this form, please contact Commission staff at (916) 653-4899 or FGC@fgc.ca.gov.

SECTION I: Required Information.

Please be succinct. Responses for Section I should not exceed five pages

1. Person or organization requesting the change (Required)

Name of primary contact person: Ben Wolfe III

Address: [REDACTED]

Telephone number: [REDACTED]

Email address: [REDACTED]

2. Rulemaking Authority (Required) - Reference to the statutory or constitutional authority of the Commission to take the action requested: pursuant to the authority vested by sections 200, 205, 265, 313, 5508 and 5509 of the Fish and Game Code and to implement, interpret or make specific sections 200, 205, 265, 313, 399, 5508 and 5509 of said Code

3. Overview (Required) - Summarize the proposed changes to regulations:

Section 27.65 Fillet of Fish on Vessels (b)(10) Ocean whitefish: Fillets must be a minimum of 6 and one half inches in length and shall bear the entire skin intact.

Delete minimum fillet size so this section reads: Fillets shall bear the entire skin intact.

4. Rationale (Required) - Describe the problem and the reason for the proposed change:

Section 28.58 Ocean Whitefish does not specify a minimum size for Ocean Whitefish. There is no reason to have a minimum fillet size on a fish for which there is no minimum size specified.

Since any size Ocean Whitefish can be legally kept then any size fillet should be allowed.

SECTION II: Optional Information

1. **Date of Petition:** 11/21/2018

2. **Category of Proposed Change**

- Sport Fishing
- Commercial Fishing
- Hunting
- Other, please specify: [Click here to enter text.](#)

3. **The proposal is to:** *(To determine section number(s), see current year regulation booklet or <https://govt.westlaw.com/calregs>)*

- Amend Title 14 Section(s):Section 27.65 Fillet of Fish on Vessels (b)(10) Ocean whitefish.
- Add New Title 14 Section(s): [Click here to enter text.](#)
- Repeal Title 14 Section(s): [Click here to enter text.](#)

4. **If the proposal is related to a previously submitted petition that was rejected, specify the tracking number of the previously submitted petition** [Click here to enter text.](#)

Or Not applicable.

5. **Effective date:** If applicable, identify the desired effective date of the regulation.
If the proposed change requires immediate implementation, explain the nature of the emergency: [Click here to enter text.](#)

6. **Supporting documentation:** Identify and attach to the petition any information supporting the proposal including data, reports and other documents: [Click here to enter text.](#)

7. **Economic or Fiscal Impacts:** Identify any known impacts of the proposed regulation change on revenues to the California Department of Fish and Wildlife, individuals, businesses, jobs, other state agencies, local agencies, schools, or housing: [Click here to enter text.](#)

8. **Forms:** If applicable, list any forms to be created, amended or repealed:

[Click here to enter text.](#)

SECTION 3: FGC Staff Only

Date received:

FGC staff action:

- Accept - complete
- Reject - incomplete
- Reject - outside scope of FGC authority

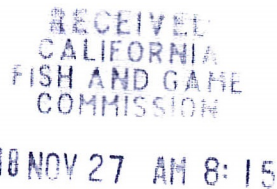
Tracking Number 2018-017

Date petitioner was notified of receipt of petition and pending action: December 12-13, 2018

Meeting date for FGC consideration: February 6, 2019

FGC action:

- Denied by FGC
- Denied - same as petition _____
Tracking Number
- Granted for consideration of regulation change



2019 JUL 18 PM 1:45

Memorandum

Date: July 18, 2019

To: Melissa Miller-Henson
Acting Executive Director
Fish and Game Commission

From: Craig Shuman, D. Env. 
Marine Regional Manager

Subject: **Petition to Remove Minimum Size Requirement for Ocean Whitefish Fillets
(Tracking Number: (2018-017))**

A petition submitted by Mr. Ben Wolfe III to the Fish and Game Commission (Commission) proposes to amend Title 14 Section 27.65 Fillet of Fish on Vessels (b)(10) Ocean Whitefish. The proposed change is to delete the requirement that Ocean Whitefish fillets must be 6 and one half inches in length. The rationale provided by Mr. Wolfe states there is no reason to have a minimum fillet size on a fish for which there is no minimum size limit (total length) specified.

The current minimum fillet size for Ocean Whitefish was enacted in 1986 along with Kelp Bass and Barred Sand Bass fillet sizes primarily because all three species have fillets (along with a patch of skin) that are very similar in appearance. The current regulation requires the entire skin to remain intact for Ocean Whitefish to address this similarity.

Based on shared behavioral characteristics, Ocean Whitefish are managed as an associated species with federally managed groundfish and share the same recreational season and depths as the Rockfish, Cabezon and Greenlings (RCG) complex. Currently in the Southern Management Area (Point Conception to the U.S./Mexico border) the boat-based RCG fishery is open from March 1 through December 31. Retention of Ocean Whitefish is prohibited seaward of the 75-fathom depth contour, except in the Cowcod Conservation Areas where retention is prohibited seaward of the 40-fathom depth contour. The fishery is open year-round to divers and shore-based anglers. The daily bag and possession limit is ten fish and there is not a minimum size limit.

Southern California is at the northern edge of abundance for Ocean Whitefish as they are much more common further south in Mexican waters. It appears that their occurrence and abundance in California waters are driven by extended periods of warmer water; however, there is no evidence that Ocean Whitefish establish permanent residence and reproduce in southern California. In recent years, including the El Niño of 2015-16, southern California ocean waters have been warmer and

Melissa Miller-Henson, Acting Executive Director
Fish and Game Commission
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many juvenile Ocean Whitefish from 8-12 inches have migrated north from Mexico. Due to this, there have been increased recreational fishing opportunities for Ocean Whitefish and the California Department of Fish and Wildlife (Department) has observed an increasing trend of recreational anglers targeting this species.

The Department monitors effort and catch in the recreational and commercial fisheries; however, other information is lacking on Ocean Whitefish and a thorough study on stock size, maturity, reproduction, and residency in California waters is needed to ensure the stock is sustainably managed. The current fillet length of 6 and one half inches serves as a de-facto size limit for those anglers not wishing to retain whole fish. The return of smaller fish aids in the sustainability of this resource, especially when descending devices are used to return fish caught from deeper areas. The Department recommends this petition be denied to allow staff and partners the time necessary to gather the resources and essential data needed to ensure sustainable management measures are in place.

ec: California Department of Fish and Wildlife

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