

Mr. Jim Kellogg, President
California Fish and Game Commission
1416 Ninth Street
P.O. Box 944209
Sacramento, California 94244-2090

RE: Department of Fish and Game's Proposed Striped Bass Regulation Changes

Dear President Kellogg and Commission members:

I am a California angler who has benefited from the Endangered Species Act as it pertains to better water management for our endangered fish species, and indeed all fisheries in our California Delta. As such, I am writing to express my deep concern over proposed striped bass regulation changes.

I have become aware of the fact that several of our State's preeminent fisheries biologist have cautioned against these regulation changes as they may yield the opposite of the intended effect and could lead or contribute to the extinction of delta smelt and our endangered salmon species.

As you know, the Endangered Species Act encourages that all effort is brought to bear in assisting the recovery of listed species. However, it is also true that the Act discourages any action that is of dubious benefit and, indeed may do harm to the recovery efforts of listed species. Our State's preeminent inland fisheries experts, Dr. Peter Moyle and Dr. William Bennett (Letter to Commission of Aug. 26th 2010) have stated specifically and convincingly that reducing the effects of striped bass predation on non native cohorts and predators of listed species could directly result in unintended harmful consequences for listed species. Their concerns are backed up by respected fisheries biologist Dr David Ostrach (Letter to the Commission July 19th 2010). These concerns are sufficient to suggest that the Commission's first obligation is to "do no harm" to listed species, therefore, I urge the Commission for an outright rejection of this regulation proposal.

Directly related to the E.S.A., I have also become aware of this additional fact:

- The Department of Fish & Game (DFG) and other defendant interveners in the litigation that brought about the Settlement Agreement leading to the striped bass regulation change proposal prevailed in the summary judgments rendered by the federal court. The court found no merit in the legal arguments the plaintiffs (Coalition For a Sustainable Delta) regarding alleged population level impacts caused by striped bass to E.S.A listed fish species in the Bay-Delta estuary. The court ruled decisively in support of the position of the DFG and defendant interveners that the decline of estuary's listed fisheries was not attributable to predation by striped bass. Specifically, Judge Wanger agreed that the best science available has not shown any population level effect on listed species and one of DFG's own Biologists, Marty Gingras, has stated that there is no science that shows any population level effect on listed species due to striped bass predation. There are also numerous peer reviewed predation studies done in the estuary and its tributaries that conclude population level effects of predation (if any) is at the current time, "unknowable".

In addition to my concerns regarding the E.S.A., I have learned the following:

- This settlement agreement does not supersede the provisions of the federal Central Valley Project Improvement Act (CVPIA) and it's legal mandate to double the population of all anadromous fish species of the estuary, including striped bass, from their mid-nineteen nineties population levels. In short, the proposed regulations work at cross purposes to the CVPIA federal mandate, thus conflicting with the intent of the federal law and setting up the potential for another round of litigation regarding the striped bass fishery. The Commission could find itself in the untenable position of passing regulations that could result in violating federal law and having to defend itself in federal court.
- The proposed regulation change with the attendant increased bag and possession limits would encourage over-consumption of striped bass far beyond the limits recommended California's Office of Environmental Health Hazard Assessment. In short, it is my view the possession limit in this proposal encourages consumption more than health warnings discourage the consumption of striped bass. The Commission should take into full consideration the well documented science on the health risks associated with anything beyond modest consumption of striped bass. Women and children, in particular, are most vulnerable to these health risks and should not eat any striped bass at all. It would not be good public policy for the Commission to advance regulations that would not safeguard the public from the health hazards associated with the consumption of striped bass.
- As you may recall, Sec. 1700 of the Fish and Game Code requires, among many important conservation provisions, the management, on a basis of adequate scientific information promptly promulgated for public scrutiny, of the fisheries under the state's jurisdiction with the objective of maximizing the sustained harvest. This and other relevant code sections require the public's fishery resources to be managed in the long term, on a sustainable basis. The regulations that the department proposed would not comply with this legal mandate.
- The proposal does not exempt San Luis Reservoir and the O'neil Forebay, one of our Nation's premiere trophy striped bass fisheries. These two bodies of water are not connected to the Delta biologically and are not home to any listed species. This adds to my perception that, beyond risks to listed species, the thoughts guiding development of this proposal were lacking in a comprehensive understanding of our state's striped bass fisheries and the sensitivities of California striped bass anglers.

I am confident the Commission will carefully consider my concerns about the negative effect this proposal might have on listed species and my additional concerns regarding health, anadromous fish recovery and fish and game code directives. I am also confident that the Commission has the power to creatively direct responsible development of effective listed species recovery efforts. To that end, I would like to respectfully offer a possible alternative process. First, reject this proposal outright. Second, I would suggest directing the DFG to develop a priority list of stressors on our listed species in order of direct biological importance. Third, develop a specific list of suggestions to address each stressor and four, formulate policy suggestions solely on the merit of direct benefit to the listed species recovery efforts. Finally I would stress the DFG strive to avoid listed species recovery priorities that are perceived to be the most politically or legally expeditious. It is, of course, reasonable to expect our DFG, which is in part a scientific body, to behave in a thoughtful manner without regard to extraneous issues that ultimately may result in extraordinary risks to our listed species.

Sincerely,