

Memorandum

Date: March 19, 2014

To: Sonke Mastrup
Executive Director
Fish and Game Commission

From: Charlton H. Bonham
Director

Subject: **Agenda Item for the April 16 Fish and Game Commission (Commission) Meeting Regarding Proposed Changes to the 2014 Regulatory Calendar**

The Department of Fish and Wildlife (Department) is proposing changes to the Commission's 2014 regulatory calendar related to the schedule for groundfish conformance, commercial hagfish, and take of rare plants. In addition, the Department proposes that the commercial surfperch rulemaking be dropped from this year's calendar. This memo outlines the Department's reasoning in support of the proposed changes for consideration at the Commission's April meeting.

Groundfish Federal Conformance

The Groundfish Core Team (Core Team) met on February 27, 2014. Discussion at the Core Team meeting identified several areas of substantial complexity in the federal conformance process, including state- versus federally-managed species, lack of federal bag limits for some species such as soupfin shark, and enforceability of the new automatic conformance regulations. In addition, Commission staff is concerned whether the local court systems will have had sufficient time to fully understand the new state conformance process in the proposed Pacific halibut regulations, if adopted. With these potential areas of uncertainty, the Core Team suggests that additional time is prudent to resolve issues in the groundfish conformance regulations and to learn more from the Pacific halibut automatic conformance process before applying it to groundfish. The Department proposes to delay the groundfish conformance rulemaking and proceed with a regular groundfish rulemaking for 2015-2016, with notice at the August meeting followed by discussion in October and adoption in December.

Commercial Hagfish

The Department's Marine Region requests that the notice meeting for the commercial hagfish rulemaking be moved from the August meeting in San Diego to the June meeting in Eureka. Hagfish is primarily a north coast fishery and Eureka is a major port of landings for this species. Having the notice meeting in Eureka would allow greater participation by affected parties and would facilitate a presentation by Marine Region technical staff based in Eureka.

Take of Rare Plants

The Department's Native Plant Program requests that the proposed rulemaking governing the take of rare plants be moved up to notice at the June meeting. The program would like these regulations to be effective by January 1, 2015 to close a significant gap in the Department's permitting program. Since these regulations are subject to the new "quarterly effective" provisions of the Administrative Procedure Act, going to notice at the June meeting would make possible a January 1 effective date. Program staff has engaged in substantial pre-notice outreach with affected parties, including the California Building Industry Association, California Farm Bureau Federation, California Forestry Association, Center for Biological Diversity, as well as other state agencies and major utilities. The Department also requests that this proposal be a discussion item at the May 2014 Wildlife Resources Committee meeting in the Bay Area to allow even greater public outreach.

Commercial Surfperch

The Department's Marine Region recommends that this rulemaking be removed from the 2014 regulatory calendar. While the proposed shift in season dates is biologically appropriate, the impact of the fishery to surfperch stocks is minimal due to its small size. The fishery participation continues to drop with local fishermen advancing in age. Currently there are fewer than ten fishermen landing redtailed surfperch commercially, and only two landed more than 100 pounds last year; such limited landings make it impractical to incur the costs of a full rulemaking at this time. The Department recommends that staff continue monitoring landings, conducting market and Fisheries Independent Survey sampling, and re-evaluate the proposal if warranted in the future.

Summary

The Department requests that the Commission's 2014 regulatory calendar be modified to 1) move the notice for groundfish 2015-16 from June to August, 2) move the commercial hagfish notice from August to June, 3) add the rare plant notice to June, and 4) remove the commercial surfperch rulemaking.

If you have any questions regarding this item, please contact Craig Martz, Regulations Unit Manager at (916) 653-4674 or Craig.Martz@wildlife.ca.gov.

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