

CALIFORNIA FISH AND GAME COMMISSION
STATEMENT OF PROPOSED EMERGENCY REGULATORY ACTION

Emergency Action to
Amend Section 28.20
Title 14, California Code of Regulations
Re: Pacific halibut

I. Statement of Facts Constituting the Need for Emergency Regulatory Action

Pacific halibut along the United States west coast are jointly managed through authorities of the International Pacific Halibut Commission (IPHC), Pacific Fishery Management Council (Council), and the National Marine Fisheries Service (NMFS), in conjunction with west coast state agencies. The Council coordinates west coast management of all recreational and commercial Pacific halibut fisheries in U.S. waters through the Pacific Halibut Catch Sharing Plan (CSP), which constitutes a framework for recommending annual management measures. NMFS is then responsible for specifying the final management measures in federal regulation (Title 50 CFR Subpart E of Part 300 and the Federal Register). These federal regulations are applicable in the Federal Exclusive Economic Zone (three to 200 miles offshore) off Washington, Oregon and California.

Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S. Code §1801 *et seq.*), the federal government exercises exclusive jurisdiction over fishery resources from 3 to 200 miles offshore. However, because some of these fish stocks also live in state waters, it is important that federal and state fishery management actions be consistent. Section 1856 of the Magnuson-Stevens Act requires states to conform their laws to the federal regime to maintain their jurisdiction over Pacific halibut (*Hippoglossus stenolepis*), which occur in both federal and state waters. Failure to undertake conforming actions can result in the federal government formally preempting state control of the fishery in state waters (16 U.S. Code §1856(b); Title 50 Code of Federal Regulations (CFR), Part 600, Subpart G).

Under California law [Sections 200, 202, and 316 of the Fish and Game Code(FGC)], the California Fish and Game Commission (Commission) has authority to establish regulations for sport fishing in State waters (zero to three miles from shore) and to prohibit the taking or possessing of Pacific halibut in the same manner as prohibited through federal law, or by rules or regulations adopted by the IPHC. For species managed under federal fishery management plans or regulations (e.g., salmon, groundfish, coastal pelagic and highly migratory species, and Pacific halibut), the Commission has usually taken concurrent action, pursuant to the California Administrative Procedure Act, to conform State recreational regulations to federal regulations which have been adopted through an open and deliberative federal rulemaking process, including a detailed review of economic impacts. This is done in recognition of federal jurisdiction and to ensure consistency and ease of use for constituents who are subject to both State and federal laws while fishing, or possessing sport fish.

Recent Council Action Re: Pacific Halibut Fishing Off California

At its November 2013 meeting, the Council recommended changes to the 2014 recreational Pacific halibut regulations off California in order to keep catches within federal harvest limits. The recommendations included shortening the open season off California by closing the month of August, in response to substantially increased catches of Pacific halibut off California's north coast in past recent years, while Pacific halibut abundance is slightly declining across its range. The closure of August was determined to be the best available measure to manage the fishery in a manner more consistent with the allocation framework and to prevent exceeding the overall allocation. The Council's recommendations were implemented by NMFS in federal regulations that took effect on April 1, 2014.

In response to the Council's November 2013 recommendation, the Commission initially pursued a standard rulemaking under the authority of Section 205.1, FGC, to adopt a process to auto-conform State Pacific halibut sport fishing regulations to federal regulations (OAL notice #Z2014-0308-15). However, it became apparent during the rulemaking process that 1) the proposed regulation did not provide for the printing of the new season date in Title 14, and 2) the authority provided in Section 205.1, FGC, was insufficient to promulgate regulatory changes to the season date without pursuing a separate rulemaking.

These facts came to the attention of the Commission staff too late to begin a three-meeting rulemaking process in time to achieve an August closure.

The proposed amendments of Title 14, California Code of Regulations (CCR), described in this Emergency Statement must be effective in time to conform to these federal regulations, since Title 14, CCR, regulations currently allow fishing in the month of August. If Commission action, or the effective date of the regulation changes proposed in this package is delayed, there will be inconsistency in season dates between the federal and State regulations. Conflict between State and federal regulations will confuse recreational anglers, hamper the efforts of enforcement personnel, and could result in harvests that exceed the total allowable catch established in federal law for purposes of halibut conservation.

Present Regulations

Beginning in 2007, the recreational Pacific halibut season has been open from May 1 through October 31 each year. In general, most of the recreational fishery off California takes place between Memorial Day and Labor Day. Seasonally, the majority of the Pacific halibut catch (62 percent) occurs during July and August; a time when fishing opportunities for salmon and groundfish are also available.

Current State regulations (Section 28.20, Title 14, CCR) authorize recreational fishing for Pacific halibut in State ocean waters (zero to three miles offshore) from May 1 to October 31. The daily bag limit is one fish per angler and there is no minimum size limit.

Proposed Amendments

The proposed amendments to the regulations would modify subsection 28.20(a),

Title 14, CCR, to allow fishing from May 1 through July 31 and from September 1 through October 31; closing the month of August. These State regulations would be consistent with federal regulations, and are expected to achieve needed reductions in catch off the California coast to keep within harvest limits set for the west coast. Failure to effectively close the fishery during the month of August could result in exceeding federal west coast harvest limits, which could pose an immediate risk to the conservation and sustainability of this fishery resource.

II. 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) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

- (b) Nondiscretionary Costs/Savings to Local Agencies:

None.

- (c) Programs Mandated on Local Agencies or School Districts:

None.

- (d) 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.

III. Authority and Reference

The Fish and Game Commission proposes this emergency action pursuant to the authority vested by sections 200, 202, 205, 219, 220, 240 and 316 of the Fish and Game Code and to implement, interpret, or make specific sections 200, 201, 202, 203.1, 205, 207, 210, 215, 219, 220, and 316 of said Code.

IV. Section 240 Finding

Pursuant to Section 240 of the Fish and Game Code, the Commission made the finding that the adoption of this regulation is necessary for the immediate conservation, preservation, or protection of birds, mammals, reptiles, or fish, including, but not limited to, any nests or eggs thereof.

Informative Digest (Plain English Overview)

The Pacific Fishery Management Council (Council) coordinates west coast management of recreational and commercial Pacific halibut (*Hippoglossus stenolepis*) fisheries in the federal fishery management zone (three to 200 miles offshore) off Washington, Oregon and California and recommends management measures that National Marine Fisheries Service (NMFS) then specifies in federal regulation.

Under California law (Sections 200, 202, and 316 of the Fish and Game Code), the California Fish and Game Commission (Commission) has authority to establish regulations for sport fishing in State waters (zero to three miles from shore) and to prohibit the taking or possessing of Pacific halibut in the same manner as prohibited through federal law, or by rules or regulations adopted by the International Pacific Halibut Commission.

Current State regulations (Section 28.20, Title 14) authorize recreational fishing for Pacific halibut in California waters from May 1 to October 31. The daily bag limit is one fish per angler and there is no minimum size limit.

At its November 2013 meeting, the Council recommended changes to the 2014 recreational Pacific halibut regulations off California. The recommendations included shortening the open season by closing the month of August. The closure of August was determined to be the best available measure to manage the fishery in a manner more consistent with the allocation framework and to prevent exceeding the overall allocation.

The NMFS adopted the Council's recommendation and the changes to the federal regulations took effect on April 1, 2014.

Due to the recent Council action to close the month of August to Pacific halibut fishing off California, the Department of Fish and Wildlife (Department) believes that it is prudent to take emergency action to quickly adhere to the federal action for the immediate conservation of California's Pacific halibut populations. The proposed emergency regulations are necessary to achieve conformance with the federal regulations in time achieve the August closure.

Proposed Amendments

The proposed amendments to the regulations would modify subsection 28.20(a) to allow fishing from May 1 through July 31 and September 1 through October 1. The modified language would be consistent with federal regulations, pursuant to the Pacific Halibut Catch Sharing Plan adopted by the Council, for Pacific halibut regulations applicable in California State waters.

Benefits: The proposed regulation will provide benefits to the environment in the conservation and preservation of wild Pacific halibut populations.

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. The Legislature has delegated authority to the Commission to promulgate Pacific halibut sport fishing regulations (sections 200, 202, 205, and 316, Fish and Game Code).

Regulatory Language

Section 28.20, Title 14, CCR, is amended to read:

§ 28.20. Halibut, Pacific.

(a) Season: Pacific halibut may be taken only from May 1 through July 31 and from September 1 through October 31.

(b) Limit: One.

(c) Minimum size: None.

Note: Authority cited: Sections 200, 202, 205, ~~210, 219 and 220~~, 219, 220, 240 and 316, Fish and Game Code. Reference: Sections ~~200-202~~200, 201, 202, 203.1, ~~205-210~~205, 207, 210, 215 and 217.5-222, 219, 220 and 316, Fish and Game Code.

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