

## **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 240, 7071, 8587.1 and 8588 of the Fish and Game Code and to implement, interpret or make specific Sections 240, 8585.5, 8587.1 and 8588 of said Code, proposes to amend sections 52.10 and 150.16, Title 14, California Code of Regulations, relating to Cabezon Total Allowable Catch and Cumulative Trip Limits.

### **Informative Digest/Policy Statement Overview**

Under current regulations (Section 52.10, Title 14, CCR), the total allowable catch (TAC) for cabezon is 193,900 pounds with 118,300 pounds of the TAC allocated to the recreational fishery and 75,600 pounds of the TAC allocated to the commercial fishery. In addition, the commercial harvest is regulated by two-month cumulative trip limits for each individual permittee. The allowable amount per two-month period currently ranges from 100 to 1,000 pounds (Section 150.16, Title 14, CCR).

State regulation specifies that the cabezon TAC is equivalent to an optimum yield (OY) adopted in state or federal regulations when a stock assessment has been completed. A stock assessment was recently completed for cabezon in waters off California, and the federal Pacific Fishery Management Council (Council) recently adopted an OY for cabezon based on information from the stock assessment. Since a federal OY has been adopted for cabezon, it is necessary to adjust the state TAC to equal the federal OY and to change those regulations that are dependent on the value of the TAC.

The proposed regulations would reduce the statewide cabezon TAC to 152,100 pounds, and would reduce the recreational allocation to 92,800 pounds and commercial allocation to 59,300 pounds. The changes to the amounts provided to the recreational and commercial fisheries are proposed so their sum would not exceed the TAC, and would maintain the recreational/commercial allocation ratio in the current regulations. Commercial trip limits are proposed to be changed so the commercial fishery will not exceed its allocation. The proposed values per two-month period range from 0 to 1,000 pounds. The Commission may select values from that range which will provide for commercial fishing, yet ensure the commercial fishery does not exceed its allocation and which will align the cabezon season with the minor nearshore rockfish season set by the Council.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Veteran's Memorial Building, 209 Surf Street, Morro Bay, California on August 26, 2004, at 10:00 a.m., or as soon thereafter as the matter may be heard.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the James W. Kellogg Training Center, 935 Detroit Avenue, Concord, California on October 22, 2004 at 8:30 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 October 15, 2004 at the address given below, or by fax at (916) 653-5040, or by e-mail to [FGC@dfg.ca.gov](mailto:FGC@dfg.ca.gov), but must be received no later than October 22, 2004 at the hearing in Concord, CA. All written comments must include the true name and mailing address of the commentor.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Robert R. Treanor, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to Robert R. Treanor or Tracy L. Reed at the preceding address or phone number. **Ms. Marija Vojkovich, Department of Fish and Game, phone (805) 568-1246, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at [http://www.dfg.ca.gov/fg\\_comm/](http://www.dfg.ca.gov/fg_comm/).

#### **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. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. 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**

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:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, including the Ability of California Businesses to Compete with Businesses in Other States:

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 proposed regulations will reduce recreational and commercial take of cabezon in California. This action may result in coastwide economic impacts which could impair the ability of California businesses to compete with businesses in other states. The proposed changes will mainly affect the business activities of commercial fishermen, all of which are small businesses as defined under California Government Code Section 11342.610, including: nearshore commercial cabezon businesses, and commercial passenger fishing vessel (CPFV) businesses. However, direct losses to small businesses may be offset, to some degree, by long-term improvements in the status (abundance, size, and quality) of the cabezon stock.

Commercial fishermen with nearshore permits who harvest cabezon will be directly impacted through reduced commercial catches in 2005, as compared with 2004 allowable catches. The proposed reduction from the current commercial allocation of 75,600 pounds to 59,300 pounds could mean projected ex-vessel revenue reductions of \$77,425 for California commercial fishermen. This is based on 2003 data for ex-vessel value of landings of commercial fish, which shows the average price of cabezon was \$4.75/pound. This \$77,425 reduction in ex-vessel landings translates into a \$155,702 reduction in overall economic output for the entire State (based on a California economic demand output multiplier of x 2.011). However, this assumes that the price per pound will not increase in response to reduced cabezon catches by California fishermen.

The demand for California cabezon is driven by the market for live-fish, which offers high dollar prices for live cabezon. Total California commercial cabezon landings for year 2003 were 87,407 pounds, valued at \$415,345 (ex-vessel, year 2003 dollars), of these landings approximately 90 percent were for the live-fish market (calculated as 78,546 pounds live cabezon out of a total 87,407 pounds landed = 89.7 percent). But the trend in cabezon landings for California fishermen shows a decline of, on average, about 25 percent per annum over the last six years. This is due to management measures aimed at protecting fish

populations from overfishing and at maintaining populations above critical levels. By reducing commercial cabezon landings from year to year, two events in California's live-cabezon market have occurred: an increase in average price per pound of about 13 percent annually from 1998 to 2004, and an increasingly unmet market demand. Growth in this unmet market demand in California, coupled with attractive prices paid for live cabezon, has spurred out-of-state suppliers to develop market distribution channels into California. As a result, the amount of live cabezon from Oregon is increasing in California's markets.

Data from the Oregon Department of Fish and Wildlife shows that live-fish landings (in pounds) have accounted for a large portion of the live-fish market in California. In 2003, live cabezon from Oregon accounted for 39 percent of the total amount sold in California. Oregon's deliveries of live cabezon to California have, on average, increased over the last six years at an average annual rate of 14.8 percent. Given the trends in California's and Oregon's live-fish landings, reducing the 2005 allowable commercial harvest for California fishermen to 59,300 pounds could increase Oregon's market-share to between 51 percent and 59 percent of California's live-cabezon market. Such an increase in market-share could make it more difficult for California fishermen to compete with Oregon fishermen. In addition, the live cabezon from Oregon are reportedly being offered at a lower price than California fishermen have received in the past for live cabezon. Thus, the projected direct impact to fishermen, a \$77,425 reduction in ex-vessel revenues for the 2005 season, could be greater in the long run.

Individual sport fishermen and small businesses that service California's ocean sportfishing activities also may be impacted. CPFVs that rely in large part on taking passengers fishing for nearshore species, including cabezon, comprise a small-business sector that may be directly impacted. In addition, other businesses that depend on private boat and shore-based recreational angling opportunities such as bait and tackle manufacturers may be indirectly impacted. Since ocean sport fishing usually includes catch of assorted bottom fish species in the aggregate, it is difficult to ascertain the direct angling value of the cabezon resource. However, data from ocean sportfishing observations suggest that the cabezon may be a desirable species and is often caught in association with rockfish, greenlings, and lingcod. We generally assumed that reduction in one recreational groundfish species limit (for example, cabezon) would be made up in substituting alternative groundfish species comprising the aggregate bag. In a worst case scenario, a 21 percent reduction in the recreational harvest limit could result in some reduction in fishing activity for fishermen who prefer cabezon. However, we assume that fishermen substituting other species for the absence of cabezon in their catches may offset this impact.

- (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: None.
- (c) Cost Impacts on a Representative Private Person or Business:  
  
The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal funding to the State: None.
- (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 be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: 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.

#### 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 or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: August 10, 2004

Robert R. Treanor  
Executive Director