

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 200, 202, 205, 210, 215, 220, 702, 7071 and 8587.1 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 205, 206, 210, 215, 220, 1802, 7071, 8585.5, and 8586 of the Fish and Game Code; 50 CFR Part 660, Subpart G; 50 CFR 660.384, and Title 14 CCR 27.20, proposes to amend sections 27.20, 27.25, 27.30, 27.35, 27.40, 27.45, 27.50, 27.51, 28.26, 28.27, 28.28, 28.29, 28.48, 28.49, 28.51, 28.52, 28.53, 28.54, 28.55, 28.56, 28.57, and 28.58; and add Section 27.32, Title 14, California Code of Regulations, relating to recreational fishing regulations for federal groundfish and associated species for 2009 and 2010.

Informative Digest/Policy Statement Overview

Under California law, the California Fish and Game Commission (Commission) adopts regulations for recreational fishing in state waters zero to three miles from shore. The Pacific Fishery Management Council (Council), consisting of representatives from west coast states, recommends management measures for fisheries operating in federal waters 3 to 200 miles from shore. These management measures are established as federal regulations by NOAA Fisheries Service. For consistency, ease of enforcement, and to avoid confusion on the part of recreational fishermen, the Commission routinely adopts regulations to bring state law into conformance with federal rules for groundfish and other federally-managed species. The proposed changes described in this action would make the requisite changes for the 2009 and 2010 seasons.

There are 90 species of groundfish that occur in state and federal waters off the coast of California, including several species of rockfish, lingcod, cabezon, kelp greenling, California scorpionfish, some flatfish species, and some shark species. These "federal groundfish" species are managed by the Council under the Pacific Coast Federal Groundfish Fishery Management Plan (GFMP) (Magnuson-Stevens Fisheries and Conservation Act 16 U.S.C Section 1851 et seq.).

California sheephead, ocean whitefish and all greenlings of the genus *Hexagrammos* are species that occur almost exclusively within state waters in California and are managed by the Department of Fish and Game (Department). These state-managed species, otherwise identified as "associated species" are known to be caught with federal groundfish species, and thus are regulated in conjunction with federal groundfish.

At its June meeting, the Council adopted new optimum yields for some federal groundfish species along with harvest guidelines for the different fishery sectors for 2009 and 2010. Management measures (e.g., seasons, depth constraints, bag limits) were also decided by the Council to keep within these optimum yields and harvest guidelines for each state and sector. Analysis of past years' catch is used to determine which management measures are expected to keep each fishery sector within its harvest guideline.

Optimum yields set by the Council are based on stock assessments (analyses of current population size), or if a stock assessment is not available, average recent catches are used as a proxy, and are set to maintain healthy stocks. If a stock assessment reveals that the current population size is at or below 25 percent of the unfished biomass (the historic population size), it is considered "overfished". Federal law requires that steps be taken to rebuild overfished stocks

under strict guidelines that place an emphasis on a reasonable likelihood of achieving success within specified time periods.

Currently there are six groundfish species in California that are considered overfished: bocaccio, canary rockfish, cowcod, darkblotched rockfish, widow rockfish, and yelloweye rockfish. Rebuilding plans for each of these species have resulted in the need to set strict harvest guidelines and tailor management to ensure that fishery impacts are minimized. For California's recreational fishery, significant constraints to fishing activities in northern waters will be needed to keep catches of yelloweye rockfish within the allowable harvest guideline for the 2009 and 2010 seasons, similar to 2007 and 2008.

While not designated as "overfished", some federal groundfish species stock assessments show a need to enact more constraining regulations to keep catches within established harvest guidelines, even in the absence of a rebuilding plan. For California's recreational fishery, additional restrictions off central California will be needed to keep catches of blue rockfish within the allowable limit for 2009 and 2010.

It is virtually impossible to target an individual rockfish species, thus fishing for all rockfish has to be restricted to keep within the optimum yield for a constraining species. A "constraining" species is one whose harvest level is low enough that fishing for other co-occurring species becomes limited so that the constraining species' harvest level is not exceeded. Yelloweye rockfish and blue rockfish are considered to be the two most constraining species for California's recreational fishery. Therefore, these species were the primary determinants for the chosen season lengths and depth constraints for fishing for all groundfish and associated species for 2009 and 2010. Canary rockfish, another overfished species, has in the past been a constraining species and could potentially be a constraining species for the central California management areas in 2009 and 2010, which would be addressed in a future rulemaking package if necessary.

Yelloweye rockfish are primarily caught with a mix of other shelf rockfish species north of Point Arena (Mendocino County) in waters deeper than 20 fathoms. For 2009 and 2010, the recreational fishery harvest guideline for yelloweye rockfish will continue to require conservative fishing seasons that may occur only in waters that are 20 fathoms and less in depth.

Blue rockfish is a dominant species in the recreational fishery in California. To stay within the new harvest guideline for this species, it was necessary for the Council to reduce the fishing season length by two weeks in central California.

In order to make the State's regulations consistent with new federal rules that will be established by NOAA Fisheries following the June 2008 Council action, the proposed changes identified in this regulatory package are needed to Title 14 regulations regarding recreational groundfish fishing in State waters. The resulting season structure and depth restrictions adopted by the Council are provided in Table 1. The proposed regulatory changes will affect boat-based anglers only; exceptions for shore-based anglers and divers would remain in effect.

Table 1. Proposed season structure and depth restrictions for the California recreational groundfish fishery for 2009 and 2010, adopted for federal waters by the Council in June 2008.

Management Area	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Northern	CLOSED				Open < 20 fm, May 15 - Sep 15				CLOSED			
North-Central N. of Pt. Arena	CLOSED				Open < 20 fm May 15 - Aug 15				CLOSED			
North-Central S. of Pt. Arena	CLOSED				Open < 30 fm, Jun 13 - Oct 31				CLOSED			
Monterey South-Central	CLOSED				Open < 40 fm, May 1 - Nov 15				CLOSED			
Morro Bay South-Central	CLOSED				Open < 40 fm, May 1 - Nov 15				CLOSED			
Southern	CLOSED				Open < 60 fm, Mar 1 - Dec 31							

- Modifications to Section 27.25, Northern Groundfish Management Area.

The Department took emergency action in August 2008 (OAL# 2008 0815 04E) to establish a May 1 through September 2 season with a maximum depth restriction of 20 fathoms (120 feet) for groundfish and associated species. Proposed regulations would change the fishing season, for the waters between the Oregon border and the 40° 10' North Latitude management line near Cape Mendocino (Humboldt County), for all groundfish and associated species by modifying the season length to May 15 through September 15. The proposed regulations would also make permanent the maximum depth restriction of 20 fathoms (120 feet) implemented through the emergency action. These changes are necessary to keep yelloweye rockfish catch within the harvest guideline as discussed above.

- Modifications to Section 27.30, North-Central Groundfish Management Area.

The Department took emergency action in August 2008 (OAL# 2008 0815 04E) to split the North-Central Management Area into two distinct regions - the North-Central North of Point Arena Groundfish Management Area, for waters between the 40° 10' North Latitude management line and Point Arena (38° 57.50' North Latitude; Section 27.30, Title 14, CCR), and the North-Central South of Point Arena Groundfish Management Area, for waters between Point Arena and Pigeon Point (San Mateo County; see below; modifications to Section 27.32, Title 14, CCR). Additionally, the emergency action established a maximum depth restriction of 20 fathoms (120 feet) for groundfish and associated species and a June 1 through November 30 season. The proposed regulations would make the 20 fathom maximum depth restriction permanent, and would modify the fishing season to May 15 through August 15. Splitting the North-Central Management Area into two regions would allow for differing regulations north and south of Point Arena, and allow for finer-scale regional management. The take of yelloweye rockfish north of Point Arena is significantly higher than that south of Point Arena.

The August 2008 emergency action (OAL# 2008 0815 04E) removed regulations pertaining to the Farallons Closure Area, the Cordell Bank Closure Area, and the exception allowing the year-round take of leopard shark in several bays from this section and relocated them to Section 27.32, because these rules do not apply within the re-defined geographic range of this management area. The proposed regulation would make permanent the restructuring of the management areas, with their respective closure areas and leopard shark exception.

- Modifications to Section 27.32, North-Central South of Point Arena Groundfish Management Area.

The Department took emergency action in August 2008 (OAL# 2008 0815 04E) to establish Section 27.32 with regulations pertaining to the waters between Point Arena (Mendocino County) and Pigeon Point (San Mateo County). These regulations include a June 1 through

November 30 season for groundfish and associated species, along with a maximum 30 fathom (180 feet) fishing depth restriction. The proposed regulations would make permanent the 30 fathom maximum depth restrictions, and would modify the fishing season to June 13 through October 31.

The August emergency action (OAL# 2008 0815 04E) removed the regulations pertaining to the Farallones Closure Area, the Cordell Bank Closure Area, and the exception allowing the year-round take of leopard shark in several bays from Section 27.30 and relocated the regulations here without change, because these rules apply within the newly established management area. The proposed regulation would make permanent the restructuring of the management areas, with their respective closure areas and leopard shark exception.

- Modifications to Section 27.35, Monterey South-Central Groundfish Management Area.

Existing regulations establish a May 1 through November 30 season for groundfish and associated species, with a maximum fishing depth restriction of 40 fathoms (240 feet). Proposed regulations would reduce the fishing season for all groundfish and associated species to May 1 through November 15, maintaining the 40 fathom depth restriction. Reducing the season by two weeks is expected to keep blue rockfish catch within the new harvest guideline.

- Modifications to Section 27.40, Morro Bay South-Central Groundfish Management Area.

Existing regulations establish a May 1 through November 30 season for groundfish and associated species, with a maximum fishing depth restriction of 40 fathoms (240 feet). Proposed regulations would reduce the fishing season for all groundfish and associated species to May 1 through November 15, maintaining the 40 fathom depth restriction. Reducing the season by two weeks is expected to help to keep blue rockfish catch within the harvest guideline.

- Modifications to Sections 28.26 California Sheephead; 28.27 Lingcod; 28.28 Cabezon; 28.29 Kelp Greenling, Rock Greenling; 28.48 Pacific Sanddab, Rock Sole, Sand Sole, Butter Sole, Curlfin Sole, Rex Sole and Flathead Sole; 28.49 Dover Sole, English Sole, Petrale Sole, Arrowtooth Flounder, and Starry Flounder; 28.51 Spiny Dogfish, Soupfin Shark; 28.52 Big Skates, California Skates, and Longnose Skates; 28.53 Ratfish, Rattails and Codlings; 28.54 California Scorpionfish (Sculpin); 28.55 Rockfish (Sebastes); 28.56 Leopard Shark; 28.57 Pacific Cod, Pacific Whiting, Sablefish, and Thornyheads; and, 28.58 Ocean Whitefish.

The listed sections list the seasons and fishing depths for these species or species groups. Additionally, some species or species groups have size limits, bag limits, gear restrictions, exceptions for leopard shark and/or exceptions for "other flatfish". The Department took emergency action in August 2008 (OAL# 2008 0815 04E) to establish seasons and fishing depths for these species or species groups. The proposed regulations would make the changes permanent for each of the sections, and change season dates and/or depth constraints to match the proposed regulations for the different Groundfish Management Areas discussed above.

- Modifications to Section 28.28(b), Cabezon Bag Limit.

Existing regulations provide for a one fish bag limit for cabezon within the 10-fish aggregate bag limit for rockfish, cabezon and greenling, the RCG complex. Proposed regulations would increase the cabezon bag limit from one fish to two fish, within the RCG bag limit. The Department analyzed potential impacts of an increase in the recreational cabezon bag limit from one to two fish within the RCG bag limit. Results of the analysis show that an increase in the bag limit is not projected to result in exceeding the recreational harvest guideline for this

species. The proposed action could reduce impacts on other fish that would be caught to replace discarded cabezon and decrease waste of discarded dead cabezon.

- Modifications to Section 28.55(b)(1), Bag Limit for Bronzespotted Rockfish.

Proposed regulations would include the bronzespotted rockfish (*Sebastes gilli*) as a prohibited rockfish species (no retention, or bag limit of zero). The bronzespotted rockfish is not described as an overfished species because there has not been a formal stock assessment completed; however, anecdotal information suggests its abundance may be low. The proposed change was adopted by the Council as a precautionary measure for 2009 and 2010 to protect bronzespotted rockfish until more information becomes available.

- Modifications to Section 28.55(b)(3), Bag Limit for Bocaccio.

Existing regulations provide for differing bag limits within the RCG bag limit for bocaccio north and south of the 40° 10' North Latitude management line, with a two fish bag limit in the Northern Management Area, and a one fish bag limit in the remaining management areas, except that there is a zero fish bag limit in the Cowcod Conservation Area. Proposed regulations would allow for a statewide two fish bag limit within the 10 fish RCG bag limit; the zero fish bag limit in the Cowcod Conservation Area would remain unchanged. The coastwide bocaccio optimum yield increased for 2009 and 2010; therefore the statewide recreational fishery can retain two fish while remaining within the bocaccio harvest guideline. The proposed action could reduce impacts on other fish that would be caught to replace discarded bocaccio, decrease waste of discarded dead bocaccio, and allow for the same limit statewide.

- Modifications to Sections 27.25 Northern Groundfish Management Area; 27.30 North-Central Groundfish Management Area; 27.35 Monterey South-Central Groundfish Management Area; 27.40 Morro Bay South-Central Groundfish Management Area; 27.45 Southern Groundfish Management Area; 27.50 Cowcod Conservation Areas; and, Sections 28.48 Pacific Sanddab, Rock Sole, Sand Sole, Butter Sole, Curlfin Sole, Rex Sole and Flathead Sole, Pertaining to the Elimination of Gear Restrictions when Fishing for Sanddabs and Other Flatfish.

Existing regulations allow Sanddabs and "Other Flatfish" to be taken in the California recreational fishery when fishing for rockfish, lingcod, and associated species is closed and in depths where fishing for rockfish is prohibited, providing that anglers are limited to not more than 12 No. 2 or smaller hooks and up to two pounds of weight. A No. 2 hook means a fishing hook with a gap not greater than 7/16 inch between the hook point and the shank. These regulations were implemented in 2004 to reduce bycatch of overfished rockfish species. The specified gear is the standard gear used for targeting sanddabs regardless of whether the rockfish season is open or closed.

The Department analyzed the merits and shortcomings of the sanddab and "Other Flatfish" gear restrictions. The analysis revealed that there has been no appreciable change to impact rates on overfished species, or any species of the genus *Sebastes*, before and after gear restrictions were implemented and that impacts are presently negligible. Additionally, both California Recreational Fisheries Survey samplers and party/charter boat operators indicated that the bycatch of rockfish species while fishing for sanddabs and "Other Flatfish" is minimal. For regulation simplicity, the Council repealed the aforementioned gear restrictions pertaining to sanddabs and "Other Flatfish". The proposed regulatory changes would conform to action taken by the Council.

- Clarifying Changes to Section 27.20(a) Pertaining to the Definition of "Depth Constraint".

Existing regulations provide the definition of depth constraint as based on either general depth contour lines or a set of federal waypoints. Proposed regulations would clarify that the Department uses two different definitions of "depth constraint" depending on whether fishing is occurring in waters greater than or equal to 30 fathoms or waters that are shallower than 30 fathoms. Areas equal to or deeper than 30 fathoms shall use a line determined by connecting the appropriate set of waypoints adopted in Federal regulations, and areas shallower than 30 fathoms shall use general depth contour lines for approximating depth at which the angler is fishing.

- Clarifying Changes to Section 27.20(b) Pertaining to Special Closure Areas.

The Department took emergency action in May 2008 (OAL# 2008 0505 01E) to clarify that unless there is a special exemption, the take of groundfish and associated species is prohibited in special closure areas (e.g., Cordell Banks closure) even when the rest of the management area is open. This emergency action will expire November 5, 2008; however, the proposed regulation would make the change permanent.

- Clarifying changes to Section 28.56 Leopard Shark.

Current regulations allow for the take of leopard shark in waters 20 fathoms or less from March through December within the Cowcod Conservation Area. This is contrary to Section 28.50 Cowcod Conservation Area which does not allow for the take of leopard shark within the Cowcod Conservation Area. Currently, there are exceptions allowing the take of leopard shark in enclosed bays; however, there are no enclosed bays within the Cowcod Conservation Area and there was never any intent to allow fishing for leopard sharks within the Cowcod Conservation Area. The proposed regulation would remove this inconsistency by prohibiting the take of leopard shark within the Cowcod Conservation Area.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Flamingo Conference Resort, 2777 Fourth Street, Santa Rosa, California, on Friday, October 3, 2008 at 8:30 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 City of Huntington Beach, City Council Chambers, 2000 Main Street, Huntington Beach, California, on Friday, November 14, 2008, 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 November 7, 2008 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on November 11, 2008. All comments must be received no later than November 14, 2008, at the hearing in Huntington Beach, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

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, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to John Carlson, Jr., or Sherrie Fonbuena at the preceding address or phone number. **Ms. Marija Vojkovich, Regional Manager of the Marine Region, 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.fgc.ca.gov>.

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 range of proposed management actions that would limit recreational groundfish fishing in one or more of the Groundfish Management Areas for one or more species of fish may have adverse impacts to some businesses in California. Sport fishing business owners, boat owners, tackle store owners, boat manufacturers, vendors of food, bait, fuel and lodging, and others that provide goods or services to those that recreationally pursue groundfish off California may be adversely affected to some degree from loss of business if the 2009 and 2010 seasons are restricted compared to previous management cycles. However, anticipated impacts are speculative and would vary considerably by geographic location and by the nature and extent of the regulatory action taken. Additionally, it should be noted that the proposed regulatory actions would not apply to those recreationally targeting groundfish from shore or by diving, which would lessen impacts to some businesses such as dive and kayak shops.

Furthermore, while some coastal areas rely more heavily on boat-based sport groundfish fishing activity, there are other areas in which it comprises only a small amount of the overall fishing effort. For 2007, the Department estimates that recreational anglers in ocean waters throughout California made about 3.7 million fishing trips. It is not possible to approximate how many of these trips would not be taken exclusively as a result of the proposed regulatory action. It is important to recognize that in all coastal areas of

California there is still recreational ocean fishing opportunity for other desirable target species that are not managed as part of the groundfish complex - namely albacore, halibut, surf perches, bass, and others. Fishing opportunities for these species would not be impacted by the proposed regulation changes. When recreational anglers are prohibited or curtailed from targeting one particular species or groups of species due to season or area closures, oftentimes they will mitigate by changing target species or relocating their effort.

The Commission has made an initial determination that the amendment of this regulation may have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Commission has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

- (i) the establishment of differing compliance or reporting requirements or timetables which take into account the resources available to businesses;
 - (ii) consolidation or simplification of compliance and reporting requirements for businesses;
 - (iii) the use of performance standards rather than prescriptive standards; or
 - (iv) exemption or partial exemption from the regulatory requirements for business.
- (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:

The proposed regulatory action could produce some impact on the creation or elimination of jobs or businesses that rely on recreational fishing for groundfish and associated species. However, the degree of impact is highly speculative in nature and cannot be quantified. See response to (a) above.

- (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. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

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: September 15, 2008

John Carlson, Jr.
Executive Director