

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

Amend Section 28.20,
Title 14, California Code of Regulations
Re: Pacific Halibut

I. Date of Initial Statement of Reasons: February 21, 2014

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing: Date: December 11, 2013
Location: San Diego, CA

(b) Discussion Hearing: Date: April 16, 2014
Location: Ventura, CA

(c) Adoption Hearing: Date: June 4, 2014
Location: Fortuna, CA

III. Description of Regulatory Action

(a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary

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 certain species, such as 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).

Current State law (Fish and Game Code, Section 316) gives the Fish and Game Commission (Commission) the authority to prohibit the taking or possessing of Pacific halibut in the same manner as the taking or possessing of Pacific halibut is prohibited through federal law, or by rules or regulations adopted by the International Pacific Halibut Commission (IPHC). Meanwhile, under a new California law (Fish and Game Code, Section 205.1), the Commission now has authority to establish - through regulation - an automatic process to conform State sport fishing

regulations applicable in State waters (zero to three miles offshore) to federal regulations for federally managed species, which include Pacific halibut.

Pacific halibut along the United States west coast is jointly managed through authorities of the 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 measures in federal regulation (Title 50 CFR Subpart E of Part 300 and the Federal Register). These federal regulations (rules) are applicable in the Federal Exclusive Economic Zone (3 to 200 miles offshore) off Washington, Oregon and California.

These federal regulations are adopted annually, or amended more often if necessary, and serve to implement the Pacific Halibut CSP and fishery management measures adopted by the Council. These measures include those for recreational fishing in federal waters off California.

For species (e.g., salmon, groundfish, coastal pelagic and highly migratory species, and Pacific halibut) managed under federal fishery management plans or regulations, the Commission has usually taken concurrent action to conform State recreational regulations to federal regulations that have been adopted through an open and deliberative federal rulemaking process, which includes 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. However, this dual process is redundant, inefficient, and historically the lag between the federal action and the conforming State action created a period of management inconsistency and confusion. To improve regulatory efficiency and reduce costs, a new California law (Fish and Game Code, Section 205.1) was enacted (Statutes of 2013, Chapter 233) with the goal of reducing redundancies between State and federal rulemaking processes for these species.

Present Regulations

Current State regulations (Section 28.20, Title 14, California Code of Regulations (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 repeal the current text of Section 28.20, Title 14, CCR, and replace it with a description of the process through which State sport fishing regulations for Pacific halibut will conform to federal sport fishing regulations for Pacific halibut in federal waters of the ocean off California. Notice of any new/changed regulations would be provided to the public via on-line and printed materials (e.g. the Commission's and Department's web pages, mail and/or email, the California Regulatory Notice Register, and Ocean Sport Fishing Regulation booklets or supplements).

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. The recommendations included shortening the open season by closing the month of August. The federal regulations are expected to take effect by May 1, 2014. The proposed changes to Section 28.20, Title 14, CCR, need to be effective in time to conform to these federal regulations, since the current regulations in Section 28.20, Title 14, CCR, allow fishing during the month of August. If Commission action, or the effective date of the regulation changes proposed in this package are delayed, there will be inconsistency in season dates between the federal and State regulations.

As a result, the proposed regulation changes described herein are not only necessary to reduce redundancy between State and federal rulemaking processes, but also because there is a need to amend the State's regulations for conformity with pending federal regulations.

Goals and Benefits of the Regulation

The goal of the regulation is to eliminate the delay between the federal action and the conforming State action which leads to a period of management inconsistency and confusion between regulations for federal and State ocean waters. Timely conformance also eliminates the creation of a preemption issued under the Magnuson-Stevens Fishery Conservation and Act.

The Commission anticipates benefits to the health and welfare of California residents. Providing opportunities to participate in sport fisheries fosters conservation through education and appreciation of wildlife.

The Commission anticipates benefits to the environment by the sustainable management of California's Pacific halibut resources.

Additional benefits of the proposed regulations are concurrence with federal law, and promotion of businesses that rely on recreational Pacific halibut fishing.

- (b) Authority and Reference Sections from Fish and Game Code for Regulation

Authority: Sections 200, 202, 205, 205.1, 219, 220 and 316, Fish and Game Code. Statutes 2013, Chapter 233, Section 1.

Reference: Sections 200, 201, 202, 203.1, 205, 205.1, 207, 210, 215, 219, 220 and 316, Fish and Game Code. Statutes 2013, Chapter 233, Section 1. Title 50, Code of Federal Regulations, Subpart E of Part 300, Sections 300.60, 300.61, 300.62, 300.63, and 300.66.

- (c) Specific Technology or Equipment Required by Regulatory Change:

None.

- (d) Identification of Reports or Documents Supporting Regulation Change

Economic Impact Assessment

- (e) Public Discussions of Proposed Regulations Prior to Notice Publication:

December 11, 2013, meeting of the Fish and Game Commission in San Diego, CA.

IV. Description of Reasonable Alternatives to Regulatory Action

- (a) Alternatives to Regulation Change:

Continue status quo management of the Pacific halibut resource. The Council would continue to recommend regulations for federal waters, NMFS will continue to implement federal regulations for waters off California, and the Commission would continue to adopt the same changes to State regulations, for conformance, via regular Administrative Procedure Act rulemakings. Not adopting the proposed process for automatic conformance with federal regulations would continue to result in redundant workload to the State in order to make annual changes to CCR Title 14 to keep State regulations in conformance with federal regulations.

- (b) No Change Alternative:

The no change alternative would result in mis-alignment between state and federal regulations expected to go into effect May 1, 2014.

- (c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative

considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the proposed regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

V. Mitigation Measures Required by Regulatory Action

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. 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 Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because the regulatory action does not substantially alter existing conditions.

(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; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission does not anticipate any impacts on the creation or elimination of jobs in California.

The Commission does not anticipate any impacts on the creation of new businesses, the elimination of existing businesses, or the expansion of businesses in California.

The Commission anticipates benefits to the health and welfare of California residents. Providing opportunities to participate in sport fisheries fosters conservation through education and appreciation of wildlife.

The Commission anticipates benefits to the environment by the sustainable management of California's Pacific halibut resources.

The Commission does not anticipate any benefits to worker safety.

Additional benefits of the proposed regulations are concurrence with federal law, and promotion of businesses that rely on recreational Pacific halibut fishing.

(c) Cost Impacts on a Representative Private Person or Business:

The agency 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:

This action would result in potential savings to the State in the form of reduced annual rulemaking activities and associated personnel and monetary costs incurred to accomplish those activities needed to align State and federal regulations.

(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, Government Code:

None.

(h) Effect on Housing Costs:

None.

Informative Digest/Policy Statement Overview

Pacific halibut along the United States west coast is 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 measures in federal regulation [Title 50, Code of Federal Regulations (CFR), Subpart E of Part 300 and the Federal Register]. These federal regulations (rules) are applicable in the Federal Exclusive Economic Zone (3 to 200 miles offshore) off Washington, Oregon and California.

For species managed under federal fishery management plans or regulations, the Commission has usually taken concurrent action to conform State recreational regulations to federal regulations that have been adopted through an open and deliberative federal rulemaking process.

Under a new California law [Fish and Game Code, Section 205.1 (Statutes of 2013, Chapter 233)], the Commission now has authority to establish - through regulation - an automatic process to conform State sport fishing regulations applicable in State waters (zero to three miles offshore) to federal regulations for federally managed species, which include Pacific halibut.

Current State regulations (Section 28.20, Title 14, California Code of Regulations (CCR)) 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.

The proposed amendments to the regulations would replace the current text of Section 28.20, Title 14, CCR, with new language that would describe the process through which State sport fishing regulations for Pacific halibut will conform to federal sport fishing regulations for Pacific halibut in federal waters of the ocean off California.

Benefits of the Regulation

The Commission anticipates benefits to the health and welfare of California residents. Providing opportunities to participate in sport fisheries fosters conservation through education and appreciation of wildlife.

The Commission anticipates benefits to the environment by the sustainable management of California's Pacific halibut resources.

Additional benefits of the proposed regulations are concurrence with federal law, and promotion of businesses that rely on recreational Pacific halibut fishing.

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. The Legislature has delegated authority to the Commission to adopt sport fishing regulations in general (Fish and Game Code, sections 200, 202 and 205); Pacific halibut sport fishing regulations specifically (Fish and Game Code, Section 316); and an automatic process to conform State sport fishing regulations to federal regulations for federally managed species, including Pacific halibut (Fish and Game Code, Section 205.1). The proposed regulations are consistent with regulations for sport fishing in marine protected areas (Section 632, Title 14, CCR) and with general sport fishing regulations in Chapters 1 and 4 of Subdivision 1 of Division 1, Title 14, CCR. Commission staff has searched the California Code of Regulations and has found no other State regulations related to the recreational take of Pacific halibut.