

STATE OF CALIFORNIA  
FISH AND GAME COMMISSION  
ADDENDUM TO FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Subsections (a) and (b) of Section 27.20, Sections 27.25, 27.30,  
27.35, 27.40, 27.45, 27.50, 28.27, 28.49, and 28.55; and

Add Section 28.47

Title 14, California Code of Regulations

Re: Recreational Fishing Regulations for Federal Groundfish and Associated Species  
for Consistency with Federal Rules for 2017 and 2018

During review of the proposed federal rule, some errors were found which result in the mis-match between State and federal regulations listed below:

- (1) The “no limit” on petrale sole and starry flounder in Section 28.47 does not align with published federal regulation that provides that petrale sole and starry flounder are subject to the overall 20-fish bag limit.
- (2) The removal of the prohibition on retention of canary rockfish does not align with published federal regulation that provides that the retention of canary rockfish is prohibited.

These errors were communicated to National Marine Fisheries Service (NMFS), but unfortunately NMFS was not able to make the corrections before the final rule published. The State regulations approved by the Commission are correct and accurately reflect the Pacific Fishery Management Council’s intent.

Kevin C. Duffy, Groundfish Branch Chief, Sustainable Fisheries Division, NMFS West Coast Region, assured Commission staff that these are regulatory typographical errors which the federal NMFS intends to correct as soon as possible. (See Attachment 1)

## ATTACHMENT 1

From: **Kevin Duffy - NOAA Federal** <[kevin.duffy@noaa.gov](mailto:kevin.duffy@noaa.gov)>  
Date: Tue, Jan 17, 2017 at 11:02 AM  
Subject: Re: possible error in proposed rule for canary retention in CCA  
To: "Grebel, Joanna@Wildlife" <[Joanna.Grebel@wildlife.ca.gov](mailto:Joanna.Grebel@wildlife.ca.gov)>  
Cc: Gretchen Hanshew <[Gretchen.Hanshew@noaa.gov](mailto:Gretchen.Hanshew@noaa.gov)>, Kathryn Blair - NOAA Affiliate <[kathryn.blair@noaa.gov](mailto:kathryn.blair@noaa.gov)>, Steve Freese <[Steve.Freese@noaa.gov](mailto:Steve.Freese@noaa.gov)>, Frank Lockhart <[frank.lockhart@noaa.gov](mailto:frank.lockhart@noaa.gov)>

Thank you for heads up and dialogue the last couple of days regarding some errors and/or emissions in the California sections of the proposed rule for the 2017-2018 Groundfish Harvest Specifications and Management Measures as published in the Federal Register. Despite best efforts by NMFS, Council, and State staff in reviewing and commenting on the draft proposed rule prior to publication, coupled with no comments during the proposed rule comment period, it appears that some corrections may be required to completely align the final regulatory package with Council direction. The timing of this information precludes NMFS from considering these corrections in the final rule, which is currently at the Federal Register and scheduled to publish very soon.

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Recent comments from CDFW staff are summarized here.

In the process of updating California state regulation tables CDFW staff have found some inconsistencies between what the Council approved for 2017-2018 and what is reflected in the proposed rule (and final rule soon) for the 2017-2018 Groundfish Harvest Specifications and Management Measures published in the *Federal Register* by NMFS. They state that per the proposed rule the Cowcod Conservation Area (CCA) regulations were not updated to reflect that petrale and starry flounder would be exempt and could be retained (similar to sanddabs). At the beginning of the California sport regulations section the regulations accurately state that petrale sole, pacific sanddab, and starry flounder are not subject to a bag limit. Then later in the regulations (3)(iv) it inaccurately states that petrale sole and starry flounder are subject to the overall 20-fish bag limit. So the first part is correct – they are not subject to a bag limit. The intent of removing the season/depth restrictions for petrale and starry flounder was to allow retention in the sport fishery inside this area.

They also found that the proposed rule pertaining to California recreational fisheries and the CCA - §660.360(c)(3)(i)(3) did not update the regulations to reflect removal of the prohibition on retention of canary rockfish in the sport fishery. Canary is a shelf rockfish and per the regulations they can now be retained.

Finally, they also noted that the section addressing Cordell Banks was not updated to reflect that petrale sole and starry flounder are exempt from the closure. They

provided information as a heads up since this is entirely in federal waters it won't affect California state regulations.

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With the final rule publishing soon, NMFS is preparing an associated public notice. NMFS will look closely at the issues you have identified, and in order to address any errors and omissions, NMFS will likely identify these inconsistencies in that public notice. Next, we will turn to resolving this matter through either a correcting amendment or an inseason action through the Council (based on advice from general counsel). Either way, we will publish the correction in the Federal Register and distribute an additional public notice concurrent with that action. If you need further information, contact me directly.

Kevin C. Duffy, Groundfish Branch Chief, Sustainable Fisheries Division, NMFS West Coast Region.