

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

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

I. Date of Initial Statement of Reasons: June 28, 2016

II. Dates and Locations of Scheduled Hearings:

- | | | |
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| (a) | Notice Hearing: | Date: August 24, 2016
Location: Folsom, CA |
| (b) | Discussion Hearing | Date: October 19, 2016
Location: Eureka, CA |
| (c) | Adoption Hearing: | Date: December 7, 2016
Location: San Diego, 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:

Biennially, the Pacific Fishery Management Council (PFMC) reviews the status of west coast groundfish populations. As part of that process, it recommends groundfish fisheries regulations aimed at meeting biological and fishery allocation goals specified in law or established in the Pacific Coast Groundfish Fishery Management Plan (FMP). These recommendations coordinate west coast management of recreational and commercial groundfish fisheries in the Exclusive Economic Zone (EEZ) (three to 200 miles offshore) off Washington, Oregon and California. These recommendations are subsequently implemented as federal fishing regulations by the National Marine Fisheries Service (NMFS).

Under California law (California Fish and Game Code sections 200 and 205), the California Fish and Game Commission (Commission) adopts regulations for the recreational groundfish fishery in State waters zero to three miles from shore.

It is critical to have consistent State and federal regulations establishing season dates, depth constraints and other management measures, and also critical that the State and federal regulations be effective

concurrently. Consistency of rules in adjacent waters allows for uniformity of enforcement, minimizes confusion, and allows for a comprehensive approach to resource management. Consistency with federal regulations is also necessary to maintain State authority over its recreational groundfish fishery and avoid federal preemption under the Magnuson-Stevens Fishery Conservation Act [16 USC §1856 (b)(1)].

On June 27, 2016, the PFMC recommended changes to federal rules for recreational groundfish fishing off California for 2017 and 2018 which are expected to go into effect on or around January 1, 2017. The proposed actions in this rulemaking would make regulations for State waters consistent with these new federal regulations.

Present Regulations

Existing law authorizes the recreational take of groundfish subject to regulations set forth by federal and State authorities. Current regulations establish season lengths, depth constraints, methods of take, closed areas, and size, bag and possession limits within the five groundfish management areas for all federal groundfish and associated species [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, 28.54, 28.55, 28.56 and 28.58, Title 14, CCR].

Species or Species Groups Which May be Taken or Possessed

Present regulations allow anglers to take and possess federally-managed groundfish species as defined in Section 1.91 when the fishing season is open. Regulations also establish that California sheephead, ocean whitefish, and all greenlings of the genus *Hexagrammos*, which are State-managed species known to associate with federal groundfish, can be taken and possessed only when the season is open to recreational groundfish fishing.

Season Length and Depth Constraints

Current regulations specify seasons and depth constraints for the five groundfish management areas in ocean waters off California. These regulations serve as management tools that are adjusted biennially to ensure that mortality of both overfished and non-overfished stocks remain within allowable limits. The current seasons and depth constraints were designed to maximize harvest of healthy stocks while staying within allowable limits for all species.

The Northern and Mendocino Management Areas have a 20 fathom depth constraint, with a season of five and one-half months. The San Francisco Management Area has an eight and one-half month season, with a depth constraint of 30 fathoms. The Central Management Area has a nine month season, with a depth constraint of 40 fathoms. The Southern Management Area has the least restrictive regulations, with a ten month season and a depth constraint of 60 fathoms. The Cowcod Conservation Areas provide discrete depth limits within the Southern Management Area.

Bag Limits

Present regulations establish bag limits which vary by species or species groups and are designed to keep harvest within allowable limits.

Proposed Regulations

The Department of Fish and Wildlife (Department) is proposing the regulatory changes described below to be consistent with PFMC recommendations for federal groundfish regulations in 2017 and 2018. This approach will allow the Commission to adopt State recreational groundfish regulations to timely conform to those taking effect in federal ocean waters in January 2017.

The proposed regulatory changes will implement the following changes:

1. Seasons and Depths
 1. Extend the season length in the Northern and Mendocino Management Areas;
 2. Increase the allowable depth in the Northern, San Francisco and Central Management Areas;
 3. Allow for the take of all species with no depth restrictions November 1 through December 31 in the Northern and Mendocino Management Areas;
2. Bag Limits
 1. Increase the bag limit for canary rockfish from zero to one fish;
 2. Decrease the bag limit for black rockfish from five to three fish;
 3. Eliminate the three fish sub-bag limit for bocaccio;
 4. Decrease the bag limit for lingcod from three to two fish;
3. Allow petrale sole and starry flounder to be retained year round at all depths;
4. Clarifications
 1. Clarify language pertaining to Rockfish Conservation Areas;
 2. Clarify regulations for petrale sole and starry flounder; and
 3. Clarify and make consistent other provisions of the regulations.

Item 1: Proposed Changes to Seasons and Depths

The proposed regulatory changes would modify season and/or depth constraints in four of the five management areas (Northern, Mendocino, San Francisco, and Central) (Figure 1) as follows:

- A. The season length is proposed to be increased by two and one-half months in the Northern and Mendocino Management Areas;
- B. The depth restriction is proposed to be increased by 10 fathoms in the Northern, San Francisco, and Central Management Areas; and
- C. Fishing for all species would be allowed with no depth restrictions from November 1 through December 31 in the Northern and

Mendocino Management Areas.

A new stock assessment was conducted for black rockfish in California in 2015. This new assessment indicated that while black rockfish are considered healthy, they are not as plentiful as previously thought. Therefore allowable harvest limits were reduced by the PFMC in response to this new scientific information. Because black rockfish are found in shallower waters, increasing the depth in some management areas will allow anglers to move to into deeper waters to target other species, which should reduce fishing pressure on black rockfish in shallower depths.

Yelloweye rockfish is overfished and managed under a rebuilding plan to facilitate rebuilding the stock to healthy levels. The harvest guideline for yelloweye rockfish was increased slightly by the PFMC this year, compared to previous years consistent with the results of the rebuilding plan. There is now adequate room within this harvest guideline to extend fishing both into deeper depths and for longer seasons in many areas.

The general season and depth limit changes listed above require changes in sections 27.25, 27.35 and 27.40 concerning exceptions for leopard shark, and in sections 27.30, 27.35 27.40, 27.45 and 27.50 concerning exceptions for California scorpionfish.

Management Area	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Northern	Closed				May 1 – Oct 31 <30fm						All Depth	
Mendocino	Closed				May 1 – Oct 31 <20fm						All Depth	
San Francisco	Closed				April 15 – Dec 31 <40fm							
Central	Closed				April 1 – Dec 31 <50fm							
Southern	Closed		Mar 1 – Dec 31 <60 fm									

Figure 1. Season structure and depth constraints proposed for the California recreational groundfish fishery for 2017 and 2018 as recommended by the PFMC in June 2016.

Item 2: Proposed Changes to Bag Limits

The proposed regulatory changes would modify bag limits for canary rockfish, black rockfish, bocaccio, and lingcod as follows:

- A. *Canary Rockfish* - The proposed regulations would increase the bag limit for canary rockfish from zero to one fish. Canary rockfish, a previously overfished stock, has rebuilt to healthy levels and allowing retention of one fish can be accommodated within the State's new recreational harvest guideline.
- B. *Black Rockfish* - The proposed regulations decrease the bag limit for black rockfish from five to three fish statewide. A lower bag limit is needed to keep catches within reduced allowable harvest limits for this species, as described above.
- C. *Bocaccio* - The proposed regulations eliminate the sub-bag limit for bocaccio within the overall 10 fish Rockfish, Cabezon, Greenling (RCG). Bocaccio is rebuilding quickly and eliminating the sub-bag limit and allowing retention of up to 10 fish can be easily

accommodated within the harvest guideline without jeopardizing the rebuilding progress of this stock.

- D. *Lingcod* - The proposed regulations decrease the bag limit for lingcod from three to two fish. A lower bag limit is needed to keep catches within allowable limits. In 2015, recreational catches came very close to exceeding the limit, and with the proposed extensions to season lengths, a lower bag limit was needed to ensure the additional catches that will come with the increases to time on the water can be accommodated within the limit.

Item 3: Proposed Changes to Retention of Petrale Sole and Starry Flounder

The proposed regulations would allow petrale sole and starry flounder to be retained year-round in all depths. Both of these species are encountered while fishing for other species and allowing retention year-round will reduce discarding while keeping catches within allowable limits. Both species are taken in very low quantities in California sport fisheries compared with the State's commercial fisheries, and sport catches are expected to continue near status-quo levels with the proposed change.

Item 4: Clarifications

The proposed regulations clarify that when depth limits are in effect, fishing is prohibited seaward of the specified depth limit along the mainland coast and along islands and offshore seamounts. The proposed changes would reduce public confusion and clarify those areas which are closed to fishing, particularly around offshore islands and seamounts. To improve clarity, regulations governing petrale sole and starry flounder were removed from Section 28.49 and relocated in a new stand-alone Section 28.47 because they are no longer subject to any depth constraints. Other changes are proposed for clarity and consistency.

It is the policy of this State to encourage the conservation, maintenance, and utilization of the living resources of the ocean and other waters under the jurisdiction and influence of the State for the benefit of all the citizens of the State and to promote the development of local fisheries and distant-water fisheries based in California.

The objectives of this policy include, but are not limited to, the maintenance of sufficient populations of all species of aquatic organisms to ensure their continued existence and the maintenance of a sufficient resource to support a reasonable sport use, taking into consideration the necessity of regulating individual sport fishery bag limits to the quantity that is sufficient to provide a satisfying sport.

Adoption of scientifically-based groundfish seasons, depth restrictions, size limits, and bag and possession limits provides for the maintenance of sufficient populations of groundfish species to ensure their continued existence.

The benefits of the proposed regulations are consistency with federal law, sustainable management of groundfish resources, and promotion of businesses that rely on recreational groundfish fishing.

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

Authority: Sections 200, 202, 205, 220, 702, 7071 and 8587.1, Fish and Game Code.

Reference: Sections 200, 202, 205, 220, 1802, 7071 and 8585.5, Fish and Game Code; Title 50, Code of Federal Regulations, Part 660, Subpart G; and Section 27.20, Title 14, CCR.

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

None

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

2017-2018 Groundfish Harvest Specifications and Management Measures Including Changes to Groundfish Stock Designations (Amendment 27 to the Pacific Coast Groundfish Fishery Management Plan); Description and Analysis for Council Decision-Making http://www.pcouncil.org/wp-content/uploads/2016/03/F3_Att1_17-18_GF_SpexCouncilDoc_APR2016BB.pdf

Pacific Coast Groundfish Fishery Management Plan for the California, Oregon, and Washington Groundfish Fishery. March 2016. Pacific Fishery Management Council.

http://www.pcouncil.org/wp-content/uploads/2016/03/GF_FMP_FINAL_Mar2016_Mar282016.pdf

Nearshore Fishery Management Plan. Adopted October 25, 2002. Department of Fish and Game.

<https://www.wildlife.ca.gov/Conservation/Marine/NFMP.aspx>

Fisheries Economics of the United States, 2014. May 2016. NOAA Technical Memorandum, NMFS-F/SPO-163.

<http://www.st.nmfs.noaa.gov/Assets/economics/publications/FEUS/FEUS-2014/Report-and-chapters/FEUS-2014-FINAL-v5.pdf>

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

Pacific Fishery Management Council meetings where the proposed regulations for the 2017 and 2018 recreational groundfish and associated species were discussed:

- September 9-16, 2015, Sacramento, CA
- November 14-19, 2015, Garden Grove, CA
- March 8-14, 2016, Sacramento, CA
- April 8-14, 2016, Vancouver, WA
- June 21-28, 2016, Tacoma, WA

State public meetings where the proposed regulations for the 2017 and 2018 recreational groundfish and associated species were discussed:

- December 2, 2015, Eureka, CA
- December 3, 2015, Fort Bragg, CA
- December 9, 2015, Sausalito, CA
- January 6, 2016, Monterey, CA
- January 7, 2016, Los Alamitos, CA

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

No alternatives were identified by or brought to the attention of Commission staff that would have the same desired regulatory effect.

(b) No Change Alternative:

Under the No Change Alternative, State law would be inconsistent with federal law. Inconsistency in regulations will create confusion among the public and may result in laws that are difficult to enforce. Additional fishing opportunity expected to come with the federal regulation changes effective in January 2017 would not be realized.

It is critical to have consistent State and federal regulations establishing season dates, depth constraints and other management measures, and also critical that the State and federal regulations be effective concurrently. Consistency with federal regulations is also necessary to maintain State authority over its recreational groundfish fishery and avoid federal preemption under the Magnuson-Stevens Fishery Conservation Act [16 USC §1856 (b)(1)].

(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 statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Commission anticipates increased opportunities for the recreational groundfish fishery in 2017-2018 compared to 2016.

- (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 significant impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses or the expansion of businesses in California.

The Commission anticipates benefits to the health and welfare of California residents.

The Commission does not anticipate any benefits to worker safety.

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

- (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:

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, Government Code:

None

(h) Effect on Housing Costs:

None

VII. Economic Impact Assessment

Recreational groundfish fisheries are broadly sub-divided between private anglers and commercial passenger fishing vessels. The economic impact of regulatory changes for recreational fisheries may be estimated by tracking the resulting changes in fishing effort, angler trips and length of stay in the fishery areas. Distance traveled affects gas and other travel expenditures. Day trips and overnight trips involve different levels of spending for gas, food, and accommodations at area businesses as well as different levels of sales tax impacts. Direct expenditures ripple through the economy, as receiving businesses buy intermediate goods from suppliers that then spend that revenue again. Business spending on wages is received by workers who then spend that income, some of which goes to local businesses. Recreational fisheries spending, thus multiplies throughout the economy with the indirect and induced effects of the initial direct expenditure.

The adoption of scientifically-based regulations provides for the maintenance of sufficient populations of groundfish to ensure their continued existence and future groundfish sport fishing opportunities that in turn support the fishery economy. In a recently released report, Fisheries Economics of the United States 2014 (May 2016) by the National Marine Fisheries Service, all marine recreational anglers trip-related and equipment expenditures sum to approximately \$2.0 billion in California. Coupled with the indirect and induced effects of this \$2.0 billion direct revenue contribution, the total realized economic benefit to California is estimated at \$2.7 billion in total economic output annually. This corresponds with about \$1.1 billion in total wages to Californians, and about 23,000 jobs in the State, annually. While the precise share of these expenditures attributed solely to groundfish anglers is not known, we do know that the groundfish fishery constitutes a large share of the State's recreational angler activity.

The proposed regulations will modify State recreational groundfish regulations to conform to federal rules. Currently, the conforming State regulations for groundfish include season lengths, depth restrictions, size limits, bag limits, and possession limits. In adopting these conforming regulations the State relies on information provided in PFMC documents which includes analysis of impacts to California (http://www.pcouncil.org/wp-content/uploads/2016/03/F3_Att1_17-18_GF_SpexCouncilDoc_APR2016BB.pdf).

For public notice purposes to facilitate Commission discussion, the Department is proposing regulatory changes to encompass the range of federal groundfish regulations that are expected to be in effect for 2017 and 2018. The proposed regulatory changes would modify the bag limit for some species and/or species groups and would modify the season and/or depth constraints in four of the management areas (Northern, Mendocino, San Francisco, and Central).

The range of estimated impact on angler trips by management area and the percent increase from the status quo is presented in Table 1. The economic impacts may be close to status quo; however, some increased revenues are expected. These additional revenues would provide economic benefit to the greater community, particularly to the coastal communities in the Northern and Mendocino Management Areas.

Table 1. Estimated Impact on Angler Trips by Management Area.

Management Area	Impact on Angler Trips	Percent Increase over Status Quo
Northern	Status Quo + 2,800 Trips	Increase of 7%
Mendocino	Status Quo + 1,500 Trips	Increase of 9%
San Francisco	Status Quo	Status Quo*
Central	Status Quo	Status Quo*
Southern	Status Quo	Status Quo

*A 10 fathom increase in depth is proposed, however economic effects of such an increase cannot be quantified.

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 positively affected to some degree from increases to business that may result under the range of proposed regulations. However, anticipated impacts may vary by geographic location. Additionally, economic impacts to these same businesses may result from a number of factors unrelated to the proposed changes to groundfish fishing regulations, including weather, fuel prices, and success rates in other marine recreational fisheries such as salmon and albacore.

Effects of the Regulation on the Creation or Elimination of Jobs Within the State

The cumulative effects of the changes statewide are estimated to be neutral to job elimination and potentially positive to job creation in California. No significant changes in fishing effort and recreational fishing expenditures to businesses are expected as a direct result of the proposed regulation changes.

Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses within the State

The cumulative effects of the changes statewide are expected to be neutral to business elimination and potentially positive to the creation of businesses in California. No significant changes in fishing effort and recreational fishing expenditures to businesses are expected as a direct result of the proposed regulation changes.

Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State

The cumulative effects of the changes statewide are expected to be neutral to positive to the expansion of businesses currently doing business in California. No significant changes in fishing effort and recreational fishing expenditures to businesses are expected as a direct result of the proposed regulation changes.

Benefits of the Regulation to the Health and Welfare of California Residents

Providing increased fishing opportunities for groundfish encourages recreation, which can have a positive impact on the health and welfare of California residents. Groundfish taken in the sport fishery and later consumed may have positive human health benefits.

Benefits of the Regulation to Worker Safety

The proposed regulations are not anticipated to impact worker safety conditions.

Benefits of the Regulation to the State's Environment

It is the policy of this State to encourage the conservation, maintenance, and utilization of the living resources of the ocean and other waters under the jurisdiction of the State for the benefit of all citizens of the State. Benefits of the proposed management actions include increased fishing opportunity, along with the continuation of the reasonable and sustainable management of recreational groundfish resources and the protection of listed and special status species. Adoption of scientifically-based seasons, depth restrictions, and recreational bag limits provide for the maintenance of sufficient populations of groundfish to ensure their continued existence.

Other Benefits of the Regulation

Concurrence with Federal Law

The PFMC reviews the status of groundfish regulations biennially. As part of that

process, it recommends regulations aimed at meeting biological and fishery allocation goals specified in law or established in the Pacific Coast Groundfish Fishery Management Plan. These recommendations coordinate management of recreational and commercial groundfish in the EEZ (three to 200 miles offshore) off the coasts of Washington, Oregon, and California. These recommendations are subsequently implemented as ocean fishing regulations by the National Marine Fisheries Service.

California's sport fishing regulations need to conform to, or be more restrictive than, federal regulations to ensure that biological and fishery allocation goals are not exceeded.

Informative Digest/Policy Statement Overview

Biennially, the Pacific Fishery Management Council (PFMC) reviews the status of west coast groundfish populations. As part of that process, it recommends groundfish fisheries regulations aimed at meeting biological and fishery allocation goals specified in law or established in the Pacific Coast Groundfish Fishery Management Plan (FMP).

These recommendations coordinate west coast management of recreational and commercial groundfish fisheries in the Exclusive Economic Zone (EEZ) (three to 200 miles offshore) off Washington, Oregon and California. These recommendations are subsequently implemented as federal fishing regulations by the National Marine Fisheries Service (NMFS).

For consistency, the California Fish and Game Commission (Commission) routinely adopts sportfishing regulations to bring State law into conformance with federal law for groundfish and other federally-managed species.

Current regulations establish season lengths, depth constraints, methods of take, and size, bag and possession limits within the five groundfish management areas for all federal groundfish and associated species.

Summary of Proposed Amendments

The Department of Fish and Wildlife (Department) is proposing the following regulatory changes to be consistent with PFMC recommendations for federal groundfish regulations in 2017 and 2018. This approach will allow the Commission to adopt State recreational groundfish regulations to timely conform to those taking effect in federal ocean waters in January 2017.

The proposed regulatory changes will implement the following changes:

1. Seasons and Depths
 - A. Extend the season length in the Northern and Mendocino Management Areas;
 - B. Increase the allowable depth in the Northern, San Francisco and Central Management Areas;
 - C. Allow for the take of all species with no depth restrictions November 1 through December 31 in the Northern and Mendocino Management Areas;
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 - A. Increase the bag limit for canary rockfish from zero to one fish;
 - B. Decrease the bag limit for black rockfish from five to three fish;
 - C. Eliminate the three fish sub-bag limit for bocaccio;
 - D. Decrease the bag limit for lingcod from three to two fish;
3. Allow petrale sole and starry flounder to be retained year round at all depths;
4. Clarifications
 - A. Clarify language pertaining to Rockfish Conservation Areas; and
 - B. Clarify and make consistent other provisions of the regulations.

The benefits of the proposed regulation changes are consistency with federal law, sustainable management of groundfish resources and promotion of businesses that rely on recreational groundfish 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 (Fish and Game Code, sections 200, 202 and 205). The proposed regulations are consistent with regulations for sport fishing in marine protected areas (Section 632, Title 14, CCR), with Nearshore Fishery Management Plan regulations (sections 52.00 through 52.10, Title 14, CCR) and with sport fishing regulations in Chapters 1 and 4 of Subdivision 1 of Division 1, and Section 195, 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 groundfish.