

STAFF SUMMARY FOR APRIL 13, 2017

3. PACIFIC HALIBUT RECREATIONAL FISHING**Today's Item**Information ☐Action ☒

Adopt proposed changes to recreational Pacific halibut fishing regulations.

Summary of Previous/Future Actions

- Notice hearing Dec 7-8, 2016; San Diego
- Discussion hearing Feb 8-9, 2017; Rohnert Park
- **Today's adoption hearing Apr 13, 2017; Teleconference**

Background

In Dec 2016, FGC authorized publication of a notice of its intent to amend the recreational Pacific halibut fishing regulations. The proposed changes to Section 28.20 modify the season to include a range from May 1 to Oct 31, which may include periodic closures, and update the reference to the Federal Register specifying the 2017 federal quota amount.

Pacific halibut is internationally managed under the authority of the Northern Pacific Halibut Act of 1982 between the USA and Canada. Pacific halibut along the U.S. West Coast is jointly managed through authorities of the International Pacific Halibut Commission, Pacific Fishery Management Council, and National Marine Fisheries Service (NMFS), in conjunction with West Coast state agencies. For consistency, FGC routinely adopts regulations to bring State law into conformance with federal and international law for Pacific halibut.

Significant Public Comments

1. One comment in support of a status quo season (Exhibit 4).

Recommendation

FGC staff: Adopt changes to the season structure as recommended by DFW, update the regulation to identify the Federal Register in which the 2017 federal quota amount is specified, and adopt the notice of exemption.

DFW: Adopt the open season for recreational take of Pacific halibut as follows: May 1-Jun 15, Jul 1-15, Aug 1-15, and Sep 1-Oct 31, or until the quota is reached, whichever comes first.

Exhibits

1. [DFW memo, received Oct 6, 2016](#)
2. [Initial statement of reasons](#)
3. [Draft notice of exemption](#)
4. [Email from Tim Klassen, received Feb 12, 2017](#)
5. [DFW memo to FGC, received Mar 28, 2017, with DFW Mar 8, 2017 letter to NMFS attached.](#)

STAFF SUMMARY FOR APRIL 13, 2017

Motion/Direction

Moved by _____ and seconded by _____ that the Commission has determined, based on the record, this project is exempt from the California Environmental Quality Act pursuant to the guidelines in Public Resources Code sections 15307 and 15308, and adopts the proposed changes to Section 28.20 related to Pacific halibut recreational fishing regulations, as recommended by the Department of Fish and Wildlife.

Memorandum

2016 OCT -6 AM 10:40

Date: October 3, 2016

To: Valerie Termini, Executive Director
Fish and Game Commission

From: Charlton H. Bonham
Director



Subject: **Agenda Item for the December 7-8, 2016, Fish and Game Commission Meeting, Request to Publish Notice of the Commission's Intent to Amend Section 28.20, Title 14, California Code of Regulations, Re: Pacific Halibut**

The Department of Fish and Wildlife (Department) requests that the Fish and Game Commission (Commission) authorize publication of notice of its intent to consider amending existing regulations for the recreational Pacific halibut (*Hippoglossus stenolepis*) fishery (Section 28.20, Title 14, CCR).

An Initial Statement of Reasons (ISOR) is attached, which proposes regulatory changes needed to align State regulations to federal regulations. This will allow for discussion and adoption at the February and April 2017 Commission meetings, respectively.

A Notice of Exemption (NOE) is also attached. Since the NOE is not anticipated to change, this early submission gives the Commission notice of the Department's recommendation to rely on a California Environmental Quality Act (CEQA) categorical exemption for the Pacific halibut rulemaking. The following paragraphs describe staff's analysis of use of a categorical exemption under the CEQA.

Categorical Exemptions to Protect Natural Resources and the Environment

The Commission's adoption of these regulations is an action subject to CEQA. The review effort by Department staff pursuant to CEQA Guidelines section 15061 lead staff to conclude that adoption of the regulations would properly fall within the Class 7 and Class 8 categorical exemptions (CEQA Guidelines sections 15307, 15308). These two exemptions are related to agency actions to protect natural resources and the environment. The proposed regulations define annual fishing seasons, federal quota allocations, daily bag and sizes limits, and specify methods of take for alignment with enacted federal regulations. State conformance with federal regulations is also necessary to maintain continued State authority over its recreational Pacific halibut fishery and avoid federal preemption under the Magnuson-Stevens Fishery Conservation Act (16 USC §1856 (b)(1)). In staff's view, because these regulations are intended to protect the sustainability of the fishery as a natural resource, the Commission's adoption of regulations is an activity that is the proper subject of CEQA's Class 7 and 8 categorical exemptions.

No Exceptions to Categorical Exemptions Apply

As to the exceptions to categorical exemptions set forth in CEQA Guidelines section 15300.2, including the prospect of unusual circumstances and related effects, the Department's review was guided by the California Supreme Court's recent decision in *Berkeley Hillside Preservation v. City of Berkeley*. Staff has reviewed all of the available information possessed by the Department relevant to the issue and does not believe adoption of the regulations poses any unusual circumstances that would constitute an exception to the categorical exemptions set forth above. Compared to the activities that fall within Class 7 and Class 8 generally, which include the given example of wildlife preservation activities such as the current effort, there is nothing unusual about the proposed regulations.

In addition, even if there were unusual circumstances, no potentially significant effects on either a project-specific or cumulative basis are expected. The intent of the proposed regulations is conformance of State regulations with federal regulations to maintain continued State authority over its recreational Pacific halibut fishery and avoid federal preemption under the Magnuson-Stevens Fishery Conservation Act (16 USC §1856 (b)(1)). The regulations are anticipated to achieve optimum yield in the fishery, but also to prevent overfishing and thereby take into consideration the potential for negative impacts on the fishery.

Therefore, staff does not believe that the Commission's reliance on the Class 7 and Class 8 categorical exemptions is precluded by the exceptions set forth in CEQA Guidelines section 15300.2.

If you have any questions regarding this item, please contact Dr. Craig Shuman, Regional Manager, Marine Region, at (805) 568-1246. The public notice for this rulemaking should identify Environmental Scientist, Melanie Parker as the Department's point of contact. Ms. Parker can be reached at (831) 649-2814 or Melanie.Parker@wildlife.ca.gov.

Attachment

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Valerie Termini, Executive Director
Fish and Game Commission
October 3, 2016
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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: October 3, 2016

II. Dates and Locations of Scheduled Hearings:

- (a) Notice Hearing: Date: December 7, 2016
Location: San Diego, CA
- (b) Discussion Hearing: Date: February 9, 2017
Location: Rohnert Park, CA
- (c) Adoption Hearing: Date: April 13, 2017
Location: Teleconference

III. Description of Regulatory Action:

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

Pacific halibut is internationally managed under the authority of the Northern Pacific Halibut Act of 1982 (the "Act"; Title 16, Chapter 10, Subchapter IV, Sections 773 to 773k, U.S. Code) pursuant to the 1923 treaty between the United States of America and Canada for the Preservation of the [Pacific] Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention). Provisions of the Convention establish the International Pacific Halibut Commission (IPHC) and outline general administrative and enforcement requirements by the respective parties.

Convention waters as defined include "... the waters off the west coasts of the United States and Canada ... within the respective maritime areas in which either Party exercises exclusive fisheries jurisdiction. For the purposes of this Convention, the "maritime area" in which a Party exercises exclusive fisheries jurisdiction includes without distinction areas within and seaward of the territorial sea or internal waters of the Party." (Article I).

The IPHC was established to conduct research and coordinate management activities in waters of the parties to the Act. Pacific halibut along the United States west coast is jointly managed through the IPHC, Pacific Fishery Management Council (PFMC), and the National Marine Fisheries Service (NMFS), in conjunction with west coast state agencies. The IPHC sets the annual Total Allowable Catch (TAC) for each of the Pacific halibut management areas (including the west coast – Area 2A) using stock assessment and research survey results, which are then effectuated through regulations by NMFS.

The PFMC coordinates west coast management of all recreational and commercial Pacific halibut fisheries in United States waters through the Area 2A Pacific Halibut Catch Sharing Plan (CSP), which constitutes a framework for recommending annual management measures to NMFS. The CSP framework also establishes the sharing formula used for allocating the Area 2A TAC among west coast fisheries, including the California recreational fishery. NMFS is responsible for specifying the final CSP language and management measures in federal regulations (50 CFR Part 300, Subpart E and Federal Register) and reporting season specifications on its halibut telephone hotline.

For species managed under federal fishery management plans and their regulations, the Fish and Game Commission (Commission) has usually taken concurrent action to conform State recreational regulations to federal regulations. 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 for or in possession of sport fish. Pacific halibut federal regulations are applicable in federal waters (three to 200 miles offshore) off Washington, Oregon and California. Each state adjacent to federal waters adopts corresponding fishery regulations for their own waters (zero to three miles offshore).

PFMC Action Re: Pacific Halibut Fishing Off California

At its November 2016 meeting, the PFMC will recommend changes to the 2017 CSP and recreational Pacific halibut fishery in California. Federal regulations are expected to become effective prior to May 1, 2017.

Pacific Halibut Quota Management

The established quota management system for the Pacific halibut recreational fishery ensures catches stay within the allowable quota.

Following the determination of the 2017 Area 2A TAC by the IPHC (in late January 2017), the Department of Fish and Wildlife (Department) may conduct additional public outreach to gather input to inform the NMFS decision on a preferred 2017 fishing season expected to keep catches

within the allowable quota. After consideration of the input received, the Department will recommend a preferred 2017 California recreational season structure to NMFS for approval. The approved season will be included in the final federal regulations and on the NMFS halibut hotline prior to the start of the season.

During the 2017 fishing season, the Department will actively monitor the fishery and coordinate with NMFS, the IPHC and PFMC weekly on the status of catches relative to the Pacific halibut quota. If catches are projected to meet or exceed the California quota, NMFS and the IPHC could take action to close or modify the fishery following consultation with the Department. The NMFS will provide notice of any inseason action to close the season in California via its halibut hotline; this is similar to the process used for recreational fisheries in Oregon and Washington.

The Department shall also inform the Commission and the public via a press release of any inseason changes in regulations triggered by achieving or expecting to exceed the quota. The latest fishing rules will be posted on the Department's website, the Recreational Groundfish Fishing Regulations Hotline, the NMFS Area 2A halibut hotline, and made available by contacting a Department office.

Present Regulations

Current regulations for Pacific halibut authorize recreational fishing in waters off California from May 1 through 15, June 1 through 15, July 1 through 15, August 1 through 15, and September 1 through October 31 or until the quota has been projected to have been met, whichever comes first. The State and federal daily bag limit is one fish per angler and there is no minimum size limit.

Present regulations also establish methods of take and include the use of hook and line, harpoons, spears, and bow and arrow gear.

Proposed Amendments

The Department is proposing the following regulatory changes to be consistent with PFMC recommendations and the CSP for Pacific halibut regulations in 2017. This approach will allow the Commission to adopt State recreational Pacific halibut regulations to conform in a timely manner to those taking effect in federal ocean waters on or before May 1, 2017.

The proposed regulatory changes to Section 28.20 would modify the seasons to include a range from May 1 to October 31 which may include periodic closures, and update the reference to the Federal Register specifying the 2017 federal quota amount. The final regulation will conform to the season, established by federal regulations, which begins in May 2017.

Goals and Benefits of the Regulation

It is the policy of the 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. In addition, it is the policy of the State to promote the development of local fisheries and distant-water fisheries based in California in harmony with international law respecting fishing and the conservation of the living resources of the ocean and other waters under the jurisdiction and influence of the State. 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 seasons and other regulations provides for the maintenance of sufficient populations of Pacific halibut to ensure their continued existence.

The benefits of the proposed regulations are consistency with international treaty and federal regulations and the sustainable management of California's Pacific halibut resources.

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

Authority: Sections 200, 202, 205, 219, 220, 240 and 316, Fish and Game Code.

Reference: Sections 200, 202, 203.1, 205, 207, 215, 219, 220 and 316, Fish and Game Code, 50 CFR Part 300, Subpart E; and 50 CFR 300.66.

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

None.

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

Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea.

Northern Pacific Halibut Act of 1982:

<http://www.gpo.gov/fdsys/pkg/USCODE-2010-title16/html/USCODE-2010-title16-chap10-subchapIV.htm>

Environmental Assessment and Regulatory Impact Review for Continuing Implementation of the Catch Sharing Plan for Pacific Halibut in Area 2A, 2014-2016:

<http://www.westcoast.fisheries.noaa.gov/publications/nepa/halibut/ea-halibut-2014.pdf>

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

- September 17, 2016, PFMC meeting in Boise, ID.
- November 16-21, 2016, PFMC meeting in Garden Grove, 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, status quo management of the Pacific halibut resource would continue for 2017. This could result in misalignment between federal and State regulations when NMFS establishes new regulations for the California fishery for 2017 or if NMFS takes inseason action to modify or close the fishery. Inconsistency in regulations will create confusion among the public and may result in laws that are difficult to enforce.

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 Pacific halibut fisheries and avoid federal or international preemption

(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 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 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 fish and 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 consistency with federal regulations 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:
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 fisheries are broadly sub-divided between private anglers and commercial passenger fishing vessels. The economic impact of regulatory changes for recreational fisheries is 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. Daytrips 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 who 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. Spending related to recreational fisheries thus multiplies throughout the economy with the indirect and induced effects of the initial direct expenditure.

In the aftermath of a 2014 Pacific halibut one month fishing closure, surveys^a of anglers and businesses were conducted to gauge the

^a Hesselgrave, T., N. Enelow, and K. Sheeran, 2014. The Estimated Economic Impact of the Northern California Pacific Halibut Closure of August 2014 (recreational and charter boats), conducted by Ecotrust, funded by Humboldt Area Saltwater Anglers.

Takada, M., 2014. Analysis of the Economic Effects of the August Pacific Halibut Closure on California's North Coast Businesses, conducted by Humboldt State University, funded by California Department of Fish and Wildlife.

importance of the Pacific halibut fishery to anglers and local communities. Of 265 angler respondents, about 20 percent of Pacific halibut anglers traveled from outside of coastal northern California, while the majority of survey respondents were from California's north coast. The Department's 2014 surveys similarly found that 70 percent of anglers reported residing within California's three north coast counties (Mendocino, Humboldt, and Del Norte). Of the total reported trips (6,589), the respondent anglers each took on average more than 30 trips in the 2013/2014 seasons, and 34 percent included Pacific halibut as a primary target. Results indicated an even higher number (89 percent) pursued Pacific halibut as one of their primary target species, and 70 percent also pursued other species on trips for Pacific halibut. The average angler traveled 119 miles on land and 23 miles on water on their most recent Pacific halibut trip. Overall, angler expenditures averaged about \$250 per angler trip and both surveys concluded that recreational fishing for Pacific halibut is economically important to charter boat businesses, tackle and marine supply businesses, lodging establishments near fishing access points, and some businesses that provide traveler services such as: gas stations, markets, convenience stores, and restaurants.

The adoption of scientifically-based regulations provides for the maintenance of sufficient populations of sport fish to ensure their continued existence and future sport fishing opportunities that in turn support local and regional economies. In a 2012 Fisheries Economics Report by the NMFS, all marine recreational anglers trip-related and equipment expenditures sum to approximately \$1.7 billion in California. Coupled with the indirect and induced effects of this \$1.7 billion direct revenue contribution, the total realized economic benefit to California is estimated at \$2.7 billion in annual total economic output. This corresponds with about \$630 million in total wages to Californians, which affects about 13,000 jobs in the State, annually. The portion of this benefit specifically derived from or related to the Pacific halibut fishery is unknown.

The proposed regulations will modify State recreational Pacific halibut regulations to conform to federal rules. Currently, State regulations for Pacific halibut provide for an annual quota, season length, authorized methods of take, and bag limit.

In adopting these conforming regulations, the State relies on information provided in the federal Draft Environmental Assessment which includes analysis of impacts to California. (Environmental Assessment And Regulatory Impact Review For Continuing Implementation Of The Catch Sharing Plan For Pacific Halibut In Area 2A, 2014-2016)

<http://www.westcoast.fisheries.noaa.gov/publications/nepa/halibut/ea-halibut-2014.pdf>.

For public notice purposes to facilitate Commission discussion, the Department is proposing regulatory changes to encompass the range of federal Pacific halibut regulations that are expected to be in effect for 2017. The proposed regulatory changes may modify season length and update the reference to the Federal Register specifying the 2017 federal quota amount.

Economic impacts are not expected to change compared to 2016 because the fishery season when set, is expected to provide similar fishing opportunities as the previous year. Throughout 2017, the number of angler trips is expected to continue with little change from 2016. Thus, the estimated impact from angler spending is anticipated to be close to status quo.

(a) 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.

(b) 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 have potentially positive impacts 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.

(c) 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.

- (d) Benefits of the Regulation to the Health and Welfare of California Residents:

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 California's wildlife.

- (e) Benefits of the Regulation to Worker Safety:

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

- (f) Benefits of the Regulation to the State's Environment:

It is the policy of this State to encourage the conservation, maintenance, and utilization of living marine resources under the jurisdiction and influence of the State for the benefit of all citizens (Section 1700, Fish and Game Code). Benefits of the proposed regulations include continuation of fishing opportunity, along with the continuation of the reasonable and sustainable management of recreational finfish resources. Adoption of scientifically-based seasons provide for the maintenance of sufficient populations of Pacific halibut to ensure their continued existence.

- (g) Other Benefits of the Regulation:

Concurrence with Federal Law:

Pacific halibut along the United States west coast is jointly managed through the IPHC, PFMC, and the NMFS, in conjunction with west coast state agencies. The PFMC annually reviews the status of Pacific halibut regulations. As part of that process, it recommends regulations aimed at meeting biological and fishery allocation goals specified in law or established in the Pacific Halibut CSP. These recommendations coordinate management of recreational Pacific halibut in State (zero to three miles) and federal waters (three to 200 miles offshore) off the coasts of Washington, Oregon, and California. These recommendations are subsequently implemented as ocean fishing regulations by the NMFS.

California's sport fishing regulations need to conform to federal regulations to ensure that biological and fishery allocation goals are not exceeded and to provide uniformity in management and enforcement activities across jurisdictions.

Informative Digest/Policy Statement Overview

Pacific halibut is internationally managed under the authority of the Northern Pacific Halibut Act of 1982 between the United States of America and Canada. Pacific halibut along the United States west coast is jointly managed through the International Pacific Halibut Commission (IPHC), Pacific Fishery Management Council (PFMC), and the National Marine Fisheries Service (NMFS), in conjunction with the west coast state agencies. The PFMC coordinates west coast management of all recreational and commercial Pacific halibut fisheries in United States waters through the Pacific Halibut Catch Sharing Plan (CSP), which constitutes a framework for recommending annual management measures. NMFS is responsible for specifying the final CSP language and management measures in federal regulations (50 CFR Part 300, Subpart E and the Federal Register) and noticing them on its halibut telephone hotline. Federal regulations for Pacific halibut are applicable in federal waters (three to 200 miles offshore) off Washington, Oregon, and California. Each state adjacent to federal waters adopts corresponding fishery regulations for their own waters (zero to three miles offshore).

For consistency, the California Fish and Game Commission (Commission) routinely adopts regulations to bring State law into conformance with federal and international law for Pacific halibut.

At its November 2016 meeting, the PFMC will recommend changes to the 2017 CSP and recreational Pacific halibut fishery in California. The November PFMC regulatory recommendation and NMFS final rule will be considered by the Commission when it takes its own regulatory action to establish the State's recreational Pacific halibut fishery regulations for 2017.

Summary of Proposed Amendments

The Department of Fish and Wildlife (Department) is proposing the following regulatory changes to be consistent with PFMC recommendations and the CSP for Pacific halibut regulations in 2017. This approach will allow the Commission to adopt State recreational Pacific halibut regulations to conform in a timely manner to those taking effect in federal ocean waters on or before May 1, 2017.

The proposed regulatory changes modify Pacific halibut regulations to allow for timely conformance to federal fisheries regulations and inseason changes. The proposed regulatory changes would modify the seasons to include a range from May 1 to October 31 which may include periodic closures, and update the reference to the Federal Register specifying the 2017 federal quota amount. The final regulation will conform to the season established by federal regulations in May 2017.

The benefits of the proposed regulations are: consistency with federal regulations, the sustainable management of California's Pacific halibut resources, and health and welfare of anglers.

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) and Pacific halibut fishing regulations specifically (Fish and Game Code, Section 316). 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 CCR and has found no other State regulations related to the recreational take of Pacific halibut.

Regulatory Language

Section 28.20, Title 14, CCR, is amended to read:

§28.20. Halibut, Pacific.

(a) Season:

(1) Pacific halibut may be taken only from [varied dates within the range from May 1 to October 31, and may include periodic closures]~~May 1 through 15, June 1 through 15, July 1 through 15, August 1 through 15, and September 1 through October 31~~, or until the quota is reached, whichever is earlier. Pacific halibut take is regulated by a quota that is closely monitored each year in alignment with federal regulations.

(2) The Pacific halibut quota is published in the Federal Register ~~81 FR 18789, April 1, 2016~~ [Volume and Date to be inserted by OAL]. The department shall inform the commission, and the public via a press release, prior to any implementation of restrictions triggered by achieving or expecting to exceed the quota. Anglers and divers are advised to check the current rules before fishing. The latest fishing rules may be found on the department's website at: wildlife.ca.gov/Fishing/Ocean, or by calling the Recreational Groundfish Fishing Regulations Hotline (831) 649-2801 or the National Marine Fisheries Service Area 2A Halibut Hotline (800) 662-9825 for recorded information, or by contacting a department office.

(b) Limit: One.

(c) Minimum size: None.

(d) Methods of Take:

(1) When angling, no more than one line with two hooks attached may be used.

(2) A harpoon, gaff, or net may be used to assist in taking a Pacific halibut that has been legally caught by angling. See Section 28.95 of these regulations for additional restrictions on the use of harpoons.

(3) Take by spearfishing is allowed pursuant to Section 28.90 of these regulations.

Note: Authority cited: Sections 200, 202, 205, 219, 220, 240 and 316, Fish and Game Code. Reference: Sections 200, 202, 203.1, 205, 207, 215, 219, 220 and 316, Fish and Game Code, 50 CFR Part 300, Subpart E; and 50 CFR Part 300.66.

Notice of Exemption

Appendix E

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

County Clerk

County of: N/A

From: (Public Agency): CA Fish and Game Commission
1416 Ninth Street, Room 1320
Sacramento, CA 95814

(Address)

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

Project Applicant: N/A

Project Location - Specific:

Statewide

Project Location - City: N/A

Project Location - County: N/A

Description of Nature, Purpose and Beneficiaries of Project:

Pacific halibut is jointly managed by the International Pacific Halibut Commission, Pacific Fishery Management Council, National Marine Fisheries Service, and the west coast states. The Fish and Game Commission has taken concurrent action to conform State recreational regulations to federal regulations.

Name of Public Agency Approving Project: California Fish and Game Commission

Name of Person or Agency Carrying Out Project: California Department of Fish and Wildlife

Exempt Status: **(check one):**

- ☐ Ministerial (Sec. 21080(b)(1); 15268);
- ☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
- ☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- ☒ Categorical Exemption. State type and section number: Cal. Code Regs., tit. 14, §§ 15307, 15308
- ☐ Statutory Exemptions. State code number: _____

Reasons why project is exempt:

See attached.

Lead Agency

Contact Person: Valerie Termini

Area Code/Telephone/Extension: (916) 653-4899

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? ☒ Yes ☐ No

Signature: _____ Date: 4/13/2017 Title: Executive Director

☒ Signed by Lead Agency ☐ Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: _____

ATTACHMENT TO NOTICE OF EXEMPTION

April 13, 2017

Adoption of Pacific Halibut Regulations

The California Fish and Game Commission (Commission) took final action under the Fish and Game Code and the Administrative Procedure Act (APA) with respect to the proposed project on April 13, 2017. In taking its final action for the purposes of the California Environmental Quality Act (CEQA, Pub. Resources Code, § 21000 *et seq.*), the Commission adopted the regulations relying on the categorical exemption for “Actions by Regulatory Agencies for Protection of Natural Resources” contained in CEQA Guidelines Section 15307, and the categorical exemption for “Actions by Regulatory Agencies for Protection of the Environment” contained in CEQA Guidelines Section 15308. (Cal. Code Regs., tit. 14, §§ 15307, 15308.)

Categorical Exemptions to Protect Natural Resources and the Environment

In adopting the Pacific halibut regulations to conform to federal regulations jointly adopted by the International Pacific Halibut Commission, Pacific Fishery Management Council, and National Marine Fisheries Service, the Commission relied for purposes of CEQA on the Class 7 and 8 categorical exemptions. In general, both exemptions apply to agency actions to protect natural resources and the environment. The regulations define annual fishing seasons, federal quota allocations, daily bag and size limits and specify methods of take for alignment with enacted federal regulations. The federal regulations are developed with the dual purpose of maintaining optimum yield while at the same time preventing overfishing and conserving the resource. State conformance with federal regulations is also necessary to maintain continued State authority over its recreational Pacific halibut fishery and avoid federal preemption under the Magnuson-Stevens Fishery Conservation Act (16 USC §1856 (b)(1)). Because these regulations are intended to protect the sustainability of the fishery as a natural resource, Commission adoption of these regulations is an activity that is the proper subject of CEQA’s Class 7 and 8 categorical exemptions.

No Exceptions to Categorical Exemptions Apply

As to the exceptions to categorical exemptions set forth in CEQA Guidelines Section 15300.2, including the prospect of unusual circumstances and related effects, the Commission review was guided by the California Supreme Court’s recent decision in *Berkeley Hillside Preservation v. City of Berkeley*. Staff has reviewed all of the available information possessed by the Commission relevant to the issue and does not believe adoption of the regulations creates any unusual circumstances that would constitute an exception to the categorical exemptions set forth above. Compared to the activities that fall within Class 7 and Class 8 generally, which include the given example of wildlife preservation activities such as the current effort, there is nothing unusual about the proposed regulations.

In addition, even if there were unusual circumstances, no potentially significant effects on either a project-specific or a cumulative basis are expected. The intent of the proposed regulations is conformance of State regulations with federal regulations to maintain continued State authority over its recreational ocean salmon fishery and avoid federal preemption under the Magnuson-Stevens Fishery Conservation Act (16 USC §1856 (b)(1)). The regulations are anticipated to achieve optimum yield in the fishery, but also to prevent overfishing and thereby take into consideration the potential for negative impacts on the fishery.

Therefore, staff does not believe that the Commission's reliance on the Class 7 and Class 8 categorical exemptions is precluded by the exceptions set forth in CEQA Guidelines Section 15300.2.

DRAFT

From:
Sent: Sunday, February 12, 2017 4:51 AM
To: FGC
Subject: Pacific Halibut Regulations for 2017

I strongly support the status quo for the 2017 Pacific Halibut Regulations. As a charter boat operator in Eureka I have been booking Halibut trips for several months now based on last years regulations.

Tim Klassen Reel Steel Sport Fishing Eureka,CA.

Memorandum

2017 MAR 28 AM 7:11

Date: March 27, 2017

To: Valerie Termini
Executive Director
Fish and Game Commission

From: Charlton H. Bonham
Director



Subject: **Agenda Item for the April 13, 2017 Fish and Game Commission Teleconference - Request to Amend Section 28.20, Title 14, CCR**

The California Department of Fish and Wildlife (Department) would like to update the Fish and Game Commission (Commission) on its recommendation regarding the 2017 recreational Pacific halibut season dates. At the Commission's February 9, 2017 discussion hearing in Santa Rosa, the Department recommended the same season dates as 2015 and 2016. At the time, no public comments on the season had been received.

Following that meeting, public input was received by both the Department and the Commission expressing interest in additional open fishing days that align with holiday weekends. In response to this input, the Department analyzed the possibility of adding additional open days, and submitted comments to the National Marine Fisheries Service (NMFS) recommending a longer open season that would allow the fishery to be open over the Memorial Day weekend, in addition to Labor Day and Independence Day weekends. The Department's comment letter is attached.

Based on the 2017 Area 2A total allowable catch of 1,330,000 pounds, the 2017 Pacific halibut quota for the California subarea will be 34,580 pounds -- about 5,000 pounds more than the 2016 quota. Due to this quota increase, and considering the fishery catch trends observed during 2015 (Figure 1) and 2016 (Figure 2) and the comments received from the public, the Department recommends the Commission adopt an additional 16 open days in the 2017 season so that the entire month of May would be open, consistent with the Department's recommendation to NMFS.

The proposed dates are expected to continue to meet the goal of providing as much opportunity throughout the season while ensuring the quota is attained. The fishery would be open May 1 to June 15, July 1 to 15, August 1 to 15, and September 1 to October 31, or until the quota has been taken, whichever comes first, at which time the fishery will be closed for the remainder of the year. As in 2015 and 2016, the dates are not guaranteed days, and the season could be closed early if it is determined that projected catches will exceed the California quota.

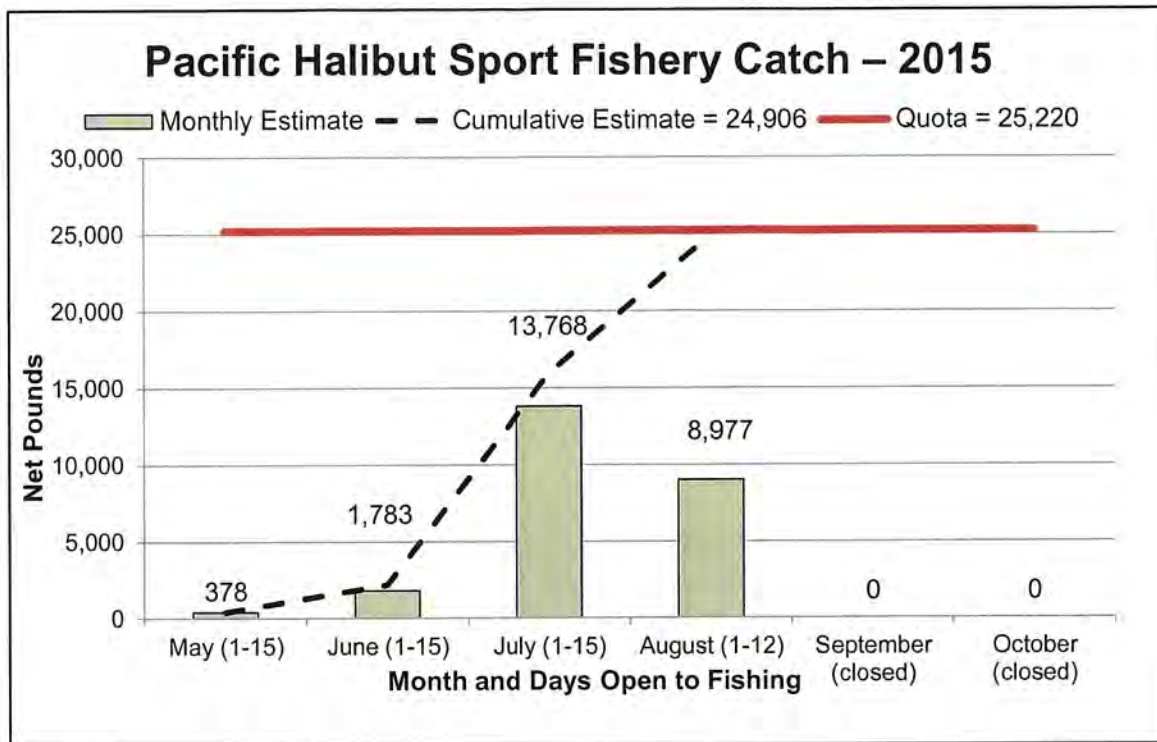


Figure 1. California recreational Pacific halibut monthly estimated catches, cumulative season total catches, and annual quota amount in net pounds for 2015. The fishery in 2015 was scheduled to be open May 1 to 15, June 1 to 15, July 1 to 15, August 1 to 15, and September 1 to October 31 or until the quota was taken. The fishery closed on August 13, 2015, after 57 open days of fishing, due to projected attainment of the quota. Data from CDFW.

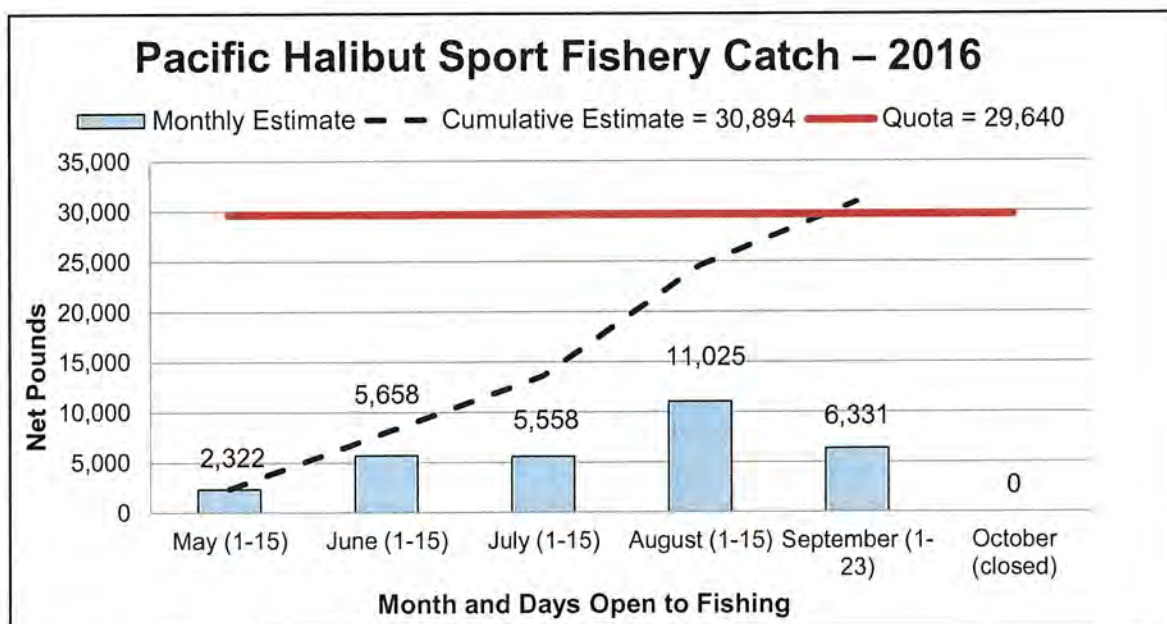


Figure 2. California recreational Pacific halibut monthly catch estimates, cumulative season total catches, and quota amount in net pounds for 2016. The fishery in 2016 was scheduled to be open May 1 to 15, June 1 to 15, July 1 to 15, August 1 to 15, and September 1 to October 31, or until the quota had been taken. The fishery closed on September 24, 2016, after 83 open days of fishing, due to projected attainment of the quota. Data from CDFW.

The Department analyzed projected catch during the proposed season dates (Figure 3) and does not expect the additional open days in May will have a substantial effect on the timing of quota attainment, especially when considering the increased 2017 quota. The Department notes that catch projections cannot account for the unpredictability of fishing effort, changes in catch rates, availability of alternative targets, weather, effects of moving to a 'derby fishery' mentality off California, and other factors that may affect angler behavior and/or catch.

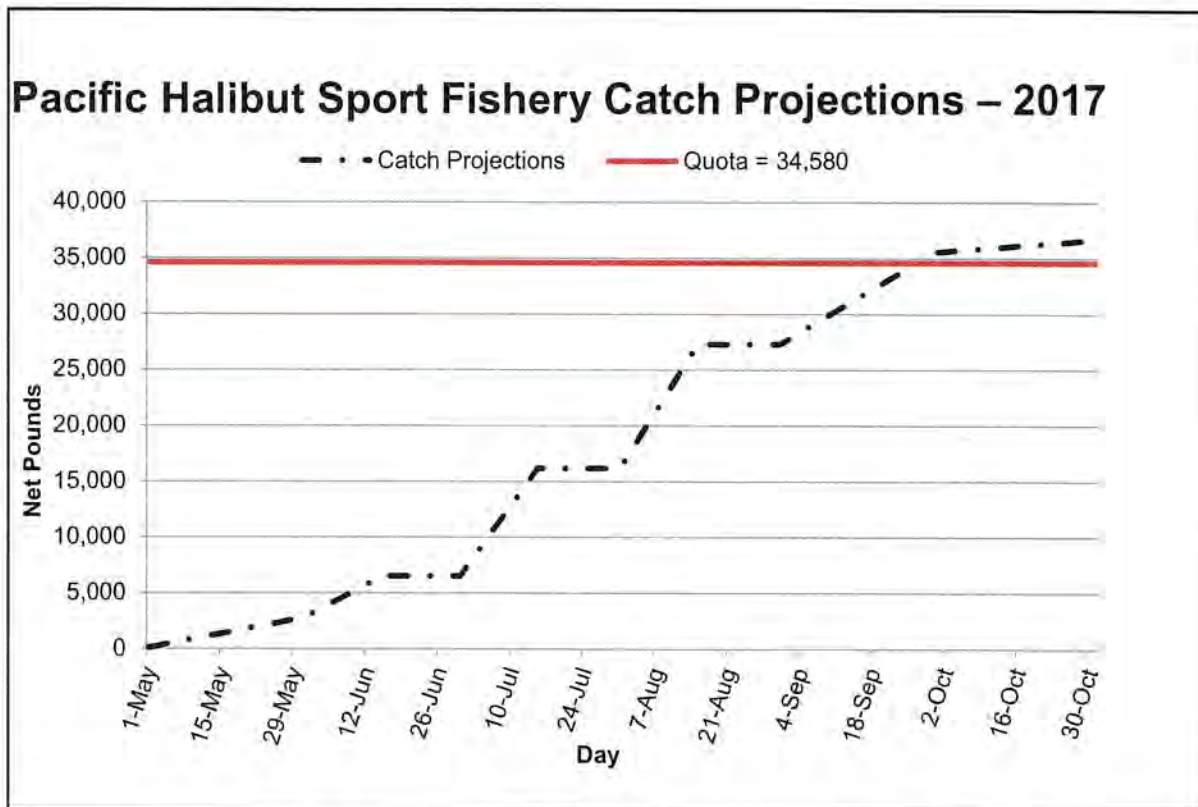


Figure 3. Projected 2017 recreational Pacific halibut catch in net pounds as the season progresses. Catch projections were generated by averaging catch estimates from 2015 and 2016. Projected date of quota attainment is September 26, 2017. Actual fishery performance may vary due to a variety of factors. Data from CDFW.

The Department would also like to acknowledge that angler compliance with the season dates has been outstanding, and the inseason monitoring and closure process has worked effectively to keep catches very close to the quota. These factors were also considered in recommending the additional open days.

Federal halibut regulations that will establish the season dates for California's sport fishery are expected to be effective prior to the May 1 start of the fishery. The Department recommends the Commission adopt these same dates at its April teleconference to maintain consistency between state and federal regulations.

Valerie Termini, Executive Director
Fish and Game Commission
March 27, 2017
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If you have any questions or need additional information, please contact
Melanie Parker, Environmental Scientist, Marine Region, at (831) 649-2814, or at
Melanie.Parker@wildlife.ca.gov.

Attachment

ec: **Department of Fish and Wildlife**

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EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



March 9, 2017

Barry A. Thom
Regional Administrator
National Marine Fisheries Service, West Coast Region
7600 Sand Point Way NE.
Seattle, WA 98115-0070

Subject: PACIFIC HALIBUT FISHERIES; CATCH SHARING PLAN

Dear Mr. Thom:

In response to your proposed rule dated February 23, 2017, the California Department of Fish and Wildlife (CDFW) provides these comments on the 2017 recreational fishing season for the California subarea as described in the Pacific Halibut Catch Sharing Plan (CSP). CDFW is recommending a change to the status quo season structure (described below) and will continue our inseason catch monitoring and management process to ensure that the annual catch stays within the California quota.

Background

Prior to 2015, the recreational Pacific halibut fishery in California was managed using a fixed fishing season set in advance and the total catch was determined post-season; there was no inseason management to hold catches to the quota. Beginning in 2015, provisions in the CSP provided California an increased recreational Pacific halibut allocation (and quota) and at that time CDFW implemented inseason management measures to hold catches to the quota.

Based on the 2017 Area 2A Total Allowable Catch (TAC) of 1,330,000 pounds, the 2017 Pacific halibut quota for the California subarea will be 34,580 pounds. Given the increase in the quota and fishery catch trends during 2016, CDFW proposes providing additional open days for the 2017 season. CDFW will continue tracking and monitoring catches inseason on a weekly basis in 2017 and will coordinate through the season with the National Marine Fisheries Service (NMFS), Pacific Fishery Management Council and International Pacific Halibut Commission on the need for closure of the fishery upon attainment, or projected attainment, of the quota.

Recommended Season Dates

Due to the increase in the California quota amount, the fishery performance in 2016, and comments received by California constituents, CDFW proposes the following open fishing dates with a goal of providing as much opportunity throughout the season while ensuring the quota is fully harvested.

Barry Thom, Regional Administrator
West Coast Region, NFMS
March 9, 2017
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May 1-June 15
July 1-July 15
August 1-August 15
September 1-October 31

The fishery would be open within the dates above until the quota has been taken, or until October 31, whichever comes first, at which time the fishery would close for the remainder of the year. The above fixed season dates are not guaranteed days and the season could be closed early if it is determined projected catches will exceed the California quota.

Although many factors drive fishing effort and catch, CDFW estimates catch expectations for 2017 under an assumption that catch rates will be similar to those seen in 2015 and 2016. CDFW notes that catch projections cannot account for the unpredictability of fishing effort, changes in catch rates, availability of alternative targets, weather, effects of moving to a 'derby fishery' mentality off California, and other factors that may affect angler behavior and/or catch.

The proposed open season dates above would now include May 16-May 31 and reflect a 16-day increase from the 2016 dates. In making this recommendation, CDFW considered requests from the public to offer additional opportunity over holiday weekends, while also noting that the inseason monitoring, closure and notification processes have worked extremely well for compliance, and have also worked well to keep catches very close to the quota. CDFW expects that the additional open days in May could produce higher catch totals than have been observed in recent years in the month of May. However, since total catches for the month of May have been historically low - with a maximum catch of 4,795 pounds when the full month has been open - CDFW does not expect the additional open days in May will have a substantial effect on the timing of quota attainment, especially when factoring in the increased 2017 quota.

If you have any questions or need additional information, please contact Ms. Deb Wilson-Vandenberg, our CDFW Pacific halibut staff, at (831) 649-2892 or Deb.Wilson-Vandenberg@wildlife.ca.gov.

Sincerely,



Marci Yaremko, State-Federal Fisheries Program Manager
California Department of Fish and Wildlife
Marci.Yaremko@wildlife.ca.gov

Barry Thom, Regional Administrator
West Coast Region, NFMS
March 9, 2017
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ec:

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