

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

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

I. Date of Initial Statement of Reasons: November 12, 2016

II. Date of Final Statement of Reasons: April 13, 2017

III. Dates and Locations of Scheduled Hearings:

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

IV. Update:

At its April 13, 2017 teleconference, the Commission adopted the following modifications to Section 28.20, Title 14, CCR, as recommended by the Department for consistency with federal regulations:

- Season dates from May 1 - June 15, July 1-15, August 1-15, and September 1 - October 31, or until the quota is projected to be reached, whichever comes first.
- Update the reference to the Federal Register.

Updates to Authority and Reference Citations Based on Recent Legislation:

Senate Bill 1473 (Stats. 2016, Ch. 546) made organizational changes to the Fish and Game Code that became effective January 1, 2017. The changes included moving the Commission's exemptions from specified Administrative Procedure Act time frames from Section 202 to Section 265 of the Fish and Game Code; moving the Commission's three-meeting process for adoption of regulations from Section 207 to Section 255 of the Fish and Game Code; moving the statement concerning effective dates from Section 215 to Section 270 of the Fish and

Game Code; and moving the Commission's authority to adopt emergency regulations from Section 240 to Section 399 of the Fish and Game Code. These were organizational changes only. Senate Bill 1473 also repealed subdivision (b) of Section 220 of the Fish and Game Code. In accordance with these changes to the Fish and Game Code, sections 202, 220 and 240 are removed from, and sections 265 and 399 are added to the authority citations, and sections 202, 207, 215 and 220 are removed from, and sections 255, 265 and 270 are added to the reference citations for Section 28.20, Title 14, CCR.

No other modifications were made to the originally proposed language of the Initial Statement of Reasons.

V. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations:

Tim Klassen, ReelSteel Sportfishing Charters, email dated February 12, 2017.

Supports status quo regulations for 2017 because his business books trips for this year based on last year's regulations.

Response.

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 and 2016 and the comments received from the public, the Department recommended the National Marine Fisheries Service (NMFS) add an additional 16 open days in the 2017 season so that the entire month of May would be open. This will allow the fishery to be open over the Memorial Day weekend, in addition to Labor Day and Independence Day weekends.

The season 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 will 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

VI. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:  
California Fish and Game Commission  
1416 Ninth Street

Sacramento, California 95814

VII. Location of Department Files:

Department of Fish and Wildlife  
1416 Ninth Street  
Sacramento, California 95814

VIII. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

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 adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

IX. 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

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 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.

- (d) 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.

- (e) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

- (f) Nondiscretionary Costs/Savings to Local Agencies:

None.

- (g) Programs Mandated on Local Agencies or School Districts:

None.

- (h) 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.

- (i) Effect on Housing Costs:

None.

## Updated 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 **authorities of** 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, **205, and 265**) 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.

**At its April 13, 2017 teleconference, the Commission adopted the following modifications to Section 28.20, Title 14, CCR as recommended by the Department for consistency with federal regulations:**

- **Season dates from May 1 - June 15, July 1-15, August 1-15, and September 1 - October 31, or until the quota is projected to be reached, whichever comes first.**
- **Update the reference to the Federal Register.**

**Updates to Authority and Reference Citations Based on Recent Legislation:**

**Senate Bill 1473 (Stats. 2016, Ch. 546) made organizational changes to the Fish and Game Code that became effective January 1, 2017. The changes included moving the Commission's exemptions from specified Administrative Procedure Act time frames from Section 202 to Section 265 of the Fish and Game Code; moving the Commission's three-meeting process for adoption of regulations from Section 207 to Section 255 of the Fish and Game Code; moving the statement concerning effective dates from Section 215 to Section 270 of the Fish and Game Code; and moving the Commission's authority to adopt emergency regulations from Section 240 to Section 399 of the Fish and Game Code. These were organizational changes only. Senate Bill 1473 also repealed subdivision (b) of Section 220 of the Fish and Game Code. In accordance with these changes to the Fish and Game Code, sections 202, 220 and 240 are removed from, and sections 265 and 399 are added to the authority citations, and sections 202, 207, 215 and 220 are removed from, and sections 255, 265 and 270 are added to the reference citations for Section 28.20, Title 14, CCR.**