

CALIFORNIA FISH AND GAME COMMISSION  
FINDING OF EMERGENCY AND  
STATEMENT OF PROPOSED EMERGENCY REGULATORY ACTION

Emergency Action to Amend  
Section 28.55  
Title 14, California Code of Regulations (CCR)  
Re: Recreational Sub-Bag Limits for Vermilion, Copper and Quillback Rockfishes

Date of Statement: December 9, 2021

Unless otherwise specified, all section references in this document are to Title 14, California Code of Regulations.

**I. Statement of Facts Constituting the Need for Emergency Regulatory Action**

***Background***

Regulatory authority for groundfish stocks is shared jointly between state and federal governments. It is important to have consistent state and federal regulations establishing harvest limits, season dates, depth constraints and other management measures and also important that the state and federal regulations be effective concurrently. Consistency of rules in adjacent waters allows for uniformity of enforcement, minimizes confusion which promotes compliance, 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 subdivision 1856 (b)(1)].

The Pacific Fishery Management Council (PFMC) reviews the status of west coast groundfish populations and recommends regulations to the National Marine Fisheries Service (NMFS). As part of the PFMC process, NMFS (acting under delegated authority from the U.S. Department of Commerce) manages the fishery in the Exclusive Economic Zone (3 to 200 miles offshore) off Washington, Oregon and California.

Under California law (California Fish and Game Code sections 200 and 205), the California Fish and Game Commission (Commission) routinely adopts regulations in Title 14 of the California Code of Regulations (CCR) for the recreational groundfish fisheries in state waters zero to three miles from shore in an effort to ensure consistency with federal regulations for offshore waters.

Present regulations establish recreational bag limits which vary by species or species groups and are designed to keep harvest within allowable limits. Section 28.55 sets forth the open areas, seasons, depth constraints, limits, and methods of take for rockfish (Genus *Sebastes*). However, subsections 27.20(b)(1)(A) – (D) provide specified exceptions, including year-round take when angling from shore or when diving or spearfishing.

As described in subsection 28.55(b), the Rockfish, Cabezon, and Greenling complex (RCG) has a daily 10-fish bag and possession aggregate limit, meaning that each angler's catch can be composed of any combination of rockfish, cabezon, or greenling as long as total catch remains at or below 10 fish. Sub-bag limits are implemented when harvest

guidelines cannot accommodate the 10-fish bag limit being composed of a single species. Present regulations include a sub-bag limit for vermilion rockfish (5 fish). Bronzespotted rockfish, cowcod, and yelloweye rockfish have bag limits of zero fish.

New stock assessment information and landings data in 2021 indicated significant declines in quillback rockfish (*Sebastes maliger*) and copper rockfish (*Sebastes caurinus*) stocks off California. While further assessment is needed to better understand the status of these stocks, this new information is currently the best available science. In addition, landings data indicated that recent and current catch levels for vermilion rockfish (*Sebastes miniatus*) are in excess of the federal harvest guidelines. On November 21, 2021, the PFMC recommended precautionary changes to reduce the current sub-bag limit for vermilion rockfish (*Sebastes miniatus*), and to implement new sub-bag limits for both quillback rockfish (*Sebastes maliger*) and copper rockfish (*Sebastes caurinus*), which are expected to go into effect in federal regulation on or around January 1, 2022.

The objective of the proposed emergency amendment to state regulations is to adjust the sub-bag limits for these species to ensure the state regulations are consistent with PFMC recommendations and pending federal regulations, and reduce harvest levels to levels that can be sustainably supported based on best available scientific information.

## II. Proposed Emergency Regulations

The California Department of Fish and Wildlife (Department) is recommending the following emergency regulatory changes:

- **Amend subsection 28.55(b)(2)**
  - Reduce the vermilion rockfish bag limit within the daily 10-fish RCG bag and possession limit from five to four.
    - Recent vermilion rockfish catches have substantially exceeded federal guidelines, leading to the PFMC's recommendation to reduce the bag limit in 2022.
- **Amend subsection 28.55(b)(3)**
  - Add new subsection 28.55(b)(3) to include a sub-bag limit for quillback rockfish of one fish within the daily 10-fish RCG bag and possession limit.
    - New science suggests this stock is severely depleted off California, and reductions in catch are needed to begin rebuilding, leading to the PFMC's recommendation to reduce the bag limit in 2022.
- **Add subsection 28.55(b)(4)**
  - Add new subsection 28.55(b)(4) to include a sub-bag limit for copper rockfish of one fish within the daily 10-fish RCG bag and possession limit.
    - New science suggests this stock is severely depleted off California, and reductions in catch are needed to protect the stock, leading to the PFMC's recommendation to reduce the bag limit in 2022.

- **Re-number subsection 28.55(b)(3) to (b)(5)**
  - Re-number current subsection 28.55(b)(3) for the Cowcod Conservation Area limit on slope rockfish to 28.55(b)(5) to accommodate the above additions of subsections 28.55(b)(3) and (4).

### III. Findings for the Existence of an Emergency

Presently, the Commission considered the following factors in determining that an emergency does exist at this time:

#### ***The magnitude of potential harm:***

The recreational groundfish fisheries are important ecological, cultural, and recreational resources in the State of California. It is important to have consistent state and federal regulations establishing harvest limits, season dates, depth constraints and other management measures, and it is also important that the state and federal regulations be effective concurrently. Inconsistency in state and federal rules hinders enforcement, increases angler confusion, and precludes 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 of management.

#### ***The existence of a crisis situation:***

Emergency action is necessary now for conformance to PFMC-recommended federal regulations and to increase protection of the stocks from catch levels that current information indicates are higher than can be sustainably supported.

#### ***The immediacy of the need:***

The Commission routinely adopts regulations for recreational groundfish for consistency with federal regulations. On November 21, 2021, PFMC approved recommended in-season adjustments to the recreational groundfish fisheries off California. The federal regulations adjusting the sub-bag limits for quillback rockfish, copper rockfish, and vermilion rockfish are anticipated to be effective on or around January 1, 2022.

#### ***Whether the anticipation of harm has a basis firmer than simple speculation:***

PFMC action on November 21, 2021 recommended in-season adjustments to the recreational groundfish fisheries off California based on new stock assessment information and landings data indicating that recent and current harvest levels are higher than can be sustainably supported. While further assessment is needed to better understand the stock status, this new information is currently the best, readily available science. Regulations from NMFS are currently underway and anticipated to be effective on or around January 1, 2022. At that time, if the Commission does not take conforming action, inconsistent state and federal regulations will lead to angler confusion and difficulty in enforcement. Furthermore, under federal law, inconsistent state management schemes may lead to extension of federal jurisdiction into state waters. (16 U.S.C. subdivision 1856(b).)

#### **IV. 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) **Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:**

The Commission anticipates that there will be costs to the state, specifically the Department. Program implementation costs are estimated to be \$41,737 over the proposed emergency regulation period of 180 days. These additional costs will be absorbed within existing Department budgets. No effects on federal funding to the state are anticipated.

(b) **Nondiscretionary Costs/Savings to Local Agencies:** None.

(c) **Programs Mandated on Local Agencies or School Districts:** None.

(d) **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.

(e) **Effect on Housing Costs:** None.

#### **V. Technical, Theoretical, and/or Empirical Studies, Reports, or Documents Relied Upon:**

Letter from Charles A. Tracy, Executive Director of Pacific Fishery Management Council to Barry Thom, Regional Administrator of National Marine Fisheries Service, West Coast Region RE: Council Recommendation for Groundfish Inseason Action in November 2021

- Tables 3-5 on page 2 describe the recommended 2022 management for quillback, copper, and vermilion/ sunset rockfish off California.

#### **VI. Authority and Reference**

Authority cited: Sections 200, 205, 265, 399, 702, 7071 and 8587.1, Fish and Game Code.  
Reference: Sections 200, 205, 265, 399, 1802, 7071 and 8585.5, Fish and Game Code; 50 CFR Part 660, Subpart G; and 14 CCR 27.20.

#### **VII. Fish and Game Code Section 399 Finding**

In accordance with Section 399 of the Fish and Game Code, the Commission finds that adopting this regulation is necessary for the immediate conservation, preservation or protection of vermilion, quillback and copper rockfish and for the immediate preservation of the public peace, health and safety, or general welfare to ensure conformance with federal laws.

## **Informative Digest (Policy Statement Overview)**

Unless otherwise specified, all section references in this document are to Title 14, California Code of Regulations.

Regulatory authority for groundfish stocks is shared jointly between state and federal governments.

The Pacific Fishery Management Council (PFMC) reviews the status of west coast groundfish populations and recommends regulations to the National Marine Fisheries Service (NMFS). As part of the PFMC process, NMFS (acting under delegated authority from the U.S. Department of Commerce) manages the fishery in the Exclusive Economic Zone (3 to 200 miles offshore) off Washington, Oregon and California.

Under California law (California Fish and Game Code sections 200 and 205), the California Fish and Game Commission (Commission) routinely adopts regulations in Title 14 of the California Code of Regulations (CCR) for the recreational groundfish fisheries in state waters zero to three miles from shore in an effort to ensure consistency with federal regulations for offshore waters.

Present regulations establish recreational bag limits which vary by species or species groups and are designed to keep harvest within allowable limits. Section 28.55 currently sets forth the open areas, seasons, depth constraints, limits, and methods of take for rockfish (Genus *Sebastes*). However, subsections 27.20(b)(1)(A) – (D) provide specified exceptions, including year-round take when angling from shore or when diving or spearfishing.

As described in subsection 28.55(b), the Rockfish, Cabezon, and Greenling complex (RCG) has a daily 10-fish bag and possession aggregate limit, meaning that each angler's catch can be composed of any combination of rockfish, cabezon, or greenling as long as total catch remains at or below 10 fish. Sub-bag limits are implemented when harvest guidelines cannot accommodate the 10-fish bag limit being composed of a single species. Present regulations include a sub-bag limit for vermilion rockfish (5 fish). Bronzespotted rockfish, cowcod, and yelloweye rockfish have bag limits of zero fish.

### **Existence of an Emergency and Need for Immediate Action**

The California Department of Fish and Wildlife (Department) recommends that the Commission modify the sub-bag limit for vermilion rockfish and establish a one fish sub-bag limit for both quillback rockfish and copper rockfish in the recreational fishery for 2022. The proposal would amend Section 28.55 through emergency action. The proposal is necessary for conformance to PFMC-recommended federal regulations and to increase protection of the stocks from catch levels that current information indicates are higher than can be sustainably supported.

New stock assessment information and landings data in 2021 indicated significant declines in some rockfish stocks off California. On November 21, 2021, the PFMC approved recommended in-season adjustments to the recreational groundfish fisheries off California. The federal regulations adjusting the sub-bag limits for quillback rockfish, copper rockfish, and vermilion rockfish are anticipated to be effective in early January 2022.

The proposed rule would amend Section 28.55 to reduce the current vermilion rockfish sub-bag limit from 5-fish to 4-fish within the daily 10-fish RCG bag and possession limit and implement new sub-bag limits of 1-fish for both quillback rockfish and copper rockfish within the daily 10-fish RCG bag and possession limit.

To determine whether an emergency exists, the Commission considered the following factors: The magnitude of potential harm; the existence of a crisis situation; the immediacy of the need; and whether the anticipation of harm has a basis firmer than simple speculation.

### **Benefits of the Proposed Regulations**

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.

### **Consistency and Compatibility with Existing Regulations**

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Legislature has delegated authority to the Commission to adopt recreational fishing regulations (Fish and Game Code, sections 200 and 205). The proposed regulations are consistent with the Commission's regulations in Title 14, CCR. Commission staff has searched the CCR and has found no other state regulations related to the recreational take of groundfish.