

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

Re-adoption of 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: May 19, 2022

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

I. Emergency Regulations in Effect to Date

The California Fish and Game Commission (Commission) approved an emergency rulemaking amending Section 28.55 that became effective January 6, 2022. The emergency rulemaking reduced the vermilion rockfish (*Sebastes miniatus*) sub-bag limit within the daily 10-fish Rockfish, Cabezon, and Greenling (RCG) complex bag and possession limit from five to four fish, added a sub-bag limit for quillback rockfish (*Sebastes maliger*) of one fish within the daily 10-fish RCG bag and possession limit, and added a sub-bag limit for copper rockfish (*Sebastes caurinus*) of one fish within the daily 10-fish RCG bag and possession limit.

The rule was adopted in response to new information obtained in 2021 which indicated significant declines in some rockfish stocks off California. On November 21, 2021, the Pacific Fishery Management Council (PFMC) recommended precautionary changes to reduce the then-current sub-bag limit for vermilion rockfish, and to implement new sub-bag limits for both quillback rockfish and copper rockfish, which went into effect in federal regulation on January 1, 2022. The objective of the emergency amendment was to adjust the sub-bag limits for these species to ensure the state regulations are consistent with PFMC recommendations and federal regulations.

II. Request for Approval of Re-adoption of Emergency Regulations

The current emergency rule, Section 28.55, will expire on July 6, 2022 unless it is readopted for an additional 90 days.

The Commission regularly adopts recreational groundfish fishing regulations for consistency with federal regulations. California Department of Fish and Wildlife (Department) staff are currently developing such a regular rulemaking to adopt new management measures for groundfish species under joint federal/state management authority, and associated state managed species, that are congruent with PFMC actions. The regular rulemaking is set to be heard by the Commission at its June 15-16, 2022 meeting, and will incorporate the sub-bag limits currently addressed by the emergency rule.

In order to obtain the necessary information to inform that rulemaking and protect resources while it is promulgated, the current emergency rule will need to be extended.

III. Statement of Facts Constituting the Need for Re-adoption of Regulatory Action

Prior Commission Actions

On December 15, 2021, the Commission adopted the following emergency regulations amending Section 28.55 related to bag and possession limits for vermilion rockfish, quillback rockfish, and copper rockfish.

Emergency Regulations

- Amend subsection 28.55(b)(2)
 - Reduce the vermilion rockfish sub-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, 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, 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 subsection 28.55(b)(3) for the Cowcod Conservation Area limit on slope rockfish to be 28.55(b)(5) to accommodate the above additions of subsections 28.55(b)(3) and (4).

Existence of an Emergency and Need for Immediate Action

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 actions and federal law 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, 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 became effective on 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 then-current harvest levels were 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 the National Marine Fisheries Service became effective on January 1, 2022. 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).)

V. Readoption Criteria

1) Same as or Substantially Equivalent

Pursuant to Government Code subdivision 11346.1(h), a readoption may be approved only if the text is “the same as or substantially equivalent to an emergency regulation previously adopted by that agency.” The language proposed for this rulemaking is the same as the language of the original emergency regulation.

2) Substantial Progress

Government Code subdivision 11346.1(h) specifies “Readoption shall be permitted only if the agency has made substantial progress and proceeded with diligence to comply with subdivision (e)” [sections 11346.2 through 11347.3, inclusive].

A rulemaking in compliance with these sections (certificate of compliance) is currently underway and is scheduled to be presented to the Commission for public notice in June of 2022.

Proposed Action by the Commission

The Commission proposes the readoption of amendments to Section 28.55 that is the same as previously effective.

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 \$20,484 over the proposed 90-day extension of the emergency regulation period. 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 re-adopting this regulation is necessary for the immediate conservation, preservation or protection of birds, mammals, fish, amphibians, or reptiles, including, but not limited to, their nests or eggs, 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)

Existence of an Emergency and Need for Immediate Action

On December 16, 2021, the California Fish and Game Commission (Commission) approved an emergency rulemaking, amending Section 28.55, Title 14, California Code of Regulations (CCR), that became effective January 6, 2022. The December 2021 emergency action reduced the then-current vermilion rockfish sub-bag limit from 5 fish to 4 fish within the daily 10-fish Rockfish, Cabezon, and Greenling (RCG) bag and possession limit and implemented new sub-bag limits of 1 fish for both quillback rockfish and copper rockfish within the daily 10-fish RCG bag and possession limit. The emergency was necessary for consistency with Pacific Fishery Management Council (PFMC) actions and federal regulations.

New stock assessment information and landings data in 2021 indicated significant declines in some rockfish stocks off California. 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 went into effect January 1, 2022.

Proposed Regulations

The proposed readoption would extend the emergency regulation in Section 28.55, Title 14, CCR. The emergency rule is due to expire on July 6, 2022 if a readoption is not filed. A readoption is necessary to ensure that resources are protected while the Department of Fish and Wildlife develops its biennial groundfish rulemaking to adopt new management measures for groundfish species under joint federal/state management authority, and associated state managed species, that are congruent with PFMC actions.

Benefits of the Proposed Regulations

The benefits of the proposed regulations are consistency with federal regulations, 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 California Code of Regulations and has found no other state regulations related to the take of groundfish.