

STAFF SUMMARY FOR AUGUST 17, 2022

5. RECREATIONAL SUB-BAG LIMITS FOR VERMILION, COPPER AND QUILLBACK ROCKFISHES EMERGENCY**Today's Item****Information** ☐**Action** ☒

Discuss and consider adopting a second 90-day extension of emergency regulations for sub-bag limits for vermilion rockfish, copper rockfish, and quillback rockfish.

Summary of Previous/Future Actions

- | | |
|--|---|
| • Pacific Fishery Management Council (PFMC) recommendation | Nov 21, 2021 |
| • Adopted emergency regulations | Dec 15-16, 2021; Webinar/Teleconference |
| • First re-adoption | Jun 15-16, 2022; Los Angeles/Trinidad |
| • Today's potential second re-adoption | Aug 17, 2022; Loleta |

Background

At its Dec 15-16, 2021 meeting, FGC adopted emergency regulations to: (1) reduce the vermilion rockfish sub-bag limit from 5 fish to 4 fish within the 10-fish rockfish, cabezon and greenling (RCG) daily bag and possession limit, and (2) implement new sub-bag limits for both quillback rockfish and copper rockfish of 1 fish within the 10-fish RCG daily bag and possession limit for 2022. The emergency rulemaking was necessary to maintain consistency with federal regulations that went into effect Jan 1, 2022 (see Exhibit 5), after PFMC recommendation and subsequent action by the National Marine Fisheries Service. The FGC emergency regulations went into effect Jan 6, 2022. At its Jun 2022 meeting, FGC re-adopted the emergency regulations; without further action by FGC today, the emergency regulations will expire Oct 5, 2022.

The changes included in the emergency regulation are also proposed to be included as part of the biennial groundfish management rulemaking for 2023-24, to continue conformance with federal regulations through a regular rulemaking. The biennial groundfish management rulemaking for 2023-24 is scheduled for discussion at the Oct 2022 FGC meeting and adoption at an FGC teleconference in Nov 2022. To maintain consistency between state and federal regulations for 2022, DFW requests FGC re-adopt the emergency regulations for an additional 90-day period to continue the emergency regulation until the biennial groundfish management rulemaking for 2023-24 is complete.

Significant Public Comments (N/A)**Recommendation**

FGC staff: Re-adopt the emergency regulations for an additional 90 days as recommended by DFW.

DFW: Re-adopt emergency regulations to adjust the sub-bag limits for vermilion, quillback and copper rockfishes to ensure state regulations are consistent with PFMC recommendations and federal regulations (exhibits 1 and 2).

STAFF SUMMARY FOR AUGUST 17, 2022

Exhibits

1. [DFW memo transmitting draft emergency statement, received Jun 24, 2022](#)
2. [Draft emergency statement and proposed regulatory language, dated Jun 24, 2022](#)
3. [Draft economic and fiscal impact statement \(STD. 399\)](#)
4. [Letter from Charles A. Tracy, Executive Director, PFMC, to Barry Thom, Regional Administrator, National Marine Fisheries Service, dated Dec 1, 2021](#)
5. [Staff summary from Dec 15-16, 2021 FGC meeting \(for background purposes only\)](#)

Motion

The Commission determines, pursuant to Section 399 of the California Fish and Game Code, that adopting this regulation is necessary for the immediate conservation, preservation, and 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.

The Commission further determines, pursuant to Section 11346.1 of the California Government Code, that an emergency situation exists and finds this proposed regulation is necessary to address the emergency.

Moved by _____ and seconded by _____ that the Commission re-adopts the emergency regulation to amend subsection (b) of Section 28.55, related to sub-bag limits for vermilion rockfish, quillback rockfish, and copper rockfish.

Memorandum

Date: June 22, 2022

To: Melissa Miller-Henson
Executive Director
Fish and Game Commission

From: Charlton H. Bonham
Director

Subject: **Agenda Item for the August 17-18, 2022, Fish and Game Commission Meeting: Re-adoption of Emergency Addition and Amendments to Recreational Sub-Bag Limits for Vermilion, Copper and Quillback Rockfishes, Section 28.55, Title 14, California Code of Regulations (CCR)**

On December 15, 2021, the Fish and Game Commission (Commission) took emergency action to reduce the vermilion rockfish (*Sebastes miniatus*) bag limit within the 10-fish daily Rockfish, Cabezon, and Greenling (RCG) complex bag and possession limit from five to four fish, add a sub-bag limit for quillback rockfish (*Sebastes maliger*) of one fish within the daily 10-fish RCG bag and possession limit, and add a sub-bag limit for copper rockfish (*Sebastes caurinus*) of one fish within the daily 10-fish RCG bag and possession limit. The emergency action amended Section 28.55, Title 14, CCR. The objective of the emergency amendment was to adjust the sub-bag limits for these species to ensure the state regulations were consistent with Pacific Fishery Management Council (PFMC) recommendations and federal regulations.

The Department of Fish and Wildlife (Department) requests the Commission take action at its August 17-18, 2022, meeting to re-adopt the emergency regulations to adjust the bag limits for these species to ensure the state regulations are consistent with the PFMC recommendations and federal regulations. If the emergency regulations are not re-adopted, they will expire October 3, 2022.

Transmittal of the attached updated Finding of Emergency and Statement of Proposed Emergency Regulatory Action will allow the Commission to consider re-adopting the emergency rulemaking at its August 17-18, 2022, meeting. The readoption would be the second of two 90-day extensions. A certificate of compliance (standard) rulemaking is included as part of the biennial groundfish management rulemaking for conformance with federal regulations, which came before the Commission at its June 15-16, 2022, meeting.

If you have any questions or need additional information, please contact Dr. Craig Shuman, Marine Regional Manager via email at R7RegionalMgr@wildlife.ca.gov. The Department point of contact for this emergency rulemaking is Environmental Scientist, Melanie Parker, who can be contacted via email at Groundfish@wildlife.ca.gov.

Melissa Miller-Henson, Executive Director
Fish and Game Commission
June 22, 2022
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cc: Chad Dibble, Deputy Director
Wildlife and Fisheries Division

Craig Shuman, D. Env., Regional Manager
Marine Region

Marci Yaremko, Program Manager
Marine Region

Melanie Parker, Environmental Scientist
Marine Region

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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: June 24, 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, and re-adopted the emergency regulation on June 16, 2022. The emergency rulemaking reduced the vermillion 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 vermillion 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 October 3, 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 a regular rulemaking for groundfish species under joint federal/state management authority such that new management measures for the jointly managed groundfish species are congruent with PFMC actions. This rulemaking will also include additional measures for the associated state managed species. At its June 15-15, 2022 meeting, the Commission authorized publication of notice regarding the regular rulemaking which 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, and on June 16, 2022 the Commission readopted, 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 vermilion rockfish, quillback rockfish, copper 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.

Proposed Action by the Commission

The Commission proposes the second 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 \$19,653 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 October 3, 2022 if a readoption is not filed. A readoption is necessary to ensure that resources are protected until the effective date of the biennial groundfish rulemaking which will implement new management measures for groundfish species under joint federal/state management authority 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.

Emergency Regulatory Language

Section 28.55, Title 14, CCR, is amended to read:

§ 28.55. Rockfish (Sebastes).

. . . [No changes to subsections (a) through (a)(6), shown for context only] . . .

(a) Open areas, seasons, and depth constraints: See Section 27.20 through Section 27.50 for definitions, special closure areas, and exceptions. Take and possession is authorized as follows:

(1) Northern Groundfish Management Area: Open and closed dates and depth constraints as defined by Section 27.25.

(2) Mendocino Groundfish Management Area: Open and closed dates and depth constraints as defined by Section 27.30.

(3) San Francisco Groundfish Management Area: Open and closed dates and depth constraints as defined by Section 27.35.

(4) Central Groundfish Management Area: Open and closed dates and depth constraints as defined by Section 27.40.

(5) Southern Groundfish Management Area: Open and closed dates and depth constraints as defined by Section 27.45.

(6) Cowcod Conservation Areas: Open and closed dates and depths constraints as defined by Section 27.50. Only Nearshore Rockfish, and Shelf Rockfish, as defined in subsections 1.91(a)(1) and 1.91(a)(3), may be taken and possessed, except as provided below in subsection (b)(1).

(b) Limit: Ten, within the Rockfish, Cabezon, and Greenling complex (RCG complex, as defined in Section 1.91) limit of 10 fish, in any combination of species, except as provided below.

(1) The limit on bronzespotted rockfish, cowcod, and yelloweye rockfish is zero. These species shall not be taken or possessed as part of the RCG limit.

(2) The limit on vermilion rockfish is ~~five~~ four fish, within the RCG bag limit.

(3) The limit on quillback rockfish is one fish, within the RCG bag limit.

(4) The limit on copper rockfish is one fish, within the RCG bag limit.

~~(3)(5)~~ In the Cowcod Conservation Areas (see Section 27.50), the limit on slope rockfish, as defined in subsection 1.91(a)(4), is zero. These species shall not be taken or possessed as part of the RCG limit in the Cowcod Conservation Areas.

. . . [No changes to subsections (c) through (e), shown for context only] . . .

(c) Size limit: None.

(d) Method of take: When angling, gear is restricted to not more than two hooks and one line. For purposes of this section, a hook is a single hook, or a double or treble hook with multiple points connected to a common shank.

(e) Fishing rules for rockfish may be changed during the year or in-season by the department under the authority of subsection 27.20(e). See subsection 27.20(f) for additional information.

NOTE: 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.

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (Rev. 10/2019)

ECONOMIC IMPACT STATEMENT

DEPARTMENT NAME Fish and Game Commission	CONTACT PERSON David Thesell	EMAIL ADDRESS fgc@fgc.ca.gov	TELEPHONE NUMBER 916 902-9291
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Amend Section 28.55, Title 14, Re: Recreational Sub-Bag limits for Vermilion, Copper & Quillback Rockfishes			NOTICE FILE NUMBER Z

A. ESTIMATED PRIVATE SECTOR COST IMPACTS *Include calculations and assumptions in the rulemaking record.*

1. Check the appropriate box(es) below to indicate whether this regulation:

- | | |
|--|---|
| <input type="checkbox"/> a. Impacts business and/or employees | <input type="checkbox"/> e. Imposes reporting requirements |
| <input type="checkbox"/> b. Impacts small businesses | <input type="checkbox"/> f. Imposes prescriptive instead of performance |
| <input type="checkbox"/> c. Impacts jobs or occupations | <input type="checkbox"/> g. Impacts individuals |
| <input type="checkbox"/> d. Impacts California competitiveness | <input checked="" type="checkbox"/> h. None of the above (Explain below): |

An Emergency Regulation only requires Fiscal Impact Assessment*If any box in Items 1 a through g is checked, complete this Economic Impact Statement.**If box in Item 1.h. is checked, complete the Fiscal Impact Statement as appropriate.*2. The _____ estimates that the economic impact of this regulation (which includes the fiscal impact) is:
(Agency/Department)

- ☐ Below \$10 million
- ☐ Between \$10 and \$25 million
- ☐ Between \$25 and \$50 million
- ☐ Over \$50 million *[If the economic impact is over \$50 million, agencies are required to submit a [Standardized Regulatory Impact Assessment](#) as specified in Government Code Section 11346.3(c)]*

3. Enter the total number of businesses impacted: _____

Describe the types of businesses (Include nonprofits): _____

Enter the number or percentage of total
businesses impacted that are small businesses: _____

4. Enter the number of businesses that will be created: _____ eliminated: _____

Explain: _____

5. Indicate the geographic extent of impacts: ☐ Statewide
☐ Local or regional (List areas): _____

6. Enter the number of jobs created: _____ and eliminated: _____

Describe the types of jobs or occupations impacted: _____

7. Will the regulation affect the ability of California businesses to compete with
other states by making it more costly to produce goods or services here? ☐ YES ☐ NO

If YES, explain briefly: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (Rev. 10/2019)

ECONOMIC IMPACT STATEMENT (CONTINUED)**B. ESTIMATED COSTS** *Include calculations and assumptions in the rulemaking record.*

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ _____

a. Initial costs for a small business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

b. Initial costs for a typical business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

c. Initial costs for an individual: \$ _____ Annual ongoing costs: \$ _____ Years: _____

d. Describe other economic costs that may occur: _____

2. If multiple industries are impacted, enter the share of total costs for each industry: _____

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements.
Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted. \$ _____4. Will this regulation directly impact housing costs? ☐ YES ☐ NO

If YES, enter the annual dollar cost per housing unit: \$ _____

Number of units: _____

5. Are there comparable Federal regulations? ☐ YES ☐ NO

Explain the need for State regulation given the existence or absence of Federal regulations: _____

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ _____

C. ESTIMATED BENEFITS *Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. Briefly summarize the benefits of the regulation, which may include among others, the health and welfare of California residents, worker safety and the State's environment: _____

2. Are the benefits the result of: ☐ specific statutory requirements, or ☐ goals developed by the agency based on broad statutory authority?

Explain: _____

3. What are the total statewide benefits from this regulation over its lifetime? \$ _____

4. Briefly describe any expansion of businesses currently doing business within the State of California that would result from this regulation: _____

D. ALTERNATIVES TO THE REGULATION *Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: _____

ECONOMIC AND FISCAL IMPACT STATEMENT (REGULATIONS AND ORDERS)

STD. 399 (Rev. 10/2019)

ECONOMIC IMPACT STATEMENT (CONTINUED)

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation: Benefit: \$ _____ Cost: \$ _____

Alternative 1: Benefit: \$ _____ Cost: \$ _____

Alternative 2: Benefit: \$ _____ Cost: \$ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: _____

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? ☐ YES ☐ NO

Explain: _____

E. MAJOR REGULATIONS *Include calculations and assumptions in the rulemaking record.*

California Environmental Protection Agency (Cal/EPA) boards, offices and departments are required to submit the following (per Health and Safety Code section 57005). Otherwise, skip to E4.

1. Will the estimated costs of this regulation to California business enterprises **exceed \$10 million**? ☐ YES ☐ NO

If YES, complete E2. and E3

If NO, skip to E4

2. Briefly describe each alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

(Attach additional pages for other alternatives)

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 1: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 2: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

4. Will the regulation subject to OAL review have an estimated economic impact to business enterprises and individuals located in or doing business in California exceeding \$50 million in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through 12 months after the major regulation is estimated to be fully implemented?

☐ YES ☐ NO

If YES, agencies are required to submit a [Standardized Regulatory Impact Assessment \(SRIA\)](#) as specified in Government Code Section 11346.3(c) and to include the SRIA in the Initial Statement of Reasons.

5. Briefly describe the following:

The increase or decrease of investment in the State: _____

The incentive for innovation in products, materials or processes: _____

The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency: _____

ECONOMIC AND FISCAL IMPACT STATEMENT (REGULATIONS AND ORDERS)

STD. 399 (Rev. 10/2019)

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT *Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

- ☐ 1. Additional expenditures in the current State Fiscal Year which are reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

- ☐ a. Funding provided in _____
Budget Act of _____ or Chapter _____, Statutes of _____

- ☐ b. Funding will be requested in the Governor's Budget Act of _____
Fiscal Year: _____

- ☐ 2. Additional expenditures in the current State Fiscal Year which are NOT reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

Check reason(s) this regulation is not reimbursable and provide the appropriate information:

- ☐ a. Implements the Federal mandate contained in _____
- ☐ b. Implements the court mandate set forth by the _____ Court.

Case of: _____ vs. _____

- ☐ c. Implements a mandate of the people of this State expressed in their approval of Proposition No. _____

Date of Election: _____

- ☐ d. Issued only in response to a specific request from affected local entity(s).

Local entity(s) affected: _____

- ☐ e. Will be fully financed from the fees, revenue, etc. from: _____

Authorized by Section: _____ of the _____ Code;

- ☐ f. Provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each;

- ☐ g. Creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

- ☐ 3. Annual Savings. (approximate)

\$ _____

- ☐ 4. No additional costs or savings. This regulation makes only technical, non-substantive or clarifying changes to current law regulations.

- ☒ 5. No fiscal impact exists. This regulation does not affect any local entity or program.

- ☐ 6. Other. Explain _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (Rev. 10/2019)

DRAFT DOCUMENT**FISCAL IMPACT STATEMENT (CONTINUED)****B. FISCAL EFFECT ON STATE GOVERNMENT** *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*☒ 1. Additional expenditures in the current State Fiscal Year. (Approximate)\$ 19,653*It is anticipated that State agencies will:*☒ a. Absorb these additional costs within their existing budgets and resources.☐ b. Increase the currently authorized budget level for the _____ Fiscal Year☐ 2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

☐ 3. No fiscal impact exists. This regulation does not affect any State agency or program.☒ 4. Other. Explain CDFW staff time from several divisions will be shifted to implement the proposed emergency regulation. See Addendum.**C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS** *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*☐ 1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

☐ 2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

☒ 3. No fiscal impact exists. This regulation does not affect any federally funded State agency or program.☐ 4. Other. Explain _____

FISCAL OFFICER SIGNATURE

DATE

*The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.*

AGENCY SECRETARY

DATE

*Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399.*

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER

DATE



STD399 ADDENDUM

Emergency Action to Amend
Section 28.55
Title 14, California Code of Regulations (CCR)

[Re-Adopt II]

Re: Recreational Sub-Bag limits for Vermilion, Copper and Quillback Rockfishes

The California Department of Fish and Wildlife (Department) recommends that the Commission re-adopt reduced sub-bag limits for vermilion rockfish, quillback rockfish, and copper rockfish in the recreational fishery for 2022. This is in response to the Pacific Fishery Management Council (PFMC) recommending, on November 21, 2021, precautionary changes to reduce the then-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*). The recommendations went into effect in federal regulation on January 1, 2022.

The proposal would re-adopt amendments to Section 28.55, Title 14, California Code of Regulations (CCR) through emergency action. The proposal is necessary for conformance to PFMC actions and federal law to ensure that the adjusted sub-bag and possession limits do not exceed federally established harvest limits.

Economic Impact Statement

Emergency regulations do not require an economic impact statement; only fiscal impacts must be evaluated (California Government Code Section 11346.1).

Fiscal Impact Statement**A. FISCAL EFFECT ON LOCAL GOVERNMENT**

The proposed amendment to Section 28.55, Title 14, CCR will not have the potential for a fiscal effect on local governments.

B. FISCAL EFFECT ON STATE GOVERNMENT

The Commission anticipates some fiscal effect on State government as a result of this emergency action.

1. Additional expenditures in the current State Fiscal Year: \$19,653

The potential for fiscal effects to the Department are projected to sum to \$19,653 over the 90-day effective period of the proposed emergency regulation during the 2022-23 fiscal year (see Table 1).

Program implementation will involve a range of staff members' time engaged in public communications, education, and outreach to the affected individual recreational anglers and businesses that serve recreational groundfish anglers. Law enforcement will also be engaged in public outreach in the process of enforcing the proposed emergency

regulation. It is anticipated that the Department will absorb these additional costs within its existing budgets and resources.

Table 1. Recreational Rockfishes Sub-Bag Limits Implementation Costs

Program	Classification	Task	Rate	Hours	Total
MR (groundfish)	Environmental Scientist - Range C	Groundfish public outreach	\$66.32	40.0	\$2,652.80
MR (groundfish)	Scientific Aid	Groundfish public outreach	\$17.14	80.0	\$1,371.20
MR (outreach)	Environmental Scientist - Range C	Public Outreach / communication	\$66.32	20.0	\$1,326.40
MR	Sr. Environmental Scientist, Supervisor	Review/Oversight	\$101.80	8.0	\$814.40
MR	Environmental Program Manager	Review/Oversight	\$117.71	4.0	\$470.84
MR (CRFS)	Environmental Scientist - Range C	Recreational Fishing Survey	\$66.32	20.0	\$1,326.40
MR (CRFS)	Fish and Wildlife Tech	Recreational Fishing Survey	\$38.70	40.0	\$1,548.00
MR (CRFS)	Scientific Aid	Recreational Fishing Survey	\$17.14	100.0	\$1,714.00
LED	Fish and Game Warden – Range B	Public Outreach / Enforcement	\$63.69	24.0	\$1,528.56
LED	Fish and Game Lieutenant (Supervisor)	Public Outreach / Enforcement	\$84.76	12.0	\$1,017.12
LED	Patrol Boat	Public Outreach / Enforcement	\$196.00	12.0	\$2,352.00
OCEO	Public Information Officer	Public Outreach / communication	\$88.74	4.0	\$354.96
MR subtotal				312.0	\$11,224.04
LED subtotal				48.0	\$4,897.68
OCEO subtotal				4.0	\$354.96
		Program Subtotal	--	364.0	\$16,476.68
		Overhead	19.28%	--	\$3,176.70
		Program Total		364.0	\$19,653.38

Notes: CalHR California State Civil Service Pay Scales by Classification; Rate is the median hourly salary including benefits (staff benefit rates: Peace Officer =60.96%, Non-Peace Officer =52.73%) and (19.28%) overhead. Department Branch abbreviations: MR = Marine Region; CRFS = California Recreational Fishing Survey; LED = Law Enforcement Division; OCEO = Office of Communications, Education, and Outreach.

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS

The proposed amendment to Section 28.55, Title 14, CCR will not have the potential for a fiscal effect on the federal funding of state programs.



Pacific Fishery Management Council

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Marc Gorelnik, Chair | Charles A. Tracy, Executive Director

December 1, 2021

Mr. Barry Thom, Regional Administrator
National Marine Fisheries Service, West Coast Region
1201 NE Lloyd Blvd., Suite 1100
Portland, OR 97232-1274

Re: Council Recommendation for Groundfish Inseason Action in November 2021

Dear Mr. Thom:

The Pacific Fishery Management Council (Council) met November 15–19 and 21–22 via webinar. As part of their agenda, the Council considered inseason adjustments to the 2021 and 2022 groundfish fisheries, as well as set-asides to accommodate the incidental mortality of Pacific whiting in 2022 research activities and in the pink shrimp fishery. The Council also reviewed and considered analytical documents provided at the November meeting by the Groundfish Management Team (GMT) [Agenda Item E.7.a, Supplemental GMT Reports 1](#) and [Supplemental GMT Report 2](#), the Groundfish Advisory Subpanel (GAP) [Agenda Item E.7.a, Supplemental GAP Report 1](#), and the California Department of Fish And Wildlife's (CDFW) [Supplemental Report 2](#) in making further inseason adjustment recommendations.

The Council recommends for the National Marine Fisheries Service to adopt the following inseason adjustments for the groundfish fishery as soon as possible.

Adjustments to 2022 Fisheries

Sablefish Daily-Trip-Limits (DTL)

The Council considered several alternatives for the 2022 sablefish daily trip limit for the limited entry fixed gear (LEFG) and open access (OA) fisheries both north of 36° North latitude (N. lat.) and recommends the following adjustments (by fishery and management area) shown in Table 1.

Table 1. Sablefish daily trip limit recommendations for 2022 LEFG and OA fisheries.

Fishery	Management Area	Daily Trip Limit Recommendation
LEFG	North of 36° N. lat.	2,400 lb./week, not to exceed 4,800 lb./2 months
OA	North of 36° N. lat.	600 lbs./day, or 1 landing/week up to 2,000 lbs., not to exceed 4,000 lbs./2 months

LEFG and OA Lingcod Trip Limits North of 40° 10' N. lat.

The Council considered adjusting 2022 bimonthly trip limits for lingcod in the LEFG and OA fisheries north of 42° N. lat. and recommends the following adjustments in Table 2.

Table 2. Recommended 2022 trip limits for LEFG and OA lingcod south of 40° 10' N. lat.

Fishery	Management Area	Trip Limit Recommendation
LEFG	North of 42° N. lat.	5,000 lbs. per 2 months
OA	North of 42° N. lat.	2,500 lbs. per 1 month

The Council reviewed the [E.7.a, Supplemental CDFW Report 2](#) and [E.7.a, Supplemental GMT Report 2](#) which considered inseason management of quillback (Table 3), copper (Table 4), and vermilion/sunset rockfish (Table 5) off of California for 2022. The Council recommended the following modifications to management of these species off of California only.

Quillback Rockfish**Table 3. Recommended 2022 management for Quillback Rockfish off of California.**

Fishery	Trip Limit Recommendation
Recreational	Institute a one (1) quillback rockfish sub-bag limit within the Rockfish Cabezon Greenling (RCG) 10 fish recreational daily bag limit.
Commercial	Implement a minor nearshore rockfish trip limits between 42°- 40° 10' N. lat. of 2,000 lbs. / 2 months, of which no more than 75 lbs can be quillback rockfish.
Commercial	Implement a deeper nearshore rockfish trip limits south of 40° 10' N. lat. of 2,000 lbs. / 2 months, of which no more than 75 lbs can be quillback rockfish.

Copper Rockfish**Table 4. Recommended 2022 management for Copper Rockfish off of California.**

Fishery	Trip Limit Recommendation
Recreational	Institute a one (1) copper rockfish sub-bag limit within the RCG 10 fish recreational daily bag limit.
Commercial	Implement a minor nearshore rockfish trip limits between 42°- 40° 10' N. lat. of 2,000 lbs. / 2 months, of which no more than 75 lbs can be copper rockfish.
Commercial	Implement a deeper nearshore rockfish trip limits south of 40° 10' N. lat. of 2,000 lbs. / 2 months, of which no more than 75 lbs can be copper rockfish.

Vermilion/Sunset Rockfish**Table 5. Recommended 2022 management for Vermilion/Sunset Rockfish off of California.**

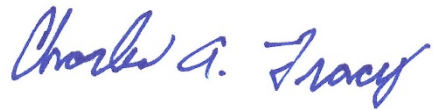
Fishery	Trip Limit Recommendation
Recreational	Institute a four (4) vermilion/sunset rockfish sub-bag limit within the RCG 10 fish recreational daily bag limit.

Pacific Whiting Set-Asides

The Council recommends a Pacific whiting set-aside of 750 mt for research activities and the pink shrimp fishery in 2022.

Should you have any questions regarding these Council recommendations, please do not hesitate to contact Mr. Todd Phillips of my staff.

Sincerely,



Charles A. Tracy
Executive Director

TMP:kma

cc: Pacific Council Members

Ms. Abbie Moyer
Ms. Melissa Mandrup
Ms. Susan Chambers
Mr. Mike Burner
Mr. John DeVore
Mr. Brett Wiedoff
Mr. Todd Phillips

STAFF SUMMARY FOR DECEMBER 15-16, 2021
For Background Purposes Only

19. RECREATIONAL GROUNDFISH EMERGENCY

Today's Item

Information ☐

Action ☒

Discuss and consider adopting emergency regulations for the 2022 recreational fishing season for copper, quillback and vermilion rockfish bag limits, to conform state regulations with federal in-season changes to the 2022 recreational groundfish regulations.

Summary of Previous/Future Actions

- | | |
|--|--|
| • Pacific Fishery Management Council action | Nov 21, 2021 |
| • Today's discussion and adoption hearing | Dec 15-16, 2021; Webinar/Teleconference |

Background

Regulatory authority for groundfish stocks is shared jointly between state and federal governments. Maintaining state groundfish regulations consistent with federal regulations that establish harvest limits, season dates, depth constraints and other management measures is important to allow for uniform enforcement, minimal confusion, and a comprehensive approach to resource management. Consistent regulations are necessary to maintain state authority over its recreational groundfish fishery and avoid federal preemption under the Magnuson-Stevens Fishery Conservation Act.

On Nov 21, 2021, the Pacific Fishery Management Council (PFMC) recommended in-season adjustments to three recreational groundfish fisheries off California; PFMC recommended to reduce the sub-bag limit for vermilion rockfish (*Sebastes miniatus*), and to adjust the bag limits for both quillback rockfish (*Sebastes maliger*) and copper rockfish (*Sebastes caurinus*) (Exhibit 4); these changes in federal regulation are expected to take effect in early Jan 2022, upon publication in the federal register. The recommended adjustments were based on new stock assessment information and landings data that led PFMC to conclude that recent and current harvest levels are higher than can be sustainably supported. While further assessment is needed to better understand the stock status for quillback and copper rockfish, this new information is currently the best, readily-available science.

DFW requests FGC take emergency action to adjust the bag limit for the three groundfish species (Exhibit 1). The proposed rule would amend Section 28.55 to: (1) reduce the current vermilion rockfish sub-bag limit from 5 fish to 4 fish within the 10-fish rockfish, cabezon and greenling (RCG) daily bag and possession limit, and (2) implement new sub-bag limits of 1 fish for both quillback rockfish and copper rockfish within the 10-fish RCG daily bag and possession limit. The emergency action would ensure consistency with PFMC recommended federal regulations, and reduce catches to more closely align with federal harvest guidelines intended to support sustainable harvest of these species.

FGC approval today would allow FGC staff to provide notice and submit materials to the Office of Administrative Law to best align with the expected effective date of federal regulations (estimated to be Jan 6, 2022).

STAFF SUMMARY FOR DECEMBER 15-16, 2021
For Background Purposes Only

Significant Public Comments (N/A)

Recommendation

FGC staff: Adopt the proposed emergency action to reduce the 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 for both quillback rockfish and copper rockfish of 1 fish within the daily 10-fish RCG bag and possession limit for 2022.

DFW: Reduce the sub-bag limit for vermilion rockfish and implement new sub-bag limits for quillback rockfish and copper rockfish through emergency action, as specified in the emergency statement (Exhibit 2).

Exhibits

1. DFW memo transmitting emergency statement, received Dec 7, 2021
2. Draft emergency statement and proposed regulatory language, updated Dec 9, 2021
3. Draft economic and fiscal impact statement (STD 399)
4. Letter from Charles A. Tracy, PFMC, to Barry Thom, National Marine Fisheries Service, dated Dec 1, 2021
5. DFW presentation

Motion

The Commission determines that, pursuant to Section 399 of the California Fish and Game Code, 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.

The Commission further determines, pursuant to Section 11346.1 of the California Government Code, that an emergency situation exists and finds this proposed regulation is necessary to address the emergency.

Moved by _____ and seconded by _____ that the Commission adopts the emergency regulation to amend subsection (b) of Section 28.55, related to sub-bag limits for vermilion rockfish, quillback rockfish and copper rockfish.