

State of California
Fish and Game Commission
Final Statement of Reasons for Regulatory Action

Amend Sections 1.91, 27.20, 27.25, 27.30, 27.35, 27.40, 27.45, 27.50, 27.51, 28.26, 28.27, 28.28,
28.29, 28.47, 28.48, 28.49, 28.54, 28.55, 28.56, 28.58, 28.65 and 28.90

Title 14, California Code of Regulations

Re: Recreational Fishing Regulations for Federal Groundfish and Associated Species
for 2023 and 2024

I. Dates of Statements of Reasons

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|----------------------------------|-------------------------|
| (a) Initial Statement of Reasons | Date: September 6, 2022 |
| (b) Final Statement of Reasons | Date: November 18, 2022 |

II. Dates and Locations of Scheduled Hearings

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|------------------------|-------------------------|--------------------------|
| (a) Notice Hearing | | |
| | Date: June 15, 2022 | Location: Los Angeles |
| (b) Discussion Hearing | | |
| | Date: October 13, 2022 | Location: Kings Beach |
| (c) Adoption Hearing | | |
| | Date: November 15, 2022 | Location: Teleconference |

III. Update

The following non-substantive changes were made to the proposed regulations:

- The term “this Section” was amended to “this section” in sections 27.20, 28.47, 28.48 and 28.49.
- Underline formatting was added where it was missing for proposed text in subsection 27.30(b)(2)(A) and 27.30(b)(2)(A)1.
- A space was added in proposed text in subsections 27.30(b)(2)(A) and 27.45(b)(3)(A).
- The word “section” was changed to “subsection” in proposed text for subsections 27.45(b)(3)(A)1. and 27.45(b)(3)(A)2.
- The strikeout language was corrected to match existing regulatory language in subsection 27.50(a).
- The word “subsections” was added to the proposed text in subsections 27.50(c)(1) and (2).
- The word “section” is amended to “subsection” in subsection 28.65(g).
- Strikeout/underline formatting of spaces was corrected throughout the proposed regulatory text.

There have been no other changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.

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

Responses to public comments are included in Attachment 1.

V. 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, state law would be inconsistent with federal law. Inconsistency in regulations will create confusion among the public and may result in laws that are difficult to enforce. Additionally, state regulations cannot be less restrictive than federal regulations, and the federal regulation changes effective in January 2023 are more restrictive than current regulations.

It is critical to have consistent state and federal regulations establishing harvest limits, season dates, depth constraints and other management measures, and it's critical that the state and federal regulations be effective concurrently. 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 [United States Code, Title 16, subsection 1856(b)(1)]**.

Furthermore, under the no change alternative, California sheephead and ocean whitefish will remain coupled to federal groundfish. This would prevent additional recreational opportunities intended to supplement the loss of opportunity in federal groundfish.

(c) Consideration of Alternatives

In view of information currently possessed, no 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.

(d) Description of Reasonable Alternatives that Would Lessen Adverse Impact on Small Business

Throughout the development of the proposed regulations in coordination with Federal agencies, consideration was given to limit the potential for adverse impacts on small businesses that could otherwise occur as a result of the need to reduce mortality for quillback and copper rockfishes and stay within harvest guidelines for yelloweye rockfish and cowcod. Short-term and long-term impacts are expected to occur as the sportfish-related sectors adjust to new regulations and fishery operations. Reductions in groundfish angler days can translate to income and job losses for commercial passenger fishing vessels (CPFV) operators and crew as well as other sportfishing and travel-related businesses. At the same time, shifts in angler preferences for other target species could provide growth in opportunities for anglers and businesses throughout port localities and the state.

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 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. The Department anticipates decreased opportunities for the **recreational groundfish** fishery in 2023-2024 compared to 2022. However, the impact on the entirety of marine sportfishing activity is not expected to be sufficient to significantly impact sportfishing expenditures to businesses within the state.

- (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 significant impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses or the expansion of businesses in California. However, some short-term job losses may occur as sportfish-related businesses adjust to changes in the composition of recreational fishing opportunities.

The Commission anticipates benefits to the health and welfare of California residents. Participation in sport fisheries opportunities fosters conservation through education and appreciation of California's wildlife.

The Commission does not anticipate any benefits to worker safety.

The Commission anticipates benefits to the environment by the sustainable management of California's sport fishing resources.

- (c) Cost Impacts on a Representative Private Person or Business

The Commission 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.

Updated Informative Digest/Policy Statement Overview

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

The Pacific Fishery Management Council (PFMC) reviews the status of west coast groundfish populations biennially. As part of that process, it recommends groundfish harvest limits and regulations aimed at meeting biological and fishery allocation goals specified in law or established in the Pacific Coast Groundfish Fishery Management Plan (PCGFMP). These recommendations coordinate west coast management of recreational and commercial groundfish fisheries in the Exclusive Economic Zone (three to 200 miles offshore) off Washington, Oregon, and California. These recommendations are subsequently reviewed for implementation as federal fishing regulations by National Oceanic and Atmospheric Administration Fisheries.

Under California law (California Fish and Game Code sections 200, 205, 7071, and 8587.1), the California Fish and Game Commission (Commission) adopts regulations in Title 14, CCR, for the recreational and nearshore commercial groundfish fisheries in state waters zero to three miles from shore. Management authority for most nearshore stocks is shared jointly between state and federal governments in conjunction with the PCGFMP and the Nearshore Fishery Management Plan.

Existing law authorizes the recreational take of groundfish subject to regulations set forth by federal and state authorities. Current regulations establish season lengths, depth constraints, methods of take, as well as size, bag, and possession limits within the five groundfish management areas for all federal groundfish and associated species.

The California Department of Fish and Wildlife is recommending the recreational regulatory changes for federal groundfish be consistent with PFMC recommendations in 2023 and 2024. Other changes are proposed to decouple the recreational regulations for California sheephead and ocean whitefish from those for federal groundfish. This approach will allow the Commission to adopt state groundfish regulations to timely conform to those taking effect in federal ocean waters in January 2023.

The PFMC approved season structures for 2023 and 2024 (Figure 1) are a substantial departure from the status quo, in that each management area will incur a significant reduction in fishing time in nearshore waters. The severe reductions are necessary to incorporate the best scientific information available from the 2021 stock assessments for quillback and copper rockfishes off California and the rebuilding analysis for quillback rockfish off California. A new offshore-only fishery for shelf and slope rockfish and lingcod will be available in some areas of the state during certain months.

Management Area	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Northern	Closed				May 15-Oct 15			All Depths			Closed	
Mendocino	Closed				>50 fm		July 16-Dec 31			All Depths		
San Francisco	Closed				>50 fm		July 16-Dec 31			All Depths		
Central	Closed				May 1-Sep 30			All Depths		>50 fm		
Southern	Closed			Apr 1-Sep 15			All Depths			>50 fm		

Figure 1. Proposed recreational seasons and depths for all species of rockfish, lingcod, cabezon, all greenlings of the genus *Hexagrammos* in 2023 and 2024 by management area.

The Cowcod Conservation Areas, which are within the Southern Groundfish Management Area but with a discrete depth limit of 40 fathoms, will be closed January 1 through March 31 in all depths,

open April 1 through September 15 in waters shoreward of the 40-fathom depth contour, and closed September 16 through December 31 in all depths.

In all management areas, California scorpionfish, “other flatfish” as defined in Section 28.48, petrale sole, starry flounder, leopard shark, and the federal groundfish listed in Section 28.49 (soupsin shark, Dover sole, English sole, arrowtooth flounder, spiny dogfish, skates, rattfish, grenadiers, finescale codling, Pacific cod, Pacific whiting, sablefish and thornyheads) are proposed to be open year-round at all depths.

Restrictions on methods of take are added to Section 28.49 to provide for consistency with the method of take for rockfish, California scorpionfish, lingcod, cabezon and kelp and rock greenlings.

The sub-bag limits for quillback rockfish (1-fish), copper rockfish (1-fish), and vermilion rockfish (4-fish) that were implemented through emergency action effective January 6, 2022, will be maintained.

Additionally, there is a proposal to decouple California sheephead and ocean whitefish regulations from those for federal groundfish. The Department is recommending a reduction in the current recreational bag limit for California sheephead from 5 fish to 2 fish. Furthermore, the Department is recommending the current January-February boat-based seasonal closure stay in effect for California sheephead but not for ocean whitefish, while all other depth constraints and area restrictions that currently apply to these species to protect shelf rockfishes be removed. The current shore based angling and diving/spearfishing exceptions for California sheephead currently specified in Section 27.20 will be added to Section 28.26.

The definition of depth constraint is revised in subsection 27.20(a).

Subsection 27.20(b)(1) is revised to reflect the new definition of depth constraint, the decoupling of California sheephead and ocean whitefish from the regulations for federal groundfish, and the allowance of take year-round at all depths of some federal groundfish species.

Subsection 27.20(b)(1)(A) is revised to reflect the decoupling of California sheephead and ocean whitefish from the regulations for federal groundfish and the allowance of take year-round at all depths of some federal groundfish species.

In subsection 27.20(b)(1)(B), California scorpionfish, leopard shark and the species listed in Section 28.49 are added to the list of species exempt from depth constraints for consistency with the season changes described above.

Subsections 27.20(b)(1)(C) and 27.50(c)(1) are revised to provide clarity that transportation by vessel of species taken under the shore based fishing exemption is unlawful.

Several non-substantive changes are proposed to correct errors or outdated terminology, provide consistency, and reduce redundancy between Title 14 sections, and increase the clarity of the regulations.

- In all sections included in this rulemaking “take and possession” is updated to read “take and/or possession”; the term “federally-managed groundfish” is changed to “federal groundfish”; and “possession limit” is changed to “bag and possession limit”.
- The scientific names of fish are updated to current accepted nomenclature and to correct spelling errors in Section 1.91.
- In Section 27.20, an abbreviation for groundfish management area is introduced.

- Subsection 27.20(b)(1)(C) is amended for regulatory clean-up and will provide consistency with language in Section 632, Marine Protected Areas.
- The web address provided in subsection 27.20(f) is updated.
- The groundfish call hotline is removed from subsection 27.20(f)
- A copy and paste error is corrected in subsection 27.30(a)
- Clarifying language regarding the CCAs is added to Section 27.45.
- The formatting of a coordinate listed in subsection 27.50(a) is corrected.
- The organization of Section 27.50, and text is amended to enhance the clarity of the current regulations; no changes to the species that can or cannot be retained within the CCAs are proposed.
- Section 27.51 is amended to reduce redundancy with subsection 27.20(d).
- Currently established fillet size limits and other fillet regulations (as established in Section 27.65) are added to relevant species-specific sections beginning with Section 28.26.

Benefits of the Proposed Regulations

Benefits of the proposed management actions include preserving fishing opportunity, along with the continuation of the reasonable and sustainable management of groundfish resources and the protection of listed and special status species.

This regulation would result in consistency with federal law. California's recreational fishing regulations for federal groundfish species need to conform to, or be more restrictive than, federal regulations to ensure that biological and fishery allocation goals are not exceeded and to avoid federal preemption under the Magnuson-Stevens Fishery Conservation Act [United States Code, Title 16, subsection 1856 (b)(1)].

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 recreational take of groundfish.

On November 15, 2022, the Commission adopted the regulations as originally proposed. Several non-substantive edits were made to correct capitalization, terminology, spacing and strikeout/underline formatting and to correctly reflect existing regulation. There have been no other changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.