State of California
Fish and Game Commission

Finding of Emergency and Statement of Proposed Emergency Regulatory Action

Emergency Action to Amend Section 28.15
Title 14, California Code of Regulations

Re: California halibut daily bag and possession limit reduction to two fish north of Point Sur

Date of Statement: April 14, 2023

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

Background

In order to protect the California halibut (halibut) resource, the California Department of Fish and Wildlife (Department) requests an emergency action that will reduce the recreational bag limit while not jeopardizing this popular recreational fishery. The current regulation §28.15, Title 14, California Code of Regulations (CCR), allows recreational anglers a daily bag and possession limit of three halibut for areas north of Point Sur, Monterey County. The Department proposes a daily bag and possession limit reduction from three to two fish for areas north of Point Sur, effective immediately.

This proposal is prompted by the recent announcement of the 2023 salmon fishery closure paired with additional changes to opportunity for groundfish fisheries. These changes limit fishing opportunities and change fishery accessibility. Recreational anglers will potentially shift their effort from the closed fisheries to halibut. This is particularly true in areas such as San Francisco Bay where some effort shift has already been documented this year.

There are two significant impacts to the halibut fishery anticipated in the 2023 season and subsequent years:

- With the change in concurrent fisheries, anglers will likely shift their attention to other available fishing opportunities, including halibut, particularly within San Francisco Bay. Based on the effort shift observed during the 2008 and 2009 salmon fishery closure, the Department anticipates the increase in recreational anglers targeting halibut will double compared to 2022.
- In the wild, halibut recruitment appears to be associated with warm water phases, while low recruitment is associated with cold water phases, particularly when these phases are prolonged. Over the past few years, the Department has noted a decrease in ocean temperatures.

Department staff have received requests from certain Commercial Passenger Fishing Vessel (CPFV) operators and recreational anglers to proactively consider a bag limit reduction to two fish to lessen the effect of the anticipated effort shift on the halibut resource and an anticipated decline in halibut fishing success in subsequent years. Recreational fishery participants expressed a decline in fishing success following the last salmon closure in 2008 and 2009.

During the 2008 and 2009 salmon closure, the estimated recreational take of halibut in northern

California surpassed 54,000 and 43,000 fish, respectively. In comparison, estimated recreational catch for halibut was 15,000 fish in 2007, prior to the salmon closure. In subsequent years following the closure, fishing success showed a steady decline and by 2013, catch dipped to just below 5,000 halibut. Average catch remained low for several years, but following warm-water periods that began in 2014, has steadily increased through 2022. Halibut egg and larval survival has shown high correlation with optimal environmental conditions associated with warm water. Unfortunately, the anticipated effort shift in 2023 will coincide with a cold-water period, which is correlated with lower halibut egg and larval survival and lower fishery recruitment.

Department staff monitor recreational fishery catch and effort estimates on a monthly basis as provided by the California Recreational Fisheries Survey. Based on fishing effort and total average annual catch estimates from recent years (2018, 2019, and 2021), reducing the daily bag and possession limit to two fish is estimated to result in a savings of 13% (approximately 7,450 fish) of the legal-sized halibut population in northern California for 2023 (Recreational Fisheries Information Network (RecFin) bag limit tool 2023).

The Department has considered a one-fish bag limit which is estimated to result in a greater decrease in halibut take compared to a two-fish limit. However, this was widely unsupported by CPFV operators who voiced concerns about economic impacts to their businesses, and recreational anglers who expressed opposition to the one-fish limit option. The bag limit reduction to two fish is supported by the recreational fishery and expected to support halibut population levels through this period of increased fishing pressure and coinciding cold-water, low recruitment cycle.

II. Proposed Emergency Regulations

Reduce the recreational fishery daily bag limit for halibut from three to two fish for areas north of Point Sur, Monterey County. This change would automatically trigger a reduction of the possession limit from three to two fish because no more than one daily bag limit may be possessed unless otherwise authorized (Title 14 CCR §1.17).

III. Findings for the Existence of an Emergency

The Commission considered the following factors in determining that an emergency does exist at this time.

The magnitude of potential harm:

Threats to stock stability will socioeconomically harm important recreational and commercial fisheries. Halibut is an important sport and commercial fish, and both fisheries positively contribute to California’s economy. The recreational fishery comprises a significant CPFV and six-pack fleet in San Francisco Bay which primarily consists of small family-owned businesses. Halibut is also a popular target for many private boaters throughout northern California. If the sustainability of the halibut population is impacted, the viability of CPFV and six-pack operations that rely on halibut are threatened as well.

The repercussions of the magnitude of potential harm to stock stability also extend beyond just the recreational fishery. The halibut population supports a statewide commercial fishery with multiple socioeconomically important commercial sectors: open access commercial hook-and-line, restricted access commercial trawl, and restricted access commercial gill net (gill net only occurs

in southern California). The commercial fishery provides a fresh local source of seafood with most fish being sold within California at restaurants, grocery stores, farmers markets, and directly at the dock. The commercial fishery is also valuable, and in 2022, ex-vessel value totaled approximately $5.5 million. If stock stability is threatened, the viability of these commercial fisheries that rely on halibut are threatened as well.

The existence of a crisis situation:

The sustainability of halibut is threatened by multiple factors, which cumulatively contribute to the existence of a crisis situation for 2023: anticipated commercial and recreational fishery effort shifts, environmental factors including cold-water conditions, and biological factors including area-based sex ratio bias.

Anticipated recreational fishery effort shifts

The sustainability of the halibut population is potentially threatened by a recreational effort shift as anglers turn to halibut to replace fishing opportunities for salmon, therefore increasing effort and ultimately take. This effort shift from salmon also occurred during the last closure in 2008 and 2009. Changes to other fishery regulations this year, which have reduced accessibility to nearshore fishery options, could also contribute to an even greater effort shift to halibut. Finally, with the increase in social media usage by the fishing community, there is a concern that effort shifts to halibut may result in greater successful take due to easier access of information regarding how and where to target halibut.

Anticipated commercial fishery effort shifts

Additionally, halibut sustainability is threatened by a potential shift in commercial fishing efforts. Displaced commercial salmon fishermen may participate in the open access commercial hook-and-line halibut fishery, which will also increase effort and ultimately take.

Environmental factors including cold-water conditions

While halibut are regulated by a minimum size limit that protects immature individuals from take, cold-water periods limit the success of reproduction regardless of maturation status. Egg and larval survival diminish during cold water periods. According to the NOAA climate prediction center, the Oceanic Nino Index indicates that environmental conditions have primarily been classified as cold-water periods beginning halfway through 2020. This indicates that egg and larval survival for halibut have been low since that time, and the last warm-water period (which results in higher halibut egg and larval survival) was documented in 2019. Because there is a 3- to 4-year lag until halibut reach the minimum size limit, it is likely that the fishery will see limited recruitment with new individuals until 3 to 4 years after environmental conditions change and warm water periods are documented again. It is likely that many halibut (primarily females, due to sex specific growth rates) born in 2019 will be legal to take this year with fewer fish recruiting into the fishery in the coming years. With climate change, the prediction of environmental conditions has become increasingly difficult. The inability to forecast environmental conditions increases the magnitude of potential harm if cold-water conditions persist and regulations are not implemented to sustain the stock.

Biological factors including area-based sex ratio

Finally, there is a heavy sex ratio bias for the recreational fishery toward female fish. Most halibut caught by the recreational fishery are females (80% or more depending on the area) that are returning to nearshore areas to rest after a spawning event. Male halibut typically stay in deeper waters after they reach maturation, areas that are less frequently fished by recreational anglers. While halibut have high fecundity and are described as prolific spawners in optimal conditions, females are considered the limiting factor for reproduction over males.

The immediacy of the need:

There is an immediate need for action due to an anticipated increase in fishing pressure and take of halibut in 2023. The increase in fishing pressure on halibut is linked to reduction in fishing opportunities for other species, such as salmon. The closure of the recreational salmon fishery, which began in April, has already resulted in a shift towards halibut. Halibut are targeted by the recreational fishery in northern California during the spring through early fall with the majority of take documented during the summer (Figure 1). The San Francisco Bay area fishery is already underway, and the Monterey Bay area fishery typically begins in May. Therefore, the regular rulemaking process is inadequate to address the time-sensitive circumstances faced by California halibut. The requirements of the APA, the Commission's three separate bi-monthly public meetings required by Fish and Game Code Section 255, and OAL's 30 working day review period would implement the necessary regulatory changes, at the earliest, in approximately 8 months; well after intensified fishery pressure on California halibut.

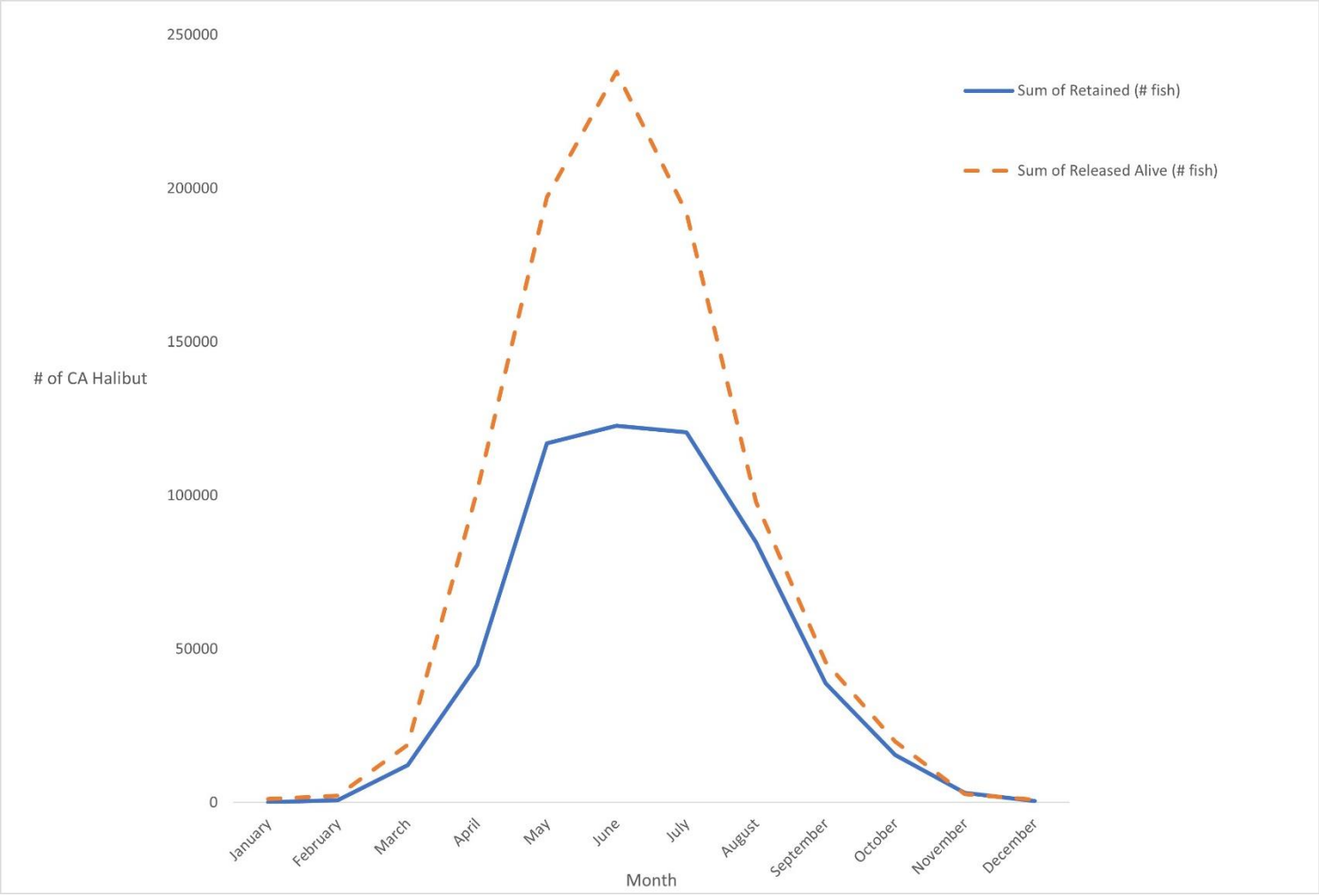

Figure 1. Estimated monthly ***sum (2005-2022) of retained recreationally caught halibut by number for all modes and gears for northern California (North of Point Conception) (RecFIN, March 2023).***

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

This is not the first time the halibut fishery has faced increased effort due to a salmon closure, paired with a cold-water period; however, this year there is an additional effort shift anticipated due to groundfish fishery changes. CPFV logbook data were used to graph the annual sum of the number of fishers (anglers) onboard CPFVs that retained halibut in northern California, from 2005-2022 (Figure 2). During the salmon closure in 2008, the number of fishers doubled compared to the previous year. The number of fishers retaining halibut in 2022 was slightly lower than the number retaining halibut in 2008; the 2023 effort could quite possibly double the already high effort experienced by the fishery in 2022 (Figure 2).

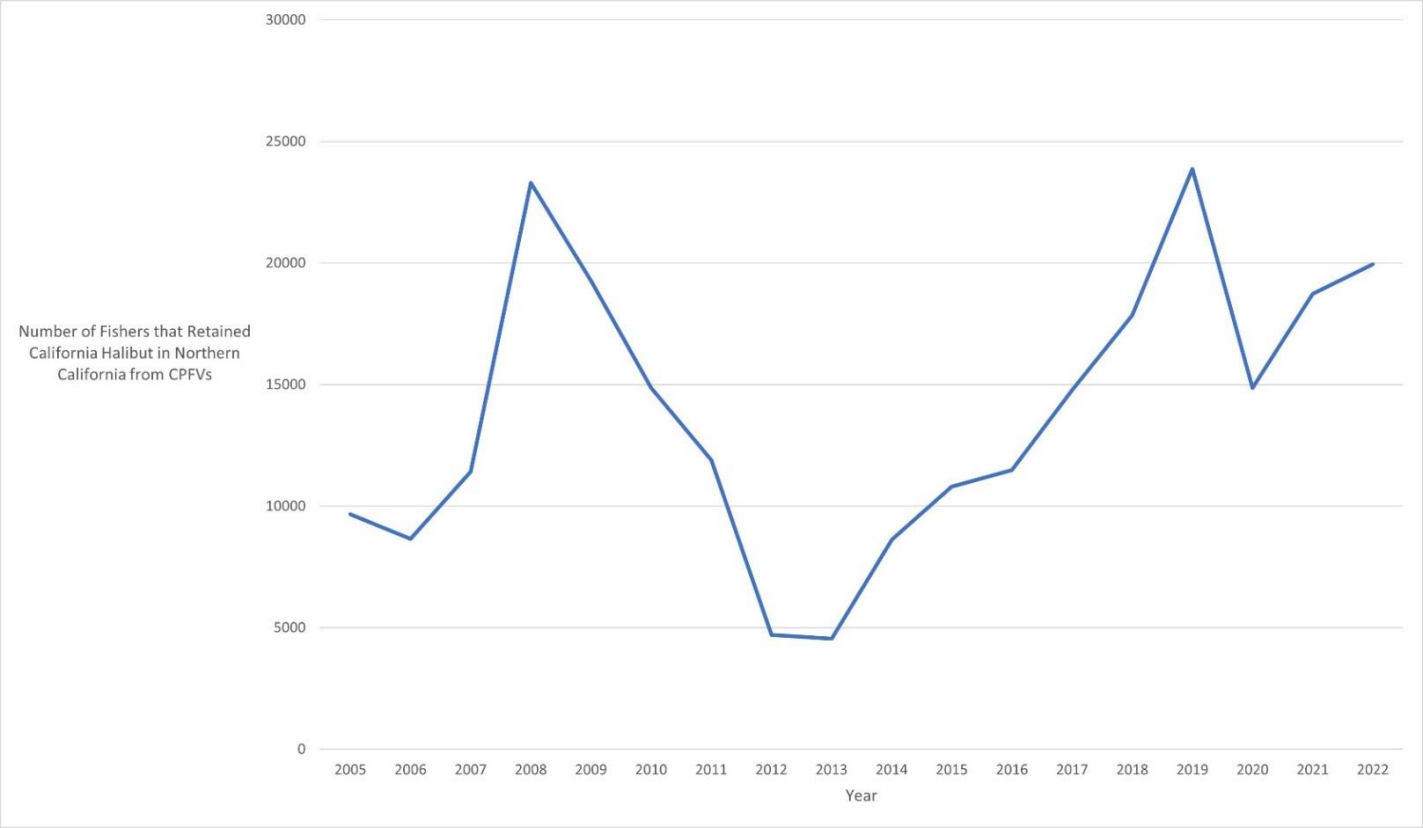

Figure 2. Number of fishers onboard CPFVs that retained halibut in northern California (North of Point Conception) (Marine Log System, April 2023).

During the salmon closure of 2008 and 2009, the recreational take estimates of California halibut in northern California surpassed 54,000 and 43,000 fish, respectively (Figure 3). In 2007, the year prior to the salmon closure, estimated catch for halibut was 15,000 fish. By 2013, four years after the closure, catch estimates dipped to just below 5,000 fish. Catch estimates remained low for six years (2011-2016) following the closure. Low fishing success during this time resulted in declines in fishing effort for halibut, and many CPFVs, six-packs, and commercial open access hook-and-line fishery participants withdrew from the fishery. The fishery began to rebound in 2017, due to warm water periods that began in 2014, which resulted in a recruitment pulse indicated by numbers of released (sublegal) halibut (Figure 4). While the fishery has shown the ability to rebound following similar events in the past, the viability of the recreational fishery was impacted during the following six-year low period due to stock instability. The goal with this regulation change is to lessen economic and environmental harm to the industry and halibut population

during the anticipated environmental conditions and increased fishing efforts. In 2022, the annual sum of the Oceanic Nino Index was the coldest since recreational catch estimates became available in 2005, and it is unknown when the next warm water period will occur. Climate change may be the driver behind more severe fishery cycles, and it is unknown what is necessary to ensure a rebound following a low period.

Reducing the daily bag and possession limit has been identified as a management tool to lessen the impacts of increased effort and take from displaced anglers and the magnitude of potential harm during this crisis situation. Based on preliminary modeling, a bag limit reduction from three fish to two fish could result in an estimated savings of 13% for northern California or 7,450 fish (RecFIN bag limit tool March 2023). This model estimate is based on total average annual catch and effort data collected by the California Recreational Fisheries Survey (CRFS) in 2018, 2019, and 2021.

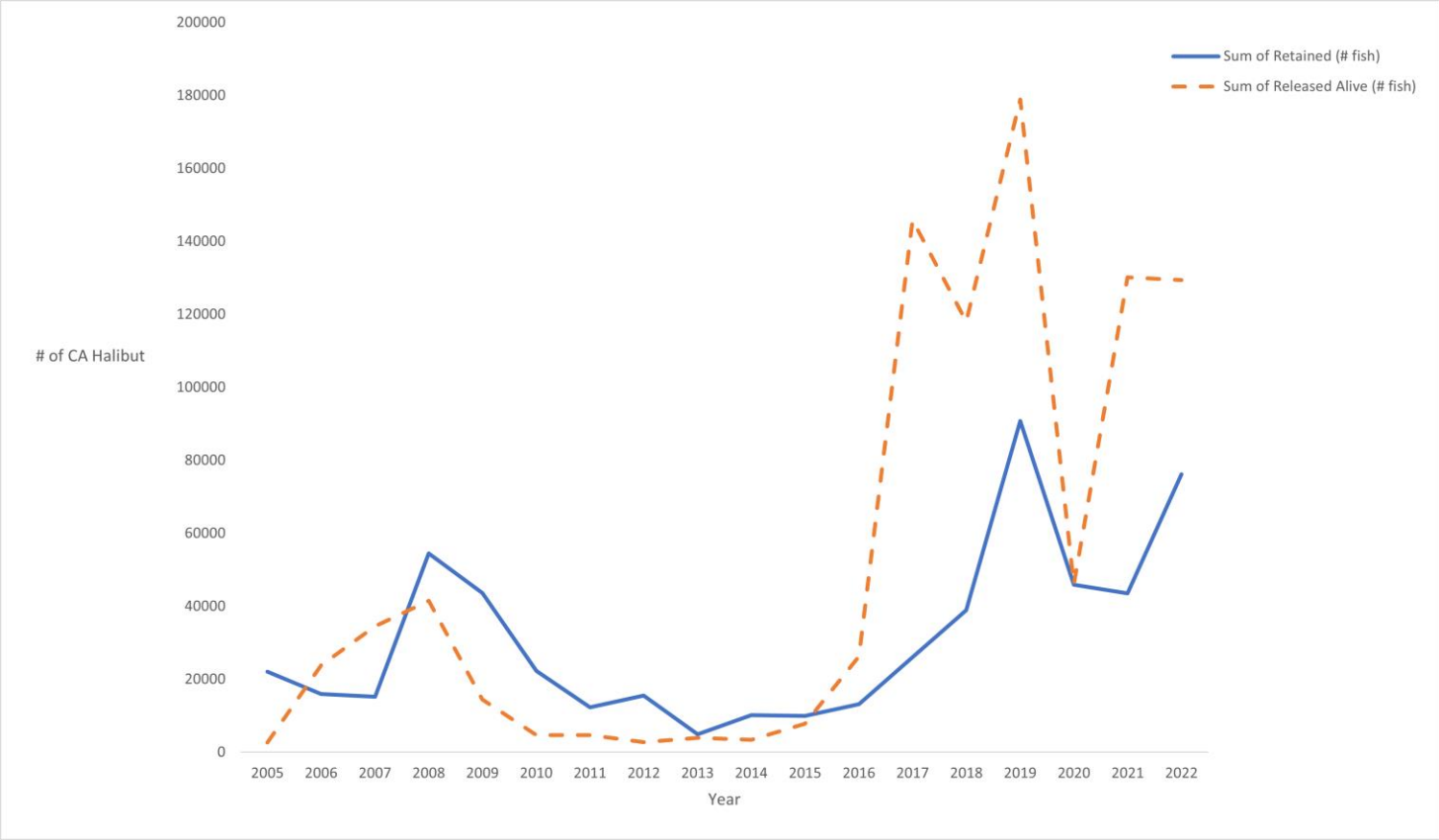

Figure 3. Annual CRFS estimates of kept (solid line) and released (dashed line) halibut by number of fish for all modes combined in northern California (North of Point Conception) (RecFIN, March 2023).

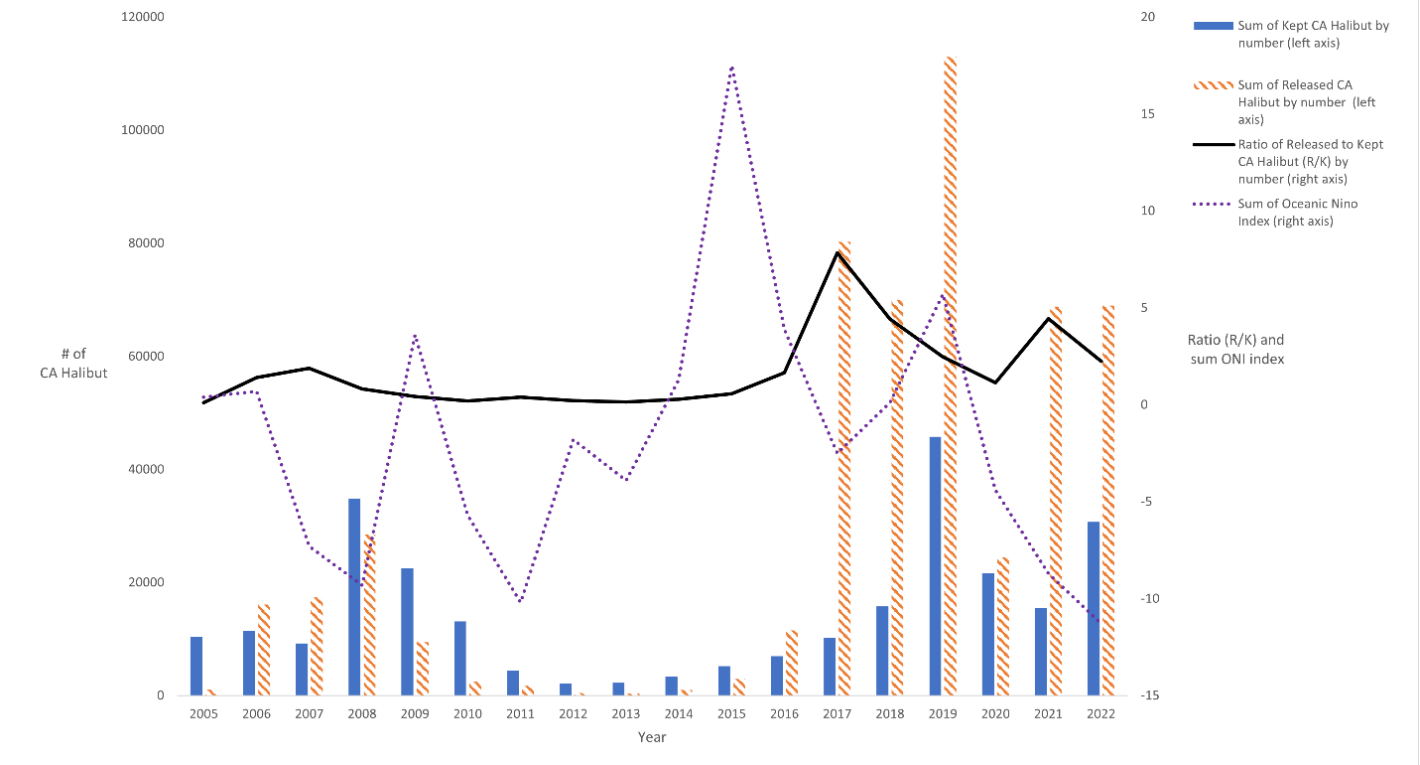

Figure 4. ***Bay Area (Sonoma, Marin, Solano, Napa, Contra Costa, Alameda, Santa Clara, San Mateo, San Francisco Counties) sum of the number of kept (K) and released alive (R) halibut by year for recreational private/rental boats are shown as solid and striped bars respectively (left axis). The ratio of released to kept halibut (released/kept) is shown as a solid black line and the sum of the Oceanic Nino Index is shown as a dotted purple line (right axis) (RecFIN, March 2023, NOAA Climate Prediction Center).***

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 initial 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: None

(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:

California Department of Fish and Wildlife. 2022. California halibut, *Paralichthys californicus,* Enhanced Status Report.

Marine Logs System. 2023. https://apps.wildlife.ca.gov/marinelogs/cpfv

NOAA National Weather Service. 2017. NOAA Center for Weather and Climate Prediction. Climate Prediction Center. Cold and warm episodes by season. https://origin.cpc.ncep.noaa.gov/products/analysis_monitoring/ensostuff/ONI_v5.php

RecFIN. 2023. Recreational Fisheries Information Network. Catch/Sample Data Reports. https://www.recfin.org/

VI. Authority cited: Sections 110, 200, 205, 265, 275, and 399 Fish and Game Code.
Reference: Sections 110, 200, 205, 265, 270 and 275, Fish and Game Code.

VII. Fish and Game Code Section 399 Finding

Delay in the amendments to bag and possession limits for halibut puts marine resources at risk. Emergency action is necessary to safeguard halibut stocks in a timely manner due to anticipated recreational fishery effort shifts from the 2023 salmon closure and additional restrictions to other fishery regulations; anticipated commercial fishery effort shifts from commercial salmon to open access commercial hook-and-line halibut; environmental factors including cold-water conditions; and biological factors including area-based sex ratio bias.

Pursuant to 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 California halibut.

Informative Digest/Policy Statement Overview

In order to protect the California halibut (halibut) resource the California Department of Fish and Wildlife (Department) requests an emergency action that will reduce the legal recreational catch limit while not jeopardizing this popular recreational fishery. The current regulation §28.15, Title 14, California Code of Regulations (CCR), allows recreational anglers a daily bag and possession limit of three halibut for areas north of Point Sur, Monterey County. The Department proposes a daily bag and possession limit reduction from three to two fish for areas north of Point Sur effective immediately.

This proposal is prompted by the recent announcement of the 2023 salmon fishery closure paired with changes to groundfish fishery regulations. These changes limit fishing opportunities and change fishery accessibility. It is anticipated that recreational anglers will shift their effort from closed fisheries to halibut. This is particularly true in areas such as San Francisco Bay where the effort shift has already been documented this year.

There are two significant impacts to the halibut fishery anticipated in the 2023 season and subsequent years. Delay in the amendments to bag and possession limits for halibut puts marine resources at risk. Emergency action is necessary to safeguard halibut stocks in a timely manner due to:

- Anticipated recreational fishery effort shifts from salmon and groundfish fisheries;
- Anticipated commercial fishery effort shifts;
- Environmental factors including cold-water conditions; and
- Biological factors including area-based sex ratio bias.

The Department recommends that the California Fish and Game Commission (Commission) amend subsection 28.15(a), Title 14, CCR, through emergency action. The proposal is necessary to safeguard the halibut fishery from overfishing and the detrimental environmental effects of a cold-water trend.

The stability of the stock is threatened by multiple factors this year which all contribute to the existence of a crisis situation: anticipated effort shifts due to the 2023 salmon closure and additional restrictions to other fisheries, and environmental and biological factors including cold-water conditions and an area-based sex ratio bias.

Benefits of the Regulation:

The Commission anticipates benefits to the State’s environment by sustainably managing California’s ocean resources and reducing bycatch. The environmental risks arising from the proposed rule are not regarded as significant, as the rule manages the resource more conservatively than existing regulation.

Consistency and Compatibility with Existing Regulations

Article IV, Section 20 of the State Constitution specifies that the Legislature may delegate to Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated authority to the Commission to promulgate

sport fishing regulations (Fish and Game Code sections 200 and 205). Commission staff has searched the California Code of Regulations and has found no other state regulations that address the recreational take of California halibut. The Commission has reviewed its own regulations and finds that the proposed regulations are consistent with other recreational fishing regulations and marine protected area regulations in Title 14, CCR, and therefore finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

Emergency Regulatory Language

Section 28.15, Title 14 CCR, is amended to read:

§ 28.15. Halibut, California.

(a) Limit: Five in waters south of a line extending due west magnetic from Point Sur, Monterey County, and ~~three~~ two in waters north of a line extending due west magnetic from Point Sur, Monterey County.

(b) Minimum size: Twenty-two inches total length.

NOTE: Authority: Sections 110, 200, 205, 265, ~~and~~ 275, and 399, Fish and Game Code. Reference: Sections 110, 200, 205, 265, 270 and 275, Fish and Game Code.