



## **Finding of Emergency and Statement of Proposed Emergency Regulatory Action to Amend Sections 27.20, 27.25, 27.30, 27.35, 27.40, 27.45, 27.50, 28.55, Title 14, California Code of Regulations**

### **Re: Recreational Quillback Rockfish**

October 1, 2023

#### **I. FINDING OF EMERGENCY**

##### **(Gov. Code, § 11346.1, subd. (b); Cal. Code Regs., tit. 1, § 50)**

Pursuant to Government Code section 11346.1, subdivision (b), and California Code of Regulations, Title 1, section 50, a state agency may adopt emergency regulations if the agency makes a finding that the adoption of a regulation is necessary to address a situation calling for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.

##### **Specific Facts Demonstrating the Existence of an Emergency and Need for Immediate Action (Gov. Code, § 11346.1, subd. (b)(2))**

The California Department of Fish and Wildlife (Department) proposes an emergency action that will prohibit the retention of quillback rockfish (*Sebastes maliger*) statewide and prohibit boat-based groundfish fishing shoreward of the 50-fathom Rockfish Conservation Area (RCA) boundary line from Point Conception to the California/Oregon border, consistent with a federal regulatory action expected to publish in October 2023. The 2021 quillback rockfish stock assessment concluded that the population status of quillback rockfish in California is in severe decline, and the population is estimated at only 14 percent of the unfished population. As a result, a recreational one-fish limit and reduced commercial limits were implemented in 2022 to reduce catch. The National Marine Fisheries Service is currently in the process of formally declaring the California stock of quillback rockfish as overfished, and is developing a rebuilding plan for the species.

While the 2021 quillback rockfish stock assessment was conducted on the entire stock in California, separate Annual Catch Targets (ACTs) were established for the areas north and south of 40°10' N lat. (near Cape Mendocino) based on the estimated biomass in those areas. Catches are tracked during the season through commercial fish landings and through Department surveys of reported and observed recreational catch.

The Overfishing Limit (OFL) is the estimate of the maximum amount of a stock that can be caught in a year without further depleting the stock. The ACT is a type of harvest target that is set below the OFL, and is specified in federal regulations to guide management. Current catch to date (combined commercial and recreational) north of

40°10' N lat. and south of 40°10' N lat. indicate an overage of both of the ACTs and OFLs, which requires immediate action to significantly reduce all fisheries impacts to quillback rockfish. As of August 2023, north of 40°10' N lat. catch was estimated at approximately 150 percent of the OFL (1.05 metric tons or 2,315 pounds) and south of 40°10' N lat. catch was estimated at approximately 111 percent of the OFL (1.06 metric tons or 2,337 pounds). Therefore, immediate measures to prohibit the take of and interaction with quillback rockfish are necessary to prevent further depletion of this stock.

Quillback rockfish are typically encountered north of Point Conception and shallower than 50 fathoms. When recreational anglers fish for nearshore rockfish in these depths, it is impossible to predict which species will be caught. Minimizing catch of one species often requires closing fishing in areas and depths where other groundfish are found. In this case, closing nearshore waters inside of the RCA boundary line and prohibiting the take of nearshore groundfish is necessary to minimize catch of quillback rockfish. In particular, the proposed emergency regulations would authorize only the take of shelf rockfish, slope rockfish, and lingcod, and allow recreational groundfish fishing only seaward of the RCA boundary line. Prohibiting quillback retention and imposing depth restrictions on groundfish fishing is expected to substantially minimize catch of quillback rockfish. Allowing fishing in nearshore waters for any nearshore species increases quillback rockfish catch and increases incidental mortality, further exceeding the 2023 OFL overage.

The proposed emergency regulations would allow vessels to anchor, drift, or transit in shallow water with groundfish species aboard that were legally taken in offshore waters seaward of the 50-fathom RCA boundary line, so long as no recreational fishing gear is deployed. Exceptions to the “no gear may be deployed shoreward of the RCA boundary line with groundfish that are closed to take or possession aboard” regulation would be provided to allow for otherwise legal use of hoop nets, crab traps and dip nets, as specified. These allowances are not expected to increase impacts to quillback rockfish populations, and would allow for additional fishing opportunities on the same trip for other species that are open to fishing.

### **Necessity**

The Department finds the adoption of these proposed regulations is necessary to avoid serious harm to the public peace and general welfare. Immediate closure of recreational groundfish fisheries in nearshore waters is critical to avoid further overage of the quillback ACTs and OFLs, which have already been exceeded. The greater the overage, the greater the conservation risk to the California quillback resource, which is expected to receive a federal ‘overfished’ designation. It is equally necessary to ensure that these amendments do not unreasonably prohibit recreational anglers from pursuing other crustacean and bait fisheries with legal gear types, as provided, while possessing

legally taken groundfish in areas otherwise closed to take and possession of groundfish. Finally, the proposed amendments to recreational groundfish regulations are designed to mirror federal regulations expected to be published in October 2023.

### ***Proposed Regulations***

Many of the proposed amendments to regulations are designed to mirror federal groundfish regulations expected to be published in the Federal Register in October 2023 that will prohibit recreational retention of quillback rockfish in California, and also establish “offshore-only” fisheries for waters from the Oregon-California border to Point Conception. Additional language would authorize the ability to use hoop nets, crab traps and dip nets as specified to take non-groundfish species in areas closed to groundfish fishing while shelf and slope rockfish and lingcod are aboard. A description of each of the Title 14, CCR sections proposed for amendment follows.

Subsection 27.20(b)(1)(A) is amended to allow anchoring and drifting in addition to transiting in a closed area and adds a provision to allow hoop nets, crab traps, and dip nets as specified within the 50-fathom nearshore closure while groundfish legally taken in the ‘offshore-only’ fishery are aboard. These provisions are being added to ensure fishing opportunities for other species are not impacted by the nearshore closure. Current regulations allow transit through a closed area with legally retained groundfish (i.e., taken in the open offshore areas); however, gear may not be deployed during transit through the closed area. The proposed amendment will provide exceptions to this rule to allow use of hoop nets, Dungeness crab traps, and dip nets for take of select non-groundfish species while groundfish are onboard a vessel that is anchoring, drifting, or transiting through the nearshore closure. It is expected that these exceptions will have de minimis impacts on the quillback rockfish resource, while allowing opportunities for other viable fishery targets on the same trip.

Subsections 27.20(b)(1)(C & D), 27.25(b), 27.30(b), 27.35(b), 27.40(b), 27.45(b), 27.50(b)(3)(D), 28.55(b)(1), and 28.55(b)(3) are amended to prohibit the retention of quillback rockfish in all ocean waters. The current bag limit is one fish but the proposed amendments will reduce the limit to zero. This is necessary to ensure the population of quillback rockfish is not depleted any further, and to support future stock rebuilding efforts.

Subsections 27.25(b)(3)(A & B), 27.30(b)(2), 27.35(b)(2), 27.40(b)(3), 27.45(b)(3) are amended to close an area shoreward of the 50 fathom line for all recreational nearshore groundfish (nearshore rockfish, cabezon, and greenling) and establish an “offshore fishery” only for the Groundfish Management Areas north of Point Conception. This is necessary because fishing in nearshore waters for any nearshore species increases quillback rockfish catch, and increases incidental mortality.

Proposed amendments to subsections 27.25(b)(2)&(3), 27.30(b)(2)&(3), 27.35(b)(2)&(3), and 27.40(b)(2)&(3) would modify fishing seasons based on depth. The Department notified the public of the need in late July and then mid-August to modify the seasons to “offshore-only” (allowing fishing for groundfish only shoreward of the 50-fathom RCA boundary line) to protect quillback rockfish populations.

**Technical, Theoretical, and/or Empirical Studies, Reports, or Documents Relied Upon (Gov. Code, § 11346.1, subd. (b)(2))**

- Pacific Fishery Management Council’s Groundfish Management Team Report: <https://www.pcouncil.org/documents/2023/09/g-8-a-supplemental-gmt-report-5.pdf/>
- Status of Quillback Rockfish off California in 2021: <https://www.pcouncil.org/documents/2021/12/status-of-quillback-rockfish-sebastes-maliger-in-u-s-waters-off-the-coast-of-california-in-2021-using-catch-and-length-data-december-2021.pdf/>
- Draft Rebuilding analysis for quillback rockfish (*Sebastes maliger*): <https://www.pcouncil.org/documents/2022/01/draft-rebuilding-analysis-for-quillback-rockfish-sebastes-maliger-in-u-s-waters-off-the-coast-of-california-based-on-the-2021-stock-assessment-incorporating-november-2021-council-meeting-requests.pdf/>

**The Proposed Regulation Does Not Differ or Conflict with Federal Law**

The proposed regulation does not differ substantially or conflict with an existing comparable federal regulation or statute. The proposed regulations are designed to mirror federal regulations expected to be published in October 2023.

**The Proposed Regulation is Not Inconsistent Nor Incompatible with Existing State Regulations**

The Legislature may delegate to Department such powers relating to the protection and propagation of fish and game as the Legislature sees fit. Department staff has searched the California Code of Regulations, and has determined that other state regulations that apply to groundfish species are not inconsistent nor incompatible with the proposed regulations. The Department therefore finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

**Benefits of the Proposed Regulation**

The Department anticipates this regulation will have positive impacts on the quillback rockfish resource, while providing continued opportunities to target and retain other shelf and slope rockfish and lingcod. The proposed amendments would also authorize recreational anglers to continue to fish for crustaceans and bait, as provided, with legally-taken groundfish aboard. Allowing anglers to pursue multiple recreational fishing

targets on a single trip allows for efficient operations and more opportunities for success.

## **II. AUTHORITY AND REFERENCE**

### **Amend Section 27.20**

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

### **Amend Sections 27.25, 27.30, and 27.35,**

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

### **Amend Sections 27.40 and 27.45**

Authority cited: Sections 200, 205 and 265, Fish and Game Code.  
Reference: Sections 200, 205, 265, 1802 and 7071, Fish and Game Code; and 50 CFR Part 660, Subpart G.

### **Amend Section 27.50**

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

### **Amend Section 28.55**

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

## **III. OTHER MATTERS PRESCRIBED BY STATUTE**

### **(Gov. Code, § 11346.5, subd. (a)(4))**

The Department's operations are primarily prescribed by the hundreds of provisions set forth in the California Fish and Game Code and Title 14, California Code of Regulations. Other bodies of law that govern the Department include, but are not limited to, the Government and Penal Codes.

## **IV. LOCAL MANDATE DETERMINATION**

### **(Gov. Code, § 11346.5, subd. (a)(5))**

The Department has determined that adoption of the proposed regs does not impose a new mandate on local agencies or school districts.

**V. ESTIMATE OF COST OR SAVINGS**

**(Gov. Code, § 11346.5, subd. (a)(6) and § 11346.1, subd. (b))**

This emergency rulemaking will not result in any costs or savings to local agencies or school districts and does not affect federal funding to the state. No additional costs or savings to the state are anticipated. The Department has determined that the proposed recreational quillback rockfish emergency action will not affect license revenue or the Department's existing level of monitoring and enforcement activities. Additionally, no other state agencies would be affected by this regulatory action.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

### **(Gov. Code, § 11346.5, subd. (a)(3))**

The California quillback (*Sebastes maliger*) rockfish population is in decline, and is currently being harvested at unsustainable levels. It is necessary that the California Department of Fish and Wildlife (Department) immediately take steps to reduce mortality of quillback rockfish. Because the California stock of quillback rockfish is presumed to be overfished, the Department proposes an emergency action that will prohibit the retention of quillback rockfish from Point Conception to the California/Oregon Border. Because quillback rockfish associate with other groundfish and are typically found shallower than 50 fathoms, the Department also proposes limiting boat-based groundfish fishing to seaward of the 50-fathom Rockfish Conservation Area (RCA) boundary line from Point Conception to the California/Oregon border. To avoid negative impacts to other fisheries, the Department also proposes authorizing use of hoop nets, crab traps and dip nets, as provided, shoreward of the RCA boundary line when legally-taken groundfish are aboard.

These measures are intended to reduce quillback rockfish mortality and ensure their ability to recover, while allowing recreational anglers to pursue both other groundfish and other fishery targets on the same trip.

### **Benefits of the Proposed Regulation**

The Department anticipates this regulation will have positive impacts on the quillback rockfish resource, while providing continued opportunities to target and retain other shelf and slope rockfish and lingcod. The proposed amendments would also authorize recreational anglers to continue to fish for crustaceans and bait, as provided, with legally-taken groundfish aboard. Allowing anglers to pursue multiple recreational fishing targets on a single trip allows for efficient operations, and more opportunities for success.

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

The Legislature may delegate to Department such powers relating to the protection and propagation of fish and game as the Legislature sees fit. Department staff has searched the California Code of Regulations and has determined that other state regulations that apply to groundfish species are not inconsistent nor incompatible with the proposed regulations. The Department therefore finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations.