

State of California  
Fish and Game Commission

Initial Statement of Reasons for Regulatory Action  
Certificate of Compliance

Amend Section 28.15  
Title 14, California Code of Regulations  
Re: California Halibut Daily Bag and Possession Limits

I. Date of Initial Statement of Reasons: September 13, 2023

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing

Date: Thurs, October 12, 2023

Location: San Jose

(b) Discussion Hearing

Date: Thurs, December 14, 2023

Location: San Diego area

(c) Adoption Hearing

Date: Wed, February 14, 2024

Location: Sacramento

III. Description of Regulatory Action

(a) Statement of Specific Purpose of Regulatory Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary

Unless otherwise specified, all section references in this document are to Title 14 of the California Code of Regulations (CCR). Commission refers to the California Fish and Game Commission unless otherwise specified. Department refers to the California Department of Fish and Wildlife unless otherwise specified.

To promote sustainability of the California halibut (*Paralichthys californicus*; halibut) population without jeopardizing this popular recreational fishery, the proposed regulation change aims to continue the existing two-fish daily bag and possession limit in northern California established by emergency action in Section 28.15, through a regular rulemaking as set forth in Option 1 in the attached Proposed Regulatory Language.

To enhance sustainability of the southern halibut stock, the proposed regulation includes Option 2, as set forth in the attached Proposed Regulatory Language, which reduces the daily bag and possession limit in southern California from five to two fish, and results in a uniform statewide limit of two.

To improve clarity for stakeholders, both regulatory proposal options include minor language adjustments to Section 28.15.

Halibut is a top management priority for the Department of Fish and Wildlife (Department), and an Enhanced Status Report has been completed. The Department is currently working on a California halibut management review process which includes all fishery sectors statewide: recreational, and commercial hook-and-line, trawl, and gill net. While recreational fishing

regulations have been anticipated to result from the multi-sector halibut management review, the recreational sector is being addressed first due to the timing afforded by the emergency bag limit reduction needed for northern California and identified need in southern California. Additional proposed recreational management measures will be accounted for within the broader halibut management review; equitable actions for commercial sectors are being discussed in parallel with this rulemaking; and potential commercial regulation change proposals are forthcoming.

### *The Necessity of a Two Fish Bag Limit for Northern California*

The sustainability of the halibut population has been threatened by a recreational effort shift as anglers turned to halibut to replace lost fishing opportunities in 2023, therefore increasing effort and, ultimately, take of halibut. In response, the Department pursued an emergency regulation to reduce the recreational halibut daily bag and possession limit from three fish to two fish in northern California (waters north of Point Sur, Monterey County) in April 2023. At its May 17, 2023, meeting, the Fish and Game Commission (Commission) unanimously voted to adopt this emergency proposal which became effective on June 2, 2023 (OAL File No. #2023-0524-02E).

The Department recommended this emergency action to promote sustainability of the halibut population and fisheries due to the expected recreational fishery effort shift and increased take caused by the 2023 salmon fishery closure, the 2023 nearshore groundfish closure from April to mid-July in the San Francisco Management Area, the expected impacts of cold-water conditions that limit recruitment at the egg and larval phase, and interest from the recreational industry. The goal of this change is to lessen the impact on the halibut resource and anticipated decline in halibut fishing success in subsequent years, without jeopardizing this popular recreational fishery.

The current emergency rule will expire after six months, on November 29, 2023, unless it is readopted for an additional 90 days at the October 11-12 meeting of the Commission. If approved, the emergency regulation will be extended through February 2024.

A second readoption will be requested for an additional 90 days (March – May) to allow for the implementation of a permanent regulation and Certificate of Compliance.

It is expected that the halibut fishery will need additional time to rebuild following the increase in fishing pressure experienced during the salmon closure of 2023. This is based on recreational fishery take estimates that indicate the halibut fishery entered a six-year low period (2011-2016) following the salmon closure of 2008/2009 and coinciding cold-water that limits halibut recruitment at the egg and larval phase. The June 2023 emergency regulation immediately resulted in a savings of fish, as catch rates higher than two fish per angler were commonly attainable just prior to the effective date. However, the halibut population experienced heavy effort and take in April and May. Preliminary data from April and May 2023 estimate that more than 75,000 halibut were taken by the recreational fishery statewide, with more than 90% of those halibut taken in the San Francisco Bay area. This exceeds the total fish taken in northern California during the entire year of the salmon closure in 2008.

Additionally, neither a strong cohort of young-of-the-year nor warm water period have been documented, indicating that recruitment remains negatively impacted. The National Oceanic Atmospheric Administration (NOAA) predicts an El Niño to develop in 2023, which is likely to bring warm water and improve halibut recruitment, however, it takes approximately four years

for halibut to reach the minimum size limit of 22 inches and become eligible for take by the fishery. 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.

Due to the necessity displayed by the emergency regulation, and interest from the recreational industry for increased stability in the halibut population, the Department has determined that the fishery should not revert to a bag limit of three fish in this region.

Option 1 will establish a two fish limit for northern California only. It is anticipated that this regular rulemaking to permanently adopt these halibut bag limit changes will become effective in March 2024, at which time the emergency regulation will be replaced. A Certificate of Compliance will be transmitted to the Office of Administrative Law.

### *The Necessity of a Two Fish Bag Limit for Southern California*

The proposed regulation change includes Option 2, which reduces the daily bag and possession limit in southern California (south of Point Sur, Monterey County) from five to two fish, and results in a uniform statewide limit of two. Just as a three fish bag limit in northern California has not proven effective in maintaining population stability in that region, the current five fish bag limit will not be conservative enough to safeguard halibut stocks from potential increases in fishing pressure and fluctuating environmental conditions in southern California. Additionally, recreational catch in southern California has shown a declining trend since estimates became available in 2005, and northern California has had consistently higher recreational catch than southern California since 2014 (Figure 1). This is indicative of lower stock availability in southern California and reflects a need for conservation efforts in the southern California recreational fishery.

In southern California, catch rates higher than two fish per angler have been periodically attainable but a five fish bag limit is rarely taken. Preliminary data indicate that halibut recently experienced a good recruitment event in southern California and fishing success will likely increase in the near future. A lower bag limit provides the highest protection for the resource during cyclical events where fishery recruitment results in more successful catch rates. The enhanced stock stability that a good recruitment event provides can be jeopardized if take is not successfully limited. Department staff have observed that fishing effort is generally correlated with success. Effort increases during years where halibut catch rates are high, and likewise, effort decreases when catch rates are low and more recreational fishermen shift effort to different fisheries where there are opportunities for better success. Due to this behavior, southern California is susceptible to sudden shifts in effort, and a bag limit reduction would provide more opportunity for the southern California stock to build during periods of good recruitment.

Based on preliminary modeling, a bag limit reduction from five to two halibut could result in an estimated savings of 23% (nearly 3,000 fish) of the recreational take in southern California for 2024 (Recreational Fisheries Information Network bag limit tool, July 2023). This model estimate is based on total average annual catch and effort data collected by the California Recreational Fisheries Survey (CRFS) in 2021 and 2022 for all fishing modes combined. Of the more than 2,100 halibut recreational fishermen interviewed in the survey, only 7% achieved a daily bag higher than two fish.

Option 2 will establish a two fish limit statewide. The proposed bag limit of two fish will have minimal impact on anglers under current halibut stock conditions, provides a precautionary buffer against increased fishing harvest, and ensures a sustainable halibut population statewide.

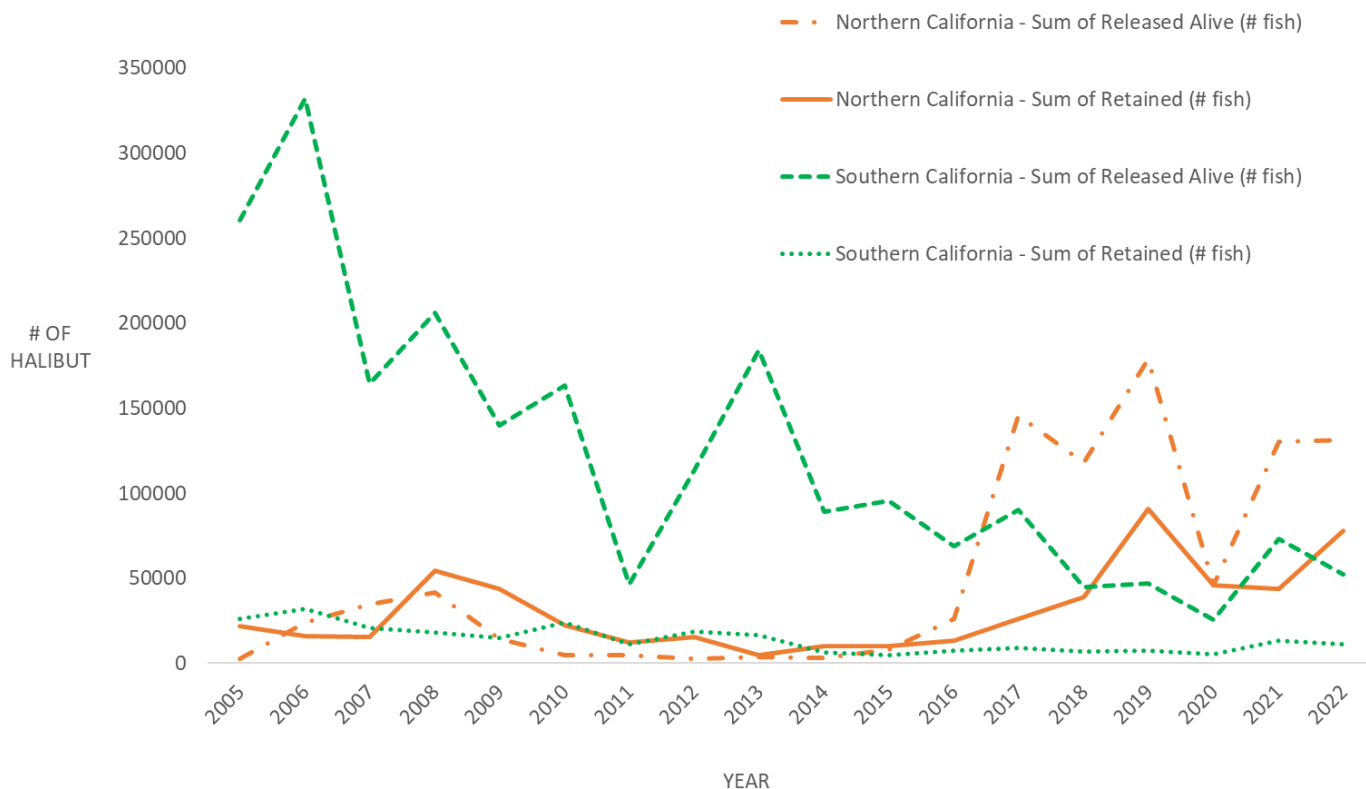


Figure 1. Annual CRFS estimates of kept and released halibut (number of fish) for all modes combined in northern California (north of Point Conception) and southern California. (Recreational Fisheries Information Network, July 2023).

### *The Necessity of Minor Language Adjustments to Section 28.15*

In addition, the regulatory proposal seeks to include minor language adjustments to Section 28.15 to improve clarity for stakeholders. To boost searchability, the Department suggests re-naming the title of this section from ‘Halibut, California’ to ‘California Halibut’. To ensure that it is clear that regulations in Section 28.15 apply to halibut, the Department suggests adding text in subsection (a) ‘The following restrictions apply to the recreational taking of California halibut.’, which would re-number the bag limit regulation language to (a)(1). Finally, ‘Daily Bag and Possession’ Limit, was added to better describe the word ‘Limit,’ which is defined in sections 1.17 and 1.59, Title 14. This description was added because stakeholders have expressed confusion that there is currently a possession limit for halibut which is equal to the daily bag limit.

(b) Goals and Benefits of the Regulation

The Marine Life Management Act (MLMA) is intended to ensure the conservation, sustainable use, and restoration of California's marine living resources. In 2019, the Department assessed the state's fisheries under the 2018 Master Plan for Fisheries framework. A prioritization process identified halibut as a species in need of management attention due to potential risks to bycatch species (including sub legal-sized halibut) and from a changing climate.

The proposed regulation change meets objectives of the MLMA (Fish and Game Code Sections 7050 and 7055) with a goal to promote sustainability of the halibut population without jeopardizing this popular recreational fishery. A bag limit reduction will lessen economic and environmental harm to the industry and halibut population caused by fluctuating fishing effort and environmental conditions.

The benefits of the regulation change include, but are not limited to the proposed regulation providing:

- Creating a positive conservation impact for northern California, and for southern California.
- Avoiding jeopardy to the recreational fishery or cause economic harm to industry.
- Impacting the fewest number of recreational participants compared to other regulation changes considered.
- Possibly reducing bycatch of sublegal halibut and other species because less time will need to be spent fishing to reach the lower bag limit.
- Improving clarity for stakeholders by a uniform statewide bag and possession limit (option 2).
- Creating a bag and possession limits comparable to other recreational species such as striped bass, salmon, bluefin tuna, lingcod, and California sheephead.
- Protecting and improving stability in the northern California halibut stock, especially during a period of heavy fishing effort caused by the salmon closure.
- Providing an option to protect the southern California stock during fluctuations in fishing effort and environmental conditions, and allowing the southern California stock to build.
- Responding to stakeholders' feedback - positive verbal comments were received from stakeholders during the May 17 Commission emergency bag limit meeting on the reduction proposal for northern California.

(c) Authority and Reference Sections from Fish and Game Code for Regulation

Authority cited: Sections 110, 200, 205, 265, and 275, Fish and Game Code.

Reference: Sections 110, 200, 205, 265, 270 and 275, Fish and Game Code.

(d) Specific Technology or Equipment Required by Regulatory Change: None

(e) Identification of Reports or Documents Supporting Regulation Change

Commission (2023). Staff Summary for the May 17, 2023 Commission meeting: California Halibut. Available from: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=212886&inline>

Department (2022). California halibut, *Paralichthys californicus*, Enhanced Status Report. Available from: <https://marinespecies.wildlife.ca.gov/california-halibut/>

Department (2023). California halibut Scaled Management Process. Available from: <https://wildlife.ca.gov/Conservation/Marine/CA-Halibut-Scaled-Management>

Department (2023). California Halibut Emergency, powerpoint to the Fish and Game Commission, May 17, 2023. Available from: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=212956&inline>

NOAA National Weather Service (2017). NOAA Center for Weather and Climate Prediction. Climate Prediction Center. Cold and warm episodes by season. Available from: [https://origin.cpc.ncep.noaa.gov/products/analysis\\_monitoring/ensostuff/ONI\\_v5.php](https://origin.cpc.ncep.noaa.gov/products/analysis_monitoring/ensostuff/ONI_v5.php)

Marine Management News Blog (2023). CDFW Considers Reducing California Halibut Bag and Possession Limit in Northern California. Available from: <https://cdfwmarine.wordpress.com/2023/04/13/cdfw-considers-reducing-california-halibut-bag-and-possession-limit-in-northern-california/#more-10425>

Master Plan for Fisheries (2018). A Guide for Implementation of the Marine Life Management Act. Available from: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=159222&inline>

NOAA National Weather Service (2017). NOAA Center for Weather and Climate Prediction. Climate Prediction Center. Cold and warm episodes by season. Available from: [https://origin.cpc.ncep.noaa.gov/products/analysis\\_monitoring/ensostuff/ONI\\_v5.php](https://origin.cpc.ncep.noaa.gov/products/analysis_monitoring/ensostuff/ONI_v5.php)

Recreational Fisheries Information Network (2023). Catch/Sample Data Reports and Bag Limit tool Analysis. Available from: <https://www.recfin.org/>

(f) Public Discussions of Proposed Regulations Prior to Notice Publication

July 20, 2023, Marine Resources Committee meeting, Petaluma

IV. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change

No alternatives to a regulatory change were identified by or brought to the attention of Commission staff that would have the same desired regulatory effect. It is not anticipated that the recreational fishery would take fewer halibut if it were not mandatory. The Department asked the San Francisco Bay area CPFV fleet if they would be willing to voluntarily drop to a two fish bag limit, before the emergency regulation went into effect in June 2023, and the CPFV fleet opposed the request.

(b) No Change Alternative

Delay in prompt action to amend the daily bag and possession limits for halibut puts marine resources at risk. The Department manages the take allowed per recreational angler by a daily bag limit because there is no cap on recreational fishing effort. In northern California, the reduction in fishing opportunities for other species resulted in increased fishing pressure and take of halibut in 2023. In southern California, preliminary data indicate the fishery recently experienced a good recruitment event and anglers are more likely to fill a bag limit higher than two fish in the near future. Given that the southern California stock has shown a declining trend in recreational catch estimates, a bag limit reduction in southern California will provide the stock with an opportunity to build. Action is recommended in both regions to safeguard halibut stocks in a timely manner due to fishery effort shifts and fluctuating environmental conditions.

The Department did consider several alternatives to a two fish bag limit, however these other alternatives were found to likely result in negative economic impacts or increased bycatch, and therefore did not meet the goal to promote sustainability of the halibut resource, without jeopardizing this popular recreational fishery.

#### V. Mitigation Measures Required by Regulatory Action

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

#### 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 initial 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. A two-fish bag limit maintains the existing economic climate because the reduction is not significant enough to alter fishing behavior beyond reducing daily harvest. The second option for a statewide proposed bag limit of two fish will have minimal impact on anglers under current halibut stock conditions.

##### (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 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. The Commission does not anticipate any benefits to the health and welfare of California residents, or worker safety. The Commission anticipates benefits to the State's environment by sustainably managing California's marine 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.

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

The agency 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

## VII. Economic Impact Assessment

### (a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State

The Commission does not anticipate any impacts on the creation or elimination of jobs within the state because this proposed action should allow for ongoing fishing activity similar to current and historical levels which would not affect the demand for jobs.

Halibut is an important sport and commercial fish, and both fisheries positively contribute to California's economy. The recreational fishery comprises a significant Commercial Passenger Fishing Vessel (CPFV) and "six-pack" fleet throughout California, and particularly in San Francisco Bay. Halibut is also a target for many private boaters throughout California, and three socioeconomically important commercial sectors: open access commercial hook-and-line, restricted access commercial trawl, and restricted access commercial gill net.

The proposed regulations safeguard halibut stocks to preserve the viability of these fisheries without causing an economic impact that would jeopardize them. A two-fish bag limit maintains the existing economic climate because the reduction is not significant enough to alter fishing behavior beyond reducing daily harvest. CPFVs in San Francisco Bay reported no economic impact caused by the 2023 emergency bag limit reduction. A Recreational Fisheries Information Network (RecFIN) bag limit tool analysis completed in 2023 indicated that only 7% of anglers in southern California have recently achieved a bag limit higher than two fish. Thus, fishery effort and harvest in southern California is expected to also be within historic levels.

### (b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State

The Commission does not anticipate any impacts on the creation of new business or the elimination of existing businesses within the state because this proposed action should allow for ongoing fishing activity similar to current and historical levels which would not affect the demand for goods and services related to halibut fishing within the state.

### (c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State

The Commission does not anticipate any impacts on the expansion of businesses in California because this action will not affect the demand for goods and services related to halibut fishing within the state.



(d) Benefits of the Regulation to the Health and Welfare of California Residents

The Commission anticipates generalized benefits to the health and welfare of California residents who participate in halibut fishing.

(e) Benefits of the Regulation to Worker Safety

The Commission does not anticipate any benefits to worker safety in California because this action will not affect working conditions.

(f) Benefits of the Regulation to the State's Environment

The Commission anticipates benefits to the state's environment through the scientific management of the halibut fishery.

## Informative Digest/Policy Statement Overview

To promote sustainability of the California halibut (halibut) population, the California Department of Fish and Wildlife (Department) proposes a regulation change that will reduce recreational take without jeopardizing this popular recreational fishery.

The proposed regulation change aims to make permanent the existing two-fish daily bag and possession limit in northern California established by emergency regulation in Section 28.15, through a regular rulemaking (certificate of compliance). It is expected that the fishery will require additional time to rebuild following the high take caused by an effort shift from the salmon and nearshore groundfish closures, and environmental conditions, documented in 2023. Due to the necessity displayed by the emergency regulation, and interest from the recreational industry for increased stability in the halibut population, the Department has determined that the fishery should not revert to a bag limit of three fish in this region.

In addition, the proposed regulation includes a second option, which reduces the daily bag and possession limit in southern California from five to two fish, and results in a uniform statewide limit of two. This second option enhances the sustainability of the southern halibut stock. The proposed bag limit of two fish will have minimal impact on anglers under current halibut stock conditions, provides a precautionary buffer against increased fishing harvest, and ensures a sustainable halibut population statewide.

Introducing the second option at this time ensures regulatory efficiency by combining the proposed actions. The regulatory proposal also seeks to include minor language adjustments to Section 28.15 to improve clarity for stakeholders.

While change to the recreational fishing regulations have been anticipated to result from the multi-sector halibut management review, the recreational sector is being addressed first due to the timing afforded by the emergency bag limit reduction needed for northern California and identified need in southern California.

### Benefits of the Regulation:

The Commission anticipates benefits to the State's environment by sustainably managing California's ocean resources. The California halibut fishery would benefit to minimize overfishing and allow time for the environmental and biological factors to resolve.

### 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 regulation

