



Finding of Emergency and Statement of Proposed Emergency Regulatory Action to Add Section 35.00 and Amend Sections 150.06, 150.16, and 189 Title 14, California Code of Regulations

Re: Commercial Groundfish Management Measures

January 26, 2024

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 create a California Groundfish Restriction Area (CGRA) and will establish trip limits for commercial take of nearshore rockfish¹, except for quillback rockfish (*Sebastes maliger*), and California scorpionfish in state waters² outside of the CGRA. The CGRA would extend from 36° N latitude (near Point Lopez) to the California Oregon Border and from an easterly boundary line approximating 20 fathoms to a westerly boundary line that is defined as the boundary of the Exclusive Economic Zone or EEZ, generally three nautical miles from shore. Take and possession of all other non-

¹ Nearshore Rockfish," which means the following species of rockfish: black rockfish (*Sebastes melanops*), black and yellow rockfish (*S. chrysomelas*), blue rockfish (*S. mystinus*), brown rockfish (*S. auriculatus*), calico rockfish (*S. dallii*), China rockfish (*S. nebulosus*), copper rockfish (*S. caurinus*), gopher rockfish (*S. carnatus*), grass rockfish (*S. rastrelliger*), kelp rockfish (*S. atrovirens*), olive rockfish (*S. serranoides*), quillback rockfish (*S. maliger*), treefish (*S. serriceps*). Cal. Code Regs., tit. 14, § 1.91.

² The offshore boundary of the state's sovereign lands was established in 2014 by an [order](#) entered by the United States Supreme Court in the case of United States of America, Plaintiff v. State of California, 135 S. Ct. 563; 190 L. Ed. 2d 514; 2014 U.S. LEXIS 8436 (2014). This action by the United States Supreme Court permanently fixes the offshore boundary between the United States and California, resolving a dispute that began in 1935 with the discovery of oil in Wilmington, California. There is now a fixed boundary approximately 3 nautical miles off the coast of California extending from Mexico to Oregon, providing certainty to state and federal lessors, regulators, lessees, and operators of federal and state mineral and renewable-energy leasing programs.

nearshore groundfish not listed would be prohibited in state waters north of 36° N latitude. The goal of the CGRA is to minimize interaction with particular species of groundfish that cannot be selectively avoided and must be protected by limiting or prohibiting fishing in certain depths or areas for federal groundfish and all greenlings of the genus *Hexagrammos*.

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. The National Marine Fisheries Service recently formally [declared 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.

An 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. An ACT is a type of harvest target that is set below the OFL and is specified in federal regulations to guide management.

At its November 2023 meeting, the Pacific Fishery Management Council (PFMC) recommended inseason changes to commercial fisheries in order to limit the mortality of quillback rockfish off the coast of California for 2024. The federally specified harvest limits (both the ACT and OFL contributions) for the stock of quillback rockfish off the coast of California were estimated to be significantly exceeded in 2023 (see 88 FR 67656, October 2, 2023, for more information).

This emergency arises from resultant overfishing of quillback rockfish in 2023 and subsequent closure of the entire nearshore fishery in the state waters via federal regulations, implemented January 1, 2024³. The federal inseason management changes establish the shoreward boundary of the federal non-trawl Rockfish Conservation Area at the 3 nautical mile boundary or shoreward EEZ and resultant trip limits are to apply in federal waters only (including specifying a trip limit of zero for minor nearshore rockfish).

Currently, the California Code of Regulations establishes trip limits, as well as Rockfish Conservation Areas, for commercial take of groundfish, which includes both shallow

³ 88 Fed. Reg. 83830, available at <https://www.govinfo.gov/content/pkg/FR-2023-12-01/pdf/2023-25905.pdf>

nearshore rockfish and deeper nearshore rockfish, and California scorpionfish in state waters by incorporating federally established commercial groundfish regulations. Specifically for shallow and deeper nearshore rockfishes and California scorpionfish: “Cumulative trip limit values noticed in the Federal Register by the National Marine Fisheries Service for the cumulative trip limit periods for shallow nearshore rockfish, deeper nearshore rockfish, and California scorpionfish apply to each individual California commercial licensee in addition to the federally-defined vessel-based limits.” Cal. Code Regs. Tit. 14, § 150.16, subd. (e)(5); see also *id.* at § 150.05. The federally defined trip limits are located at 50 Code of Federal Regulations (CFR) Part 660, Tables 2 & 3 to Part 660, Subpart F.

Because quillback rockfish population data indicate the stock is rarely encountered south of 36° N latitude (near Point Lopez), federal regulations implemented January 1, 2024 closed commercial nearshore fishing, while commercial fishing for non-nearshore groundfish stocks is open north of 36° N latitude (near Point Lopez). As a result of combined current state and federal regulations, the state permitted commercial nearshore fishery, which primarily operates in state waters and is a limited access fishery, is closed. Meanwhile, the commercial fishery for other non-nearshore groundfish stocks, which does not limit the number of fishery participants, may operate in state waters. This does little to limit mortality of quillback rockfish, unless regulations are changed.

The Department’s proposed action would establish a 20-fathom boundary line approximating the 20-fathom depth contour because available fishery data indicate quillback rockfish off California are infrequently encountered in waters shallower 20-fathoms. This new CGRA 20-fathom boundary line would be available for use in management for both the commercial and recreational groundfish fisheries, as needed. Additionally, the proposed action would implement a commercial CGRA between the 20-fathom boundary line and the shoreward boundary of the EEZ north of 36° N latitude (i.e., would prohibit commercial groundfish fishing between the 20-fathom and the shoreward boundary of the EEZ in this area). The proposed action would establish trip limits for groundfish species authorized for take under a shallow or deeper nearshore permit, while also prohibiting commercial take of all other non-nearshore groundfish in state waters north of 36° N latitude. Further, the proposed action aims to clarify regulations statewide, while also reaffirming extension of federal commercial groundfish regulations into state waters south of 36° N latitude (e.g., the area that was unaffected by recent federal action).

Without the Department’s proposed action, impacts to quillback rockfish from the unlimited non-nearshore commercial groundfish fishery are likely to continue to accrue while also prohibiting the take of other nearshore groundfish stocks in areas where quillback rockfish are infrequently encountered. This would result in serious economic harm to nearshore fishery participants and business that rely upon them, while also not mitigating impacts to quillback rockfish.

Necessity

Given the near immediate applicability of the new federal rules, immediate action is necessary to avoid serious harm to the general welfare. Since the federal trip limit of 0lbs/2 months has completely halted commercial fishing under 232 active nearshore commercial fishing permits, the Department proposed action will establish nearshore rockfish trip limits as they were prior to federal action, while prohibiting commercial take of quillback rockfish and other non-nearshore groundfish north of 36 N latitude. Closure of non-nearshore commercial groundfish fishery north of 36 N latitude is needed to avoid repeated overage of the quillback rockfish ACTs and OFLs. The greater and repeated overage, the greater the risk to California's quillback rockfish resource, which has been received a federal 'overfished' declaration. It is equally necessary to ensure these amendments do not unreasonable prohibit other commercial groundfish fishing that could occur with diminished risk to the quillback rockfish resource.

Taken together, these actions aim to prevent serious economic harm to the nearshore fishery, while also mitigating impacts to quillback rockfish. Therefore the state must promulgate its own commercial groundfish regulations for the affected area.

Proposed Regulations

Section 35.00

Section 35.00 is proposed for addition under a new Article for Division 1, Chapter 4, Title 14, CCR. Creating a new Article 2, to be called, "Ocean Management Boundaries" is necessary because the use of the new section for the defined 20-fathom line may involve both commercial and recreational sectors for groundfish stocks. It's also possible for future ocean boundary lines to also be added under this new Article. Section 35 is added to establish the waypoint coordinates of the 20-fathom boundary line which may be used in commercial or recreational groundfish fisheries management as a tool to mitigate impacts to groundfish stocks of concern. Separate grouping of coordinates for Mainland coast from islands makes it easier to reference the general geographic grouping of coordinates. Defining a 20-fathom line for the CGRA is necessary for management because available fishery data indicate quillback rockfish off California are infrequently encountered in waters shallower 20-fathoms.

Section 150.06

Subsection 150.06(a) is amended to remove the definition of "Cowcod Closure Areas" which are located in federal waters, and have been repealed from federal regulation. This subsection is necessary to define the area and reference the boundary lines of the CGRA for use in commercial groundfish management north of 36° N latitude. Reference is made to the Code of Federal Regulations due to the required definition of the EEZ for consistency with federal regulations.

Subsection 150.06(b) is added to establish a transit provision to would allow for groundfish legally taken in federal waters to be landed in California, which would require

transiting areas that are otherwise closed to the take and possession of groundfish in state waters. This provision is necessary to allow for exemption for transit through the CGRA.

Subsection 150.06(b) is renumbered to subsection (c) and amended to clarify that federal commercial regulations, except for nearshore rockfishes, cabezon, California scorpionfish, California sheephead and greenlings of the genus *Hexagrammos*, are extended into state waters south of 36° N latitude. These changes are necessary to update the Point Lopez management boundary and clarify the subject species.

Subsection 150.06(c) previously specified where state defined seasonal closures for nearshore rockfishes, cabezon, California scorpionfish, California sheephead and greenlings of the genus *Hexagrammos* are specified in state regulation.

- Subsections 150.06(c) and (c)(1) through (c)(3) are deleted to remove establishing federally defined closure periods and times for nearshore rockfishes, cabezon, California sheephead and greenlings of the genus *Hexagrammos*. This change is necessary given

Section 150.16

Subsection 150.16(b) is updated to reflect changes made to commercial landing requirements which have been implemented prior to the last time this subsection was amended requiring submission via electronic fish ticket. This update is necessary because the Fish and Game receipt is no longer applicable.

Subsection 150.16(e) is amended to include reference to federal groundfish for cumulative trip limit periods and update to the correct name for California sheephead. This is needed to clarify cumulative trip limit periods for nearshore fish stocks and retain consistency with federal trip limits established for non-nearshore groundfish.

Subsection 150.15(e)(1) Subsection 150.16(e) is amended to clarify that cumulative trip limits are totaled by the sum of the pounds landed during the applicable limit period.

Subsection 150.16(e)(3) is amended to clarify how cumulative trip limits are summed, depending on whether the cumulative trip limit period applies to nearshore fish stocks or other non-nearshore federal groundfish. This amendment and those additions of subsections (e)(3)(A) and (B) are needed because under current state and federal regulations the cumulative trip limit period for the afore mentioned groundfish groups accrue either against the individual and vessel or solely against the vessel.

Subsection 150.16(e)(3)(A) is added to specify that the cumulative trip limit period for shallow and deeper nearshore rockfish, cabezon and California scorpionfish accrue against both the individual and the vessel, as is the case under current regulation. Additionally, this new subsection is largely just a renumbering of subsection 150.16(e)(5).

Subsection 150.16(e)(3)(B) is added to clarify that the cumulative trip limit period for all other non-nearshore federal groundfish accrue against both the individual and the vessel, as is the case under current regulation.

Subsection 150.16(e)(5) is deleted because this subsection was slightly amended and renumbered as subsection (e)(3)(A).

Subsection 150.16(e)(6) is renumbered to subsection (e)(5) and is amended to include other federal groundfish as well as clarify the regulatory text for the species or species groups originally included in this section. This is necessary because federal trip limits for certain groundfish are being extended into state waters. Specifically, federally permitted take of yellowtail rockfish by commercial salmon troll and other non-nearshore federal groundfish south of 36° N latitude.

Subsection 150.16(5)(6)(A) is added to establish and specify trip limits between 42° N latitude and 36° N latitude.

Subsection 150.16(5)(6)(B) is added to establish and specify trip limits south of 36° N latitude.

Subsection 150.16(e)(6)(B) is renumbered to subsection (e)(5)(C) and is amended to specify that the Department may take inseason action to modify trip limits or closures for nearshore rockfish and California scorpionfish based upon harvest limits established in federal regulation. This is necessary because harvest limits for these species or species groups are established in federal regulation while the state specifies a Total Allowable Catch (TAC) for cabezon, California sheephead and greenlings of the genus *Hexagrammos* in state regulation.

Subsection 150.16(e)(6)(C) is renumbered (e)(6)(D) and amended to address a typo in the word "permittee" for maximum clarity.

Subsection 150.16(e)(6)(D) is renumbered (e)(6)(E) and amended to increase clarity for the mechanism of closure for cabezon, California sheephead, greenlings of the genus *Hexagrammos* and nearshore rockfish, if needed. This amendment does not make any material changes.

Subsection 150.16(f) is amended to establish commercial trip limits for all other non-nearshore groundfish not specified in subsection 150.16(e)(5)(A) and (e)(5)(B)

Subsection 150.16(f)(1) is added to prohibit take and possession of all other groundfish not specified in subsection 150.16(e)(6)(A), except for purposes of continuous transit, in state waters north of 36° N latitude, except as provided in subsection (f)(1)(A) and (B). This is necessary to mitigate mortality of quillback rockfish by the non-nearshore groundfish fishery, which is not limited in the number of participants.

Subsection 150.16(f)(1)(A) is added to provide an exception for the take and possession of groundfish in cases of continuous transit. This is necessary because otherwise it would prohibit groundfish legally taken elsewhere (e.g., federal waters) from being

landed into California and would unduly burden commercial fishers and negatively impact the California economy.

Subsection 150.16(f)(1)(B) is added to provide an exception for the take and possession of yellowtail rockfish in state waters by commercial salmon troll fishers. This is necessary because the gear used in this fishery is fished in the midwater column and is unlikely to adversely impact quillback rockfish.

Subsection 150.16(f)(2) is added to reaffirm extension of federal commercial trip limits for all other groundfish in state waters south of 36° N latitude.

Subsection 150.16(g) is added to extend federal crossover provisions for entities that may take groundfish from areas that have differing cumulative trip limits to maintain consistency between state and federal groundfish regulations.

Subsection 150.16(h) is added to clarify the cumulative trip limits specified in section 150.16 shall not be exceeded.

Section 189

Section 189 is amended to make minor technical changes to existing regulations, including an update to the method by which the public may contact the Department of Fish and Wildlife to receive a copy of federal regulations.

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

88 Federal Register 83830 available from

<https://www.federalregister.gov/documents/2023/12/01/2023-25905/magnuson-stevens-act-provisions-fisheries-off-west-coast-states-pacific-coast-groundfish-fishery>

PFMC inseason rule as posted in 88 Federal Register 90127 available from:

<https://www.federalregister.gov/documents/2023/12/29/2023-27689/magnuson-stevens-act-provisions-fisheries-off-west-coast-states-pacific-coast-groundfish-fishery>

Quillback overfished determination available from:

<https://www.fisheries.noaa.gov/bulletin/noaa-fisheries-announces-overfished-determination-quillback-rockfish-california>

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. Whereas the federal government has corresponding regulations for Nearshore Rockfish trip limits in federal waters, these trip limits will apply *only in state waters*. The Magnuson Stevens Act specifically reserves to the states jurisdiction to regulate fisheries in state waters. See 16 U.S.C. § 1856. The proposed regulations are designed to correspond with the federal regulations.

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 the proposed regulations will have positive impacts on the commercial Nearshore h Fishery. At this time, commercial Nearshore Fishery Permit holders and Deeper Nearshore Species permittees who hold limited-entry permits authorizing take of shallow and deeper nearshore rockfish, cabezon and greenlings, are bound by federal regulations applicable to waters N of 36 degrees that specify these fisheries are closed, or limited to zero-take in federal waters. The proposed regulations will allow these permittees to resume harvesting these species at previously authorized catch levels but will require them to operate in state waters only between the 20-fathom boundary line and the shoreline.

The proposed regulations would also add a series of waypoints to define this new 20-fathom boundary line, which is needed for fisheries to be able to operate in the shallowest of depths where quillback rockfish do not reside. Without the 20-fathom boundary line and the authorization to fish shoreward of that line, these fisheries would remain closed.

Further, if the proposed regulations are not enacted to cease commercial non-nearshore groundfish fisheries from operating in the CGRA, these activities will result in continued unsustainable fishery bycatch mortality of quillback rockfish and exceedance of the very small 2024 catch limits for this species, which would be inconsistent with federal law.

II. AUTHORITY AND REFERENCE

Section 35.00

Authority Cited: 200, 702, 7071, 7652, 8587.1

Reference: 200, 205, 702, 1802, 7071, 7652, 8585.5, 8587.1

Section 150.06

Authority cited: Sections 7071, 7652 and 8587.1, Fish and Game Code.

Reference: Sections 7071, 7652, 8585.5 and 8587.1, Fish and Game Code.

Section 150.16

Authority cited: Sections 702, 7071, 8587.1 and 8588, Fish and Game Code.

Reference: Sections 1802, 8585.5, 8586, 8587, 8587.1 and 8588, Fish and Game Code.

Section 189

Authority cited: Section 7652, Fish and Game Code.

Reference: Sections 7652, 7652.2, and 8607, Fish and Game Code.

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 commercial groundfish 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 rockfish population is in decline and is currently being harvested at unsustainable levels. Recent 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.

This emergency arises from resultant overfishing of quillback rockfish in 2023 and subsequent closure of the entire nearshore fishery in the state waters via federal regulations, implemented January 1, 2024. The federal inseason management changes establish the shoreward boundary of the federal non-trawl Rockfish Conservation Area at the 3 nautical mile boundary or shoreward Exclusive Economic Zone and resultant trip limits are to apply in federal waters only (including specifying a trip limit of zero for minor nearshore rockfish).

It is necessary that the California Department of Fish and Wildlife (Department) immediately take steps to reduce mortality of quillback rockfish. The Department proposes an emergency action that will create a California Groundfish Restriction Area (CGRA) and will establish trip limits for commercial take of nearshore rockfish, except for quillback rockfish (*Sebastes maliger*), and California scorpionfish in state waters outside of the CGRA.

The Department's proposed action would establish a 20-fathom boundary line approximating the 20-fathom depth contour because available fishery data indicate quillback rockfish off California are infrequently encountered in waters shallower 20-fathoms. This new CGRA 20-fathom boundary line would be available for use in management for both the commercial and recreational groundfish fisheries, as needed. Additionally, the proposed action would implement a commercial CGRA between the 20-fathom boundary line and the shoreward boundary of the EEZ north of 36° N latitude (i.e., would prohibit commercial groundfish fishing between the 20-fathom and the shoreward boundary of the EEZ in this area). The proposed action would establish trip limits for groundfish species authorized for take under a shallow or deeper nearshore permit, while also prohibiting commercial take of all other non-nearshore groundfish in state waters north of 36° N latitude. Further, the proposed action aims to clarify regulations statewide, while also reaffirming extension of federal commercial groundfish regulations into state waters south of 36° N latitude (e.g., the area that was unaffected by recent federal action).

Without the Department's proposed action, impacts to quillback rockfish from the unlimited non-nearshore commercial groundfish fishery are likely to continue to accrue while also prohibiting the take of other nearshore groundfish stocks in areas where quillback rockfish are infrequently encountered. This would result in serious economic harm to nearshore fishery participants and business that rely upon them, while also not

mitigating impacts to quillback rockfish.

Benefits of the Proposed Regulation

The Department anticipates this regulation will create appropriate conservation measures for the quillback rockfish resource, while re-establishing continued economic opportunities to target and retain other minor nearshore opportunities.

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.