

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINDING OF EMERGENCY AND
STATEMENT OF PROPOSED EMERGENCY REGULATORY ACTION

Second Readoption of 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: November 1, 2023

I. Emergency Regulations in Effect to Date

At its May 17, 2023, meeting, the Fish and Game Commission (Commission) adopted an emergency rulemaking amending subsection 28.15 that became effective June 2, 2023. The emergency regulation reduced the recreational bag limit of California halibut (*Paralichthys californicus*) from three to two fish, in the area north of Point Sur, Monterey County.

To protect the California halibut (halibut) resource, the California Department of Fish and Wildlife (Department) requested emergency action to reduce the recreational bag limit while not jeopardizing this popular recreational fishery. The recommendation was prompted by the anticipated closure of the 2023 salmon fishery, which was unanimously voted on at the May 17, 2023, Commission meeting. Additional changes in opportunities for groundfish fisheries which limited fishing opportunities and changed fishery accessibility inclined Department staff to propose the emergency action for halibut. Some recreational anglers shifted their effort from the closed fisheries to halibut, particularly in the San Francisco Bay area.

II. Second Readoption of Emergency Regulations

At the October 12, 2023, meeting of the Commission, the emergency regulation was first readopted extending its effective period an additional 90 days, from November 30, 2023 through February 28, 2024. This request for a second readoption will continue the emergency action to protect the halibut population until a permanent regulation can be implemented. This second readoption will allow the emergency regulation to continue from the end of February through May 2024, or until a regulation to make the changes permanent becomes effective.

A rulemaking to adopt the emergency action as a standard regulation (called a Certificate of Compliance) and other amendments to the halibut regulations (Section 28.15) was authorized for notice by the Commission at its October 12, 2023 meeting. Discussion of the proposed regulations occurred at the December 13-14, 2023 Commission meeting. It is expected that the regular (standard) rulemaking will be adopted by the Commission at the February 14-15, 2024, meeting, and the emergency readoption will remain in effect until the permanent regulations become effective when filed with the Secretary of State.

III. Statement of Facts Constituting the Need for Readoption of Regulatory Action

The emergency action reducing the recreational daily bag limit for halibut from three to two

fish for areas north of Point Sur, Monterey County, has resulted in the desired effect of reducing the total catch by recreational fishermen. Department staff monitors recreational fishery catch and effort estimates monthly 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 legal-sized halibut in northern California for 2023 (Recreational Fisheries Information Network (RecFin) bag limit tool 2023).

The continued emergency action reducing the bag limit is necessary to preserve the halibut population until the permanent regulation can take effect.

IV. Existence of an Emergency and Need for Immediate Action

Presently, 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 Commercial Passenger Fishing Vessel (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. In 2022, the commercial fishery 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: commercial and recreational fishery effort shifts, environmental factors including the impacts of recent cold-water conditions, and biological factors including area-based sex ratio bias.

Anticipated recreational fishery effort shifts

The sustainability of the halibut population is threatened by a recreational effort shift as anglers turn to halibut to replace fishing opportunities for salmon and groundfish, therefore increasing effort and ultimately take. This effort shift also occurred during the last salmon fishery closure in 2008 and 2009. Changes to other fishery regulations this year, which have reduced accessibility to nearshore fishery options, have contributed 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 shift in commercial fishing efforts. Displaced commercial salmon fishermen participated in the open access commercial hook-and-line halibut fishery, which increased 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 from mid-2020 to mid-2023. This indicates that egg and larval survival for halibut was low during that time, and the previous warm-water period (which results in higher halibut egg and larval survival) was documented in 2019. Waters began to warm in May 2023. 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 May 2023. 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 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 May, 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 typically begins in early April, and the Monterey Bay area fishery typically begins in May.

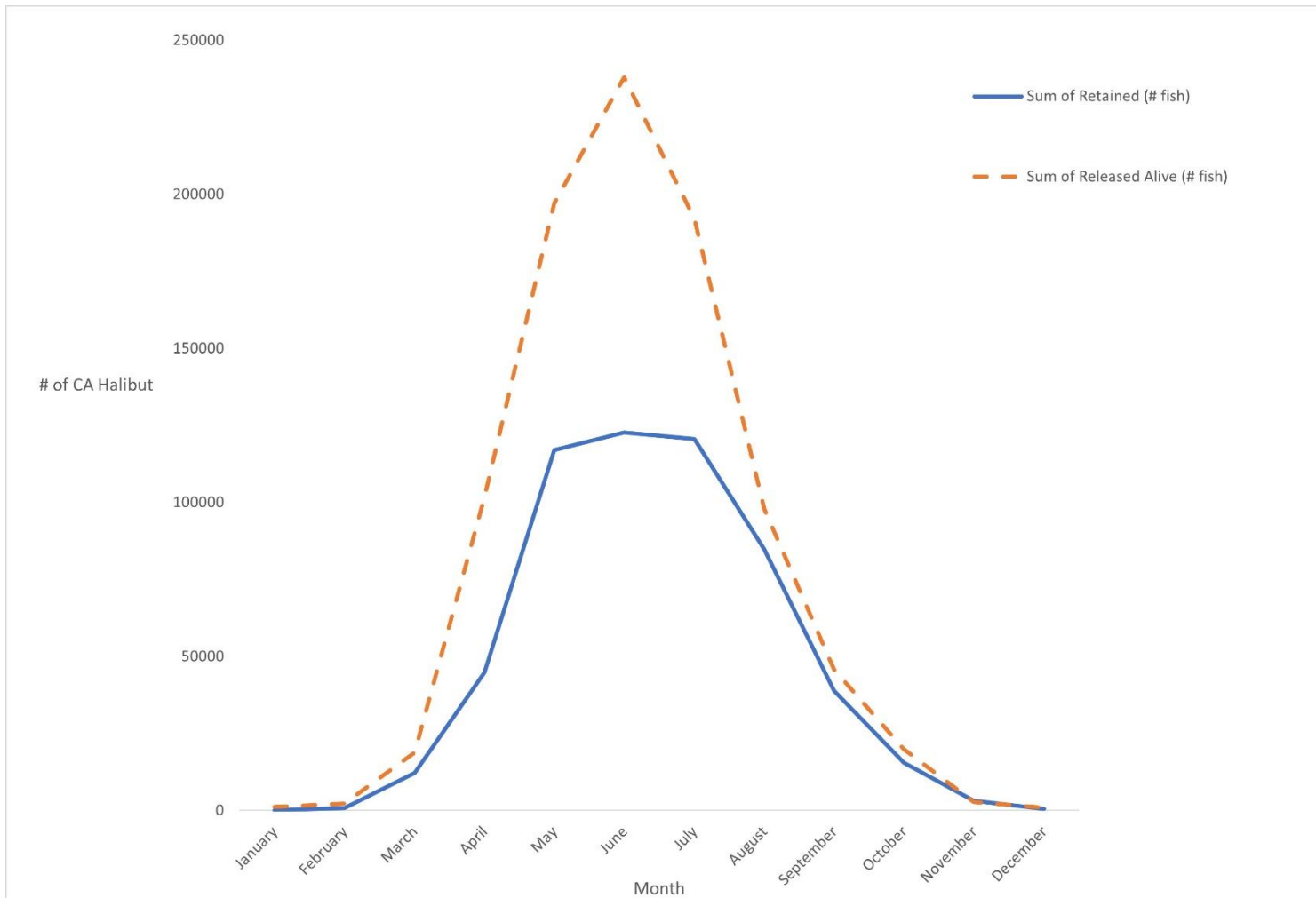


Figure 1. Estimated monthly sum (2005-2022) of retained recreationally caught halibut by number for all modes and gears for northern California (North of Point Conception) (RecFIN, March 2023).

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 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).

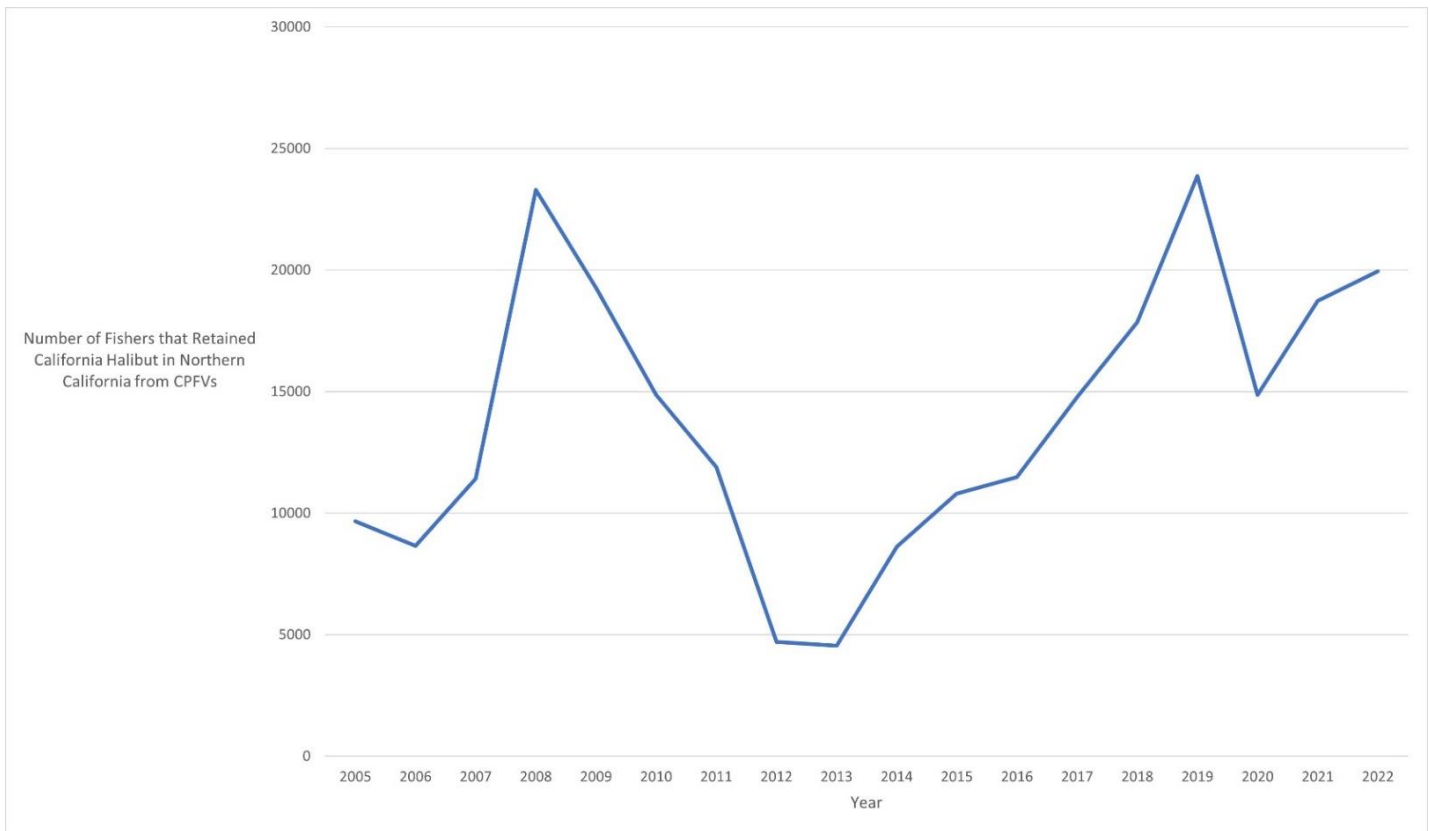


Figure 2. Number of fishers onboard CPFVs that retained halibut in northern California (North of Point Conception) (Marine Log System, April 2023).

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, demonstrating the differences in effort before and after the closure. By 2013, four years after the closure, catch estimates dipped to just below 5,000 fish. Catch estimates for halibut remained low for six years (2011-2016) following the salmon closure, revealing that high fishing pressure and low recruitment led to a decline in the population. This low fishing success 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 with favorable environmental conditions, 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. Waters began to warm in May 2023; however the favorable impact will not be reflected in the fishery take for approximately four years. 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.

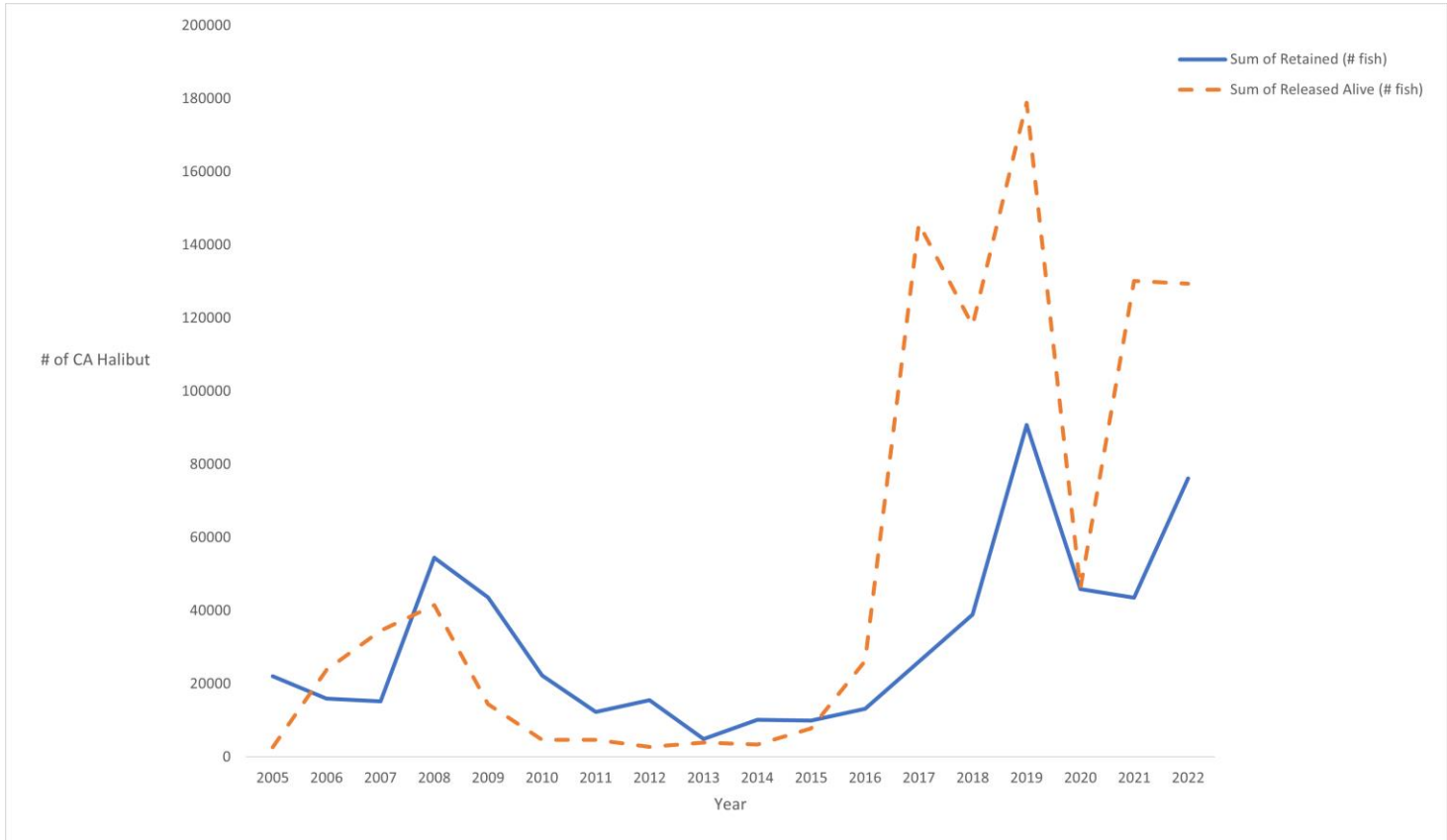


Figure 3. Annual CRFS estimates of kept (solid line) and released (dashed line) halibut by number of fish for all modes combined in northern California (North of Point Conception) (RecFIN, March 2023).

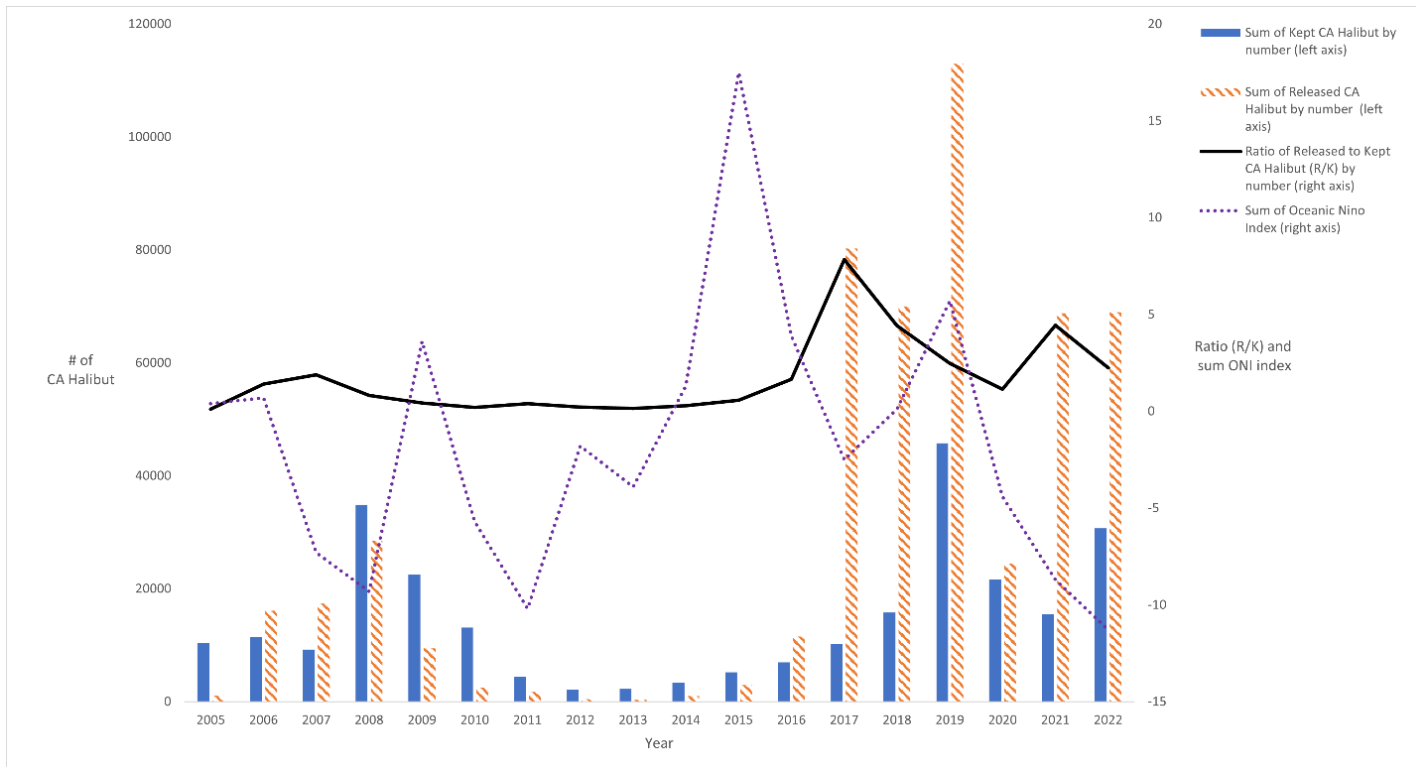


Figure 4. Bay Area (Sonoma, Marin, Solano, Napa, Contra Costa, Alameda, Santa Clara, San Mateo, San Francisco Counties) sum of the number of kept (K) and released alive (R) halibut by year for recreational private/rental boats are shown as solid and striped bars respectively (left axis). The ratio of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

V. Readoption Criteria

Same as or Substantially Equivalent

Pursuant to Government Code subdivision 11346.1(h), a readoption may be approved only if the text is “the same as or substantially equivalent to an emergency regulation previously adopted by that agency.” The language proposed for this rulemaking is the same as the language of the original emergency regulation.

Substantial Progress

Government Code subdivision 11346.1(h) specifies “Readoption shall be permitted only if the agency has made substantial progress and proceeded with diligence to comply with subdivision (e)” [sections 11346.2 through 11347.3, inclusive].

A regular rulemaking is currently underway and was authorized by the Commission for public notice in October 2023.

Proposed Action by the Commission

The Commission proposes the readoption of the emergency amendment to Section 28.15 that is the same as previously effective.

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) 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.

VI. 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/>

VII. Authority and Reference

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.

VIII. 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 recreational fishery effort shifts from the 2023 salmon closure and additional restrictions to other fishery regulations; 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 the readoption of this emergency regulation is necessary for the immediate conservation, preservation, or protection of California halibut.

Informative Digest/Policy Statement Overview

Request for Approval of the Second Readoption of Emergency Regulations amending Section 28.15, Halibut. At the October 12, 2023, meeting of the Fish and Game Commission (Commission), the emergency regulation was first readopted extending its effective period an additional 90 days, November 30, 2023 through February 28, 2024. This second readoption will remain effective from the end of February through May 2024, or until the permanent regulation becomes effective. A public hearing on the permanent regulations has been noticed by the Commission for February 14-15, 2024, and the emergency readoption will remain in effect until the permanent regulation, if adopted, becomes effective.

The Department of Fish and Wildlife (Department) recommends that the Commission continue the emergency action to protect the California halibut (halibut) resource. The Department proposes a daily bag and possession limit reduction from three to two fish for areas north of Point Sur effective immediately. The readoption of the emergency 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: effort shifts due to the 2023 salmon closure and additional restrictions to groundfish 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 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.