

State of California
California Department of Fish and Wildlife
Final Statement of Reasons for Regulatory Action
Certificate of Compliance

Adopt Section 35.00
Amend Sections 150.06, 150.16, 189
Title 14, California Code of Regulations
Re: **Commercial Groundfish Management Measures**

I. Dates of Statements of Reasons

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| (a) Initial Statement of Reasons | Date: August 10, 2024 |
| (b) Final Statement of Reasons | Date: December 30, 2024 |

II. Dates and Locations of Scheduled Hearings

A public hearing pursuant to Government Code section 11346.8 was held as follows:

- Date: December 4, 2024
- Time: 1:00 p.m.- 2:00 p.m.
- Format: Virtual Hearing via Microsoft Teams (Meeting link and access information were posted to the Proposed Regulations Webpage, at: [Proposed Emergency Action for Commercial Groundfish Management Measures](#))

III. Update

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action. The California Department of Fish and Wildlife (Department) adopted the amended regulations on January 10, 2025.

IV. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations

Barry Crider, commercial fisher, email dated October 28, 2024.

Comment 1: Appreciates what is being done to protect quillback rockfish, while preserving commercial fishing opportunities.

Response 1: Support noted.

Comment 2: Requests nearshore permittees be allowed retention of other non-nearshore groundfish stocks (e.g., lingcod) shoreward of the 20-fathom boundary line.

Response 2: The comment requesting action falls outside the scope of this rulemaking. State regulations govern the take of nearshore groundfish stocks, including specifying the species for which a nearshore permit is required to be taken. Lingcod and other non-nearshore groundfish stocks are not included in the regulatory definition of nearshore species and are not subject to related commercial nearshore permitting

requirements. Under current state permitting requirements, there is no mechanism to restrict the take of non-nearshore groundfish stocks to only nearshore permittees.

Comment 3: Suggests that by modifying nearshore permits (shallow and deeper nearshore) to include non-nearshore groundfish species (e.g., lingcod), the quillback rockfish stock would still be protected and access to a healthy lingcod stock would be gained.

Response 3: See Response #2. Since the nearshore permits cannot be modified to include non-nearshore groundfish species like lingcod at this time, allowing commercial take of such groundfish species would result in an unlimited participant fishery. The likely result would be increased discard mortality of quillback rockfish. This is because individuals without nearshore permits targeting lingcod may encounter quillback rockfish and would be required to discard them. Management measures for groundfish are designed to keep mortality of all species within established harvest limits. Some species with more restrictive harvest limits may result in more prohibitive management measures for the entire fishery and may result in limiting access to otherwise healthy stocks. Otherwise, restrictive harvest limits may be exceeded, which could lead to more severe constraints or closure of the fishery.

Comment 4: States the recreational fishery is permitted to fish shoreward of the 20-fathom boundary line and retain lingcod.

Response 4: North of 37° 07' N lat., the recreational fishery is permitted to fish shoreward of the 20-fathom boundary line and retain lingcod during only five months of the year. Whereas the commercial nearshore fishery is authorized year-round shoreward of the 20-fathom boundary line. Direct comparisons between the recreational and commercial nearshore fisheries are not applicable due to the regulatory differences between the fisheries (e.g., limits on the amount that may be taken and period of time open).

Comment 5: States that by modifying the nearshore permits to include other non-nearshore groundfish stocks like lingcod, it would maximize commercial fishing opportunity and benefit local markets.

Response 5: Given the constraints and considerations outlined in Responses #2 and #3, allowing a year-round commercial nearshore fishery shoreward of the 20-fathom boundary line was found to provide the most stability for commercial opportunity and markets.

V. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change

No other alternatives were identified by or brought to the attention of Department staff that would have the same desired regulatory effect. Regulatory amendment is required to maintain commercial nearshore groundfish harvest opportunity, while also limiting mortality of quillback rockfish.

(b) No Change Alternative

Without the proposed certificate of compliance action to continue prevention of commercial

non-nearshore groundfish fisheries from operating in state waters north of 37° 07' N latitude, the result will be continued unsustainable fishery bycatch mortality of quillback rockfish. It would likely result in the exceedance of the very small catch limits for this species, which would be inconsistent with federal law. Additionally, in absence of the certificate of compliance action, the nearshore fishery north of 37° 07' N latitude would be closed in state waters, resulting in forgone harvest and economic opportunity, in depths where data indicates quillback rockfish are infrequently encountered.

(c) Consideration of Alternatives

In view of information currently possessed, no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

(d) Description of Reasonable Alternatives that Would Lessen Adverse Impact on Small Business

There is no reasonable alternative that would have less of an impact on small businesses operating in the commercial groundfish fishery. Without the proposed certificate of compliance regulations, north of 37° 07' N latitude the nearshore fishery would be completely closed to nearshore permittees and bycatch mortality of quillback rockfish would continue to accrue in state waters from the non-nearshore fishery. The non-nearshore groundfish fishery may still be pursued in federal waters where there is diminished risk to California's quillback rockfish resource.

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 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 Department does not anticipate that the proposed action will have significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Without the proposed certificate of compliance action, the commercial nearshore fishery would be closed and quillback rockfish bycatch mortality would continue to accrue from the non-nearshore groundfish fishery. Allowing quillback rockfish mortality to exceed the small federal limits for California would be inconsistent with federal regulation and would result in the closure of nearshore and non-nearshore groundfish fishing. The proposed action ensures that the non-nearshore fishery can continue to operate in federal waters where there is less risk to the quillback rockfish resource while keeping the nearshore fishery open, allowing both to continue competing in the marketplace. Without the proposed changes the commercial nearshore fisheries would be closed, and restaurants and other fish businesses would seek alternative groundfish suppliers from other states, such as Oregon. The proposed changes provide improved

enforceability and clarification of existing regulations that aid in the continued preservation of marine resources while endeavoring to minimize interruptions to commercial harvest opportunities, and thus, the prevention of adverse economic impacts.

- (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 Department does not anticipate adverse impacts on the creation or elimination of jobs within the state given that the proposed amendments are to commercial groundfish regulations, which maintain access of the nearshore fishery to permittees while the non-nearshore groundfish fishery may continue to operate in federal waters. The Department does not anticipate adverse impacts on the creation of new business, the elimination of existing businesses, or the expansion of businesses in California. The proposed changes are to provide improved enforceability and clarification of existing regulations, while keeping the nearshore groundfish fishery open instead of fully closed. The proposed certificate of compliance regulations close state waters to the take of non-nearshore groundfish north of 37° 07' N latitude. However, this fishery may continue to federal waters. Taken together, the proposed certificate of compliance action and are not anticipated to change the annual level of harvest activity or the demand for goods and services related to marine resource harvest that could impact the demand for labor, induce the creation of new businesses, eliminate existing businesses, or cause the expansion of businesses in California. The Department does not anticipate any benefits to the health and welfare of California residents or to worker safety from the proposed action. The Department anticipates benefits to the State's environment directly through maintaining the harvest of healthy stocks while mitigating mortality of quillback rockfish to ensure that their population is able to rebuild.

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

The Department is aware of cost impacts that a representative private person or business could reasonably incur as a result of compliance with the proposed action. The Department estimates that for the areas impacted by the proposed action, a total of 202 vessels were participating in the commercial groundfish fishery in varying capacities. From those 202 vessels, a total of 97 vessels did not fish in federal waters in the period preceding changes to federal and state regulations (2022) and may incur varying degrees of cost impact as a result of the proposed regulations. However, of the 97 vessels that did not fish in federal waters, 52 vessels actively fished nearshore fish stocks. Given the proposed regulations would maintain the nearshore fishery in state waters, these vessels could continue fishing in state waters for nearshore fish stocks or elect to fish federal waters for non-nearshore groundfish.

Under the proposed regulations, the remaining 45 vessels would no longer be able to fish for non-nearshore groundfish in state waters and would have to fish in federal waters to commercially access non-nearshore groundfish stocks. These vessel owners would need to abide by federal groundfish regulations, which in part, require a Vessel Monitoring System (VMS) while commercial fishing for or possessing commercial groundfish in federal waters. Costs associated with conforming to federal VMS requirements include the purchase of an approved VMS unit, which is fully reimbursable through a federal program while funding is

available. Vessel owners would also be required to pay a monthly service fee, which may range approximately between 30 and 75 dollars per month, depending on the service provider.

While 45 vessels are estimated to be the maximum number that may be impacted by the proposed regulations, it is more likely that fewer vessels are will be severely impacted by the proposed regulation. A review of the landings data for these vessels indicates that a majority had relatively small landings of groundfish and may wish to switch to non-groundfish species or other opportunities. Of the 45 vessels that have landed non-nearshore groundfish and have not fished in federal waters, the average annual landed weight of groundfish is 388 pounds, resulting in an average ex-vessel value of \$1,427.88. Approximately four of those vessels landed an average of 22,055 pounds, with an average ex-vessel value of \$41,108.87. Given this disparity of the landed weight and ex-vessel value between these four vessels and the majority of the remaining vessels, it is likely that the proposed regulations and the additional costs imposed by conforming to federal groundfish regulations may impact fewer than 10 vessels due to their likely preference to continue harvesting groundfish versus other species. This would result in combined direct cost impact of approximately \$1,400 to \$3,600, annually (see STD399 and Addendum).

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State

This certificate of compliance adoption of the emergency rulemaking will not result in any costs or savings to state agencies and does not affect federal funding to the state. The Department has determined that the certificate of compliance action for this the commercial groundfish emergency will not affect license or landing fee revenues or the Department's existing level of expenditures on monitoring and enforcement activities. Additionally, no other state agencies would be affected by this regulatory action.

(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.

Updated Informative Digest/Policy Statement Overview

The California quillback rockfish (*Sebastes maliger*) population is in decline, with the recent quillback rockfish stock assessment concluded that the population of quillback rockfish in California is overfished, and the population is estimated at only 14 percent of the unfished population.

The emergency action currently in effect arose 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 established 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). Subsequent federal inseason action modified the southern boundary of the area affected by the regulations implemented on January 1, 2024.

It is necessary that the California Department of Fish and Wildlife (Department) continue the action to reduce mortality of quillback rockfish based upon updated analyses of commercial data. The Department proposes to make the emergency action long-term via a certificate of compliance action to continue the California Groundfish Restriction Area (CGRA) and trip limits for commercial take of nearshore rockfish, except for quillback rockfish, and California scorpionfish in state waters outside of the CGRA.

Specifically, the Department's certificate of compliance would maintain 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 20-fathom boundary line will continue to be available for use in management for both the commercial and recreational groundfish fisheries, as needed. Additionally, this action maintains the commercial CGRA between the 20-fathom boundary line and the shoreward boundary of the EEZ to north of 37° 07' N latitude (i.e., would prohibit commercial groundfish fishing between the 20-fathom and the shoreward boundary of the EEZ in this area). North of 37° 07' N latitude, the proposed action would maintain trip limits for groundfish species authorized for take under a nearshore (also known as shallow) or deeper nearshore permit, while also prohibiting commercial take of all other non-nearshore groundfish in state waters. Further, regulations statewide would be clarified, while also extending federal commercial groundfish regulations, except for those pertaining to state permitted nearshore species, into state waters south of 37° 07' N latitude (i.e., the area that was modified by recent federal action). Trip limits for groundfish species authorized for take under a nearshore or deeper nearshore permit would continue to be authorized in state waters south of 37° 07' N latitude.

Benefits of the Proposed Regulation

This proposed certificate of compliance action will continue appropriate conservation measures for the quillback rockfish resource, while re-establishing continued economic opportunities to target and retain other nearshore opportunities.

The Department anticipates the proposed action will have positive impacts on the commercial nearshore fishery. At this time, commercial nearshore fishery permittees 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 north of 37° 07' N latitude that specify these fisheries are closed or limited to zero-take in federal waters. The

proposed certificate of compliance action 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 certificate of compliance action would also continue 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.

Without the Department's proposed certificate of compliance action, impacts to quillback rockfish from the unlimited non-nearshore commercial groundfish fishery would continue to accrue past an expiration of the current emergency in effect. The result will be continued unsustainable fishery bycatch mortality of quillback rockfish. It would likely result in the exceedance of the very small catch limits for this species, which would be inconsistent with federal law. Commercial fishing for groundfish stocks other than those authorized by a nearshore or deeper nearshore permit would continue in state waters, while also prohibiting the take of 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.

Consistency and Compatibility with Existing Regulations

The Legislature may delegate to Department such powers relating to the protection and commercial fishery resources as the Legislature sees fit, including the authority to adopt regulations pertaining to commercial fisheries (e.g., Fish and Game Code Sections 200 and 7652). Department staff has searched the California Code of Regulations and has determined that other state regulations that apply to management of commercial groundfish fisheries 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.

UPDATE

The Department adopted the proposed regulations (certificate of compliance) for the commercial groundfish management measures on January 10, 2025. There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.