

Regulatory Language

(1) Section 52.00 is added to new Article 3 of new Chapter 5.5, Subdivision 1 of Title 14, California Code of Regulations (CCR), to read:

Article 3. Nearshore Fishery Management Plan.

52.00. Purpose and scope.

(a) This Article implements the Nearshore Fishery Management Plan (Nearshore FMP or plan), as adopted by the California Fish and Game Commission (commission) consistent with the goals, objectives and procedures of the Nearshore FMP and the Marine Life Management Act of 1998, and applicable federal groundfish regulations. These regulations, in combination with other applicable provisions of the Fish and Game Code, Title 14, California Code of Regulations (CCR), and federal groundfish regulations, govern management and regulation of nearshore fish stocks and fisheries.

(b) A regulation adopted by the commission specific to sport fishing for nearshore fish stocks is included with ocean sport fishing regulations beginning with Section 27.00, Title 14, CCR. A regulation specific to commercial fishing for nearshore fish stocks is included with commercial fishing regulations beginning with Section 150, Title 14, CCR.

NOTE

Authority cited: Sections 7071 and 8587.1, Fish and Game Code. Reference: Sections 7070, 7071, 7075, 7078, 7083 and 8587.1, Fish and Game Code.

(2) Section 52.01 is added to new Article 3 of new Chapter 5.5, Subdivision 1 of Title 14, CCR, to read:

52.01. Definitions.

(a) Definitions for *nearshore fish stocks*, *nearshore fisheries*, and *nearshore waters* are included in Section 1.90, Title 14, CCR.

(b) *Allocation* means assignment of an amount of catch to different sectors of a fishery.

(c) *Cape Mendocino* for purposes of describing the boundary of fishery management areas means a point on the mainland shore at 40 degrees 10 minutes north latitude.

(d) *Council* means Pacific Fishery Management Council [see subdivision (k) below].

(e) *Fishery Control Rule* means specified approaches to determining the amount and type of catch allowed in a fishery.

(f) *National Marine Fisheries Service or NMFS* means the National Marine Fisheries Service in the United States Department of Commerce.

(g) *Nearshore Fishery Management Plan (Nearshore FMP)* means the Nearshore Fishery Management Plan approved or amended by the Fish and Game Commission.

(h) *Nearshore Rockfish* means black rockfish (*Sebastes melanops*), Black-and Yellow rockfish (*Sebastes chrysomelas*), blue rockfish (*Sebastes mystinus*), brown rockfish (*Sebastes auriculatus*), calico rockfish (*Sebastes dallii*), California scorpionfish (*Scorpaena guttata*), China rockfish (*Sebastes nebulosus*), copper rockfish (*Sebastes caurinus*), gopher rockfish (*Sebastes carnatus*), grass rockfish (*Sebastes rastrelliger*), kelp rockfish (*Sebastes atrovirens*), olive rockfish (*Sebastes serranoides*), quillback rockfish (*Sebastes maliger*), treefish (*Sebastes serripes*).

(i) *Overfished* is defined at Section 97.5 of the Fish and Game Code, and in the Nearshore FMP also means a population that falls below the threshold of 30% of the estimated unfished biomass.

(j) *Overfishing* is defined at Section 98 of the Fish and Game code, and in the Nearshore FMP also means that the total catch of a nearshore fish population exceeds the Total Allowable Catch in any year or season.

(k) *PFMC or Council* means the Pacific Fishery Management Council established pursuant to the Magnuson-Stevens Fishery Conservation and Management Act.

(l) *Quota* means a specified numerical amount of landings (excluding discard mortality), the attainment (or expected attainment) of which may cause closure of the fishery.

(m) *Total Allowable Catch or TAC* means a specified numerical amount of catch (including discard mortality), the attainment (or expected attainment) of which may cause closure of the fishery. In Stage I of the Nearshore FMP Fishery Control Rule, TAC is equivalent to a proxy for Optimum Yield; In Stages II and III, TAC is equivalent to Optimum Yield.

(n) *Unfished Biomass or Bunftished* means an estimate of the biomass or population size that would exist if there had been no fishing in recent history (within several generations) of a fish population.

(o) Definitions contained in Chapter 1, and Article 1 of Chapter 5.5, of Subdivision 1, Division 1, Title 14, CCR, and Chapters 1 and 2 of Division 0.5 of the Fish and Game Code, apply to the nearshore fishery in addition to definitions of this section.

NOTE

Authority cited: Section 7071, Fish and Game Code. Reference: Sections 7071, 7075, 7078, 7083 and 7086, Fish and Game Code.

(3) Section 52.02 is added to new Article 3 of new Chapter 5.5, Subdivision 1 of Title 14, CCR, to read:

52.02. Process and Timing.

(a) Management of nearshore fish stocks will conform with the goals, objectives, criteria, procedures, and Fishery Control Rule guidelines of the Nearshore Fishery Management Plan, and other applicable state and federal laws and regulations.

(b) Monitoring and assessment of nearshore fisheries will be conducted annually, and, at a minimum, will include the collection and review of reported catches. The department will provide management recommendations to the commission annually, and in-season if a need is identified.

(c) The director may establish and appoint members to advisory committees, including regional advisory committees (RACs), to assist the department with development and review of fishery assessments, management options and proposals, and plan amendments.

(d) Management measures and actions may be developed, considered, adopted, and implemented at any time of year to achieve management plan goals and objectives, and may apply to any or all management areas, or portions of management areas at the discretion of the commission.

NOTE

Authority cited: Section 7071 and 7652 Fish and Game Code. Reference: Sections 7071, 7075, 7083 and 7652 Fish and Game Code.

(4) Section 52.03 is added to new Article 3 of new Chapter 5.5, Subdivision 1 of Title 14, CCR, to read:

52.03. Nearshore Fishery Management Plan (Nearshore FMP) Project

Option 1
(Preferred)

(a) The Department's Recommended Proposed Project in the Nearshore FMP (Plan) involving a combination of Fishery Control Rules, Allocation, Regional Management, Marine Protected Areas (MPAs), Restricted Access, and other management measures described in the Nearshore FMP will be utilized in managing nearshore fisheries toward meeting goals and objectives of the Plan.

(b) A fishery management measure may be selected and inserted instead of, or in addition to, measures included in the adopted Nearshore FMP Project where specified in regulation.

NOTE

Authority cited: Section 7071, Fish and Game Code. Reference: Sections 7071, 7075, 7082 and 7083, Fish and Game Code.

Option 2

(Prohibition On the Commercial Take of Nearshore Fish Stocks off California) (a) The Nearshore FMPs Alternative 2 for the Recommended Nearshore FMP (Plan) Project involving Fishery Control Rules with Prohibition on the take, possession, landing, sale, and purchase of the 19 Nearshore Species from waters off California, under Fishery Control Rule Stage I and II Conditions will be utilized in managing nearshore fisheries to meet goals and objectives of the Plan.

(b) A fishery management measure may be selected and inserted instead of, or in addition to, measures included in the adopted Nearshore FMP Project where specified in regulation.

NOTE

Authority cited: Section 7071, Fish and Game Code. Reference: Sections 7071, 7075, 7082 and 7083, Fish and Game Code.

Option 3
(Commercial Gear Restrictions)

(a) Alternative 3 for the Recommended Nearshore FMP (Plan) Project involving commercial gear restrictions will be utilized in managing nearshore fisheries to meet goals and objectives of the Plan.

(b) A fishery management measure may be selected and inserted instead of, or in addition to, measures included in the adopted Nearshore FMP Project where specified in regulation.

NOTE

Authority cited: Section 7071, Fish and Game Code. Reference: Sections 7071, 7075, 7082 and 7083, Fish and Game Code.

(5) Section 52.04 is added to new Article 3 of new Chapter 5.5, Subdivision 1 of Title 14, CCR, to read:

52.04 Regional Management.

Option 1
(Preferred) Three Management Areas.

Three regional management areas, consistent with the Department's Recommended Proposed Project in the Nearshore FMP, are created off California as follows:

- (1) North Coast Region: Nearshore waters between the California-Oregon border and a line extending due west true from a point on the mainland shore at 40 degrees 10 minutes north latitude near Cape Mendocino, Humboldt County.
- (2) Central Coast Region: Nearshore waters between a line extending due west true from a point on the mainland shore at 40 degrees 10 minutes north latitude near Cape Mendocino, Humboldt County, and a line extending due west true from [Point Conception Or Point Arguello], Santa Barbara County,
- (4) South Coast Region: Nearshore waters between a line extending due west true from [Point Conception Or Point Arguello], Santa Barbara County, and the U.S.-Mexico border.

Option 2
Council Approach

Two regional management areas, consistent with the Nearshore FMP's Alternative 4 for Recommended Regional Management, exist off California as follows:

- (1) Northern Region: Nearshore waters between the California-Oregon border and a line extending due west true from a point on the mainland shore at 40 degrees 10 minutes north latitude near Cape Mendocino, Humboldt County,
- (2) Southern Region: Nearshore waters between a line extending due west true from a point on the mainland shore at 40 degrees 10 minutes north latitude near Cape Mendocino, Humboldt County, and the U.S.-Mexico border.

Option 3
(Preferred), Four Management Areas

Four regional management areas, consistent with the Nearshore FMP's Alternative 5 for Recommended Regional Management, exist off California as follows:

(1) North Coast Region: Nearshore waters between the California-Oregon border and a line extending due west true from a point on the mainland shore at 40 degrees 10 minutes north latitude near Cape Mendocino, Humboldt County.

(2) North-Central Coast Region: Nearshore waters between a line extending due west true from a point on the mainland shore at 40 degrees 10 minutes north latitude near Cape Mendocino, Humboldt County, and a line extending due west true from Point Ano Nuevo, San Mateo County.

(3) South-Central Coast Region: Nearshore waters between a line extending due west true from Ano Nuevo, San Mateo County, and a line extending due west true from [Point Conception Or Point Arguello], Santa Barbara County.

(4) South Coast Region: Nearshore waters between a line extending due west true from [Point Conception Or Point Arguello], Santa Barbara County, and the U.S.-Mexico border.

NOTE

Authority cited: Section 7071, Fish and Game Code. Reference: Sections 7071, 7075, 7082 and 7083, Fish and Game Code.

(6) Section 52.05 is added to new Article 3 of new Chapter 5.5, Subdivision 1 of Title 14, CCR, to read:

52.05. Allocation.

(a) Allocation of a Total Allowable Catch (TAC) of nearshore fish populations between recreational and commercial sectors will be consistent with the recommended Nearshore FMP allocation approach approved by the commission, and, with regulations of the Department of Commerce for nearshore groundfish until transfer of fishery management authority, or other Federal authorization for allocation by the state, is attained for these species.

(b) The commission will consider the following factors during a change in allocation:

- (1) present versus historical participation in the fishery
- (2) the economics of the fisheries
- (3) local community impacts
- (4) product quality and flow to the consumer
- (5) gear conflicts
- (6) non-consumptive uses
- (7) fishing efficiency, and
- (8) recreational versus commercial fishery factors.

~~(c) A modification of a direct allocation to a fishery may be designated as a "routine management measure" where the specific criteria under which the allocation is made are specified in regulation.~~

Option 1

(Preferred) Allocation Using Historical Fishery Information Applied Regionally

(c) (d) Allocation by the state of a commission authorized TAC for nearshore fish stock will be based on the use of historical fishery information applied regionally, with

constituent involvement, and based on a careful review of recreational and commercial landings information,

(d) (e) Until regional management is phased-in, and regional fishery information required to implement the allocation methodology under subdivision (c) (d) is available, allocation of state managed nearshore fish stocks will be based on the currently used ratio of recreational to commercial take for a species during the periods 1983 through 1989, and 1993 through 1999.

NOTE

Authority cited: Section 7071, Fish and Game Code. Reference: Sections 7071, 7075, 7082 and 7083, Fish and Game Code.

Option 2
(Allocation Based on Stock Biomass)

(c) (d) Allocation by the state of a Commission authorized TAC for nearshore fish stocks will be by region and, for each species, shall initially be in the proportion of 70 percent to the recreational fishing sector and 30 percent to the commercial fishing sector until such time as available information supports an increase in authorized take.

(d) (e) Increases that are subsequently authorized in the take of nearshore fish stocks shall be apportioned to the commercial fishing sector until such time as the total available harvest of that nearshore fish stock is apportioned equally between the two fisheries.

(e) (f) When allocations of nearshore fish stocks to the recreational and commercial fisheries sectors are equal, subsequent increases in authorized take shall be allocated in equal amounts to keep the allocation equal between the fisheries.

NOTE

Authority cited: Section 7071, Fish and Game Code. Reference: Sections 7071, 7075, 7082 and 7083, Fish and Game Code.

Option 3 (Allocation Based on Economic Benefit to the State)

(c) (d) Allocation by the state of a commission authorized TAC for nearshore fish stocks will be based on either the *Maximized Net Economic Value* to the public, less the resource cost, or the *economic contribution* of the fishery sectors as described in the Nearshore FMP.

NOTE

Authority cited: Section 7071, Fish and Game Code. Reference: Sections 7071, 7075, 7082 and 7083, Fish and Game Code.

(7) Section 52.09 is added to new Article 3 of new Chapter 5.5, Subdivision 1 of Title 14, CCR, to read:

52.09. Take of Nearshore Rockfish, Fishery Closure.

(a) Total Allowable Catch(TAC). Until the state has management authority for a species or species group included in the Nearshore FMP, the TAC of a species or species group will not exceed the amount specified in the Federal Register for that species or species group.

(b) Mechanism for Fishery Closures. When the TAC for a species or species group included in the Nearshore FMP is exceeded or expected to be exceeded, the Department may close the fishery at the time the TAC is reached or expected to be reached.

(c) The department shall give the public and the commission no less than 10 days notice of any recreational fishery closure pursuant to this Section via a Department new release.

(d) The department shall give Nearshore Fishery Permit holders no less than 10 days notice of any commercial fishery closure pursuant to this Section via a notification letter sent to each permittee's address on file with the department. The department shall give the public and the commission no less than 10 days notice of any commercial fishery closure pursuant to this Section via a department news release.

NOTE

Authority cited: Section 200, 202, 205, 7071, and 8587.1 Fish and Game Code.

Reference: Sections 97, 7056, 7071, 7075, 7082 and 7083, Fish and Game Code.

(8) Section 150.01, Title 14, CCR, is amended to read:

150.01. Nearshore Fishery Permit Required.

(a) Any person taking, possessing aboard a boat, or landing any species of nearshore fish stock listed in subsection (d) below for commercial purposes shall possess a valid nearshore fishery permit issued to that person that has not been suspended or revoked, except that when using a boat to take nearshore fish stocks at least one person aboard the boat shall have a valid nearshore fishery permit.

(b) Nearshore fishery permits are revocable.

(c) The fee for a nearshore fishery permit is one hundred and twenty five dollars (\$125).

(d) Notwithstanding Section 8587 of the Fish and Game Code, a nearshore fishing permit is required only for the commercial take of the following species of nearshore fish stocks: black-and-yellow rockfish, gopher rockfish, kelp rockfish, California scorpionfish, greenlings of the genus *Hexagrammos*, China rockfish, grass rockfish, California sheephead, and cabezon.

NOTE

Authority cited: Section 7071 and 8587.1, Fish and Game Code. Reference: Section 8585.5, 8587 and 8587.1, Fish and Game Code.

(9) Section 150.16, Title 14, CCR is amended to read:

150.16. Commercial Take of Nearshore Fishes.

(a) Cabezon, kelp greenling, and rock greenling shall not be taken commercially in the northern rockfish and lingcod management area during March and April, or in the southern rockfish and lingcod management area during January and February.

(b) California sheephead shall not be taken commercially north of Point Conception, Santa Barbara County, during March and April, and south of Point Conception during January and February.

(c) Notwithstanding Section 8588(b) of the Fish and Game Code, minimum size limits (total length) are as follows:

- (1) black-and-yellow rockfish (*Sebastes chrysomelas*) 10 in.
- (2) cabezon (*Scorpaenichthys marmoratus*) 15 in.
- (3) California scorpionfish or sculpin (*Scorpaena guttata*) 10 in.
- (4) California sheephead (*Semicossyphus pulcher*) 13 in.
- (5) China rockfish (*Sebastes nebulosus*) 12 in.
- (6) gopher rockfish (*Sebastes carnatus*) 10 in.
- (7) grass rockfish (*Sebastes rastrelliger*) 12 in.
- (8) greenlings of the genus *Hexagrammos* (*Hexagrammos* spp.) 12 in.
- (9) kelp rockfish (*Sebastes atrovirens*) 10 in.

(d) Species of nearshore fish stocks as defined in Section 1.90, Title 14, CCR, for which there is a trip limit, size limit, or optimum yield (OY) must be sorted by species prior to weighing and the weight reported separately on the Fish and Game receipt.

(e) Any nearshore fish listed under this section that are taken in a nearshore fishery shall be measured immediately upon being brought aboard the vessel and released immediately if not in compliance with the size limits specified.

(f) Regulations adopted to modify the minimum size limits or to specify maximum size limits shall be based on the best available scientific information and adopted following public notice and not less than one public hearing.

NOTE

Authority cited: Sections 240, 7071, 8587.1 and 8588, Fish and Game Code.

Reference: Sections 240, 8585.5, 8587.1 and 8588, Fish and Game Code.

(10) Section 150.17, Title 14, CCR, is amended to read: (Nearshore Commercial Fishing Gear/Commercial Closure).

Option 1
Amend Current Regulation to Apply Coastwide

150.17. Limitation on Number of Hooks and Area.

Excepting the provisions of Fish and Game Code subsection 9027.5(c), Notwithstanding Fish and Game Code Sections 9027 and 9027.5, it is unlawful to use more than 150 hooks on a vessel, or to use more than 15 hooks per line, to take nearshore fish stocks for commercial purposes in ocean waters within one mile of the mainland shore within Fish and Game Districts 6, 7, and 10, or in ocean waters within one mile of the mainland shore in Fish and Game Districts 17, 18, and 19.

NOTE

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

Reference: Sections 7050, 7051, 7055, 7060 and 8585.5, ~~9027~~, and 9027.5, Fish and Game Code.

Option 2
Rod and Reel Only (Restrict Commercial Gear for Nearshore Fish)

~~150.17. Limitation on Number of Hooks and Area.~~ Authorized Gear to Take Nearshore Finfish Within One Mile of Shore.

(a) Notwithstanding Fish and Game Code Sections 9001.5, 9001.6, 9001.7, 9027, and 9027.5, it is unlawful to take nearshore fish stocks as defined pursuant to Section 1.90 for commercial purposes in ocean waters within one nautical mile of shore except with the use of fishing gear, and in the manner, described in subdivisions (b)(1) through (5) below:

(b) The commercial take of nearshore fish stocks shall be limited to the following:

(1) rods and reels or hand lines with not more than ~~five~~ **two** hooks attached to any one line.

(2) not more than two lines per person and four lines per vessel. All lines shall be attached directly to a person or a vessel and free to move with the vessel.

(3) fishing lines shall be flexible and of not greater strength than 80 pound test breaking strength at the time of inspection by a Department representative.

(4) A single terminal weight or jig at the end of any line shall be 12-inches or less in length, and if possessing a hook with one to three points attached to a common shank (commonly termed a single, double, or treble hook) that terminal hook shall constitute one of the two hooks per line authorized under subdivision (b)(1).

~~Notwithstanding Fish and Game Code Sections 9027, it is unlawful to use more than 150 hooks on a vessel, or to use more than 15 hooks per line, to take nearshore fish stocks for commercial purposes in ocean waters within one mile of the mainland shore in Fish and Game Districts 6, 7, and 10.~~

NOTE

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

Reference: Sections 7050, 7051, 7055, 7060 and 8585.5, 8587.1, 9001.5, 9001.6, 9001.7, 9027, and 9027.5, Fish and Game Code.

Option 3 The "Washington" Option
(Prohibition on Commercial Take of Nearshore Fish)

~~150.17. Limitation on Number of Hooks and Area.~~ Prohibition on Commercial Take of Nearshore Fish. Notwithstanding any other provision of law, the commercial take, possession, landing, sale, and purchase of any species of nearshore fish from waters off California is prohibited. Nearshore fish are those species defined pursuant to Section 1.90, Title 14, CCR.

~~Notwithstanding Fish and Game Code Sections 9027, it is unlawful to use more than 150 hooks on a vessel, or to use more than 15 hooks per line, to take nearshore fish stocks for commercial purposes in ocean waters within one mile of the mainland shore in Fish and Game Districts 6, 7, and 10.~~

NOTE

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

Reference: Sections 7050, 7051, 7055, 7060 and 8585.5, 8587.1, 9001.5, 9001.6, 9001.7, 9027, and 9027.5, Fish and Game Code.

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