

## **TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 210, 215, 220, 713, 1050, 7071, 7380 and 8587.1, of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 205, 206, 210, 215, 220, 713, 1050, 1055, 7071, 7120, 7380 and 8586 of said code and Section 50 CFR Part 660, Subpart G, proposes to Amend sections 1.91, 27.60, 28.26, 28.27, 28.28, 28.29, 28.54, 28.55, 28.56, 28.58, 28.90, 701; amend and renumber sections 27.82 and 27.83; repeal sections 27.20, 27.25, 27.30, 27.35, 27.40, 27.42, 27.45, 27.50, 27.51, 27.52, 27.53, 27.67; and add Sections 27.20, 27.25, 27.30, 27.35, 27.40, 27.45, 27.50, 27.51, 28.48, 28.49, 28.51, 28.52, 28.53, 28.57, Title 14, California Code of Regulations, relating to recreational groundfish fishing.

### **Informative Digest/Policy Statement Overview**

At its June meeting, the Pacific Fishery Management Council (PFMC) adopted final harvest levels, specifications, and management measures for groundfish fishing in federal waters (3-200 miles) for 2007-2008. In order to make the State's regulations consistent with the new federal rules that will be established by NOAA Fisheries following the PFMC's actions, the Department requests the Commission act to amend its regulations regarding recreational groundfish fishing in State waters, within three miles of shore. The new federal rules will become effective on January 1, 2007. There are 90 species of federal groundfish that are subject to these federal rules; almost all of which occur off California.

California's recreational groundfish fishing regulations in Title 14, CCR include regulatory items that originate in the federal arena, as well as regulations established by the Commission for these same species. The state's groundfish fishing rules also contain regulations for other species that closely associate with federal groundfish. The three species or species groups that are not federal groundfish, but are managed by the state in accordance with the federal groundfish rules, include greenlings of the genus *Hexagrammos*, California sheephead, and ocean whitefish.

As an example of how the state regulations are structured, the PFMC establishes fishing seasons for federal groundfish, but sets a bag limit for only some of the federal groundfish species. In some cases, the Commission has established a bag limit for these species in addition to the season determined by the PFMC. However, for purposes of organizational simplicity and clarity for the public, the state's regulations combine all applicable rules for state waters, whether they are federal conformance items or not. Since Title 14 regulations are structured by species and fishing areas, the season and the bag limit for a particular species is embodied within the same section, regardless of whether the item is a "federal conformance" or a "Commission-initiated" regulation. The proposed recreational groundfish changes that the Department requests the Commission act on include both the conformance items and related items for these species that have previously been decided by the Commission.

**1. New and Continuing State Groundfish Fishing Regulations Needed to Conform to Federal Regulations effective for 2007-2008**

The following items were adopted by the PFMC and will result in federal regulations that will be effective in waters 3-200 miles off the California coast. The Department recommends the Commission adopt regulations on these same items that would apply for state waters 0-3 miles offshore, so that there is consistency between state and federal regulations:

- Groundfish fishing seasons and depth limits were adopted for all areas off California (see Figure below). In every region but the North Region, the proposed new seasons and allowable fishing depths represent an increase in fishing opportunities for anglers targeting recreational groundfish. Fishing seasons and depth constraints are needed to reduce impacts on overfished stocks. The seasons and depth structures differ by region based on prior recreational catch information, which is used to estimate potential impacts.

**Recreational Groundfish Seasons by Region, 2007-2008**

-- = Closed to boat-based fishing for groundfish

Region	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec	
North Region	---	---	---	---	> 30 fm Closed								
North Central	---	---	---	---	---	> 30 fm Closed						---	
South Central - Monterey	---	---	---	---	> 40 fm Closed							---	
South Central - Morro Bay	---	---	---	---	> 40 fm Closed							---	
South Region	---	---	> 60 fm Closed										

- Because of their overfished status, the proposed regulations would continue to prohibit retention of cowcod, canary and yelloweye rockfish at all times and in all areas.
- The 2-fish limit on lingcod would continue, with a minimum size limit of 24 inches. Slight changes to the lingcod season structure are also proposed.
- The proposed changes would allow for an increase in the daily bag limit for greenling to two fish, within the 10-fish aggregate limit for rockfish, cabezon and greenlings (the "RCG Complex"). Under current regulations, catches of greenling (all species of the genus *Hexagrammos*) in 2004 and 2005 only reached 74% and 41%, respectively, of the allowed recreational harvest in California of 34,200 pounds.

Results of a Department bag limit analysis indicate that increasing the greenling limit from 1 fish per angler to 2 fish per angler would allow more of the TAC to be taken, but should not result in the TAC being exceeded. Greenlings are taken primarily by shore and private boat fishermen in Northern California. Increasing the bag limit would allow these fishermen to take home an extra greenling and potentially increase the chance of anglers attaining their 10-fish RCG bag limit.

- Daily recreational bag limits that are presently effective for all other species of federal groundfish were re-affirmed by the PFMC.
- Fishing opportunity for California scorpionfish would be allowed year-round in waters south of Point Conception, increasing the length of the 2006 open season by two months. In recent years, fishing for this species has been constrained to as few as three months per year. The proposed change is the result of favorable stock assessment results indicating the California scorpionfish stock can be more fully utilized than it was under a data-poor and thus precautionary management strategy.
- Exceptions to closed groundfish seasons and depth constraints that apply for Pacific sanddabs and some other species of flatfish are proposed to continue, along with the requirement that not more than 12 hooks that are size #2 or smaller be used to fish for these species during times and in areas where groundfish are closed.
- Slightly different regulations are proposed for starry flounder fishing as the result of a new stock assessment. While the stock appears to be healthy, because it has now been federally assessed, pursuant to the federal groundfish plan it no longer may be categorized with the “other flatfish” for which there is no management and no OY. Therefore, amendments to Section 1.91 are proposed in order to move starry flounder from the “other flatfish” category in subsection (a)(10) into the “federally-managed flatfish” category in subsection (a)(11). The practical effect of the change in designations is that starry flounder would no longer be subject to the exception which allows them to be taken outside of groundfish fishing seasons, or in waters deeper than where groundfish fishing is authorized.
- Waters of the Cordell Bank (off Marin County) shallower than 100 fathoms in depth would continue to be closed to fishing for groundfish at all times.

## **2. Proposed State-Initiated Items to Continue**

The Department recommends the Commission continue existing regulations regarding the subject items that follow. The Department has determined that continuing these regulations is necessary 1) to achieve the federal Optimum Yields (OYs) within state waters, or alternatively, 2) that the regulation can be provided by the Commission as an exception to the federal rules, but will not jeopardize the attainment of the federal OYs in state waters. The federal OYs are set based on the best available biological and fishery data for species or groups of species of groundfish.

These special rules for California differ from the federal rules and apply within state waters only:

- The Department recommends continued alignment of sport fishing seasons and depth constraints for ocean whitefish, California sheephead and all greenlings of the genus *Haxagrammos* with the federally-established seasons and depths for groundfish. These species are known to co-occur with groundfish, and if fishing were permitted for these species in times and areas where groundfish are closed, interactions with groundfish could risk attainment of OYs.
- The Department recommends continuing the exception for leopard shark fishing in several bays and harbors throughout California. The exception allows year-round fishing for this species in designated areas only. The Department has previously evaluated the possible impacts of allowing leopard shark fishing when groundfish fishing is closed, and has determined that there is negligible risk posed relative to attainment of OYs for overfished groundfish species in state waters.
- The Department recommends continuing the prohibition on recreational fishing for federal groundfish in waters less than 10 fathoms in depth around the Farallon Islands to minimize interactions with seabirds. The measure was adopted by the PFMC in 2004, but cannot be implemented by NOAA fisheries as the agency lacks jurisdiction in this area, since these are shallow-water areas that fall completely within 0-3 miles of shore (exclusively state waters). Therefore, the Department recommends the Commission continue to include the prohibition in its regulations.

### **3. Proposed State-Initiated Items to Discontinue**

The items in this grouping are not presently included in the federal regulations, and therefore, there was no action taken on them by the PFMC when it adopted the 2007-08 groundfish specifications. However, these items are presently included in the Commission's regulations in state waters regarding federal groundfish. The Department recommends the Commission discontinue each of them.

- The Department proposes the Commission repeal the Finfish Transit Permit requirement specified in sections 27.67 and 701, Title 14, CCR, to simplify regulations. The permit requirement was established in 2001 at a time when groundfish fishing seasons off California differed dramatically. The permit allows sport fish that are legally taken in one Groundfish Management Area to be transported to an area that is closed to take and possession. Because the groundfish regulations are now fairly similar in all areas, the Department believes the permit requirement is no longer necessary when balanced against the costs to issue, enforce, and explain the permit requirement to the public and to recreational anglers.
- The Department also proposes elimination of existing gear restrictions that apply to fishing for all non-groundfish species in the California Rockfish Conservation Area, in order to simplify regulations and improve enforcement. Presently, regulations in Section 27.83, Title 14, CCR, require use of not more than one hook and six ounces of weight when fishing for non-groundfish species in times or areas where groundfish fishing is closed. There are also numerous exceptions provided to this rule. These regulations were originally established in order to ensure attainment of federal OYs in state waters, however, there are no corresponding federal rules that require such constraints.

Because the regulation and the exceptions have proven confusing to the angling public and difficult to enforce, and because it is not apparent that the measure is needed to attain federal OYs in state waters, the Department proposes the Commission eliminate the requirement.

#### **4. Shore Based and Diver Exceptions – Commission Decision is Needed**

In prior years, the Commission has provided two other state-initiated exceptions to the federal rules that apply in California waters only (see item 2 above), based on public comments received at its discussion hearings. The exceptions allow for: 1) take and possession of federal groundfish during closed seasons when angling from shore; and 2) divers to take federal groundfish during the closed seasons while spearfishing so long as they do not have fishing gear other than spear gear aboard their vessel or watercraft.

The reasons that proponents have suggested these exceptions can be provided by the Commission without jeopardizing attainment of federal OYs has varied over the years, depending on which species or species groups are most constraining. The Commission has been receptive and established the exceptions each year, usually in the interest of providing some additional opportunity to shore anglers who have stressed that they wish to see longer fishing seasons instead of larger allowable bag limits. In previous years, the PFMC has set federal groundfish fishing seasons that were as short as four months in some areas of the state, while bag limits remained at high levels. This decision by the PFMC to maintain higher bag limits in trade for shorter seasons followed testimony from boat-based anglers who asserted that reduced bag limits would be cost-prohibitive, particularly for Commercial Passenger Fishing Vessels.

While the shore-based and diver exceptions provided by the Commission have afforded these sectors of the recreational fishery the additional opportunity they request, the Department is aware that the two exceptions are difficult to enforce, and add complexity to the groundfish regulations. Consequently, the provisions reduce the overall effectiveness of closed fishing seasons, which are established for the purpose of reducing impacts to overfished stocks. Furthermore, drafting the regulations with the precision needed to make them enforceable without opening additional loopholes has also proven difficult.

As a result, the Department requests that the Commission affirmatively decide if it wishes to continue with each of the exceptions to the recreational groundfish regulations for State waters, considering that the federally-established fishing seasons have increased to between six and ten months of the year depending on the location.

#### **5. Proposed Non-Substantive Changes for Clarity and Enforceability**

Additional organizational changes to Title 14 groundfish regulations are proposed to improve clarity and enforceability, based on public and Department-initiated comments on the existing regulatory language.

The proposed regulations would now be organized so that there is a separate section for each of six Groundfish Management Areas, where the specific seasons, depth

constraints, special closures, special species restrictions and exceptions are defined that apply within that area (Proposed new sections 27.25 through 27.50). In previous years, regulations for all areas of the state have been lumped into the regulatory text of Section 27.82. The Department had received numerous comments that the Section was difficult for anglers to use, problematic for enforcement, and that it was not clear when certain provisions applied while others did not. Therefore, the proposed changes would split 27.82 into an all-purpose Section which includes the provisions that apply for all management areas (Section 27.20), and the six sections for each of the management areas that contain the specific season and depth regulations (sections 27.25 through 27.50).

In order for the sections of regulatory text regarding the groundfish management areas to appear in sequential order, the proposed regulatory amendments would relocate all groundfish management area regulations so that they commence with Section 27.20, under the heading of "Ocean Waters with Restricted Fishing."

If adopted, the new Section 27.20 will contain all definitions, general provisions and the procedural rules that apply generally to groundfish fishing seasons, depth constraints, and the process for making changes to any of the groundfish fishing regulations in-season. While there is some minor re-wording of these provisions proposed for clarity, there are no substantive changes proposed for these regulations (other than the changes made by the PFMC to the season structures and depth constraints). Regarding the present text of Section 27.20, which lists the Section's title, authority, and reference citations but contains no regulatory text (it was repealed in 2005), the title and authority/reference items would be repealed, and then the title, authority/reference and amended regulatory text of Section 27.82 would be substituted. Therefore, the proposed regulatory text shows that existing Section 27.82 has been both amended, and re-numbered.

Additionally, the remaining items listed in present regulations of sections 27.25, 27.30, 27.35, 27.40, 27.45 and 27.50 would be repealed and replaced with the groundfish season and depth regulations, special closures, and exceptions for the Northern Groundfish Management Area, the North-Central Groundfish Management Area, the Monterey South-Central Groundfish Management Area, The Morro Bay South-Central Groundfish Management Area, the Southern Groundfish Management Area, and the Cowcod Conservation Areas, respectively.

The proposed structural and organizational regulatory changes would also include amending and re-numbering the current regulations of Section 27.83, the California Rockfish Conservation Area (CRCA), to new Section 27.51. This change would allow the CRCA regulations to sequentially follow the management area regulations, which follows logically. The old title and authority/reference listings that presently appear for Section 27.51 would be repealed.

The proposed amendments would also strike the remaining titles and authority/reference citations listed for section 27.42, 27.52 and 27.53; so that the Groundfish Management Area and CRCA sections of the regulations can all appear in sequential order without interruption.

Additionally, prior versions of the Title 14 regulatory language applicable to groundfish

fishing made only a general reference to “federal groundfish.” While the 90 species of federal groundfish are defined in Section 1.91 of Title 14, and reference is made to this Section repeatedly in the current regulatory text, there still appears to be difficulty on the part of the angling public in understanding that the season and depth regulations generally apply to all 90 species.

Reports indicated that it was not intuitively obvious to anglers that some species of fish, such as some sharks, skates, and flatfish, are included in the definition of “federal groundfish”, while other species are not. To address these concerns, the Department proposes adding new Title 14 sections for the remaining federal groundfish species that previously were not listed in a specific section. The addition of these sections is expected to improve clarity of the regulations that apply for each particular species of federal groundfish, as follows:

- Section 28.48 would be added to clarify regulations that apply to the take and possession of Pacific sanddab, rock sole, sand sole, butter sole, curlfin sole, rex sole, and flathead sole.
- Section 28.49 would be added to clarify regulations that apply to the take and possession of Dover sole, English sole, Petrale sole, arrowtooth flounder, and starry flounder.
- Section 28.51 would be added to clarify regulations that apply to the take and possession of spiny dogfish and soupfin shark.
- Section 28.52 would be added to clarify regulations that apply to the take and possession of big skates, California skates, and longnose skates.
- Section 28.53 would be added to clarify regulations that apply to the take and possession of ratfish, rattails and codlings.
- Section 28.57 would be added to clarify regulations that apply to the take and possession of Pacific cod, Pacific whiting, sablefish, and thornyheads.

It is important to note that although the above new sections are proposed for addition, the substance of the regulations themselves is not “new”. In effect, there is no change to regulations presently established in Section 27.82 that govern take and possession of these species. However, listing the species in specific sections is consistent with the organization of existing regulations for other federal groundfish and associated species. See: California sheephead (Section 28.26), lingcod (Section 28.27), cabezon (Section 28.28), greenlings (Section 28.29), California scorpionfish (Section 28.54), rockfish (Section 28.55) leopard shark (Section 28.56), and ocean whitefish (Section 28.58).

**NOTICE IS GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Hubbs-Sea World Research Institute, Shedd Auditorium, 2595 Ingraham Street, San Diego, California, on Friday, October 6, 2006 at 8:30 a.m., or as soon thereafter as the matter may be heard.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the City Council Chambers, 777 Cypress Avenue, Redding, California, on Friday, November 3, 2006, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before October 27, 2006 at the address given below, or by fax at (916) 653-5040, or by e-mail to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Written comments mailed, faxed or e-mailed

to the Commission office, must be received before 5:00 p.m. on November 1, 2006. All comments must be received no later than November 3, 2006, at the hearing in Redding, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to John Carlson, Jr., or Sherrie Koell at the preceding address or phone number. **Ms. Marija Vojkovich, Marine Region, Department of Fish and Game, phone (805) 568-1246, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

#### Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

#### Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Modifying the state's regulations to conform to new federal rules is proposed to aid enforcement and improve clarity and public understanding.

- (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:

A minor but unquantified positive economic impact is expected to result from extended recreational groundfish fishing seasons and allowable depths beginning in 2007. Expected beneficiaries would be tackle retailers and sportfishing businesses, and those businesses related to tourism or boating which may enjoy some indirect benefits of increased opportunities.

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

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None.

- (f) Programs Mandated on Local Agencies or School Districts: None.

- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.

- (h) Effect on Housing Costs: None.

#### Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

#### Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: August 29, 2006

John Carlson, Jr.  
Executive Director