

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

**(Continuation of California Notice Register 2010, No. 36-Z,
and Meetings of August 18, September 16 and October 21, 2010.)**

NOTE: The Fish and Game Commission (Commission) is exercising its powers under Section 202 of the Fish and Game Code as the following changes to the proposed regulations may not be available to the public for the full public comment period prior to adoption.

(Note: See Updated Informative Digest changes shown in **bold face** type starting on page 10 of this notice.)

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 215, 220, 240, 702, 7071, 8587.1 and 8588 of the Fish and Game Code and to implement, interpret or make specific sections 97, 200, 202, 205, 206, 215, 220, 240, 1802, 5508, 5509, 7056, 7071, 8585.5, 8586, 8587, 8587.1 and 8588, Fish and Game Code; 50 Code of Federal Regulations (CFR) Part 660, Subpart G; 50 CFR 660.384; and Section 27.20, Title 14, California Code of Regulations, proposes to amend sections 27.20, 27.25, 27.30, 27.32, 27.35, 27.45, 27.50, 27.65, 28.26, 28.27, 28.28, 28.29, 28.48, 28.49, 28.54, 28.55, 28.56, 28.58, 28.65, 52.10 and 150.16, and repeal sections 27.40, 28.51, 28.52, 28.53, and 28.57, Title 14, California Code of Regulations (CCR), relating to recreational and commercial fishing regulations for federal groundfish and associated species for consistency with federal rules.

Updated Informative Digest/Policy Statement Overview

Under California law, the California Fish and Game Commission (Commission) adopts regulations for recreational groundfish fishing in state waters zero to three miles from shore. The Commission has authority over commercial nearshore fishing, whereas the legislature has authority over other commercial fishing in state waters. The Pacific Fishery Management Council (Council), consisting of representatives from West Coast states, a tribal representative, and the National Oceanographic and Atmospheric Administration (NOAA) Fisheries, recommends management measures for jointly managed fisheries operating in federal waters three to 200 miles from shore. These management measures are established as federal regulations by the Secretary of Commerce. For consistency, ease of enforcement, and to avoid confusion on the part of recreational and commercial fishermen, the Commission routinely adopts regulations to bring state law into conformance with federal rules for groundfish and other federally-managed species. The proposed changes described in this action would make the requisite changes to make state regulations consistent with new federal regulations that are expected to be effective in January, 2011.

Groundfish and Associated Species

There are 90 species of federal groundfish that occur in state and federal waters off the coast of California, including lingcod, several rockfishes, cabezon, kelp greenling, California scorpionfish, some flatfishes, and some sharks. These 90 species are managed primarily by the Council under the Pacific Coast Federal Groundfish Fishery Management Plan (Magnuson-Stevens

Fisheries and Conservation Act 16 U.S.C Section 1851 et seq. or “Magnuson”) and are defined in Section 1.91, Title 14, CCR. Harvest of California scorpionfish, cabezon, nearshore rockfishes, and greenlings, all of which are federal groundfish, occurs primarily in state waters. Management guidelines for these species are also included in the state’s Nearshore Fishery Management Plan (NFMP). California develops regulations for state waters that conform to, or are more conservative than, federal regulations.

California sheephead, ocean whitefish and all greenlings of the genus *Hexagrammos* are species that occur almost exclusively within state waters in California and are managed by the Department of Fish and Game (Department). These state-managed species, otherwise identified as “associated species” are known to be caught with federal groundfish, and thus are regulated in conjunction with federal groundfish by the state. The same regulations that apply to the 90 species of federal groundfish also apply to these associated species pursuant to regulations in Title 14 of the California Code of Regulations (CCR).

Managing to Annual Catch Limits

Past and current management of federal groundfish and associated species include annual limits on take known as optimum yields (OYs); in the NFMP these limits are called Total Allowable Catch (TAC). In response to the recent reauthorization of the Magnuson Act, the Council revised the annual limits to specifically account for scientific and management uncertainty. These new harvest limits replace the OYs and are called Annual Catch Limits (ACLs), a federal take limit that accounts for all sources of fishing related mortality and is set at a level that is expected to prevent overfishing. Recreational and commercial sector-specific allocation limits are called harvest guidelines (HGs).

The Council develops groundfish regulations on a biennial basis. At its June 2010 meeting, the Council adopted new ACLs for some federal groundfish species along with HGs for the different fishery sectors for the 2011 and 2012 cycle. Management measures (e.g., seasons, depth constraints, bag limits) were also decided by the Council to keep within the new limits for each state and sector.

Stock Assessment Outcomes

Federal catch limits are adopted by the Council and established in regulation by the Secretary of Commerce. For state-managed nearshore species (Section 1.90, Title 14, CCR), more restrictive limits may apply in California depending on application of the fishery control rules of the NFMP, and set at appropriate levels to maintain healthy stocks using the state’s standards for sustainability.

Overfished Stocks

If a stock assessment reveals that the current population size is at or below 25 percent of the unfished biomass (the historic population size), it is considered “overfished”.

Of the six groundfish species in California that are considered overfished species, yelloweye rockfish is the most constraining to the California recreational fishery.

For areas where yelloweye rockfish are most often encountered, proposed fishing seasons and depth constraints are similar to status quo. The depth constraint remains at 20 fm north of Point Arena and was not relaxed in areas further south to avoid yelloweye rockfish encounters. The Northern Management Area fishing season will only be extended by one and a half months.

Cowcod remains in an overfished status and continues to constrain the season length and allowable fishing depth to 60 fm in the Southern Management Area (Santa Barbara, Ventura, Los Angeles, Orange and San Diego Counties). The Cowcod Conservation Area (CCA) management area already protects a large portion of offshore southern California waters, where cowcod are most likely to occur. The CCA now has a proposed depth constraint of 30 fm.

Precautionary Stocks

The Council adopted new cabezon ACL values of 179 metric tons (394,600 pounds) for 2011 and 168 metric tons (370,400 pounds) for 2012 based on the new stock assessment information.

However, according to the NFMP, California is required to manage more conservatively for stocks whose depletion level is “precautionary,” meaning the stock is below the NFMP’s “healthy” target of 60 percent of unfished levels. The new cabezon assessment suggests the current population level is only 48 to 57 percent of unfished biomass in northern and southern California respectively. Following the NFMP’s more restrictive control rules that apply when stocks are above 40 percent and below 60 percent of unfished levels, the Department is proposing that the Commission set the annual cabezon TAC at 148 metric tons (326,200 pounds).

The proposed TAC would be significantly higher than the current TAC established in Section 52.10, Title 14, CCR (152,100 pounds or approximately 69 metric tons). Because the TAC is allocated 39 percent to the commercial sector and 61 percent to the recreational sector, the allocations to each sector that presently are established in Section 52.10 would be adjusted proportionally so that the recreational fishery would be allowed 199,000 pounds, and the commercial fishery 127,200 pounds.

Based on the increased ACL, for the recreational sector of the fishery the Council increased the statewide cabezon bag limit from two to three fish within the ten fish rockfish, cabezon, greenling (RCG) bag limit. Under a 3-fish bag limit, projected catches are still anticipated to fall below the recreational allocation of 199,000 pounds.

Commercial harvest is regulated to provide seasonal take of cabezon with cumulative trip limits per individual permittee. In August 2003, the Commission established cumulative trip limits for cabezon similar to the federal management approach for nearshore rockfish by limiting each permittee’s take to a specified maximum level in a two-month period. The trip limits need to be adjusted upward to accommodate the proposed increase to the commercial allocation. The Department has proposed a range of trip limit options that would accommodate this increase. The range would allow the Commission to select any value between zero and 1000 pounds for each of five two-month cumulative limit periods.

Blue rockfish is another “precautionary” species and its status constrains central California. Although blue rockfish is not as constraining as it was in 2009–2010, blue rockfish still limits the 2011–2012 season length in Management Areas from Point Arena to Point Conception. The Council approved a moderate increase in the season length in Central California (Point Arena to Point Conception) in order to stay within the new HG of 241 metric tons for blue rockfish .

Healthy Stocks

In June, the Council greatly increased the California recreational HG for lingcod from 422 metric tons in 2010 to 1151 metric tons in 2011 and 2012. In order to maximize opportunity for lingcod while continuing to avoid overfished species, the Council chose to remove the lingcod spawning closure for all modes of recreational fishing in California. To allow for additional retention of lingcod, the Council adopted a new recreational size limit for lingcod of 22 inches (down from 24 inches) in an effort to maximize fishing opportunity and make regulations consistent among California, Oregon, and Washington. The new proposed fillet length is 14 inches.

The Council chose to increase the scorpionfish depth constraint from 40 to 60 fm in the Southern Management Area during January and February, making the depth constraint 60 fm year-round—consistent with the rest of the year.

Increased Fishing Opportunity

Based on the outcomes of recent stock assessments, and resulting increases to ACLs, the Council increased recreational fishing opportunities where appropriate. The resulting 2011 and 2012 season structure and depth constraints adopted by the Council are provided in Table 1. The proposed regulatory changes in Table 1 will affect boat-based anglers targeting groundfish and associated species; shore-based fishing and spearfishing continue to be allowed year-round for these species.

Table 1. Proposed season structure and depth constraints for the California recreational groundfish fishery for 2011 and 2012, adopted for federal waters by the Council in June 2010.

Management Area	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Northern	CLOSED					May 14 (2011) or May 12 (2012)–Oct 31 < 20 fm					CLOSED	
Mendocino	CLOSED					May 14 (2011) or May 12 (2012)–Aug 15 < 20 fm			CLOSED			
San Francisco	CLOSED					Open Jun 1–Dec 31 < 30 fm						
Central	CLOSED					Open May 1–Dec 31 < 40 fm						
Southern*	CLOSED	Open Mar 1–Dec 31 < 60 fm										
CCA*	CLOSED	Open Mar 1–Dec 31 < 30 fm**										

* California scorpionfish is open year-round

** Only nearshore and shelf rockfish, lingcod, cabezon, California scorpionfish, greenlings, California sheephead, and ocean whitefish are allowed in the CCA.

The Council adopted a 30 fm depth constraint for the Cowcod Conservation Area (CCA), rather than the current 20 fm, meaning all areas within the CCA that are deeper than 30 fm will continue to be closed to fishing for groundfish and associated species. The current 20 fm depth constraint is defined using general depth contours, while the 30 fm depth constraint will be defined by Federal waypoints. Waypoints are preferable for angler compliance and enforceability.

Only four areas within the CCA currently open to groundfish fishing will be affected by increasing the allowable fishing depth to 30 fm: Santa Barbara and San Nicolas Islands, and Tanner and Cortes Banks. Areas such as Osborne Bank, which are currently open to 20 fm but drop off into deeper depths too quickly to allow compliance, will be closed to fishing.

The Council decided to expand the list of rockfish species that may be retained within the CCA to increase fishing opportunity south of Point Conception. Currently, only nearshore species are

allowed and all shelf rockfish encountered within the CCA must be discarded. The Council adopted new regulations to allow for the take and possession of shelf rockfish, as defined in Section 1.91, Title 14, CCR, in the CCA.

Regulation Simplification and Consistency

In addition to changes that are expected to provide increased fishing opportunity, other changes to California recreational fishing regulations were adopted to simplify regulations. The Council removed the 10 fm depth closure around the Farallon Islands and Noonday Rock in order to simplify regulations. Of the habitat currently closed to fishing under this regulation, the vast majority is now part of the North Farallon Islands State Marine Reserve and Southeast Farallon Islands State Marine Reserve. The reserves were established May 1, 2010, and prohibit fishing for groundfish and associated species. The limited area outside the reserves in less than 10 fm is not a concern for fishery management or conservation and would remain open to groundfish fishing under the specified depth constraint and season length in that Management Area.

To simplify the names used to describe the recreational Management Areas, the longer, less intuitive status quo names will be replaced with single word names that relate to the geographic location of the area. In addition, the Council chose to combine the Monterey (from Pigeon Point to Point Lopez) and Morro Bay (Point Lopez to Point Conception) South-Central Groundfish Management Areas into one area.

The Department proposes to combine regulations concerning minor federal groundfish into one section of Title 14, CCR for simplification. These species include: Petrale sole, starry flounder, soupfin shark, Dover sole, English sole, arrowtooth flounder, spiny dogfish, big skate, California skate, longnose skate, ratfish, Pacific rattail, finescale codling, Pacific Cod, Pacific whiting, sablefish, longspine thornyhead and shortspine thornyhead.

For added consistency, the Council adopted gear restrictions such that no more than one line and two hooks may be used to recreationally take cabezon and greenlings. This action will make angling gear restrictions consistent among cabezon, greenlings, rockfish and lingcod, which are commonly caught and managed together as the RCG complex.

The specific proposed Title 14 regulation changes identified in this regulatory package (outlined below) are necessary in order to make the State's recreational groundfish regulations consistent with the new federal rules that will be established by NMFS following the Council's actions. The proposed changes are necessary to provide the best fishing opportunities possible while staying within federal and state harvest limits.

- Modifications to Section 27.20, Groundfish Management Areas, Seasons, Depth, Exceptions, and Fishery Closure/Rule Change Process Described.

Existing regulations in subsection 27.20(e) describe the fishery closure and/or rule change process. A harvest limit includes optimum yield, recreational HG, and recreational harvest target. Proposed changes would include "annual catch limit" and "annual catch target" as valid types of harvest limits.

- Modifications to Section 27.25, Northern Groundfish Management Area.

Existing seasons, depth constraints, and special closure areas regulations (subsection 27.25(b)) establish a May 15 through September 15 season with a maximum depth constraint of 20 fm

(120 feet) for groundfish and associated species for the waters between the Oregon border and the 40° 10' North Latitude management line near Cape Mendocino (Humboldt County). Proposed regulations would expand the fishing season for all groundfish and associated species by changing the season duration to May 14, 2011 (May 12, 2012) through October 31, and maintain the maximum depth constraint of 20 fm (120 feet).

- Modifications to Section 27.30, North-Central North of Point Arena Groundfish Management Area.

The name of the North-Central North of Point Arena Groundfish Management Area, defined in subsection 27.30(a), would be changed to the "Mendocino Groundfish Management Area" for brevity and ease of use.

Existing seasons, depth constraints, and special closure areas regulations (subsection 27.30(b)) establish a May 15 through August 15 season for groundfish and associated species with a maximum depth constraint of 20 fm (120 feet) for the waters between the 40° 10' North Latitude management line near Cape Mendocino (Humboldt County) and Point Arena (Mendocino County). Proposed regulations would keep the fishing season for all groundfish and associated species near status quo, only changing the opening date to May 14, 2011 (May 12, 2012) rather than May 15, while maintaining the maximum depth constraint of 20 fm (120 feet).

- Modifications to Section 27.32, North-Central South of Point Arena Groundfish Management Area.

Section 27.32 would be renumbered as Section 27.35.

The name of the North-Central South of Point Arena Groundfish Management Area, defined in subsection 27.32(a) would be changed to the "San Francisco Groundfish Management Area" in subsection 27.35(a).

Existing seasons, depth constraints, and special closure areas regulations in subsection 27.32(b) establish a June 13 through October 31 season for groundfish and associated species with a maximum depth constraint of 30 fm (180 feet) for the waters between Point Arena (Mendocino County) and Pigeon Point (San Mateo County). Regulations proposed for subsection 27.35(b) would expand the fishing season for all groundfish and associated species by changing the season length to June 1 through December 31, and maintain the maximum depth constraint of 30 fm (180 feet).

Regulations in Subsection 27.32(b)(4) establish a 10 fm or less fishing closure around the Farallon Islands and Noonday Rock. The proposed regulations would eliminate the 10 fm depth closure. Areas shallower than 10 fm within the Northern Farallon Islands or the Southeast Farallon Islands State Marine Reserves would continue to be closed; areas shallower than 10 fm outside the reserves would allow for groundfish fishing.

- Modifications to Section 27.35, Monterey South-Central Groundfish Management Area and Section 27.40, Morro Bay South-Central Groundfish Management Area.

Section 27.35 would be renumbered as Section 27.40.

Proposed regulations would combine the Monterey South-Central Groundfish Management Area, defined in subsection 27.35(a), and the Morro Bay South-Central Groundfish

Management Area, defined in Section 27.40(a) into one management area. The new management area would be named the “Central Groundfish Management Area” and defined in 27.40(a) as ocean waters between Pigeon Point (San Mateo County) and Point Conception (Santa Barbara County).

Existing seasons, depth constraints, and special closure areas regulations (subsections 27.35(b) and 27.40(b)) establish a May 1 through November 15 season for groundfish and associated species, with a maximum depth constraint of 40 fm (240 feet), in both the Monterey and the Morro Bay South-Central Groundfish Management Areas. Regulations proposed for the new Central Groundfish Management Area in subsection 27.40(b) would expand the fishing season for all groundfish and associated species by changing the season length to May 1 through December 31. The maximum depth constraint would be maintained at the status quo of 40 fm (240 feet).

- Modifications to Section 27.45, Southern Groundfish Management Area.

Existing seasons, depth constraints, and special closure areas regulations (Section 27.45(b)) establish a March 1 through December 31 season for groundfish and associated species with a maximum depth constraint of 60 fm (360 feet) for the waters between Point Conception (Santa Barbara County) and the U.S.-Mexico border, except that California scorpionfish may be taken in January and February with a maximum depth constraint of 40 fm (240 feet). Proposed regulations would keep the open fishing season at status quo, but increase the 40 fm California scorpionfish depth constraint to 60 fm. This action would make the Southern California scorpionfish depth constraint (60 fm) consistent with the Southern groundfish depth constraint (60 fm), and California scorpionfish would continue to be open year-round.

- Modifications to Section 27.50, Cowcod Conservation Areas

Existing seasons and depth constraint regulations (subsection 27.50(b)) establish a March 1 through December 31 season for specific groundfish and associated species with a maximum depth constraint of 20 fm (120 feet) for the waters inside the CCA as defined by general depth contour lines, except California scorpionfish may be taken year-round. Proposed regulations would increase the depth constraint inside the CCA from 20 fm to 30 fm year-round, as defined by Federal waypoints. Proposed regulations would add shelf rockfish, as defined in subsection 1.91(b), to the list of allowable species or species groups to be taken or possessed March 1 through December 31.

- Modifications Concerning Lingcod to Sections 27.25, Northern Groundfish Management Area; 27.30, North-Central North of Point Arena Groundfish Management Area; 27.32, North-Central South of Point Arena Groundfish Management Area; 27.35, Monterey South-Central Groundfish Management Area; 27.40, Morro Bay South-Central Groundfish Management Area; 27.45, Southern Groundfish Management Area; and 27.50, Cowcod Conservation Areas.

Existing lingcod season regulations in subsections 27.25(c)(3), 27.30(c)(2), 27.32(c)(3), 27.35(c)(3), 27.40(c)(3), 27.45(c)(3), and 27.50(c)(2) establish a lingcod spawning closure during January through March, and December for shore-based anglers. Proposed regulations would allow for take and possession of recreationally caught lingcod during these months from beaches, banks, piers, jetties, breakwaters, docks, and other man-made structures connected to the shore.

Existing lingcod season regulations described in subsections 27.25(c)(4), 27.30(c)(3), 27.32(c)(4), 27.35(c)(4), 27.40(c)(4), 27.45(c)(4), and 27.50(c)(3) establish a lingcod closure during January through March, and December for divers and spearfishers. Proposed regulations would remove the diving/spearfishing provision so that recreational divers and spearfishers would be allowed to take and possess lingcod during these months.

Existing lingcod season regulations in subsections 27.45(b)(1), and 27.50(b)(1) through 27.50(b)(4) establish a lingcod spawning closure during January through March, and December for boat-based anglers in the Southern Groundfish Management Area and the CCA. Proposed regulations would allow for the statewide take and possession of recreationally caught lingcod during these months from any vessel when the season for groundfish and associated species is open by management area.

- Modifications to Section 27.65, Filleting Fish on Vessels

Existing regulations in subsection 27.65(b)(3) establish a 16 inch minimum fillet length for lingcod filleted on a vessel. Proposed regulations would lower the minimum lingcod fillet length to 14 inches when filleted on a vessel. This action is necessary to accommodate the decrease in the statewide lingcod minimum size limit from 24 inches to 22 inches total length. Each fillet would still need to bear intact a one-inch square patch of skin for identification.

- Modifications to Section 28.26 California Sheephead; Section 28.27 Lingcod; Section 28.28 Cabezon; Section 28.29 Kelp Greenling, Rock Greenling; Section 28.49 Dover Sole, English Sole, Petrale Sole, Arrowtooth Flounder, and Starry Flounder; Section 28.51 Spiny Dogfish, Soupin Shark; Section 28.52 Big Skates, California Skates, and Longnose Skates; Section 28.53 Ratfish, Rattails and Codlings; Section 28.54 California Scorpionfish (Sculpin); Section 28.55 Rockfish (Sebastes); Section 28.56 Leopard Shark; Section 28.57 Pacific Cod, Pacific Whiting, Sablefish, and Thornyheads; and, Section 28.58 Ocean Whitefish.

The proposed regulations would combine Sections 28.49 Dover Sole, English Sole, Petrale Sole, Arrowtooth Flounder, and Starry Flounder; Section 28.51 Spiny Dogfish, Soupin Shark; Section 28.52 Big Skates, California Skates, and Longnose Skates; Section 28.53 Ratfish, Rattails and Codlings; and Section 28.57 Pacific Cod, Pacific Whiting, Sablefish, and Thornyheads into one section, Section 28.49.

Existing regulations establish seasons and depth constraints for these species or species groups. Additionally, some species or species groups have size, bag limits, exceptions, and/or gear restrictions. The proposed regulations would change season dates and/or depth constraints to match the proposed regulations for the different Groundfish Management Areas discussed above.

- Modifications to Section 28.27, Lingcod.

Subsections 28.27(a)(1) through 28.27(a)(7) define the open season for lingcod in each Management Area. Existing regulations in these subsections would be modified to make the lingcod season consistent with the general groundfish season as described above.

Existing regulations in subsection 28.27(c) establish a minimum size limit of 24 inches for lingcod statewide. The proposed regulations would modify the lingcod minimum size limit from 24 inches to 22 inches.

Existing regulations in subsection 28.27(d) establish a method of take for targeting lingcod. The allowable gear used to take lingcod is defined as not more than two hooks and one line. The proposed regulations would clarify these gear restrictions apply only when recreational angling for lingcod. Lingcod take by hand or while diving or spearfishing would continue to be allowed.

- Modifications to Section 28.28, Cabezon.

Existing regulations in subsection 28.28(b) provide for a two fish bag limit within the ten fish aggregate bag limit for rockfish, cabezon and greenling (the RCG complex). Proposed regulations would increase the cabezon bag limit from two fish to three fish, within the RCG complex bag limit.

Modifications to subsection 28.28(d) would define an allowable method of take for cabezon while angling. This action would restrict the cabezon method of take to not more than two hooks and one line, consistent with the lingcod and rockfish regulations.

- Modifications to Section 28.29, Kelp and Rock Greenling.

Modifications to subsection 28.29(d) would define an allowable method of take for kelp and rock greenling while angling. This action would restrict the kelp and rock greenling method of take to not more than two hooks and one line, consistent with the lingcod and rockfish regulations.

- Modifications to Section 28.54, California Scorpionfish (Sculpin).

Existing open areas, seasons, and depth constraints regulations (subsection 28.54(a)(6)) establish a January 1 through December 31 season for scorpionfish for the Southern Groundfish Management Area with a maximum depth constraint of 60 fm (360 feet) during March through December and a maximum depth constraint of 40 fm (240 feet) during January and February. Proposed regulations would change the January and February depth constraint for California scorpionfish to 60 fm (360 feet).

- Modification to Section 28.55 Rockfish (Sebastes).

Existing regulations in subsection 28.55(d) establish a method of take for targeting rockfish. The allowable gear used to take rockfish is defined as not more than two hooks and one line. The proposed regulations would clarify these gear restrictions apply only when recreational angling for rockfish. Rockfish take by hand or while diving or spearfishing would continue to be allowed.

- Modification to Section 28.65, General Fin Fish Gear Restrictions.

Regulations in subsection 28.65(c) define the angling gear restriction when rockfish or lingcod are aboard or in possession as only one line and not more than two hooks. Proposed regulations would extend this gear restriction to cabezon and kelp and rock greenlings.

- Modifications to Section 52.10, Take of Sheephead, Cabezon and Greenling.

Current regulations in subsection 52.10(a)(2) set the annual TAC for cabezon at 152,100 pounds (69 metric tons). Proposed changes would increase the statewide TAC to 326,200 pounds (148 metric tons); consistent with the NFMP guidelines and the higher ACL adopted by the Council.

The commercial and recreational fisheries are each allocated a specified portion of the TAC in current regulation—subsections 52.10(a)(2)(A and B). Thus, the allocated harvest amounts for

the commercial and recreational fisheries would need to be adjusted proportionally upward to account for the increase to the TAC. The current allocation ratio is 39 percent to the commercial sector and 61 percent to the recreational sector. This existing ratio was applied to the proposed new TAC to generate proposed sector allocations:

- The commercial fishery allocation would increase from 59,300 to 127,200 pounds.
- The recreational fishery allocation would increase from 92,800 pounds to 199,000 pounds.

- Modifications to Section 150.16, Commercial Take of Nearshore Fishes.

The current cabezon two month cumulative trip limits per individual, established in subsection 150.16(e)(6)(a), are designed to keep catches to the allowable commercial catch of 59,300 pounds and are as follows:

- January–February: 300 pounds
- March–April: 100 pounds
- May–June: 250 pounds
- July–August: 150 pounds
- September–October: 900 pounds
- November–December: 100 pounds

The Department has proposed a range of trip limit options to accommodate the proposed increase to the commercial allocation in Section 52.10. The proposed values per each two-month period range from 0 to 1,000 pounds. The Commission may select values from that range which will provide for commercial fishing yet ensure the commercial fishery does not exceed its new higher annual allocation (see above under Modifications to Section 52.10) and which will continue to align the cabezon season with the minor nearshore rockfish season set by the Council.

Additional changes are proposed to clarify and simplify the regulations.

The Department conducted a survey of nearshore commercial fishery permittees in July 2010 requesting input on commercial cabezon trip limits. Of the 167 surveys that were mailed, 60 were completed and returned. Based on the proposed 2011-2012 total allowable catch for the commercial fishery, the survey responses, the number of permittees, and past levels of fishery harvest and participation, the Department made a cabezon trip limit recommendation to the Commission at its adoption hearing on October 21, 2010, from the range of values noticed in the ISOR.

Consistent with the Department's recommendation, the Commission adopted the following cabezon trip limits:

- January–February: 300 pounds**
- March–April: 100 pounds**
- May–June: 500 pounds**
- July–August: 500 pounds**
- September–October: 500 pounds**
- November–December: 300 pounds**

At its October 21, 2010 adoption hearing, the Commission also adopted the other regulatory changes as originally proposed and as recommended by the Department.

These actions were consistent with actions taken by the Pacific Fishery Management Council (Council) in June 2010. Procedurally, recommendations for federal fishing regulations are provided by the Council but established by NOAA Fisheries Service. It was anticipated that both the state and federal rule changes would be implemented in time to be effective by January 1, 2011.

In early November 2010, the Department was notified by NOAA Fisheries that it would be unable to implement the recommended changes to the federal rules by January 2011 as anticipated. The reasons provided for this delay were twofold: 1) The Draft Environmental Impact Statement (DEIS) contained deficiencies that could not be cured in time to meet the desired implementation date, and 2) Some of the PFMC recommendations needed additional scrutiny by NOAA Fisheries to ensure the measures were fully compliant with a recent court order on overfished stocks, which had been issued after some of the proposed rule changes were analyzed in the course of the DEIS development and review process.

NOAA Fisheries further advised that if their internal review concluded that any of the proposed changes were at all inconsistent with the court order, NOAA Fisheries would disapprove any such specific Council recommendation and instead maintain the status quo.

Due to this delay in the implementation of the federal rules, the Commission staff, in consultation with the Office of Administrative Law (OAL), withdrew the Commission's rulemaking file which would implement the state's regulatory changes pending the outcome of NOAA Fisheries' review of the Council's proposed amendments.

On April 29, 2011, NOAA Fisheries issued a written statement indicating approval of all but two of the proposed changes to federal recreational fishing regulations that apply in waters off California. Although the two proposed measures were considered separately, both were specific to waters in the Cowcod Conservation Areas (CCA) off Southern California; and would be incorporated into Section 27.50, Title 14, CCR and several other species-specific sections. The first proposal would have allowed shelf rockfish taken in waters open to groundfish fishing to be retained (presently only nearshore rockfish may be retained in the CCA), and the second proposal would have extended the allowable groundfish fishing depth in the CCA out to 30 fathoms (presently the limit is 20 fathoms).

The reason stated by NOAA Fisheries for denial of both the measures was "because the Council's analyses do not allow us to conclude that the changes will not result in increased mortality on cowcod. The impacts on juveniles are particularly uncertain, and increased impacts on juveniles could potentially delay rebuilding. In addition, because the cowcod biomass is extremely low, the Region [NOAA Fisheries' Northwest Region] believes that any measures that potentially increase cowcod mortality require better information to support such a change. NMFS intends to work with the state of California and the affected industry to design a sampling regime that would provide more information while maintaining protections for cowcod."

Due to the disapproval of these two items by NOAA Fisheries, the final federal rules will maintain the status-quo provisions in the CCA – namely, that only nearshore rockfish may be retained in the areas where groundfish fishing is allowed, and that groundfish

fishing is only allowed in waters out to 20 fathoms in depth. The effective date of the federal rules is not known at this time but is anticipated to be within the month of May.

At its meeting on May 5, 2011, the Fish and Game Commission continued its own action on recreational groundfish fishing so that the NOAA Fisheries' denial of the two CCA provisions can be considered and final Commission action can be taken on the state regulations.

When the Commission took action on October 21, 2010, it did so with the intent that the proposed Title 14 changes would fully align with changes to federal rules. Because NOAA fisheries disapproved the two CCA measures recommended by the Council and Department, and that information was not known or anticipated by the Commission at its October 21 adoption hearing, the Commission will consider adoption of the two CCA provisions separately at the scheduled teleconference hearing. This Continuation Notice provides notice of and opportunity to comment on only the Commission's reconsideration of these two proposed changes that would affect fishing in the CCA; and not the suite of changes contained in the whole package.

The revised proposed regulatory language reflects that the San Francisco Groundfish Management Area will open on June 1 or upon approval of the regulatory package by the Office of Administrative Law.

In addition, a typographical correction was made to reference sections listed for Section 28.29 to show Sections 200 and 202 of the Fish and Game Code as being added.

Regulatory language originally proposed to be added is shown in single underline format. Regulatory language originally proposed to be deleted is shown in ~~single strikeout format~~. Regulatory language newly proposed to be added is shown in shaded double underline format. Regulatory language newly proposed to be deleted is shown in ~~shaded double strikeout format~~. Regulatory language originally proposed to be added, and now proposed to be deleted, is shown in ~~shaded single underline double strikeout format~~.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a teleconference hearing originating from the Fish and Game Commission Conference Room, State of California Resources Building, 1416 Ninth Street, Room 1320, Sacramento, California, on Thursday, May 26, 2011, at 11:00 a.m., or as soon thereafter as the matter may be heard. Written comments may be submitted at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on May 25, 2011. All comments must be received no later than May 26, 2011, at the hearing in Sacramento, 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, Jon K. Fischer, Acting Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899.

Please direct inquiries to Jon K. Fischer or Sherrie Fonbuena at the preceding address or phone number. **Marija Vojkovich, Regional Manager of the Department of Fish and Game's Marine Region, (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 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. The proposed management actions would relax recreational groundfish fishing regulations in all of the Groundfish Management Areas for one or more fish species and may have positive impacts to some businesses in California. Sport fishing business owners, boat owners, tackle store owners, boat manufacturers, vendors of food, bait, fuel and lodging, and others that provide goods or services to those that recreationally pursue groundfish off California may be positively affected to some degree from increases to business if the 2011 and 2012 seasons are adopted, relative to previous management cycles. However, anticipated impacts are speculative and would vary considerably by geographic location and by the nature and extent of the regulatory action taken.

- (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:

The proposed regulatory action could produce some impact on the creation or elimination of jobs or businesses that rely on recreational or commercial fishing for groundfish and associated species. However, the degree of impact is highly speculative in nature and cannot be quantified. See response to (a) above.

- (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, Government Code: 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. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

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

Jon K. Fischer
Acting Executive Director

Date: May 11, 2011