

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

Amend Sections 28.20 and 28.95,
Title 14, California Code of Regulations
Re: Pacific halibut

I. Date of Initial Statement of Reasons: December 24, 2014

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing: Date: December 3, 2014
Location: Los Angeles, CA

(b) Discussion Hearing: Date: February 11, 2015
Location: Sacramento, CA

(c) Adoption Hearing: Date: April 8, 2015
Location: Santa Rosa, CA

III. Description of Regulatory Action

(a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary

Pacific halibut is internationally managed under the authority of the Northern Pacific Halibut Act of 1982 (the "Act"; Title 16, Chapter 10, Subchapter IV, Sections 773 to 773k, U.S. Code) pursuant to the Convention between the United States of America and Canada for the Preservation of the [Pacific] Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention). Provisions of the Convention establish the International Pacific Halibut Commission (IPHC) and outline general administrative and enforcement requirements.

Convention waters as defined include "... the waters off the west coasts of the United States and Canada ... within the respective maritime areas in which either Party exercises exclusive fisheries jurisdiction. For the purposes of this Convention, the "maritime area" in which a Party exercises exclusive fisheries jurisdiction includes without distinction areas within and seaward of the territorial sea or internal waters of the Party" (Article I).

The IPHC was established to conduct research and coordinate management activities in the waters of the parties to the Act. Pacific halibut along the United States west coast is jointly managed through authorities of the IPHC, Pacific Fishery Management Council (PFMC), and the National Marine Fisheries Service (NMFS), in conjunction with west

coast state agencies. The IPHC sets the annual Total Allowable Catch (TAC) for each of the Pacific halibut management areas (including the west coast – Area 2A) using stock assessment and research survey results.

The PFMC coordinates west coast management of all recreational and commercial Pacific halibut fisheries in U.S. waters through the Area 2A Pacific Halibut Catch Sharing Plan (CSP), which constitutes a framework for recommending annual management measures to NMFS. The CSP framework also establishes the sharing formula used for allocating the Area 2A TAC among west coast fisheries, including the California recreational fishery. NMFS is responsible for specifying the final CSP language and management measures in federal regulation (50 CFR Part 300, Subpart E and Federal Register) and reporting season specifications on their halibut telephone hotline.

For species managed under federal fishery management plans or regulations, the Fish and Game Commission (Commission) has usually taken concurrent action to conform State recreational regulations to federal regulations. This is done in recognition of federal jurisdiction and to ensure consistency and ease of use for constituents who are subject to both State and federal laws while fishing for or in possession of sport fish. Given the provisions of the Convention, Pacific halibut federal regulations are applicable in both State waters (zero to three miles off shore) and federal waters (three to 200 miles offshore) off Washington, Oregon and California. However, some Pacific halibut regulations specified in federal regulations (i.e., gear restrictions) are not currently specified in State regulations.

Recent PFMC Action Re: Pacific Halibut Fishing Off California

On November 16, 2014, the PFMC recommended changes to the 2015 CSP and recreational Pacific halibut fishery in California. The recommendations were based, in part, on the California Department of Fish and Wildlife's (Department) commitment to actively track and monitor the fishery to ensure that catches remained within the allowable quota.

Recommended changes included the following: increasing the allocation to California's recreational fishery from one percent to four percent of the non-tribal Pacific halibut TAC; modifying the CSP language to reflect that the California recreational fishery season will be set by NMFS after the actual quota is determined (in late January 2015); and implementing an inseason catch monitoring requirement to keep catches within the California allocation (quota).

Federal regulations are expected to become effective prior to May 1, 2015.

Pacific Halibut Quota Management

Prior to 2014, California's Pacific halibut recreational fishery was managed with a fixed season (i.e., pre-determined opening and closing dates) and catches were reconciled against the quota at the end of the year. Increases in California catches above the quota in recent years prompted the PFMC to recommend modifications to the season length in 2014 to ensure catches stayed closer to allowable limits. In 2014, the Commission took emergency action inseason to conform to federal regulatory changes which closed one month of fishing to reduce Pacific halibut catches.

While the Commission's 2014 emergency process was ultimately successful, an emergency process can take up to 30 days to implement whereas NMFS can take action in as little as 24 hours. In the event that NMFS takes action inseason to modify or close the Pacific halibut fishery on short notice (based on a concern that the quota will be exceeded), State and federal regulations will be inconsistent if emergency action is required by the Commission. This could cause confusion for enforcement and the public in addition to potentially resulting in negative impacts to the Pacific halibut resource.

Establishing a quota management system for the Pacific halibut recreational fishery will allow for conformance to federal actions in a timely manner and ensure catches stay within the allowable quota. This process would be similar to that used for managing the inland salmon fishery on the Klamath River.

Following the determination of the 2015 Area 2A TAC by the IPHC (in late January, 2015), the Department will conduct additional public outreach to gather input on a preferred 2015 fishing season expected to keep catches within the allowable quota. After consideration of the input received, the Department will recommend a preferred 2015 season structure to NMFS for approval. The approved season will be included in the final federal regulations and on the NMFS halibut hotline prior to the start of the season.

During the 2015 fishing season, the Department will actively monitor the fishery and coordinate with NMFS and the IPHC weekly on the status of catches relative to the Pacific halibut quota to ensure concurrent State and federal action as needed. If catches are projected to meet and/or exceed the California quota, NMFS could take action to close or modify the fishery. The NMFS will provide notice of any inseason action(s) to modify or close the season in California via its halibut hotline; this is similar to the process used for recreational fisheries in Oregon and Washington.

The Department shall also inform the Commission and the public via a press release of any changes in regulations triggered by achieving or expecting to exceed the quota. The latest fishing rules will be posted on the Department's website, the Recreational Groundfish Fishing Regulations Hotline, the NMFS Area 2A halibut hotline, and made available by contacting a Department office.

Present Regulations

Current federal regulations for Pacific halibut authorize recreational fishing in State and federal waters off California from May 1 to July 31 and September 1 to October 31 whereas State regulations for Pacific halibut authorize recreational fishing in State waters from May 1 to October 31. The Commission took emergency action on June 4, 2014 to close the month of August to fishing in 2014, for consistency with current federal regulations. However, those emergency actions have expired and current State regulations leave August open, which conflicts with current federal regulations. The State and federal daily bag limit is one fish per angler and there is no minimum size limit.

Present regulations establish methods of take and include the use of harpoons, spears, and bow and arrow gear.

Proposed Amendments

The Department is proposing the following regulatory changes to be consistent with PFMC recommendations and the CSP for Pacific halibut regulations in 2015. This approach will allow the Commission to adopt State recreational Pacific halibut regulations to conform in a timely manner to those taking effect in federal ocean waters on or before May 1, 2015.

The proposed regulatory changes modify regulations to allow Pacific halibut to be managed under a quota management system to allow for timely conformance to federal fisheries regulations and inseason changes. A range of Pacific halibut quotas between 0 and 50,000 pounds would be considered for public notice purposes. Quota status updates and in-season changes will be disseminated and communicated to the general public through the Department's website, the Recreational Groundfish Fishing Regulations Hotline, the NMFS Area 2A halibut hotline, and made available by contacting a Department office.

The proposed regulatory changes modify the seasons to include a range from May 1 to October 31 which may include periodic closures. The final regulation will conform to the season established by federal regulations in May 2015.

Gear restrictions are proposed to be added for consistency with existing federal regulations.

The proposed regulations modify the authorized methods of take to allow for the use of harpoons to assist in the take of recreational Pacific halibut.

A cross reference is proposed to be included to clarify those ocean areas where harpoons may be used to assist in the recreational take of Pacific halibut caught using legal gear.

It is the policy of the State to encourage the conservation, maintenance, and utilization of the living resources of the ocean and other waters under the jurisdiction and influence of the State for the benefit of all the citizens of the State. In addition, it is the policy of the State to promote the development of local fisheries and distant-water fisheries based in California in harmony with international law respecting fishing and the conservation of the living resources of the ocean and other waters under the jurisdiction and influence of the State. The objectives of this policy include, but are not limited to, the maintenance of sufficient populations of all species of aquatic organisms to ensure their continued existence and the maintenance of a sufficient resource to support a reasonable sport use, taking into consideration the necessity of regulating individual sport fishery bag limits to the quantity that is sufficient to provide a satisfying sport. Adoption of scientifically-based seasons and other regulations provides for the maintenance of sufficient populations of Pacific halibut to ensure their continued existence.

The benefits of the proposed regulations are consistency with international and federal regulation and the sustainable management of California's Pacific halibut resources.

- (b) Authority and Reference Sections from Fish and Game Code for Regulation

Authority: Sections 200, 202, 205, 219, 220, 240, and 316.

Reference: Sections 200, 201, 202, 203.1, 205, 207, 215, 219, 220, and 316.

- (c) Specific Technology or Equipment Required by Regulatory Change:

None.

- (d) Identification of Reports or Documents Supporting Regulation Change

Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea

Northern Pacific Halibut Act of 1982:
<http://www.gpo.gov/fdsys/pkg/USCODE-2010-title16/html/USCODE-2010-title16-chap10-subchapIV.htm>

2014 Pacific Halibut Catch Sharing Plan for Area 2A:
http://www.pcouncil.org/wp-content/uploads/K1a_Att1_2014CSP_SEPT2014BB.pdf

California Department of Fish and Wildlife Report on Proposed Changes to the 2015 Pacific Halibut Catch Sharing Plan:
http://www.pcouncil.org/wp-content/uploads/K1b_Sup_CDFW_Rpt_SEPT2014BB.pdf

PFMC blog post on proposed changes to Pacific Halibut Catch Sharing Plan for Area 2A in 2015: http://www.pcouncil.org/wp-content/uploads/Full_Blog_2015CSP_changes.pdf

National Marine Fisheries Service Report on Pacific Halibut Catch Sharing Plan Changes for 2015:
http://www.pcouncil.org/wp-content/uploads/G1b_Sup_NMFS_Rpt1_NOV2014BB.pdf

California Department of Fish and Wildlife Supplemental Report on Pacific Halibut Management Measures and Catch Tracking for 2015:
http://www.pcouncil.org/wp-content/uploads/G1b_Sup_CDFW_Rpt2_NOV2014BB.pdf

- (e) Public Discussions of Proposed Regulations Prior to Notice Publication:
- June 2, 2014, Department public meeting in Eureka, CA.
 - September 3, 2014, Department public meeting via teleconference.
 - September 12-17, 2014 PFMC meeting in Spokane, WA.
 - November 12-19, 2014 PFMC meeting in Costa Mesa, CA.

IV. Description of Reasonable Alternatives to Regulatory Action

- (a) Alternatives to Regulation Change:

No alternatives were identified by or brought to the attention of Commission staff that would have the same desired regulatory effect.

- (b) No Change Alternative:

Under the No-Change Alternative, status quo management of the Pacific halibut resource would continue for 2015. This would result in misalignment between federal and State regulations when NMFS

establishes new regulations for the California fishery for 2015 or if NMFS takes inseason action to modify or close the fishery. Inconsistency in regulations will create confusion among the public and may result in laws that are difficult to enforce. Further, recreational take of Pacific halibut is also likely to exceed the annual quota established and managed by the IPHC and NMFS which could have negative impacts on the resource.

It is critical to have consistent State and federal regulations establishing season dates, depth constraints and other management measures, and also critical that the State and federal regulations be effective concurrently. Consistency with federal regulations is also necessary to maintain State authority over its recreational Pacific halibut and avoid federal or international preemption.

(c) Consideration of Alternatives:

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

V. Mitigation Measures Required by Regulatory Action

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action

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

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

The proposed action will not have a significant adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because the regulatory action does not substantially alter existing conditions.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to

the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission does not anticipate any impacts on the creation or elimination of jobs in California.

The Commission does not anticipate any impacts on the creation of new businesses, the elimination of existing businesses, or the expansion of businesses in California.

The Commission anticipates benefits to the health and welfare of California residents. Providing opportunities to participate in sport fisheries fosters conservation through education and appreciation of fish and wildlife.

The Commission anticipates benefits to the environment by the sustainable management of California's Pacific halibut resources.

The Commission does not anticipate any benefits to worker safety.

Additional benefits of the proposed regulations are consistency with federal regulations and promotion of businesses that rely on recreational Pacific halibut fishing.

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

The agency 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.

VII. Economic Impact Assessment

Recreational fisheries are broadly sub-divided between private anglers and commercial passenger fishing vessels. The economic impact of regulatory changes for recreational fisheries may be estimated by tracking the resulting changes in fishing effort, angler trips and length of stay in the fishery areas. Distance traveled affects gas and other travel expenditures. Daytrips and overnight trips involve different levels of spending for gas, food and accommodations at area businesses as well as different levels of sales tax impacts. Direct expenditures ripple through the economy, as receiving businesses buy intermediate goods from suppliers who then spend that revenue again. Business spending on wages is received by workers who then spend that income, some of which goes to local businesses. Recreational fisheries spending thus multiplies throughout the economy with the indirect and induced effects of the initial direct expenditure.

The adoption of scientifically-based regulations provides for the maintenance of sufficient populations of sport fish to ensure their continued existence and future sport fishing opportunities that in turn support local and regional economies. In a 2012 Fisheries Economics Report by the NMFS, all marine recreational anglers trip-related and equipment expenditures sum to approximately \$1.7 billion in California. Coupled with the indirect and induced effects of this \$1.7 billion direct revenue contribution, the total realized economic benefit to California is estimated at \$2.7 billion in annual total economic output. This corresponds with about \$630 million in total wages to Californians, which affects about 13,000 jobs in the State, annually. The portion of this benefit derived from or related to the Pacific halibut fishery is unknown.

The proposed regulations will modify State recreational Pacific halibut regulations to conform to federal rules. Currently, State regulations for Pacific halibut provide for: season length, authorized methods of take, and bag limit.

For public notice purposes to facilitate Commission discussion, the Department is proposing regulatory changes to encompass the range of federal Pacific halibut regulations that are expected to be in effect for 2015. The proposed regulatory changes may modify season length and authorized methods of take.

The estimated impacts on angler trips may be close to status quo. Economic impacts are not expected to change compared to 2014 because the fishery season when set is expected to be similar to the previous year.

Effects of the regulation on the creation or elimination of jobs within the state

The cumulative effects of the changes statewide are estimated to be neutral to job elimination and potentially positive to job creation in California. No significant changes in fishing effort and recreational fishing expenditures to businesses are expected as a direct result of the proposed regulation changes.

Effects of the regulation on the creation of new businesses or the elimination of existing businesses within the State

The cumulative effects of the changes statewide are expected to be neutral to business elimination and have potentially positive impacts to the creation of businesses in California. No significant changes in fishing effort and recreational fishing expenditures to businesses are expected as a direct result of the proposed regulation changes.

Effects of the regulation on the expansion of businesses currently doing business within the state

The cumulative effects of the changes statewide are expected to be neutral to positive to the expansion of businesses currently doing business in California. No significant changes in fishing effort and recreational fishing expenditures to businesses are expected as a direct result of the proposed regulation changes.

Benefits of the regulation to the health and welfare of California residents

The Commission anticipates benefits to the health and welfare of California residents. Providing opportunities to participate in sport fisheries fosters conservation through education and appreciation of California's wildlife.

Benefits of the regulation to worker safety

The proposed regulations are not anticipated to impact worker safety conditions.

Benefits of the regulation to the state's environment:

It is the policy of this State to encourage the conservation, maintenance, and utilization of living marine resources under the jurisdiction and influence of the State for the benefit of all citizens (Section 7050, Fish and Game Code). Benefits of the proposed regulations include continuation of fishing opportunity, along with the continuation of the reasonable and sustainable management of recreational finfish resources. Adoption of scientifically-based seasons provide for the maintenance of sufficient populations of Pacific halibut to ensure their continued

existence.

Other benefits of the regulation:

Concurrence with Federal Law:

Pacific halibut along the United States west coast is jointly managed through authorities of the International Pacific Halibut Commission (IPHC), Pacific Fishery Management Council (Council), and the National Marine Fisheries Service (NMFS), in conjunction with west coast state agencies. The PFMC reviews the status of Pacific halibut regulations annually. As part of that process, it recommends regulations aimed at meeting biological and fishery allocation goals specified in law or established in the Pacific Halibut Catch Sharing Plan. These recommendations coordinate management of recreational Pacific halibut in State (zero to three miles) and federal waters (three to 200 miles offshore) off the coasts of Washington, Oregon, and California. These recommendations are subsequently implemented as ocean fishing regulations by the National Marine Fisheries Service.

California's sport fishing regulations need to conform to, or be more restrictive than, federal regulations to ensure that biological and fishery allocation goals are not exceeded.

Informative Digest/Policy Statement Overview

Pacific halibut is internationally managed through the Northern Pacific Halibut Act of 1982 between the United States and Canada. Pacific halibut along the United States west coast is jointly managed through authorities of the International Pacific Halibut Commission, Pacific Fishery Management Council (PFMC), and the National Marine Fisheries Service (NMFS), in conjunction with west coast state agencies. The PFMC coordinates west coast management of all recreational and commercial Pacific halibut fisheries in U.S. waters through the Pacific Halibut Catch Sharing Plan (CSP), which constitutes a framework for recommending annual management measures. NMFS is responsible for specifying the final CSP language and management measures in federal regulation (50 CFR Part 300, Subpart E and the Federal Register) and noticing them on their halibut telephone hotline. Federal regulations for Pacific halibut are applicable in State waters (zero to three miles off shore) and federal waters (three to 200 miles offshore) off Washington, Oregon and California.

For consistency, the California Fish and Game Commission (Commission) routinely adopts regulations to bring State law into conformance with federal and international law for Pacific halibut.

The November PFMC regulatory recommendation will be considered by the Commission when it takes its own regulatory action to establish the State's recreational Pacific halibut fishery regulations for 2015.

Summary of Proposed Amendments

The Department is proposing the following regulatory changes to be consistent with PFMC recommendations and the CSP for Pacific halibut regulations in 2015. This approach will allow the Commission to adopt State recreational Pacific halibut regulations to conform in a timely manner to those taking effect in federal ocean waters on or before May 1, 2015.

The proposed regulatory changes modify regulations to allow Pacific halibut to be managed under a quota management system to allow for timely conformance of federal fisheries regulations and inseason changes. A range of Pacific halibut quotas between 0 and 50,000 pounds would be considered for public notice purposes. Quota status updates and in-season changes will be disseminated and communicated to the general public through the Department's website, the Recreational Groundfish Fishing Regulations Hotline, the NMFS Area 2A halibut hotline, and made available by contacting a Department office.

The proposed regulatory changes modify the seasons to include a range from May 1 to October 31 which may include periodic closures. The final regulation will conform to the season established by federal regulations in May 2015.

Gear restrictions are proposed to be added for consistency with existing federal regulations.

The proposed regulations modify the authorized methods of take to allow for the use of harpoons to assist in the take of recreational Pacific halibut.

A cross reference is proposed to be included to clarify those ocean areas where harpoons may be used to assist in the recreational take of Pacific halibut caught using legal gear.

The benefits of the proposed regulations are consistency with federal regulations, the sustainable management of California's Pacific halibut resources, and health and welfare of anglers.

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. The Legislature has delegated authority to the Commission to adopt sport fishing regulations (Fish and Game Code, sections 200, 202 and 205) and Pacific halibut fishing regulations specifically (Fish and Game Code, Section 316). The proposed regulations are consistent with regulations for sport fishing in marine protected areas (Section 632, Title 14, CCR) and with general sport fishing regulations in Chapters 1 and 4 of Subdivision 1 of Division 1, Title 14, CCR. Commission staff has searched the California Code of Regulations and has found no other State regulations related to the recreational take of Pacific halibut.

The proposed regulations are neither inconsistent nor incompatible with commercial fishing regulations (Chapter 6, Title 14 CCR), State Coastal Conservancy regulations for experimental fishing gear loan program (Section 13862, Title 14, CCR), and State Board of Equalization tax regulations (Section 1602, Title 18, CCR).

Regulatory Language

Section 28.20, Title 14, CCR, is Amended to Read:

§ 28.20. Halibut, Pacific.

(a) Season:

(1) Pacific halibut may be taken only from May 1 through October 31. [varied dates within the range from May 1 to October 31 which may include periodic closures] or until the quota is reached, whichever is earlier. Pacific halibut take is regulated by a quota that is closely monitored each year in alignment with federal regulations.

(2) The 2015 Pacific halibut quota is [0-50,000] pounds. The department shall inform the commission, and the public via a press release, prior to any implementation of restrictions triggered by achieving or expecting to exceed the quota. Anglers and divers are advised to check the current rules before fishing. The latest fishing rules may be found on the department's website at: www.dfg.ca.gov/marine/, or by calling the Recreational Groundfish Fishing Regulations Hotline (831) 649-2801 or the National Marine Fisheries Service Area 2A Halibut Hotline (800) 662-9825 for recorded information, or by contacting a department office.

(b) Limit: One.

(c) Minimum size: None.

(d) Methods of Take:

(1) When angling, no more than one line with two hooks attached may be used.

(2) A harpoon, gaff, or net may be used to assist in taking a Pacific halibut that has been legally caught by angling. See Section 28.95 of these regulations for additional restrictions on the use of harpoons.

(3) Take by spearfishing is allowed pursuant to Section 28.90 of these regulations.

Note: Authority cited: Sections 200, 202, 205, ~~210, 219 and 220~~219, 220, 240 and 316, Fish and Game Code. Reference: Sections ~~200-202, 201, 202, 203.1, 205-210, 205, 207, 215 and 217.5-222, 219, 220 and 316,~~ Fish and Game Code.

Section 28.95, Title 14, CCR is Amended to Read:

§ 28.95. Spears, Harpoons and Bow and Arrow Fishing Tackle.

Spears, harpoons and bow and arrow fishing tackle may be used for taking all varieties of skates, rays, and sharks, except white sharks. Harpoons may be used to assist in taking Pacific halibut as specified in Section 28.20. Such gear may not be possessed or used within 100 yards of the mouth of any stream in any ocean waters north of Ventura County, nor aboard any vessel on any day or on any trip when broadbill swordfish or marlin have been taken. Bow and arrow fishing tackle may be used to take fin fish other than giant (black) sea bass, garibaldi, gulf grouper, broomtail grouper, trout, salmon, broadbill and white shark.

Note: Authority cited: Sections 200, 202, 205, ~~210, 219, 220 and 5517~~and 220, Fish and Game Code. Reference: Sections 200, 201, 202, 203.1, 205, ~~206, 207, 210, 215, 217.5, 218, 219, 220 and 5517~~and 220, Fish and Game Code.