



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 240229-0063]

RIN 0648-BL80

Fisheries Off West Coast States; Emergency Action to Temporarily Modify

Continuous Transit Limitations for California Recreational Vessels

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; emergency action; request for comments.

SUMMARY: This emergency rule temporarily modifies a continuous transit requirement for California recreational vessels. This modification will temporarily allow recreational vessels to anchor overnight and/or stop to fish for non-groundfish species inside the seasonal Recreational Rockfish Conservation Area off the coast of California, also known as the 50-fathom (91-meter) offshore fishery. This emergency measure will prevent the possible cancellation of thousands of recreational fishing trips during the 2024 recreational fishing season off California.

DATES: Effective [*Insert date of publication in the FEDERAL REGISTER*] until [*insert date 180 calendar days after date of publication in the FEDERAL REGISTER*].

Comments must be submitted by [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES:

Electronic Access

This emergency rule is accessible via the internet at the Office of the **Federal Register** website at <https://www.federalregister.gov/>. The continuing environmental

effects of the California recreational fishery were previously considered under the *Environmental Assessment for Amendment 30 to the Pacific Coast Groundfish Fishery Management Plan, 2023-2024 Harvest Specifications, and Management Measures*. This document is available on the NMFS West Coast Region Web site at:

<https://www.fisheries.noaa.gov/species/west-coast-groundfish.html>

FOR FURTHER INFORMATION CONTACT: Lynn Massey, phone: 562-900-2060, or e-mail: lynn.massey@noaa.gov.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish fishery in the U.S. exclusive economic zone (EEZ) seaward of Washington, Oregon, and California is managed under the Pacific Coast Groundfish Fishery Management Plan (FMP). The Pacific Fishery Management Council (Council) developed the Pacific Coast Groundfish FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* The Secretary of Commerce approved the Pacific Coast Groundfish FMP and implemented the provisions of the plan through Federal regulations at 50 CFR part 660, subparts C through G. Species managed under the Pacific Coast Groundfish FMP include more than 90 species of roundfish, flatfish, rockfish, sharks, and skates.

The recreational fishery sector off the California coast benefits the economy through tourism, bait and tackle sales, and other commerce that brings income to California coastal fishing communities. NMFS, the Council, and the California Department of Fish and Wildlife (CDFW) manage recreational fisheries within five districts: the Northern Management Area between 42° North latitude (N. lat.) and 40°10' N lat., the Mendocino Management Area between 40°10' N lat. and 38°57.50' N lat., the San Francisco Management Area between 38°57.50' N lat. and 37°11' N lat., the Central Management Area between 37°11' N lat. and 34°27' N lat., and the Southern Management Area between 34°27' N lat. and the U.S./Mexico border. The California

recreational groundfish fishery primarily targets lingcod, nearshore rockfish, and shelf rockfish with hook-and-line gear. Primary catch controls for this fishery include season dates, depth closures, bag limits, and area closures, all of which are tools used to keep catch within state-specific quotas and Federal annual catch limits.

At its September 2023 meeting, the Council recommended the immediate use of an available management measure known as the “offshore fishery” that would prohibit California recreational fishing vessels from fishing shoreward of the Recreational Rockfish Conservation Area (RCA) line (*i.e.*, the 50 fathom (fm, 91 meter (m))) depth contour for the remainder of 2023. NMFS implemented this recommendation on October 2, 2023 (88 FR 67656); the extended season structure of the California recreational offshore fishery is in place until changed, so applies to 2024 and beyond. The purpose of the Council’s proposed action was to protect nearshore-dwelling quillback rockfish, a species that was declared overfished by NMFS in December 2023. The continuous transit aspect of the management measure (see 50 CFR 660.360(c)(3)(i)(a)) prohibits recreational vessels from stopping or loitering in a closed area; thus, here, vessels must be continuously transiting when shoreward of the 50 fm (91 m) depth contour specified in 50 CFR 660.72, which is typically on their way back to port after fishing in Federal waters. NMFS implemented the offshore fishery and associated continuous transit requirement off of California to protect quillback rockfish on October 2, 2023 (88 FR 67656, October 2, 2023). NMFS’s action was consistent with a California state action implemented on August 21, 2023, that similarly enacted an “offshore only” fishery for state managed waters (see <https://www.wildlife.ca.gov/Notices/Regulations/Rockfish>).

At the time the Council and its advisory bodies began discussing the use of the offshore fishery management measure, the Council’s Groundfish Advisory Subpanel (GAP) voiced concerns that the continuous transit requirement that would take effect off the coast of California, in addition to similar transit rules that were applicable in

California state waters at the time, would prevent recreational vessels from: (1) anchoring shoreward of 50 fm (91 m) overnight (for safety reasons or planned on multi-day charter trips) and (2) anchoring to fish for non-groundfish species (*e.g.*, lobster with traps) shoreward of 50 fm (91 m), which was not expected to impact quillback rockfish. The GAP members asserted that the lack of ability to do these activities could create significant safety-at-sea concerns and could force charter companies to cancel fishing trips that typically offer a variety of target species, both groundfish and non-groundfish.

As described in the 2023-2024 groundfish specifications rulemaking (87 FR 62676, October 14, 2022), participating in an offshore fishery requires substantially more transit time and fuel costs. Increased transit time reduces the time available for fishing, which reduces the overall possible catch. Multi-day trips can partially mitigate the economic costs of the offshore fishery, and to do so, anchoring overnight is a necessity. The current regulation requires vessels to remain seaward of 50 fathoms (91 m) if recreational groundfish fishing has already occurred, which can restrict anchoring location options and could create safety concerns.

Additionally, in the 2023-2024 groundfish specifications biennium, there have been several constraining groundfish species in the recreational fisheries. See 87 FR 62676 (October 14, 2022) (discussing constraints due to Copper rockfish and quillback rockfish); 88 FR 67656 (October 2, 2023) (discussing constraints due to vermilion/sunset rockfish). Recreational bag limits and seasons have changed substantially compared to previous biennium, which has augmented the value for recreational fishery participants to be able to take multi-target trips and have the flexibility to seek both groundfish and non-groundfish targets.

The GAP therefore asked the Council to make changes to the regulations within the upcoming 2025-26 harvest specifications rulemaking package that would allow recreational vessels to anchor and fish for non-groundfish species even when an offshore

fishery management measure was in effect. They also expressed an urgent need for this issue to be addressed immediately, as the 2025-26 harvest specifications and management measures action will not be in place until 2025 and thus would not address the issue for the 2024 fishing season. CDFW took emergency state action to address these concerns in state waters, with the new regulations going into effect on October 30, 2023 (see <https://www.wildlife.ca.gov/Notices/Regulations/Rockfish>).

If not addressed for the 2024 fishing season, recreational vessels off California would not be able to legally anchor in Federal waters inside the recreational RCA, which would restrict the option of conducting multi-day trips and/or multi-target trips. During the 2022 fishing season, CDFW estimated that approximately 6,936 multi-day groundfish trips and 20,320 groundfish/non-groundfish combination fishing trips, respectively, occurred across both the party charter and private/rental sectors. These trip numbers are considered minimum estimates, as data to inform the number of multi-day trips and groundfish/non-groundfish combination trips is limited. Without action to modify the continuous transit requirement, recreational fishery participants would have a much narrower suite of trip types and target types available, which may not provide enough incentive for trips to occur given higher transit times and fuel costs to go farther offshore. As noted above, there are currently multiple constraining groundfish species that have resulted in reduced recreational fishing seasons and reduced fishing targets (*e.g.*, bag limits). If overall recreational fishing trips are greatly reduced, fishery participants and fishing communities in California will potentially see substantial economic losses.

Emergency Measures

In Federal waters, addressing this request would require a modification to 50 CFR 660.360(c)(3)(i)(a) that requires recreational vessels to continuously transit while shoreward of the RCA boundary. Under this emergency measure, for 180 days after the publication of this emergency rule, recreational vessels in California would be allowed to

stop and/or anchor in Federal waters shoreward of the Recreational RCA line but would not be able to deploy groundfish recreational gear inside the recreational RCA. Therefore, this action would not create any new risks of quillback rockfish mortality (assuming full compliance with the prohibition to fish for groundfish shoreward of 50 fm (91 m)). To provide the needed relief, a change to this requirement must be in place before April 1, 2024, when the recreational fishery opens in the Southern management area off of California (the season opens between May 1 and May 15 in the remaining management areas). Hook-and-line gear is the primary gear type used by recreational vessels to target groundfish; therefore, prohibiting its deployment while inside the recreational RCA would enforce the modified transit provisions while still allowing vessels to use other gear types for non-groundfish fishing (*e.g.*, traps for lobster or hoop nets for bait fish). This emergency rule would not change any other elements of the California recreational fishery.

Emergency Action Authority

Section 305(c) of the Magnuson-Stevens Act authorizes the Secretary of Commerce to implement emergency regulations to address fishery emergencies. NMFS policy guidelines for the use of emergency rules define criteria for determining whether an emergency exists under section 305(c) of the Magnuson-Stevens Act (62 FR 44421, August 21, 1997). Under NMFS' Policy Guidelines for the Use of Emergency Rules, the phrase "an emergency exists involving any fishery" is defined as a situation that meets the following three criteria:

1. Results from recent, unforeseen events or recently discovered circumstances;
2. Presents serious conservation or management problems in the fishery; and
3. Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative

consideration of the impacts on participants to the same extent as would be expected under the normal rule making process.

In addition, the Magnuson-Stevens Act section 305(c)(3) can allow for an extension of an emergency rule for an additional 186 days if the public has had the opportunity to comment and, in the case of a Council recommendation for emergency regulations or interim measures, the council is actively preparing a fishery management plan, plan amendment, or proposed regulations to address the emergency or overfishing on a permanent basis.

Rationale

Under Amendment 31 to the FMP, California quillback rockfish off California was determined to be a stock in need of conservation and management (88 FR 78677, November 16, 2023). California quillback rockfish was declared overfished on December 14, 2023. In the interim while a rebuilding plan is developed, the Council, CDFW, and NMFS implemented several inseason measures in 2023 to modify the regulations for the California recreational and commercial fisheries in Federal and state waters to limit the mortality of quillback rockfish. At the time of the creation of the offshore fishery concept in the 2023-2024 groundfish harvest specifications and management measures action (87 FR 77007, December 16, 2022), it was unforeseen how much of the recreational fishing season would need to be prosecuted via the offshore fishery based on quillback rockfish mortality. The level of allowable catch of this stock is at an unprecedented low level and very little information is available to determine the projected success of various catch and effort controls to such a low target. Recreational catch data in the fall of 2023 indicated immediate action was necessary to move the recreational fishery offshore.

In this first use of the offshore fishery, which occurred earlier in the season than expected, the full extent of the continuous transit issue was discovered. It was unforeseen how an extended fishing season in the offshore fishery coupled with a continuous transit

requirement would negatively impact the recreational fishery. Having a substantial portion of the California recreational fishery take place offshore coupled with the continuous transit requirement presents a serious management problem for the fishery by reducing the types of recreational fishing trips that could be prosecuted in light of multiple fishery restrictions. With fewer options for groundfish recreational fishing trips, fishery participants may determine the economic costs are not worth the value of the trip, which would reduce the economic benefits of recreational fishing flowing through fishing communities. Because the modification in this emergency rule would still prohibit groundfish recreational gear from being deployed shoreward of the recreational RCA, there are no expected additional impacts to quillback rockfish mortality (assuming full compliance with the prohibition to fish for groundfish shoreward of 50 fm (91 m)). The non-groundfish targets that may be included in a multi-target recreational trip are not known to catch quillback rockfish.

The continuous transit requirement can be addressed with an emergency rule to alleviate negative economic impacts for the 2024 fishing season. Other action pathways, such as an inseason action, were not available because continuous transit is not designated as a routine management measure appropriate for the processes laid out in § 660.60. The urgent need for a temporary modification to mitigate substantial economic costs outweighs the benefit of advance public notice and public comment. In light of best available information, the status of the recreational fishery off of California, and the potential social and economic costs of maintaining the existing continuous transit requirement, NMFS finds that an emergency exists, and regulations are necessary to address the emergency.

Renewal of Emergency Regulations

The Magnuson-Stevens Act limits NMFS's emergency action authority to an initial period of 180 days, with a potential extension up to an additional 186 days, if

warranted. The public has an opportunity to comment on the initial emergency action (see **ADDRESSES**). After considering public comments on this emergency rule, NMFS may take action to extend the emergency measures before expiration.

Classification

The NMFS Assistant Administrator has determined that this emergency rule is consistent with the Pacific Coast Groundfish FMP, section 305(c) and other provisions of the Magnuson-Stevens Act, the Administrative Procedure Act (APA), and other applicable law. Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries finds prior notice and public comment is not required because it would be impracticable and contrary to the public interest. This rule must be in place by the start of the recreational fishing season, which is April 1, 2024, for the Southern Management Area. Therefore, delaying the implementation of this emergency rule would cause the recreational fishing season to start in this management area without modified transit provisions in place. Modifying the continuous transit requirement for California recreational vessels would not pose a conservation risk; it would allow recreational vessels to continue to utilize multi-day and multi-target trips even when the offshore fishery is in place. The impacts of the California recreational fisheries have been prior analyzed in the *EA for Amendment 30 to the Pacific Coast Groundfish Fishery Management Plan, 2023-2024 Harvest Specifications, and Management Measures*.

Additionally, this rule is excepted from the 30-day delayed effectiveness provision of the APA under 5 U.S.C. 553(d)(1) because it relieves a restriction that would otherwise place California recreational vessels at an economic disadvantage in 2024. Immediate implementation of this rule is necessary to prevent the possible cancellation of thousands of fishing trips that could otherwise occur if not for the current continuous transit requirement.

This action is being taken pursuant to the emergency provision of the Magnuson-Stevens Act and is exempt from Office of Management and Budget review.

The Regulatory Flexibility Act does not apply to this emergency rule because prior notice and opportunity for public comment is not required.

This emergency/interim rule contains no information collection requirements under the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Fishing vessels.

Dated: February 29, 2024.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq., 16 U.S.C. 773 et seq., and 16 U.S.C. 7001 et seq.

2. In § 660.360, add paragraph (c)(3)(i)(A)(6) to read as follows:

§ 660.360 Recreational fishery—management measures.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(A) * * *

(6) Emergency rule revising continuous transit requirement. Effective [*insert date of publication in the FEDERAL REGISTER*] until [*insert date 180 calendar days after date of publication in the FEDERAL REGISTER*], notwithstanding any other section of these regulations, in times and areas where a recreational RCA is closed shoreward of a recreational RCA line (*i.e.*, when an “off-shore only” fishery is active in that management area) vessels may stop, anchor in, or transit through waters shoreward of the recreational RCA line so long as they do not have any hook-and-line fishing gear in the water.

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