

CALIFORNIA FISH AND WILDLIFE REPORT ON THE AMENDMENT TO MODIFY
GROUNDFISH ESSENTIAL FISH HABITAT AND TRAWL RCA RANGE OF
ALTERNATIVES

In the process of developing EFH alternatives, California Department of Fish and Wildlife (CDFW) staff have received a number of inquiries from stakeholders regarding the application of this federal action to state waters. While MSA actions to establish or modify EFH closed areas would implement changes to federal waters areas, state waters are an integral part of the public proposals. Consequently, the ability to concurrently modify rules in state waters through state regulatory or Legislative processes has become a topic of significant interest.

“Commercial Groundfish Fishing” Section 189, Title 14 of the California Code of Regulations (CCR) is the administrative code section that automatically conforms federally-designated routine management measures in state waters for the commercial groundfish fishery. However, even if some state-waters areas are ‘designated’ as EFH in a groundfish regulation, CDFW does not believe that automatic conformance provisions could extend to prohibit use of trawl gear by state-managed fisheries in state waters that are designated as EFH under such a federal law, especially when management authority over these fisheries – including the authority to establish or change areas closed to trawling - is clearly expressed in statute (see below).

This West Coast Groundfish FMP Amendment would establish EFH areas that are closed to trawl fishing. CDFW notes there are a number of state-managed trawl fisheries, including California halibut, sea cucumber, ridgeback prawn and pink shrimp that operate partially in federal waters, and thus would properly be subject to EFH trawl closures in federal waters under authority of the Groundfish FMP. This authority allows NMFS to establish trawl closures in federal waters due to the nexus of federal groundfish managed under the FMP with trawl gear. However, the exempted trawl fisheries subject to these trawl gear closures in federal waters are not directly managed or regulated under the Groundfish FMP. Consequently, application of Section 189, T14 CCR to conform federal regulations to these state-managed fisheries in state waters is not appropriate.

CDFW recommends adding a sentence to the Purpose and Needs statement indicating that the EFH action is not intended to apply to, supersede or otherwise affect fishery management of state-managed species in state waters. CDFW is concerned that the documents does not explicitly state or describe this intent.

With very rare exception, for federally managed fisheries such as groundfish, it is the practice of CDFW and the California Fish and Game Commission (FGC) to ensure consistency between state and federal fisheries rules in state waters and in the EEZ off California. That is exactly why Section 189, T14 CCR exists – to simply conform federal groundfish rules to federal groundfish fishing activities that occur in state waters. Consistency of rules in adjacent waters allows for ease of enforcement, minimizes confusion, and allows for a comprehensive approach to resource management. CDFW would not wish any prohibition on use of trawl gear in federal waters to

automatically apply in state waters as a matter of conformance, recognizing the authority of the California state legislature to regulate certain commercial trawl fisheries in state waters. Pursuant to Fish and Game Code Section 8841, the legislature has instead designated management authority for these fisheries to the FGC (statute reprinted below).

While the FGC has the authority to adopt regulations for these fisheries that would conform to the EFH proposals that extend into state waters areas, CDFW does not have ability to undertake or influence such regulatory processes. Accordingly, CDFW urges stakeholders to de-couple state waters considerations from this federal process.

ARTICLE 10. Trawl Nets [8830 - 8843]

(Article 10 enacted by Stats. 1957, Ch. 456.)

8841.

(a) The commission is hereby granted authority over all state-managed bottom trawl fisheries not managed under a federal fishery management plan pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. Sec. 1801 et seq.) or a state fishery management plan pursuant to Part 1.7 (commencing with Section 7050), to ensure that resources are sustainably managed, to protect the health of ecosystems, and to provide for an orderly transition to sustainable gear types in situations where bottom trawling may not be compatible with these goals.

(b) The commission is hereby granted authority to manage all of the following fisheries in a manner that is consistent with this section and Part 1.7 (commencing with Section 7050):

- (1) California halibut.
- (2) Sea cucumber.
- (3) Ridge-back, spot, and golden prawn.
- (4) Pink shrimp.

(c) The commission is also granted authority over other types of gear targeting the same species as the bottom trawl fisheries referenced in subdivision (a) to manage in a manner that is consistent with the requirements of Part 1.7 (commencing with Section 7050).

(d) Every commercial bottom trawl vessel issued a state permit is subject to the requirements and policies of the federal groundfish observer program (50 C.F.R. 660.360).

(e) The commission may only authorize additional fishing areas for bottom trawls after it determines, based on the best available scientific information, that bottom trawling in those areas is sustainable, does not harm bottom habitat, and does not unreasonably conflict with other users.

(f) It is unlawful to use roller gear more than eight inches in diameter.

(g) Commencing April 1, 2006, it is unlawful to fish commercially for prawns or pink shrimp, unless an approved bycatch reduction device is used with each net. On or before April 1, 2006, the commission shall approve one or more bycatch reduction devices for use in the bottom trawl fishery. For purposes of this subdivision, a rigid grate fish excluder device is the approved type of bycatch reduction device unless the commission, the Pacific Marine Fishery Management Council, or the National Marine Fisheries Service determines that a different type of fish excluder device has an equal or greater effectiveness at reducing bycatch. If the commission does not approve a bycatch reduction device prior to April 1, 2006, then a device that is approved by the Pacific Marine Fishery Management Council or the National Marine Fisheries Service shall be deemed approved by the commission.

(h) Except as provided in Section 8495 or 8842, it is unlawful to engage in bottom trawling in ocean waters of the state.

(i) This section does not apply to the use of trawl nets pursuant to a scientific research permit.

(j) The commission shall facilitate the conversion of bottom trawlers to gear that is more sustainable if the commission determines that conversion will not contribute to overcapacity or overfishing. The commission may participate in, and encourage programs that support, conversion to low-impact gear or capacity reduction by trawl fleets. The department may not issue new permits to bottom trawlers to replace those retired through a conversion program.

(k) As soon as practicable, but not later than May 1, 2005, the commission and the department shall submit to the Pacific Fishery Management Council and the National Marine Fisheries Service a request for federal management measures for the pink shrimp fishery that the commission and the department determine are needed to reduce bycatch or protect habitat, to account for uncertainty, or to otherwise ensure consistency with federal groundfish management.

(l) No vessel may utilize bottom trawling gear without a state or federal permit.

8842.

(a) Trawl nets of a design prescribed by the commission may be used or possessed to take shrimps or prawns under a permit issued by the department under regulations adopted by the commission. Sections 8831, 8833, 8835, and 8836 do not apply to trawl nets used or possessed under a permit issued pursuant to this section.

(b) Trawling for shrimps or prawns shall be authorized only in those waters of Districts 6, 7, 10, 17, 18, and 19 that lie not less than three nautical miles from the nearest point of land on the mainland shore, and all offshore islands and the boundary line of District 19A, except that in waters lying between a line extending due west from False Cape and a line extending due west from Point Reyes, trawling is allowed not less than two nautical miles from the nearest point of land on the mainland shore until January 1, 2008.

(c) When fishing for pink shrimp (*Pandalus jordani*) under a permit issued pursuant to this section, it is unlawful to possess in excess of 1,500 pounds of incidentally taken fish per calendar day of a fishing trip, except Pacific whiting, shortbelly rockfish, and arrowtooth flounder, which may be taken in any amount not in excess of federal regulations. No Pacific halibut and not more than 150 pounds of California halibut shall be possessed or landed when fishing under a permit issued pursuant to this section. When fishing for ridgeback prawn and spotted prawn under a permit issued pursuant to this section, it is unlawful to possess in excess of 1,000 pounds of incidentally taken fish per trip.

(d) Commencing January 1, 2008, the commission shall permit the taking of pink shrimp not less than two nautical miles from shore in waters that lie between a line extending due west from False Cape and a line extending due west from Point Reyes from the nearest point of land on the mainland shore, if the commission finds that, upon review of information from the federal groundfish observer program and other available research and monitoring information that it determines relevant, the use of trawl gear minimizes bycatch, will not damage seafloor habitat, will not adversely affect ecosystem health, and will not impede reasonable restoration of kelp, coral, or other biogenic habitats. The commission shall pay special attention to areas where kelp and other biogenic habitats existed and where restoring those habitats is feasible, and to hard bottom areas and other substrate that may be particularly sensitive to bottom trawl impacts in making that finding.