

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

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 220, 240, 316.5 and 2084 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 205, 316.5 and 2084 of said Code, proposes to amend Section 27.80, Title 14, California Code of Regulations, relating to ocean salmon sport fishing.

Informative Digest/Policy Statement Overview

The Pacific Fishery Management Council (PFMC) annually reviews the status of west coast salmon populations. As part of that process, it recommends ocean fishing regulations aimed at meeting biological and fishery allocation goals specified in law or established in the Salmon Fishery Management Plan (FMP). The PFMC is responsible for adopting annual recommendations for the management of sport and commercial ocean fisheries in the Federal fishery management zone (3 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 (NMFS). The state's recreational fishing regulations will need to conform to the new Federal rules.

The Fish and Game Commission (Commission) adopts regulations for the ocean salmon sport fishery in State waters (0 to 3 miles offshore) which are consistent with Federal fishery management goals and are effective at the same time. Otherwise, preemption of State regulatory authority by the NMFS could occur if State regulations are in conflict with Federal regulations.

Ocean conditions continued to be very poor in 2006 for many species and significant impacts to sea birds were observed. The same conditions will likely impact 2007 salmon distribution and survival in the ocean.

Although the 2007 Klamath River Fall Chinook (KRFC) preseason ocean abundance will not be available until late February, it is likely that the KRFC stocks will continue to be the limiting factor in 2007.

PFMC Regulatory Outlook

The 2007 PFMC salmon regulation process could be contentious and controversial similar to 2006. In 2006, there was a NMFS emergency closure of Federal waters off California during the month of April; the final PFMC recommendations were adopted only after a NMFS emergency rule to allow the FMP conservation objective to be temporarily set at 21,000 naturally spawning KRFC adults, and there were several emergency declarations during the season by Federal and State governments due to severely reduced commercial and recreational salmon fisheries.

There is a strong possibility that this will be the third consecutive year of failing to meet the FMP conservation objective of a minimum floor of 35,000 naturally spawning KRFC adults. Under the terms of the FMP, this would make the stock officially depleted and would require the development of a rebuilding plan.

On March 9, 2007, the PFMC will adopt management options for public review and the final PFMC regulation recommendations will be made on April 6, 2007. The various alternatives that

the PFMC will examine in the process of adopting options may include:

1. the minimum size of salmon that may be retained;
2. the number of rods anglers may use (e.g., one, two, or unlimited);
3. the type of bait and/or terminal gear that may be used (e.g., amount of weight, hook type, and type of bait or no bait);
4. the number of salmon that may be retained per angler-day or period of days;
5. the definition of catch limits to allow for combined boat limits versus individual angler limits;
6. the allowable fishing dates and areas; and
7. the overall number of salmon that may be harvested, by species and area.

Commission Regulatory Outlook

Although there are no PFMC regulatory options to review at this time, the 2007 ocean recreation salmon regulations are expected to range from no fishing north of Point Sur after April to status-quo (2006) regulations.

There also exists the possibility of Commission emergency regulatory action being needed during March or April in response to unforeseen NMFS emergency closures of Federal waters similar to the 2006 season. Presently no early season closures are predicted.

Further Commission conformance action affecting the recreational ocean salmon fisheries may be needed after the PFMC's *Review of 2006 Ocean Salmon Fisheries* and *Preseason Report I Stock Abundance Analysis* are available in late February 2007.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at Humboldt State University, Nelson Hall West, Goodwin Forum, 1 Harpst Street, Arcata, California, on March 2, 2007, at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Bodega Bay Marine Laboratory Lecture Hall, 2099 Westside Road, Bodega Bay, California, on April 13, 2007, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before April 6, 2007 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 April 9, 2007. All comments must be received no later than April 13, 2007, at the hearing in Bodega Bay, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Jr., Executive Director, Fish and Game Commission,

1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to John Carlson, Jr., or Sherrie Koell at the preceding address or phone number. **Mr. Gary Stacey, Manager, Marine Region, Department of Fish and Game, phone (562) 342-7108, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

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

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

Impact of Regulatory Action

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

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

The 2007 ocean recreation salmon regulations will range from no fishing north of Point Sur after April to status-quo (2006) regulations. Depending on which option is finally adopted by the PFMC, the incremental impacts to total economic output, from the proposed 2007 ocean recreation salmon regulations, may range from no impact (status quo) to as much as \$21,300,000 (no fishing north of Point Sur after April). Consequently, the proposed action may have a significant statewide adverse economic impact directly affecting businesses; however, it is unlikely that this would affect the ability of California businesses to compete with businesses in other states.

The Commission has made an initial determination that the amendment of this regulation may have a significant statewide adverse economic impact on businesses. The Commission has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit alternative proposals. Submissions may include the following considerations:

- (i) the establishment of differing compliance or reporting requirements or timetables which take into account the resources available to businesses;
 - (ii) consolidation or simplification of compliance and reporting requirements for businesses;
 - (iii) the use of performance standards rather than prescriptive standards; or
 - (iv) exemption or partial exemption from the regulatory requirements for business.
- (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:

Depending on which 2007 options are finally adopted by the PFMC, the incremental economic impacts to jobs within the State may range from no impact (status quo) to about 200 jobs lost (no fishing north of Point Sur after April). Likewise impacts to total personal earnings could range from no impact to as much as \$9,000,000.

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

There are no new or additional reporting requirements called for in the proposed regulations. 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:

Incremental fiscal impacts to the California Department of Fish and Game could range from no impact (status quo), to as much as \$2,100,000 in lost revenue from recreational license and tag sales (no fishing north of Point Sur after April). In addition some increases in enforcement costs would be anticipated due to proposed regulations other than status quo.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

Effect on Small Business

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

Consideration of Alternatives

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

FISH AND GAME COMMISSION

Dated: February 6, 2007

John Carlson, Jr.
Executive Director