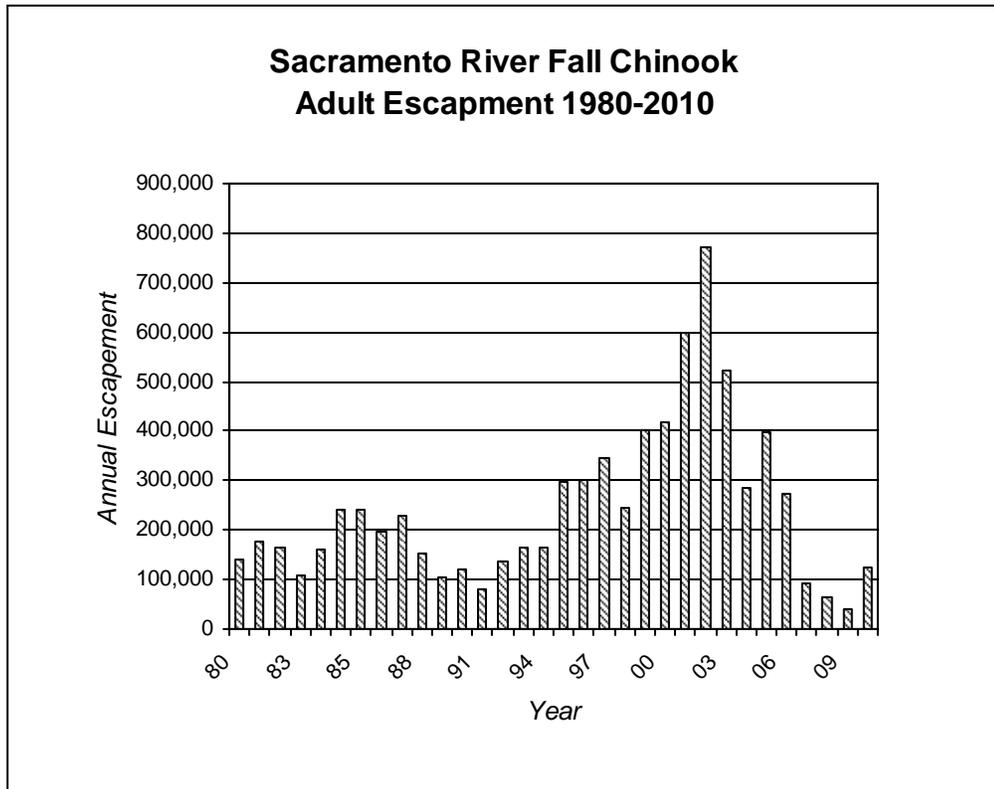


CALIFORNIA FISH AND GAME COMMISSION
STATEMENT OF PROPOSED EMERGENCY REGULATORY ACTION

Emergency Action to Amend Section 27.80
Title 14, California Code of Regulations
Re: Ocean Salmon Recreational Fishing
Conformance with Federal Regulations

I. Statement of Facts Constituting the Need for Emergency Regulatory Action:

California's commercial and recreational salmon fisheries have been severely constrained since 2007 when the Sacramento River Fall Chinook (SRFC) escapement failed to meet the minimum level of its conservation objective of the Pacific Fishery Management Council's (PFMC) Fishery Management Plan (FMP). The FMP conservation objective is an annual SRFC escapement range of 122,000 to 180,000 hatchery and natural adult spawners. The SRFC escapements for 2007, 2008 and 2009 ranged from 40,900 to 91,400 adults as shown below.



In response to the series of record low SRFC escapements, the National Marine Fisheries Service (NMFS) and California Fish and Game Commission (Commission) closed the ocean waters off California to the

commercial and recreational salmon fisheries during 2008 and 2009 and offered limited fishing in 2010. As a result, the commercial and recreational salmon fisheries were declared a fishery disaster in 2008 by the State of California and the U.S. Department of Commerce. The 2009 and 2010 salmon fisheries were also declared extensions of the 2008 fishery disaster by the State of California and the U.S. Department of Commerce. The total projected economic loss to the State for recent closures of California commercial and recreational salmon fisheries in coastal marine waters and a Central Valley in-river salmon recreational fishery were \$262 million (2008) and \$279 million (2009) and \$166 million (2010). Although recreational fishing was allowed in 2010, considerable economic losses were still projected because the season was shorter in duration and was closed two days per week.

Recent Developments

On March 1, 2011, the PFMC released the Preseason Report I: Stock Abundance Analysis and Environmental Assessment Part 1 for 2011 Ocean Salmon Fisheries (Preseason Report I). The Preseason Report I projects that the 2011 SRFC preseason ocean abundance is 730,000 adult Chinook which is significantly higher than the 2010 preseason ocean abundance projection.

Based upon this new information on March 9, 2011, the PFMC recommended that the federal waters of the Fort Bragg, San Francisco, and Monterey port areas should open on April 2, 2011 to recreational salmon fishing. The minimum size limit in all areas is 24 inches total length. The NMFS will enact this recommendation via a routine inseason action.

Given this federal rule change is pending, this proposed emergency regulatory action would implement this same opening date of April 2, 2011, in Section 27.80, Title 14, CCR for state waters along with a statewide size limit of 24 inches.

Emergency action is necessary to conform Section 27.80, Title 14, CCR, to the federal regulations in order to reduce continued adverse economic impact on the port areas of Fort Bragg, San Francisco and Monterey. If federal regulations are effective on April 2 opening the fishery, but fishing and possession of salmon continues to be prohibited in state waters as of this date, the state alone could be held responsible for continued adverse economic consequences to these port areas. The proposed changes are necessary to bring needed economic benefit to local businesses who are recovering from the lingering effects of three years of continuous salmon fishery closures.

The standard rulemaking process will not provide sufficient time for submission, review, and filing of the conforming state regulations with the Secretary of State by April 2, 2011. The lack of emergency action would result in different state and federal regulations governing ocean salmon recreational fishing season dates in waters off California, creating confusion for the public and extreme difficulty regarding enforcement of an opening date. The lack of clarity would also result in significant hardship and increased operational and management costs to both state and federal agencies and stakeholders associated with responding to uncertainty as to what rules actually govern individual fishing activities. Thus, the Commission finds this emergency action is necessary for the immediate preservation of the public peace and general welfare pursuant to Section 240 of the Fish and Game Code.

Proposed Regulations

This regulatory action proposes amendment of Section 27.80, Title 14, CCR, concerning the recreational ocean salmon fishing seasons and the statewide size limit of 24 inches in the ocean waters off California. The changes for each management area are listed in the following paragraphs:

- 1) The waters between Horse Mountain and Point Arena will open on April 2, 2011.
- 2) The waters between Point Arena and Pigeon Point will open on April 2, 2011.
- 3) The waters between Pigeon Point and Point Sur will open on April 2, 2011.
- 4) The waters below Point Sur will open on April 2, 2011.

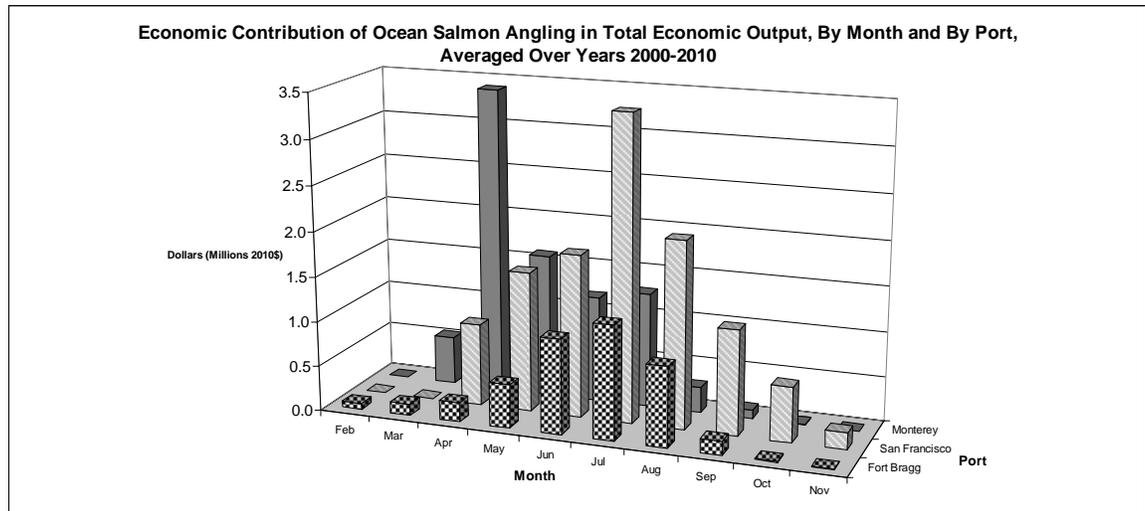
The 2011 closing dates for the above four management areas will be decided in April by the PFMC and Commission, and Section 27.80 will be amended pursuant to the regulatory process to implement these dates.

Justification

In 2010, the 2011 opening dates for recreational salmon fisheries south of Horse Mountain were not established by the PFMC for the first time since 1977 to enhance protection of SRFC due to the stock failing to meet the minimum conservation objective for three consecutive years and the uncertainty in the recent abundance forecasts. Prior to the 2008 and 2009 salmon fishery closures, the recreational salmon fishery always opened on the Saturday nearest February 15 in Fort Bragg and on the first Saturday in April for the San Francisco and Monterey port areas. These opening dates were always enacted the prior year during the PFMC process.

The April and May ocean recreational salmon fisheries are very important economically to the Fort Bragg, San Francisco, and Monterey port areas.

For the Fort Bragg port area, April and May accounts for about 4.9% and 11.4%, respectively, of that coastal community's total economic benefit from each salmon season. For the San Francisco port area, April and May accounts for 7.8% and 13.3%, respectively, of that community's total economic benefit from each salmon season. For the Monterey port area, April and May accounts for 40.7% and 19.0%, respectively, of that community's total economic benefit from each salmon season.



When limited salmon fishing reopened in 2010 after being closed for two successive seasons, April was a particularly important month for several port areas and a significant portion of the salmon revenue for the entire season was generated in that month. 35% of all salmon angler trips and 31% of all Charter Passenger Fishing Vessels (CPFV) salmon trips occurred in April. The April 2010 angler trips for Monterey were 20% higher as compared to the 2000-07 mean number of angler trips. Fort Bragg port showed a similar 15% jump for the same comparison while San Francisco port dropped 5.3%. The poor San Francisco salmon fishing in April 2010 was primarily due to bad weather and longer travel times to the fishing grounds.

In addition, the CPFV fleets in the Fort Bragg, San Francisco, and Monterey port areas have been severely reduced as a result of being closed or significantly constrained for three successive salmon seasons, which is compounded by a poor economy in general and significant increases in fuel prices. Since 2001, the number of CPFVs targeting salmon has decreased almost 30% (120 to 86) in California. The CPFV fleet has decreased 53%, 45% and 13% in Fort Bragg (number=8), Monterey (number=22) and San Francisco ports (number=49), respectively. Many CPFVs in San Francisco and Monterey switched to

sight-seeing and/or whale-watching trips in order to survive economically during the salmon fishery closures in recent years.

Industry contacts indicated that there has been a 30% reduction in coastal retail businesses that provide goods and services to salmon anglers. The economic benefit of opening April and May is desperately needed to keep the salmon-related businesses from suffering continued losses during these fiscally challenging times.

This emergency regulatory action is expected to allow salmon fishing opportunities in these four management areas approximately 1 to 2 months earlier as compared to the standard rulemaking process, consistent with the pending new federal regulations. This emergency action could result in \$8.2 million in total economic output for businesses that provide goods and services to salmon anglers and provide support for up to 84 jobs in these businesses that would otherwise be lost if regulations are delayed because they are implemented via the standard rulemaking process.

The 2008, 2009 and 2010 combined fishery disaster losses for the ocean recreational fishery were \$406 million. This emergency action will help salmon-related businesses recover from the recent salmon fishery closures and is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

II. Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

III. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the emergency regulatory action has been assessed, and the following 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 statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The

proposed changes are necessary to bring needed economic benefit to local businesses who are recovering from the lingering effects of three years of continuous salmon fishery closures.

This proposal to open April and May could result in an angler effort increase for sport salmon fishing of up to 33.6% for the port areas of Fort Bragg, San Francisco and Monterey. On a pro-rata basis, increasing the estimated business output for merchants that provide goods and services to salmon anglers in the State by this same percentage could result in an average projected increase of about \$8.2 million in total economic output for businesses.

(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:

This proposal to open April and May could result in an angler effort increase for sport salmon fishing of up to 33.6% for the port areas of Fort Bragg, San Francisco, and Monterey. On a pro-rata basis, the estimated employment impacts could result in an increase of about 84 jobs in businesses that provide goods and services to salmon anglers.

(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. There are no new reporting requirements imposed as a result of the proposed regulations.

(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

IV. Plain English Statement:

It has been determined that the amendment of these regulations may affect small businesses. The Commission has drafted the regulations in

Plain English pursuant to Government Code sections 11342(e) and 11346.2(a)(1).

V. Authority and Reference:

The Fish and Game Commission proposes this emergency action 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.

VI. Express Finding of Emergency:

Pursuant to the authority vested in it by Section 240 of the Fish and Game Code and for the reasons set forth above in the "Statement of Facts Constituting Need for Emergency Action," the Commission expressly finds that the adoption of this regulation is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

These proposed changes will help businesses, that provide goods and services to salmon anglers, recover from the adverse economic effects of the recent salmon fishery closures.

VII. Specific Agency Statutory Requirements:

The Commission has complied with the special statutory requirements governing the adoption of emergency regulations pursuant to Section 240 of the Fish and Game Code. The Commission will hold a public hearing on this regulation on March 14, 2011, and the above finding that this regulation is necessary for the immediate preservation of the public peace, health and safety, or general welfare, meets the requirements of Section 240.

VIII. Documents Relied Upon for Rulemaking:

PFMC, 2011, *Preseason Report I: Stock Abundance Analysis and Environmental Assessment Part 1 for 2011 Ocean Salmon Fisheries*, PFMC, 7700 NE Ambassador Place, Suite 200, Portland, Oregon 97220-1384.

Informative Digest (Plain English Overview)

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