

**TITLE 14. Fish and Game Commission
Notice of Emergency Regulatory Action**

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

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.

In response to the series of record low SRFC escapements, the National Marine Fisheries Service (NMFS) and 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 in federal regulations via routine in season 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.

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 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.

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.

Section 240 Finding

Pursuant to the authority vested in it by Section 240 of the Fish and Game Code and for the reasons set forth 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.

Public Comments on Proposed Emergency Regulations

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

In order to be considered, public comments on proposed emergency regulations must be submitted in writing to the Office of Administrative Law (OAL), 300 Capitol Mall, Room 1250, Sacramento, CA 95814; AND to the Fish and Game Commission, 1416 Ninth Street, Room 1320, Sacramento, CA 95814, or via fax to (916) 653-5040 or via e-mail to fgc@fgc.ca.gov. Comments must identify the emergency topic and may address the finding of emergency, the standards set forth in sections 11346.1 and 11349.1 of the Government Code and Section 240 of the Fish and Game Code. Comments must be received within five calendar days of filing of the emergency regulations. The Commission anticipates filing the emergency regulations with OAL on March 21, 2011. Please refer to OAL's website (www.oal.ca.gov) to determine the date on which the regulations are filed with OAL.

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 Business, 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

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

Consideration of 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.

FISH AND GAME COMMISSION

Dated: March 14, 2011

Jon K. Fischer
Acting Executive Director