

week. The minimum size will be twenty-four inches total length through July 5, 2012 and twenty inches total length thereafter. The bag limit remains at two salmon per day.

- (4) For the area between Pigeon Point and Point Sur: The season will run May 1, 2012 through October 7, 2012. Fishing is authorized 7 days per week. The minimum size will be twenty-four inches total length through July 5, 2012 and twenty inches total length thereafter. The bag limit remains at two salmon per day.
- (5) For the areas south of Point Sur: The season will run May 1, 2012 through October 7, 2012. Fishing is authorized 7 days per week. The minimum size will be twenty-four inches total length through July 5, 2012 and twenty inches total length thereafter. The bag limit remains at two salmon per day.

The new state regulations will allow for a May 1st opening date in the area between Horse Mountain and the California-Oregon border, including Humboldt Bay. In addition, it aligns all state regulations with new federal regulations in effect on May 1, 2012.

V. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations:

- (1) Kenneth Petruzzelli representing the San Joaquin Tributaries Association, letter dated February 24, 2012.
 - a. The Pacific Fishery Management Council (PFMC) has not provided sufficient information at this time to determine the cause of Central Valley Fall-run Chinook salmon (CVFC) failure to meet the conservation objective for 2011.
 - b. The Commission must limit the exploitation rate of fisheries within its jurisdiction so as not to limit rebuilding under the Federal Salmon Fishery Management Plan (Salmon FMP).
 - c. His organization supports Option 2. – no fishing in all areas.
 - d. His organization proposes an additional option to allow for a mark selective fishery on adipose fin-clipped CVFC.

Response:

- a. The PFMC has directed the Salmon Technical Team (STT) to develop a rebuilding plan to address the continued failure to achieve the conservation objective which is scheduled to be completed by 2013. State and federal scientists have acknowledged that the current conservation objective for CVFC is an outdated goal range established decades ago that needs reevaluation with consideration given to the current environmental and habitat conditions. Attainment of the conservation objective last year is not used retrospectively to determine fishing seasons for 2012. The stock forecast information and the projected attainment of several key conservation objectives are used to establish possible fishing

seasons for 2012.

- b. The PFMC has approved federal regulations that limit the exploitation rate of fisheries within its jurisdiction so as not to limit rebuilding under the Federal Salmon FMP. California's recreational fishing regulations conform to the Federal regulations to achieve optimum yield in California under the Federal Salmon FMP.
- c. The Commission did not adopt Option 2. The Commission adopted Option 1 which allows for recreational ocean salmon fishing opportunities while still achieving optimum yield in California under the Federal Salmon FMP.
- d. This proposed option was not among the alternatives presented for public review. Neither state nor federal scientists and managers find this alternative to be viable for California because it is anticipated that mark-selective fisheries would increase impacts on weak stocks and stocks listed under state and federal ESAs. Weak stock runs that are produced in California hatcheries to mitigate these populations have a 100 percent mark rate, unlike the CVFC run. Consequently, fishermen who are allowed to keep only marked fish (i.e., a "mark-select fishery") are more likely to retain fish that are of weak-stock origin.

(2) Britt Holmstom, oral testimony at the March 7 Commission meeting.

- a. She offered a personal comparison of the Norwegian Atlantic and Pacific Coast salmon fisheries and expressed a concern for cross contamination of the wild stocks with farmed stocks commonly found in her native Norwegian waters.

Response:

- a. This comment does not address California ocean salmon fishery regulations.

(3) Kenneth Petruzzelli representing the San Joaquin Tributaries Association, letter dated March 30, 2012.

- a. His organization supports Option 2. – no fishing in all areas.
- b. His organization proposes an additional option to allow for a mark selective fishery on adipose fin-clipped CVFC (i.e., "hatchery only").
- c. The PFMC FMP fails to address the impacts of fishery management on the goals of the Central Valley Project Improvement Act (CVPIA).

Response:

- a. The Commission did not adopt Option 2. The Commission adopted Option 1 which allows for recreational ocean salmon fishing opportunities while still achieving optimum yield in California under the Federal Salmon FMP. The Commission authorized fisheries in time and areas that allow maximum opportunity for the public while still protecting stocks of special concern and ensuring the long term sustainability of all California salmon

stocks. The Commission must weigh benefits against the risks when establishing resource management rules and regulations while utilizing the best available science. Option 1 was chosen using these criteria.

- b. This proposed option was not among the alternatives presented for public review. Neither state nor federal scientists and managers find this alternative to be viable for California because it is anticipated that mark-selective fisheries would increase impacts on weak stocks and stocks listed under state and federal ESAs. Weak stock runs that are produced in California hatcheries to mitigate these populations have a 100 percent mark rate, unlike the CVFC run. Consequently, fishermen who are allowed to keep only marked fish (i.e., a “mark-select fishery”) are more likely to retain fish that are of weak-stock origin.
- c. Each year, the PFMC applies peer-reviewed forecasting methods to estimate the total ocean abundance of SRFC for the upcoming year. In years where the SRFC abundance is low or below the minimum escapement goal, ocean fisheries off California and Oregon are considerably constrained or completely closed (e.g., 2008 season). The current SRFC conservation objective includes both hatchery and natural adults spawners and it provides protection to all CV salmon stocks, regardless of origin. It is consistent with the State’s CVPIA goal of protecting and enhancing natural salmon stocks throughout the CV.

VI. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:

California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VII. Location of Department files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

VIII. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

No alternatives have been identified.

(b) No Change Alternative:

The State must conform its ocean recreational fishing regulations for salmon in State waters (zero to three miles offshore) to the Federal regulations in order for the new State and Federal regulations to become 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.

(c) Consideration of Alternatives:

In view of the information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the proposed regulation, or would be more cost-effective to the affected private persons and equally effective in implementing the statutory policy or other provision of law.

IX. 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 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 for the continued preservation of the resource and therefore the prevention of adverse economic impacts.

(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; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses or the expansion of businesses in California. The adopted regulations provide for a normal ocean salmon season; therefore, no impacts to jobs are expected. The impacted businesses are generally small businesses employing few individuals and, like all small businesses, are subject to failure for a variety of causes. Additionally, the long-term intent of the proposed action is to increase sustainability in fishable salmon stocks and, subsequently, the promotion and long-term viability of these same small businesses.

The Commission anticipates benefits to the health and welfare of California residents. Providing opportunities for an ocean salmon sport fishery encourages consumption of a nutritious food.

The Commission does not anticipate any non-monetary benefits to worker safety.

The Commission anticipates benefits to the environment by the sustainable management of California's ocean salmon resources.

(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.

(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.

Updated Informative Digest (Policy Statement Overview)

The Pacific Fishery Management Council (PFMC) coordinates west coast management of recreational and commercial ocean salmon fisheries in the Federal fishery management zone (three to 200 miles offshore) off Washington, Oregon and California. The annual PFMC ocean salmon regulation recommendations are subsequently implemented in federal regulation by the National Marine Fisheries Service (NMFS) by May 1 of each year.

The Fish and Game Commission (Commission) adopts regulations for the ocean salmon recreational fishery in State waters (zero to three miles offshore) which are consistent with these Federal fishery management goals and regulations each year.

PFMC Regulatory Outlook

On March 7, 2012, the PFMC will propose a suite of ocean salmon fishery regulatory options. These options will go out for public review and the final PFMC recommendations for federal waters will be made on April 6, 2012. The federal regulations will go into effect on or after May 1, 2012 and 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 consider until March, the 2012 ocean salmon sport regulations could range from no fishing in all areas off California to limited salmon fishing for varied areas and dates to be determined between May 1, 2012 and November 11, 2012.

Present Regulations

Current regulations authorized recreational ocean salmon fishing north of Horse Mountain including Humboldt Bay from May 14 to September 5, 2011. Between Horse Mountain and Pigeon Point, fishing was authorized from April 2 to October 30, 2011. All areas south of Pigeon Point had an ocean salmon recreational fishing season from April 2 to September 18, 2011. For all areas in 2011, the bag limit was two fish per day (all species except coho) and the minimum size limit was 24 inches total length. All recreational fishing for ocean salmon is currently closed until further action by the PFMC

and/or the Commission.

The ocean salmon sport fishing regulations for April 1-30, 2012 are being considered in a separate rulemaking package, as described in OAL Notice No. Z-2011-1227-03.

Proposed Regulations

For public notice purposes and to facilitate Commission discussion, the Department of Fish and Game (Department) is proposing three regulatory options which encompass all possible actions that would, or would not allow for salmon fishing on or after May 1 in various areas of California for Commission consideration:

Option 1 – Varied season dates and regulations in all areas

The date ranges in the following areas are proposed to encapsulate all possibilities that might be considered for Federal ocean salmon regulations in effect on or after May 1, 2012. This approach will allow final State ocean salmon recreational fishing regulations to conform to those in effect in federal ocean waters.

- (1) For the all waters of the ocean north of Horse Mountain and in Humboldt Bay: The season, if any, may occur within the range of May 15 through September 15, 2012.
- (2) For the area between Horse Mountain and Point Arena: The season, if any, may occur within the range of May 1 to November 11, 2012.
- (3) For the area between Point Arena and Pigeon Point: The season, if any, may occur within the range of May 1 to November 11, 2012.
- (4) For the area between Pigeon Point and Point Sur: The season, if any, may occur within the range of May 1 to October 7, 2012.
- (5) For the areas south of Point Sur: The season, if any, may occur within the range of May 1 to October 7, 2012.

For all areas, the proposed bag limit will be from one to two fish and the proposed minimum size will be from 20 to 26 inches total length. The exact opening and closing dates, along with bag limit, minimum size, and days of the week open will be determined in April and may be different for each sub-area.

Option 2 - No fishing in all areas

If adopted, the regulatory text of Option 2 would specifically establish 2012 closed areas.

Option 3 - A possible combination of Option 1 and 2 may be developed after more information is available from the NMFS and PFMC.

This may include different opening and closing dates, bag limits, size limits, days of the week open and periodic closures among areas.

The benefits of the proposed regulations are concurrence with Federal law, sustainable management of ocean salmon resources, and promotion of businesses that rely on recreational ocean salmon fishing.

The Commission does not anticipate non-monetary benefits to the protection of public health and safety, worker safety, the prevention of discrimination, the promotion of fairness or social equity and the increase in openness and transparency in business and government.

The proposed regulations are neither inconsistent nor incompatible with existing state regulations.

At its April 18 teleconference meeting, the Commission adopted ocean salmon fishing seasons and regulations for May through November 2012 as described below in Modified Option 1. This action conforms state regulations to new federal rules approved by the PFMC on April 5, 2012 for federal waters.

Modified Option 1

- (1) For all waters of the ocean north of Horse Mountain and in Humboldt Bay: The season will run May 1, 2012 through September 9, 2012. Fishing is authorized 7 days per week. The minimum size will be twenty inches total length. The bag limit remains at two salmon per day.**
- (2) For the area between Horse Mountain and Point Arena: The season will run May 1, 2012 through November 11, 2012. Fishing is authorized 7 days per week. The minimum size will be twenty inches total length. The bag limit remains at two salmon per day.**
- (3) For the area between Point Arena and Pigeon Point: The season will run May 1, 2012 through November 11, 2012. Fishing is authorized 7 days per week. The minimum size will be twenty-four inches total length through July 5, 2012 and twenty inches total length thereafter. The bag limit remains at two salmon per day.**
- (4) For the area between Pigeon Point and Point Sur: The season will run May 1, 2012 through October 7, 2012. Fishing is authorized 7 days per week. The minimum size will be twenty-four inches total length through July 5, 2012 and twenty inches total length thereafter. The bag limit remains at two salmon per day.**
- (5) For the areas south of Point Sur: The season will run May 1, 2012 through October 7, 2012. Fishing is authorized 7 days per week. The minimum size will be twenty-four inches total length through July 5, 2012 and twenty inches total length thereafter. The bag limit remains at two salmon per day.**