

- (4) For the areas south of Point Sur: The season will run April 7, 2012 through April 30, 2012. Fishing is authorized 7 days per week. The minimum size will be twenty-four inches total length. The bag limit remains at two salmon per day.

The Fish and Game Commission (Commission) adopted the modified Option 1 at its March 7, 2012 meeting. The new state regulations will allow for an April 7th opening date in state waters off of most of California, and align with the new federal regulations.

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 State and federal scientists have acknowledged that the current conservation objective for CVFC is an outdated goal range established decades ago that needs reevaluation with consideration given to the current environmental and habitat conditions.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 have conformed 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 Holmstrom, 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.

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)

On May 1, 2011, NMFS implemented the 2011 Federal ocean salmon regulations, which included PFMC recommendations for dates to open the 2012 California ocean salmon recreational fishing season south of Horse Mountain. While Federal waters below Horse Mountain are scheduled to open on April 7, 2012 with the same fishing regulations in effect as in 2011, State waters are scheduled to remain closed. The 2012 season openers were not adopted into the State's ocean salmon regulations last year due to the possibility that these opener dates, along with minimum size limits, bag limits, and open fishing days, may be modified by NMFS/PFMC in March 2012 based on the most up-to-date salmon abundance information for target stocks and salmon species of special concern, including Sacramento River Winter Chinook which is listed as endangered under both State and Federal Endangered Species Acts (ESAs).

The Department of Fish and Game (Department) is proposing modification to the annual Commission ocean salmon regulatory process to synchronize salmon data availability and the Federal regulatory timeline with the State's rulemaking requirements so that rules are effective in a timely manner. Two separate Commission actions are necessary to conform the state regulations to new federal rules; the first action taken after the March 2-7, 2012 PFMC meeting and the second action taken after the April 1-6, 2012 PFMC meeting.

Proposal Overview

This regulatory proposal will provide increased flexibility for alignment of the annual Federal and State ocean salmon recreational fishing regulatory processes and ensure for adequate public notice of any possible NMFS March or April regulatory action. The proposal is outlined below:

- 1) Restructure Section 27.80, Title 14, CCR, as follows:
 - a. Different subsections (c) and (d) for the salmon fishing season in effect 1) April 7 through April 30 and 2) on or after May 1, respectively.
 - b. Allow for varied regulations among management areas, including different size limits, bag limits, days open, and periodic closures during the two time periods above to provide increased protection of California salmon stocks, especially those listed under State and Federal ESAs.
- 2) Concurrent notice of two Initial Statement of Reasons (ISOR).
 - a. In March, the first ISOR will amend subsection (c) to adopt Federal ocean salmon recreational fishing regulations in effect April 7 through April 30, 2012.
 - b. In April, the second ISOR will amend subsection (d) to adopt Federal ocean salmon recreational fishing regulations in effect on or after May 1, 2012.

This is the first ISOR to restructure Section 27.80 and add the 2012 ocean season regulations effective April 7 through April 30, 2012 as subsection (c) of Section 27.80.

Proposed Regulations

For public notice purposes to facilitate Commission discussion, the Department is proposing three regulatory options to encompass all possible actions for Commission consideration:

Option 1 – Varied season dates in all areas

The date ranges in the following areas are proposed to encapsulate all possibilities of the Commission final action on the Federal regulations in effect April 7 through April 30, 2012. This approach will allow final State ocean salmon recreational fishing regulations to be in effect at the same time as salmon regulations in federal ocean waters.

- (1) For the all waters of the ocean north of Horse Mountain and in Humboldt Bay:
Closed to fishing in April. The remainder of the 2012 season will be decided in April by the PFMC and Commission and the section will be amended pursuant to the regulatory process.
- (2) For all areas south of Horse Mountain: The season, if any, may occur within the range of April 7 to April 30, 2012. The proposed bag limit will be from 1 to 2 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 March and may be different for each sub-area.

Option 2 - No fishing in all areas

This is the same as the no change option since all ocean salmon recreational fishing seasons are currently closed in the Section 27.80 regulations. Regulation changes are proposed to clarify that all areas are closed and establish the new subsection (c) for the next ISOR.

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 week open and periodic closures among management 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 proposed regulations are neither inconsistent nor incompatible with existing state regulations.

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.

On March 5, 2012, the Pacific Fishery Management Council (PFMC) adopted Option 1, modified as follows, for recreational ocean salmon fishing in federal waters during April 2012.

Modified Option 1

- (1) **For the area between Horse Mountain and Point Arena: The season will run April 7, 2012 through April 30, 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 Point Arena and Pigeon Point: The season will run April 7, 2012 through April 30, 2012. Fishing is authorized 7 days per week. The minimum size will be twenty-four inches total length. The bag limit remains at two salmon per day.
- (3) For the area between Pigeon Point and Point Sur: The season will run April 7, 2012 through April 30, 2012. Fishing is authorized 7 days per week. The minimum size will be twenty-four inches total length. The bag limit remains at two salmon per day.
- (4) For the areas south of Point Sur: The season will run April 7, 2012 through April 30, 2012. Fishing is authorized 7 days per week. The minimum size will be twenty-four inches total length. The bag limit remains at two salmon per day.

The Fish and Game Commission adopted the modified Option 1 at its March 7, 2012 meeting.