

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

Amend Sections 1.73 and 27.75, and Subsection (c) of Section 27.80, Title 14,
California Code of Regulations

Re: Ocean Salmon Recreational Fishing – April Season, Recovery of Coded-Wire Tag
from Salmon Heads, and Ocean Salmon Fishery Closures Around River Mouths

I. Date of Initial Statement of Reasons: September 16, 2014

II. Dates and Locations of Scheduled Hearings:

(a) Notice Hearing: Date: December 3, 2014
Location: Van Nuys, CA

(b) Discussion Hearing: Date: February 11, 2015
Location: Sacramento

(c) Adoption Hearing: Date: March 16, 2015
Location: Teleconference

III. Description of Regulatory Action:

(a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

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) along the coasts of Washington, Oregon and California. The annual PFMC ocean salmon regulation recommendations are subsequently implemented by the National Marine Fisheries Service (NMFS) effective on May 1 of each year.

California's recreational salmon fishing regulations need to conform to the federal regulations to achieve optimum yield in California under the Federal Salmon Fishery Management Plan. 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.

It is critical to have consistent State and federal regulations establishing season dates, bag/size limits and other management measures, and also critical that the State and federal regulations be effective concurrently in order to maintain continuity of management and enforcement.

Conformance with federal regulations is also necessary to maintain continued State authority over its recreational salmon fishery and avoid

federal preemption under the Magnuson-Stevens Fishery Conservation Act [16 USC §1856 (b)(1)].

On May 1, 2014, NMFS implemented the 2014 federal ocean salmon regulations, which included the PFMC's recommendation to open the California ocean salmon recreational fishing season south of Horse Mountain on April 4, 2015. While federal waters south of Horse Mountain will open on April 4, 2015, State waters in this area will not open unless the Commission takes regulatory action to do so.

The 2015 season opening dates were not adopted into the State's ocean salmon regulations in 2014 as a matter of precaution, in order to account for the possibility that these dates, along with minimum size limits, bag limits, and open fishing days, or other management measures, may be modified by NMFS and PFMC based on the most up-to-date salmon abundance information. Fishery monitoring and escapement information needed for target stocks and salmon species of special concern, including Sacramento River Winter-run Chinook which is listed as endangered under both federal and State Endangered Species Acts (ESAs), is not available until the winter or early spring of 2015.

Concurrent Regulatory Action

The Commission will consider the most up-to-date information before determining if ocean salmon fishing should be authorized for April 2015. The proposed regulations would allow the Commission to adopt the April 4 opening date, or a later date in April, along with other fishery management measures for State waters that would be effective through April 30, 2015.

Two separate Commission actions are necessary to establish salmon fishing regulations for state waters that would apply in 2015 and beyond. The first action would amend subsection 27.80 (c), establishing salmon fishing regulations for the month of April 2015 consistent with federal regulations for the federal fishery management zone off California. The action would also amend Section 1.73 to ensure the recovery of coded-wire tags from salmon taken in ocean and inland recreational fisheries. Additionally, the proposed action would amend Section 27.75 to include specific latitude and longitude coordinates that define the river mouth areas closed to ocean salmon fishing to improve clarity, minimize ambiguity and improve enforceability. Recreational salmon fishing regulations for May 1 through the end of 2015 will be considered in the second rulemaking action, tentatively scheduled for adoption in April 2015.

Present Regulations

Regulations for 2014 [subsections 27.80 (c) and (d)] authorized ocean salmon recreational fishing seven days per week north of Horse Mountain including Humboldt Bay from May 10 to September 7, 2014. Between Horse Mountain and Point Arena, ocean salmon recreational fishing was authorized seven days per week from April 5 to November 9, 2014. Between Point Arena and Pigeon Point, ocean salmon recreational fishing

was authorized seven days per week from April 5 to November 9, 2014. Areas south of Pigeon Point had an ocean salmon recreational fishing season seven days per week from April 5 to October 5, 2014. The bag limit for all areas in 2014 was two fish per day (all species except coho). The area north of Horse Mountain had a minimum size limit of 24 inches total length. The area between Horse Mountain and Point Arena had a minimum size limit of 20 inches total length. The area between Point Arena and Pigeon Point had a minimum size limit of 24 inches total length through June 30, 2014 and 20 inches total length thereafter. Areas south of Pigeon Point had a minimum size limit of 24 inches total length. Since the existing regulations pertained only to the 2014 season, amendment of these regulations is essential to allow for any fishing in State waters during 2015.

Present regulations in Section 1.73 define salmon, at the species level, as Chinook, coho, pink, chum and sockeye.

Wild stocks of salmon in California waters have gone from being some of the largest salmon runs in North America to some salmon runs being listed on the endangered species list. As mitigation for water projects, California operates eight salmon hatcheries which release more than 40 million juvenile salmon annually in the Klamath-Trinity, Sacramento-San Joaquin and Russian river systems. Twenty-five percent of the salmon released from the hatcheries are implanted with coded-wire tags (CWT) that identify species, run, brood year, hatchery or wild stock, release size, release date(s), release location(s), and other data. Any salmon containing a CWT is also externally marked with a clipped adipose fin (ad-clipped) to allow for visual identification. The Department of Fish and Wildlife (Department) samples 20 percent or more of the salmon fishery landings to collect fishery management data and has done so since 1962. The heads from all ad-clipped salmon observed in the sampling are retained and the CWT in each head is extracted, decoded and the associated data are entered into the coastwide CWT database maintained by the Pacific States Marine Fisheries Commission. Fish and Game Code Section 8226 requires commercial fishermen to relinquish the head of any ad-clipped salmon upon request by an authorized agent or employee of the Department; however, there is not currently a similar regulation or statute that applies to recreational fishermen.

Present regulations in Section 27.75 specify that salmon may not be taken within 3 nautical miles (nm) north, south and west of the mouths the Smith and Klamath rivers; that salmon may not be taken in August and Sept within 2 nm north, south and west of the mouth of the Eel River; and that salmon may not be taken in August within 6 nm north and south and 3 nm west of the mouth of the Klamath River.

Proposed Regulations

For public notice purposes to facilitate Commission discussion, the Department is proposing the following regulations to encompass the range of federal ocean salmon regulations that are expected to be in effect April 4

through April 30, 2015. This approach will allow the Commission to adopt State ocean salmon recreational fishing regulations to conform to those in effect in federal ocean waters shortly after the federal rules are promulgated.

- (1) North of Horse Mountain and in Humboldt Bay: The fishery shall remain closed in this area during April. The remainder of the 2015 season will be decided in April by the PFMC and Commission and the section will be amended pursuant to the regulatory process.
- (2) Between Horse Mountain and Point Arena: The season, if any, may open on a date within the range of April 4 through April 30, 2015. The proposed daily bag limit will be from zero to two fish, and the proposed minimum size will be from 20 to 26 inches total length. The exact opening date, along with daily bag limit, minimum size, and days of the week open will be determined by the Commission, considering federal regulations applicable to this area for April 2015.
- (3) Between Point Arena and Pigeon Point: The season, if any, may open on a date within the range of April 4 through April 30, 2015. The proposed daily bag limit will be from zero to two fish, and the proposed minimum size will be from 20 to 26 inches total length. The exact opening date, along with daily bag limit, minimum size, and days of the week open will be determined by the Commission, considering federal regulations applicable to this area for April 2015.
- (4) Between Pigeon Point and Point Sur: The season, if any, may open on a date within the range of April 4 through April 30, 2015. The proposed daily bag limit will be from zero to two fish, and the proposed minimum size will be from 20 to 26 inches total length. The exact opening date, along with daily bag limit, minimum size, and days of the week open will be determined by the Commission, considering federal regulations applicable to this area for April 2015.
- (5) South of Point Sur: The season, if any, may open on a date within the range of April 4 through April 30, 2015. The proposed daily bag limit will be from zero to two fish, and the proposed minimum size will be from 20 to 26 inches total length. The exact opening date, along with daily bag limit, minimum size, and days of the week open will be determined by the Commission, considering federal regulations applicable to this area for April 2015.

The proposed regulations in Section 1.73 will add a requirement to relinquish the head of any recreationally caught salmon, upon request by an authorized agent or employee of the Department, to ensure the recovery of any coded-wire tag. The recovery of coded-wire tags collected in a statistically-valid manner from ocean and inland fisheries is the primary tool used by the Department and other agencies to produce the essential fishery information needed to sustainably manage California salmon resources and

ensure tribal allocations are met. The language will also improve consistency between Title 14 and the California Fish and Game Code.

The proposed regulations in Section 27.75 will include specific latitude and longitude coordinates that define existing river mouth area closures of the Smith, Klamath, and Eel rivers to ocean salmon fishing to improve clarity, minimize ambiguity and improve enforceability.

Other changes are proposed to clarify the existing regulations.

It is the policy of the State to encourage the conservation, maintenance, and utilization of the living resources of the ocean and other waters under the jurisdiction and influence of the State for the benefit of all the citizens of the State. Further, it is the policy of the State to promote the development of local fisheries and distant-water fisheries based in California in harmony with international law respecting fishing and the conservation of the living resources of the ocean and other waters under the jurisdiction and influence of the State. The objectives of this policy include, but are not limited to, the maintenance of sufficient populations of all species of aquatic organisms to ensure their continued existence and the maintenance of a sufficient resource to support a reasonable sport use, taking into consideration the necessity of regulating individual sport fishery bag limits to the quantity that is sufficient to provide a satisfying sport. Adoption of scientifically-based ocean salmon seasons, size limits, and bag and possession limits provides for the maintenance of sufficient populations of salmon to maintain their continued existence.

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

(b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 200, 202, 205, 220, 240, 316.5 and 2084, Fish and Game Code.

Reference: Sections 200, 202, 205, 215, 220, 316.5, 2084, and 7060, Fish and Game Code.

(c) Specific Technology or Equipment Required by Regulatory Change:

None.

(d) Identification of Reports or Documents Supporting Regulation Change:

Pacific Fishery Management Council. April 2014. Preseason Report III: Council Adopted Management Measures and Environmental Assessment Part 3 for 2014 Ocean Salmon Fishery Regulations.

(http://www.pcouncil.org/wp-content/uploads/2014_Preseason_Report_III_FINAL.pdf)

Economic Impact Assessment

(e) Public Discussions of Proposed Regulations Prior to Notice Publication:

No public meetings are being held prior to the notice publication. The 45-day comment period provides adequate time for review of the proposed amendments.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

No alternatives were identified by or brought to the attention of Commission staff that would have the same desired regulatory effect.

(b) No Change Alternative:

Concerning the proposed amendment of subsection 27.80(c), the no change alternative would maintain existing regulations which do not provide an ocean salmon recreational fishing season for 2015. Federal regulations are anticipated to open the ocean salmon recreational fishing regulations south of Horse Mountain on April 4, 2015. The State must conform its ocean recreational fishing regulations for salmon in State waters (zero to three miles offshore) to the federal regulations for consistency and to avoid public confusion. Preemption of State regulatory authority by the NMFS could occur if State regulations are in conflict with federal regulations.

Concerning the proposed amendment of Section 1.73, the no change alternative would continue the inconsistency between commercial and recreational fishing regulations pertaining to the recovery of salmon heads from salmon landed in California's salmon fisheries. The no change alternative could potentially cause significant harm to the State's ability to collect crucial data to manage California salmon fisheries and resources.

Concerning the proposed amendment of Section 27.75, the no change alternative would leave the existing ambiguous language pertaining to river mouth closures in place as specified in Section 27.75.

(c) Consideration of Alternatives:

In view of the information currently possessed, no reasonable alternative considered would be more effective in carrying out the purpose 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 affected private persons and equally effective in implementing the statutory policy or other provision of law.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are necessary.

VI. 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 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 Department anticipates status quo fishing levels for April 2015 as compared to the April 2014 ocean salmon sport fishing season.

(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 that the proposed regulations will have any impact on the creation or elimination of jobs, the creation or elimination of businesses or the expansion of businesses in California.

The Commission anticipates benefits to the health and welfare of California residents. Salmon sport fishing contributes to increased mental health of its practitioners, provides opportunities for multi-generational family activities and promotes respect for California's environment by the future stewards of California's natural resources.

The Commission anticipates benefits to the State's environment in the sustainable management of salmon resources.

Additional benefits of the proposed regulations are concurrence with federal law, and promotion of businesses that rely on recreational ocean salmon fishing.

The Commission does not anticipate benefits to worker safety.

(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.

Informative Digest (Policy Statement Overview)

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Proposed Regulations

Two separate Commission actions are necessary to conform the State regulations to federal rules that will apply in 2015. The current proposed action would amend subsection 27.80 (c), establishing salmon fishing regulations for the month of April 2015. Recreational salmon fishing regulations for May 1 through the end of 2015

will be considered in the second rulemaking action, tentatively scheduled for adoption in April 2015.

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Other changes are proposed to clarify the existing regulations.

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

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. The legislature has delegated authority to the Commission to adopt sport fishing regulations in general (Sections 200, 202 and 205, Fish and Game Code) and salmon sport fishing regulations specifically (Section 316.5, Fish and Game Code). The proposed regulations are consistent with regulations for sport fishing in marine protected areas (Section 632, Title 14, CCR) and with general sport fishing regulations in chapters 1 and 4 of subdivision 1 of Division 1, Title 14, CCR. Commission staff has searched the California Code of Regulations and has found no other State regulations related to the recreational take of salmon in the ocean.