

STAFF SUMMARY FOR MARCH 15, 2016

3. APRIL 2016 OCEAN SALMON**Today's Item**Information Action

Adopt proposed changes to ocean salmon sport fishing regulations. DFW will present the final recommendations at the meeting.

Summary of Previous/Future Actions

- Notice hearing Dec 9-10, 2015, San Diego
- Discussion hearing Feb 10-11, 2016; Sacramento
- **Today's Adoption hearing** Mar 15, 2016; Teleconference

Background

FGC annually adopts ocean salmon sport fishing regulations in State waters to conform to federal rules. The Pacific Fishery Management Council (PFMC) coordinates West Coast management of recreational and commercial ocean salmon fisheries in the federal fishery management zone, 3 to 200 miles offshore WA, OR and CA. PFMC ocean salmon recommendations are subsequently implemented by the National Marine Fisheries Service (NMFS), effective May 1 of each year.

On May 1, 2015, NMFS implemented the 2015 federal ocean salmon regulations, which included the PFMC's recommendation to open the California ocean salmon recreational fishing season south of Horse Mountain on Apr 2, 2016. While federal waters south of Horse Mountain will open on Apr 2, 2016, State waters in this area will not open unless the Commission takes regulatory action to do so.

The proposed regulations include a broad range of options to encompass the range of federal ocean salmon regulations that are expected to be in effect Apr 2 through Apr 30, 2016. This approach will allow the Commission to adopt State ocean salmon recreational fishing regulations to conform to those in effect in federal waters. (FGC will adopt the ocean salmon sport fishing regulations for the remainder of 2016 at its Apr 18 teleconference.)

Significant Public Comments (N/A)**Recommendation**

FGC staff: Adopt the proposed regulations as recommended by DFW during the meeting

Exhibits

1. [DFW memo, received Oct 19, 2015](#)
2. [ISOR](#)

Motion/Direction

The Commission adopts the proposed changes to subsection 27.80(c), related to ocean salmon sport fishing regulations, as recommended by the Department.

2015 OCT 19 PM 12:15

Memorandum

Date: October 14, 2015

To: Sonke Mastrup
Executive Director
Fish and Game Commission

From: Charlton H. Bonham
Director



Subject: **Agenda Items for the December 9-10, 2015 Fish and Game Commission Meeting
Re: Request for Notice Authorization to Amend Salmon Fishing Regulations for
2016 (two ISORs; one to amend Section 27.80(c); the second to amend 27.80(d)).**

Attached for the Fish and Game Commission's (Commission) December 9-10, 2015 meeting are two rulemaking proposals for the 2016 Ocean Salmon fishing season. The first package proposes to amend subsection 27.80(c) to establish open fishing days, bag limits and minimum size restrictions for April 2016. The second package proposes to amend subsection 27.80(d) to establish open fishing days, bag limits and minimum size restrictions for the salmon season in effect on or after May 1, 2016.

Existing Title 14 regulations specify ocean salmon recreational fishing regulations that were valid only for the 2015 season. The proposed amendments to Section 27.80(c) contained in the first ISOR would allow the Commission to adopt regulations at its March teleconference meeting that would establish any ocean salmon recreational fishing regulations for the month of April 2016, in conformance with federal rules.

The proposed amendments to Section 27.80(d) contained in the second ISOR would allow the Commission to adopt regulations at its April teleconference meeting that would establish any ocean salmon recreational fishing regulations on or after May 1, 2016, in conformance with federal rules that will be recommended by the Pacific Fishery Management Council on April 14, 2016. The range of alternatives (open fishing days/times, areas, size limits, bag limits) contained in the second ISOR are the same as those contained in the first ISOR, but the resulting regulations apply only for May 1, 2016 through the end of the year.

The Department of Fish and Wildlife (Department) requests the Commission authorize publication of notice of its intent to amend the above referenced subsections of Section 27.80, Title 14, CCR, to establish ocean salmon recreational fishing regulations for the 2016 fishing season. While the proposed rulemakings are related, they should be noticed separately to conform to timelines driven by the federal regulatory process.

Sonke Mastrup, Executive Director
Fish and Game Commission
October 14, 2015
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If you have any questions or need additional information, please contact Dr. Craig Shuman, Regional Manager of the Marine Region, at (805) 568-1246. The public notice for this rulemaking should identify Environmental Scientist, Barry Miller as the Department's point of contact. Mr. Miller can be reached at (707) 576-2860 or by email at Barry.Miller@wildlife.ca.gov.

Attachments

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

Amend Subsection (c) of Section 27.80, Title 14, California Code of Regulations
Re: Ocean Salmon Recreational Fishing – April 2016 Season

- I. Date of Initial Statement of Reasons: September 21, 2015
- II. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: December 9, 2015
Location: San Diego, CA
 - (b) Discussion Hearing: Date: February 10, 2016
Location: Sacramento, CA
 - (c) Adoption Hearing: Date: March 15, 2016
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, 2015, NMFS implemented the 2015 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 2, 2016. While federal waters south of Horse Mountain will open on April 2, 2016, State waters in this area will not open unless the Commission takes regulatory action to do so.

The 2016 season opening dates were not adopted into the State's ocean salmon regulations in 2015 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, is not available until the winter or early spring of 2016.

Concurrent Regulatory Action

The Commission will consider the most up-to-date information before determining if ocean salmon fishing should be authorized for April 2016. The proposed regulations would allow the Commission to adopt the April 2 opening date, or a later date in April, along with other fishery management measures for State waters that would be effective through April 30, 2016.

Two separate Commission actions are necessary to conform the State regulations to federal rules that will apply in 2016. The first action would amend subsection 27.80(c), establishing salmon fishing regulations for the month of April 2016 consistent with federal regulations for the federal fishery management zone off California. Recreational salmon fishing regulations for May 1 through the end of 2016 will be considered in the second rulemaking action, tentatively scheduled for adoption in April 2016.

Present Regulations

Regulations for 2015 [subsections 27.80(c) and (d)] authorized ocean salmon recreational fishing seven days per week north of Horse Mountain including Humboldt Bay from May 1 to September 7, 2015. Between Horse Mountain and Point Arena, ocean salmon recreational fishing was authorized seven days per week from April 4 to November 8, 2015. Between Point Arena and Pigeon Point, ocean salmon recreational fishing was authorized seven days per week from April 4 to October 31, 2015. Between Pigeon Point and Point Sur, ocean salmon recreational fishing was authorized seven days per week from April 4 to September 7, 2015. For areas south of Point Sur, ocean salmon recreational fishing was authorized seven days per week from April 4 to July 19, 2015. The bag limit for all areas in 2015 was two fish per day (all species except coho). The areas north of 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 April 30, 2015 and 20 inches total length

thereafter. Areas south of Pigeon Point had a minimum size limit of 24 inches total length through May 31, 2015 and 20 inches total length thereafter. Since the existing regulations pertained only to the 2015 season, amendment of these regulations is essential to allow for any fishing in State waters during 2016.

Proposed Regulations

For public notice purposes and to facilitate Commission discussion, the Department of Fish and Wildlife (Department) is proposing the following regulations to encompass the range of federal ocean salmon regulations that are expected to be in effect April 2 through April 30, 2016. 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 2016 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 2 through April 30, 2016. 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 2016.
- (3) Between Point Arena and Pigeon Point: The season, if any, may open on a date within the range of April 2 through April 30, 2016. 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 2016.
- (4) Between Pigeon Point and Point Sur: The season, if any, may open on a date within the range of April 2 through April 30, 2016. 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 2016.
- (5) South of Point Sur: The season, if any, may open on a date within the range of April 2 through April 30, 2016. 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 2016.

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. In addition, 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, 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, 316.5 and 2084, 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 2015. Preseason Report III: Council Adopted Management Measures and Environmental Assessment Part 3 for 2015 Ocean Salmon Fishery Regulations.

http://www.pcouncil.org/wp-content/uploads/2015/04/Preseason_Report_III_2015_FINAL.pdf

(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:

The no change alternative would maintain existing regulations which do not provide an ocean salmon recreational fishing season for 2016. Federal regulations are anticipated to open the ocean salmon recreational fishing regulations south of Horse Mountain on April 2, 2016. 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.

(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 2016 as compared to the April 2015 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.

VII. Economic Impact Assessment:

The proposed regulatory action would conform the State regulations to federal rules that will apply for the month of April 2016.

- (a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State:

The Commission does not anticipate any impacts on the creation or elimination of jobs due to the proposed regulation. The Commission anticipates status quo fishing levels for April 2016 as compared to the April 2015 ocean salmon sport fishing season.

- (b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State:

The Commission does not anticipate any impacts on the creation of new business or the elimination of existing businesses due to the proposed regulation. The Commission anticipates status quo fishing levels for April 2016 as compared to the April 2015 ocean salmon sport fishing season.

- (c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State:

The Commission does not anticipate any impacts on the expansion of businesses in California due to the proposed regulation. The Commission anticipates status quo fishing levels for April 2016 as compared to the April 2015 ocean salmon sport fishing season.

- (d) Benefits of the Regulation to the Health and Welfare of California Residents:

The Commission anticipates health and welfare benefits to California residents from recreation in, and enjoyment of, a sustainable and satisfying salmon fishery.

- (e) Benefits of the Regulation to Worker Safety:

The proposed regulations conform to federal fisheries management allowable harvest levels, and ensure a sustainable fishery. As such, the agency is not aware of any consequences to worker safety that could arise from the proposed regulations.

(f) Benefits of the Regulation to the State's Environment:

The Commission anticipates benefits to the environment. Adoption of scientifically-based ocean salmon seasons, size limits, and bag and possession limits ensures sufficient residual populations of salmon and their continued existence.

(g) Other Benefits of the Regulation:

The proposed regulations will provide for resource sustainability thus ensuring the continuation and future enjoyment of the salmon fishery. Maintaining healthy populations of salmon will also translate into sustained economic contributions to the State.

The proposed regulations will ensure consistent State and federal regulations establishing season dates, bag/size limits and other management measures 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

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) 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.

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- (1) North of Horse Mountain and in Humboldt Bay: The fishery shall remain closed in this area during April. The remainder of the 2016 season will be decided in April by the PFMC and Commission and the section will be amended pursuant to the regulatory process.
- (2) South of Horse Mountain: The season, if any, may open on a date within the range of April 2 through April 30, 2016. 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 each area for April 2016 and may be different for each area.

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 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.

Regulatory Language

Subsection (c) of Section 27.80, Title 14, CCR, is amended to read:

§ 27.80. Salmon

...

(c) Open Fishing Days, Daily Bag Limits, and Minimum Size in effect ~~April 4~~April 2 through April 30, ~~2015~~2016.

(1) North of Horse Mountain (40°05'00" N. lat.) and in Humboldt Bay.

(A) Closed to salmon fishing.

(2) Between Horse Mountain and Point Arena (38°57'30" N. lat.).

(A) Open to salmon fishing ~~from April 4 to April 30~~varied dates within the range from April 2 to April 30, may include periodic closures, ~~2015~~2016. Fishing is authorized ~~7~~0-7 days per week [specify open days of week and date range as needed].

(B) Daily Bag Limit: ~~2~~0-2 salmon per day. See subsection (b) above and subsection (e) below.

(C) Minimum Size: ~~20~~20-26 inches total length.

(3) Between Point Arena and Pigeon Point (37°11'00" N. lat.).

(A) Open to salmon fishing ~~from April 4 to April 30~~varied dates within the range from April 2 to April 30, may include periodic closures, ~~2015~~2016. Fishing is authorized ~~7~~0-7 days per week [specify open days of week and date range as needed].

(B) Daily Bag Limit: ~~2~~0-2 salmon per day. See subsection (b) above and subsection (e) below.

(C) Minimum Size: ~~24~~20-26 inches total length.

(4) Between Pigeon Point and Point Sur (36°18'00" N. lat.).

(A) Open to salmon fishing ~~from April 4 to April 30~~varied dates within the range from April 2 to April 30, may include periodic closures, ~~2015~~2016. Fishing is authorized ~~7~~0-7 days per week [specify open days of week and date range as needed].

(B) Daily Bag Limit: ~~2~~0-2 salmon per day. See subsection (b) above and subsection (e) below.

(C) Minimum Size: ~~24~~20-26 inches total length.

(5) South of Point Sur.

(A) Open to salmon fishing ~~from April 4 to April 30~~varied dates within the range from April 2 to April 30, may include periodic closures, ~~2015~~2016. Fishing is authorized ~~7~~0-7 days per week [specify open days of week and date range as needed].

(B) Daily Bag Limit: ~~2~~0-2 salmon per day. See subsection (b) above and subsection (e) below.

(C) Minimum Size: ~~24~~20-26 inches total length.

...

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