

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

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

The Pacific Fishery Management Council (PFMC) annually reviews the status of west coast salmon populations. As part of that process, it recommends ocean salmon fisheries regulations aimed at meeting biological and fishery allocation goals specified in law or established in the Salmon Fishery Management Plan (FMP). These recommendations coordinate west coast management of sport and commercial ocean salmon fisheries in the Federal fishery management zone (3 to 200 miles offshore) off Washington, Oregon, and California. These recommendations are subsequently implemented as ocean fishing regulations by the National Marine Fisheries Service (NMFS).

California's sport fishing regulations will need to conform to the new Federal regulations to achieve optimum yield in California. The Fish and Game Commission (Commission) adopts regulations for the ocean salmon sport fishery in State waters (zero to three miles offshore) which are consistent with Federal fishery management goals and are effective at the same time.

PFMC Regulatory Outlook

On March 13, 2009, the PFMC will develop the ocean salmon fisheries regulatory options for public review and the final PFMC regulation recommendations will be made on April 9, 2009. The various ocean salmon sport fishery alternatives that the PFMC will examine in the process of adopting options 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 review at this time, the PFMC March options will serve as the basis for the Commission's 2009 regulatory action affecting the State's ocean salmon sport fishery. There exists a strong possibility of continued ocean water closures off California due to expected low Sacramento River fall Chinook salmon returns to the Central Valley river system based upon 2008 PFMC projections.

Further Commission actions affecting the ocean salmon sport fishery may be developed after the annual PFMC reports, *Review of 2008 Ocean Salmon Fisheries* and *Preseason Report I Stock Abundance*

Analysis for 2009 Ocean Salmon Fisheries, are available in late February 2009.

Present Regulations

Current regulations have a short salmon fishing season between Horse Mountain and Point Arena from February 16 through April 4, 2008. After April 4, 2008, all areas were closed to salmon fishing.

All areas also include an informational note: In 2009, the season will be decided in April by the Pacific Fishery Management Council and California Fish and Game Commission and the section will be amended pursuant to the regulatory process.

Proposed Regulations

For public notice purposes to facilitate Commission discussion, the Department is proposing two regulatory options: 1) no fishing in all areas and 2) limited salmon fishing for varied season dates to be determined from May 15, 2009 to November 15, 2009 in the five California sub-areas between the California/Oregon Border and U.S./Mexico Border. The proposed changes from current regulations are shown below:

For all areas and options: The informational note is proposed to be removed for regulatory clarity. The note does not contain actual fishing regulations and provides limited information on the Commission schedule of actual season determinations which cannot be specified in advance for 2010. Other mechanisms to notify the public of the date of Commission action, such as mailing lists of interested and affected parties, specific information in the annual regulations booklets and periodic web postings, are more timely methods of public notification and education.

Option 1 - No fishing in all areas

- (1) All subsections are proposed to be removed to reduce public confusion.
- (2) The following language is proposed instead "All waters of the ocean are closed to salmon fishing."

Option 2 - Limited salmon fishing, if salmon allocations are made available

- (1) North of Horse Mountain and Humboldt Bay
 - a. Limited salmon fishing for varied dates to be determined between May 15, 2009 and September 30, 2009.
 - b. Exception: Pursuant to Section 27.75, the ocean area surrounding the Klamath River mouth bounded on the north by 41°38'48" N lat. (approximately 6 nautical miles north of the Klamath River mouth), on the south by 41°26'48" N. lat. (approximately 6 nautical miles south of the Klamath River mouth), and extending 3 nautical miles offshore is closed to salmon fishing between August 1 and August 31. No salmon may be taken at any time in ocean waters at the mouths of the Smith and Klamath rivers and during August and September at the mouth of the Eel River.
 - i. This closure is a requirement of State (Section 27.75) and Federal regulations and the FMP to protect returning salmon stocks in the ocean prior to their entry into the three rivers.
- (2) Between Horse Mountain and Point Arena
 - a. Limited salmon fishing for varied dates to be determined between May 15, 2009 and November 15, 2009.
- (3) Between Point Arena and Pigeon Point
 - a. Limited salmon fishing for varied dates to be determined between May 15, 2009 and November 8, 2009.
 - b. Exception: San Francisco Bay is proposed to open for salmon fishing for varied dates to be determined between May 15, 2009 and November 8, 2009. For purposes of this regulation, the San Francisco Bay is defined as the waters of San Francisco and San Pablo bays plus all their tidal bays, tidal portions of their rivers and streams, sloughs and estuaries between Golden Gate Bridge and Carquinez Bridge unless otherwise noted in Section 7.50.

- i. This exception allows for the flexibility to keep the San Francisco Bay open when the ocean fishery is closed due to ocean salmon stock constraints.
- (4) Between Pigeon Point and Point Sur and South of Point Sur
- a. Limited salmon fishing for varied dates to be determined between May 15, 2009 and October 4, 2009.
- (5) Bag Limit and Minimum Size
- a. North of Horse Mountain: The bag limit may be zero, one or two salmon per day and the minimum size may range from 20 to 24 inches total length.
 - b. South of Horse Mountain: The bag limit may be zero, one or two salmon per day and the minimum size may range from 20 to 24 inches total length.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Yolo Fliers Club, Ballroom, 17980 County Road 94B, Woodland, California, on Wednesday, March 4, 2009, at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS FURTHER GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Wine and Roses Country Inn, Garden Ballroom, 2505 West Turner Road, Lodi, California, on Thursday, April 9, 2009 at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Fish and Game Commission Conference Room, 1416 Ninth Street, Room 1320, Sacramento, California, on Tuesday, April 21, 2009, at 9:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before April 15, 2009 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. All comments must be received no later than April 21, 2009, at the hearing in Sacramento, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to John Carlson, Jr., or Sherrie Fonbuena at the preceding address or phone number. **Ms. Marija Vojkovich, Regional Manager, Marine Region, Department of Fish and Game, (805) 568-1246 has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

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 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 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: None.
- (c) Cost Impacts on a Representative Private Person or Business:
The Commission 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.

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

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose 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: February 17, 2009

John Carlson, Jr.
Executive Director