

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Section 27.80
Title 14, California Code of Regulations
Re: Ocean Salmon Sport Fishing

I. Date of Initial Statement of Reasons: December 9, 2010

II. Date of Final Statement of Reasons: April 21, 2011

III. Dates and Locations of Scheduled Hearings:

(a) Notice Hearing: Date: February 3, 2011
Location: Sacramento, CA

(b) Discussion Hearing: Date: March 3, 2011
Location: Los Angeles, CA

(c) Discussion Hearing: Date: April 7, 2011
Location: Folsom, CA

(d) Adoption Hearing: Date: April 21, 2011
Location: Teleconference

IV. Update:

On April 13, 2011, the Pacific Fishery Management Council (PFMC) adopted Option 2, modified as follows, for recreational ocean salmon fishing in federal waters.

Modified Option 2

(1) For all waters of the ocean north of Horse Mountain and in Humboldt Bay:
The season will run May 14, 2011 through September 5, 2011. The minimum size is twenty-four inches total length.

(2) For the area between Horse Mountain and Point Arena: The season will run April 2, 2011 through October 30, 2011. The minimum size will be twenty-four inches total length.

- (3) For the area between Point Arena and Pigeon Point: The season will run April 2, 2011 through October 30, 2011. The minimum size will be twenty-four inches total length.
- (4) For the area between Pigeon Point and Point Sur: The season will run April 2, 2011 through September 18, 2011. The minimum size will be twenty-four inches total length.
- (5) For the area south of Point Sur: The season will run April 2, 2011 through September 18, 2011. The minimum size will be twenty-four inches total length.

The Fish and Game Commission adopted the modified Option 2 for the state regulations at its April 21, 2011 meeting.

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

- (1) George Osborn representing the Coastside Fishing Club, oral testimony at the March 3 and April 7 Commission meetings.
 - a. His organization supports Option 3 for auto conformance.
 - b. His organization supports an early April opener for 2011.

Response:

- a. Option 3 can not be adopted at this time to due technical issues.
- b. Support noted.

- (2) Richard Ross, Coastside Fishing Club, letter dated March 25, 2011.

- a. His organization supports Option 3 for auto conformance.

Response:

- a. See response (1)a.

- (3) Roger Thomas, Golden Gate Fishermen's Association, letter dated February 25, 2011.

- a. His organization supports Option 3 for auto conformance.

Response:

- a. See response (1)a.

(4) EB Duggan, written comments and oral testimony April 7, 2011.

- a. He supports PFMC's Option 1 for the Klamath Management Zone (open season May 7 – September 5, north of Horse Mountain),
- b. He supports Option III of the PFMC Pre Season Report II dated March 2011, for Recreational In-River Sport Fishing of the Klamath Basin Fall Chinook Salmon.

Response:

- a. The PFMC adopted a modified Option 2; therefore Option 1 is no longer available for the Commission to select.
- b. This comment does not address ocean salmon fishery regulations and cannot therefore be addressed in this particular regulatory procedure.

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:

The PFMC will examine various alternatives in the process of adopting the management options on March 10, 2011 for public review. These may include such alternatives as:

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.

(b) No Change Alternative:

Upon approval of the PFMC's recommendations by the NMFS, the State must move in a timely manner to conform its ocean sport 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, or would be as effective and less burdensome to affected private persons than the proposed regulation.

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:

None.

- (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) 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.

California's sport fishing regulations will need to conform to the new Federal regulations to achieve optimum yield in California under the FMP. 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 10, 2011, the PFMC will develop the ocean salmon fisheries regulatory options for public review and the final PFMC regulation recommendations will be made on April 13, 2011. 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 2011 regulatory action affecting the

State's ocean salmon sport fishery. There exists a possibility of continued ocean water closures off California due to low Chinook salmon returns to the Central Valley River System and/or the Klamath River Basin in 2010.

Further Commission actions affecting the ocean salmon sport fishery may be developed after the annual PFMC reports, *Review of 2010 Ocean Salmon Fisheries* and *Preseason Report / Stock Abundance Analysis for 2011 Ocean Salmon Fisheries*, are available in late February 2011.

Present Regulations

Current regulations had recreational salmon fishing north of Horse Mountain including Humboldt Bay from May 29 to September 6, 2010. Between Horse Mountain and Point Arena, there was recreational salmon fishing from April 3 to September 6, 2010. All areas south of Point Arena had recreational salmon fishing season from April 3 to September 6, 2010 with 7 days per week until April 30 and 5 days per week running Thursday to Monday from May 1 to September 6. All recreational salmon fishing is currently closed until further action by the PFMC and/or the Commission.

Proposed Regulations

For public notice purposes to facilitate Commission discussion, the Department of Fish and Game (Department) is proposing three regulatory options to encompass all possible actions for Commission consideration:

- 1) All areas remain closed to salmon fishing (no change option),
- 2) Varied levels of salmon fishing in all areas, and
- 3) Automatic conformance with federal regulations to facilitate in-season changes and emergency actions.

The proposed changes from current regulations are shown below:

Option 1 - No fishing in all areas

This is the no change option as all salmon fishing seasons are currently closed in the Section 27.80 regulations.

Option 2 – Varied levels of salmon fishing in all areas

The date ranges in the following areas are proposed to encapsulate all possibilities of the Commission final action on the PFMC 2011 recommendations in mid-April. This approach will allow final State ocean salmon regulations to be effective 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: The season, if any, may occur within the range of May 1 - September 30. The exact

opening and closing dates, and the length of the season will be determined in April by the PFMC.

- (2) For the area between Horse Mountain and Point Arena: The season, if any, may occur within the range of May 1 - November 13. The exact opening and closing dates, and the length of the season will be determined in April by the PFMC.
- (3) For the area between Point Arena and Pigeon Point: The season, if any, may occur within the range of May 1 - November 13. The exact opening and closing dates, and the length of the season will be determined in April by the PFMC.
- (4) For the areas between Pigeon Point and Point Sur: The season, if any, may occur within the range of May 1 - October 2. The exact opening and closing dates, and the length of the season will be determined in April by the PFMC.
- (5) For the areas south of Point Sur: The season, if any, may occur within the range of May 1 - October 2. The exact opening and closing dates, and the length of the season will be determined in April by the PFMC.
- (6) Minimum Size Range:
 - a. North of Horse Mountain: The minimum size may range from 20 to 24 inches total length.
 - b. South of Horse Mountain: The minimum size may range from 20 to 24 inches total length.

Option 3 – Automatic conformance with federal regulations

The Department is proposing this option to replace the existing regulations for Commission consideration. Significantly more stakeholder and public involvement takes place each year during the annual Federal PFMC salmon regulatory process. This option is included to reduce administrative workload on Department and Commission staff and to allow for quicker implementation of season opening date regulations, since the Federal process is far more expedient than the State's.

The Commission's final action on ocean salmon fishing in late April each year is almost always limited to adopting state regulations that exactly mirror Federal regulations that have already been approved by PFMC earlier in the month of April. This option proposes automatic conformance of State ocean salmon regulations with Federal regulations. This approach will ensure that State ocean salmon regulations are effective at the same time as salmon regulations in Federal ocean waters and would simplify application of Federal emergency or in-season action to State regulations.

On April 13, 2011, the PFMC adopted Option 2, modified as follows, for recreational ocean salmon fishing in federal waters.

Modified Option 2

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