

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 Federal and State Endangered Species Acts (ESAs). Since the Commission must meet the statutory requirements of the Administrative Procedure Act (APA) and the Fish and Game Code, ensuring adequate notice to the public and a three meeting process if any regulatory modifications are made to ocean salmon recreational fisheries, it is not possible to incorporate modifications from the March 2012 PFMC meeting into State regulations that need to be effective by early April 2012.

Thus 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 statutory 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 for the month of April 2012 and the second action taken after the April 1-6, 2012 PFMC meeting for the remainder of 2012.

Proposal Overview

This regulatory proposal will provide increased flexibility for alignment of the annual Federal and State ocean salmon regulatory processes and ensure for adequate public notice of any possible NMFS March or April regulatory action. It will involve two separate regulatory actions and two separate Initial Statements of Reasons (ISORs) by the Fish and Game Commission. The proposal is outlined below:

- 1) Start the annual ocean salmon regulation process in December.
- 2) In ISOR #1, restructure Section 27.80, Title 14, CCR, as follows:
 - a. Establish a framework by establishing two different subsections (c) and (d) to accommodate different rules for ocean salmon recreational fishing in effect 1) April 7-30 and 2) on or after May 1, respectively.
 - b. Allow for differing regulations among management areas, including size limits, bag limits, days open, and periodic closures in these two

time periods to provide increased protection of California salmon stocks, especially those listed under State and Federal ESAs.

- 3) Concurrent notice of both ISORs.
 - a. In March, the first ISOR will amend subsection (c) to conform State regulations to Federal ocean salmon regulations in effect April 7 through April 30.
 - b. In April, the second ISOR will amend subsection (d) to conform State regulations to Federal ocean salmon regulations effective on or after May 1.

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.

Present Regulations

Current regulations had ocean salmon recreational fishing north of Horse Mountain including Humboldt Bay from May 14 to September 5, 2011. Between Horse Mountain and Pigeon Point, there was ocean salmon recreational fishing from April 2 to October 30, 2011. All areas south of Pigeon Point had an ocean salmon recreational fishing season from April 2 to September 18, 2011. For all areas in 2011, the bag limit was 2 fish per day (all species except coho) and the minimum size limit was 24 inches total length. All ocean salmon recreational fishing is currently closed until further action by the PFMC and/or the Commission. Since the regulations pertained only to the 2011 season, amendment of these regulations is essential to allow for any fishing in state waters during April 2012.

Proposed Regulations

For public notice purposes to facilitate Commission discussion, the Department is proposing three regulatory options to encompass all possible actions that would, or would not allow for salmon fishing in the month of April in various areas of California for Commission consideration:

Option 1 – Varied season dates and regulations in all areas

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

- (1) For the all waters of the ocean north of Horse Mountain and in Humboldt Bay: The fishery shall remain closed in this area during 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 the area between Horse Mountain and Point Arena: The season, if any, may occur within the range of April 7 through 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.
- (3) For the area between Point Arena and Pigeon Point: 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.
- (4) For the area between Pigeon Point and Point Sur: 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.
- (5) For the areas south of Point Sur: 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.

Option 2 - No fishing in all areas

This is the same as the no change option as 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 subsequent 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 the week open and periodic closures among 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.

- (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. 2011. Preseason Report III: Analysis of Council Adopted Management Measures for 2011 Ocean Salmon Fisheries. 7700 NE Ambassador Place, Suite 101, Portland, Oregon 97220.](#)

[Economic and Fiscal Impact Statement \(Std. 399\).](#)

- (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 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.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment. Therefore, no mitigation is 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 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.

- (i) Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

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.

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.