

**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 early season ocean salmon sport fishing.

Informative Digest/Policy Statement Overview

On May 1, 2011, the National Marine Fisheries Service (NMFS) implemented the 2011 Federal ocean salmon regulations, which included Pacific Fishery Management Council (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 Statements 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.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Resources Building Auditorium, 1416 Ninth Street, Sacramento, California, on Thursday, February 2, 2012, 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 Mission Inn Hotel, 3649 Mission Inn Avenue, Riverside, California, on Wednesday, March 7, 2012 at 8:30 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 February 29, 2012** at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on March 5, 2012. All comments must

be received no later than March 7, 2011, at the hearing in Riverside, 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, Sonke Mastrup, 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 Sonke Mastrup or Sherrie Fonbuena at the preceding address or phone number. **Ms. Marija Vojkovich, Regional Manager of the Marine Region, at (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.

(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.

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, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to the affected private persons and equally effective in implementing the statutory policy or other provision of law

FISH AND GAME COMMISSION

Sonke Mastrup
Executive Director

Dated: December 27, 2011