

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

Add Section 1.95  
Title 14, California Code of Regulations  
Re: Process for Automatic Conformance to Federal Regulations

- I. Date of Initial Statement of Reasons: March 22, 2017
- II. Date of Final Statement of Reasons: August 17, 2017
- III. Dates and Locations of Scheduled Hearings:
  - (a) Notice Hearing: Date: April 27, 2017  
Location: Van Nuys, CA
  - (b) Discussion Hearing Date: June 22, 2017  
Location: Smith River, CA
  - (c) Adoption Hearing: Date: August 16, 2017  
Location: Sacramento, CA

IV. Update:

The Commission adopted this regulation at its August 16, 2017 meeting in Sacramento. There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.

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

Oral Comment by George Osborne: Commission Meetings, June 22, 2017 and August 16, 2017:  
Supports proposal.

Department response: Support noted.

Oral Comment by Felice Pace: Commission Meeting, June 22, 2017:  
Spring Chinook does not have a management plan, so auto conforming will not address the spring Chinook regulations. Continuing to allow spring Chinook to be taken by the sport fishery in-river is not responsive to the condition of the fishery.

If we automatically conform and then ignore other species we will leave in place the spring Chinook regulations. Those have been left in place by the Commission and there has been no recommendation for change from the Department. Requests a management plan for Spring-run Chinook salmon. Need to get back to coordination among tribes and look at the species.

Response: The comments offered by the speaker are not directly related to the proposal to establish an automatic process to conform State recreational fishing regulations for salmon and Pacific halibut to federal regulations.

There are no federal sport fishing regulations for the in-river Chinook Salmon fishery, or federal sport fishing regulations specifically for spring-run Chinook Salmon. Therefore, the speaker is correct in stating that auto-conforming will not address the State's spring-run Chinook Salmon regulations, as there are no federal Klamath River spring-run Chinook Salmon regulations to which to conform. The speaker's remarks reflect an interest in changing Klamath in-river sport fishing regulations for spring-run Chinook Salmon in response to current fishery conditions.

The proposal to auto-conform the sport fishing regulations to federal regulations does not affect the Commission's ability and authority to independently adopt additional State regulations, including those for spring-run Chinook Salmon, using other established Administrative Procedure Act processes.

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 Wildlife  
1416 Ninth Street  
Sacramento, California 95814

VIII. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

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:

Status quo management of salmon and Pacific halibut resources may result in mis-alignment between State and federal regulations. The **Pacific Fishery Management Council** would continue to recommend regulations for federal waters, **National Marine Fisheries Service** would continue to implement federal regulations for waters off California, and the Commission would continue to adopt the same changes to State regulations, for conformance, via regular Administrative Procedure Act rulemakings. Not adopting the proposed process for automatic conformance with federal regulations would continue to result in redundant workload to the State in order to make changes to State regulations to keep them in conformance with federal regulations.

(c) Consideration of Alternatives: In view of 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 adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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 adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulation prescribes a procedure the Commission may use to conform State recreational fishing regulations to federal regulations.

(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 any impacts on the creation or elimination of jobs in California.

The Commission does not anticipate any impacts on the creation of new businesses, the elimination of existing businesses, or the expansion of businesses in California.

The Commission does not anticipate benefits to the health and welfare of California residents.

The Commission anticipates future benefits to the environment by the timely conformance to federal regulation, resulting in the sustainable management of California's fish resources.

The Commission does not anticipate any 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:

The Commission expects time savings for existing staff that will permit both the Commission and Department to devote more staff resources to achieving other core mandates.

(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

Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S. Code §1801 et seq.), the federal government exercises exclusive jurisdiction over fishery resources from 3 to 200 miles offshore. However, because these fish stocks also live in State waters, it is important to have consistent State and federal regulations establishing season dates and other management measures, and also important that the State and federal regulations be effective concurrently. Consistency of rules in adjacent waters allows for uniformity of enforcement, minimizes confusion, and allows for a comprehensive approach to resource management. Consistency with federal regulations is also necessary to maintain State authority over its fisheries and avoid federal preemption under the Magnuson-Stevens Fishery Conservation Act [16 USC §1856 (b)(1)].

Under current State law (Fish and Game Code Section 7110) the Fish and Game Commission (Commission) has authority to establish through regulation an automatic process to conform State recreational fishing regulations applicable in State waters (zero to three miles offshore) to federal regulations. The conforming actions implemented pursuant to the automatic process are exempt from the Administrative Procedure Act [Chapter 3.5 (commencing with Section 11340) of the Government Code].

Federal regulations may be adopted annually and may be amended more often, if necessary, and serve to implement fishery management measures adopted by the Pacific Fishery Management Council. These measures include those for recreational fishing in federal waters off California.

For species managed under federal fishery management plans or regulations, the Commission has usually taken concurrent action to conform State recreational regulations to federal regulations that have been adopted through an open and deliberative federal rulemaking process, which includes a detailed review of economic impacts. Conforming State recreational regulations is done in recognition of federal jurisdiction and to ensure consistency and ease of use for constituents who are subject to both State and federal laws while fishing, or possessing sport fish. However, the dual process is redundant and inefficient, and historically the lag between federal action and conforming State action has created a period of management inconsistency and confusion. To improve regulatory efficiency, Fish and Game Code Section 7110 was enacted with the goal of reducing redundancies between State and federal rulemaking processes for these species.

Current recreational fishing regulations for salmon and Pacific halibut are a conglomerate of State regulations that conform to federal regulations, and State regulations that are more restrictive than and not in conflict with federal regulations,

including State regulations that cover aspects not addressed in federal regulations.

### **Proposed Regulations**

Section 1.95 will be added to Title 14, CCR to describe the process through which State recreational fishing regulations for salmon and Pacific halibut will automatically conform to federal regulations.

The proposed regulation provides that recreational regulations for salmon and Pacific halibut established through the automatic conformance process shall govern unless the Commission adopts regulations using the regular rulemaking process [Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code] and specifically declares at the time of adoption the intent to deviate from the automatic conformance process.

The proposed regulations describe the two processes by which State recreational fishing regulations for salmon and Pacific halibut may conform to federal regulations: the standard conformance process to be used for annual regulations, or corrections to annual regulations, and the conformance process to be used for in-season changes to regulations.

The proposed regulation specifies that the effective date of State regulations conformed pursuant to the automatic conformance process will be the same as the effective date of the federal regulation.

The proposed regulation specifies that nothing in Section 1.95 controls the adoption or validity of Commission regulations pertaining to the identified species on matters that the federal regulations do not address.

Existing species-specific regulations will remain in Title 14. In the future, these sections may be amended to conform to federal regulations pursuant to the process described in Section 1.95, or may be amended pursuant to the regular rulemaking process, as desired by the Commission.

### **Goals and Benefits of the Regulation**

The proposed regulations will help reduce or eliminate the delay between federal action and conforming State action which leads to a period of management inconsistency and confusion between regulations for federal and State ocean waters. Timely conformance also eliminates the potential for a preemption issued under the Magnuson-Stevens Fishery Conservation and Act, and reduces redundant workload for the State.

The proposed regulation may result in future benefits to the environment by the timely conformance to federal regulation, resulting in the sustainable management of California's fish resources.

### **Compatibility with Existing State Regulations**

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. The Legislature has delegated authority to the Commission to adopt recreational fishing regulations in general (Fish and Game Code Sections 200, 205 and 265); and an automatic process to conform State recreational fishing regulations to federal regulations (Fish and Game Code Section 7110). Commission staff has searched the California Code of Regulations and has found no other State regulations related to conforming recreational fishing regulation to federal regulations.

### **Update**

**The Commission adopted this regulation at its August 16, 2017 meeting in Sacramento. There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.**