



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.]

The National Marine Fisheries Service (NMFS) adopts fishing regulations annually and may amend the regulations more often, if necessary, to implement fishery management measures adopted by the Pacific Fishery Management Council (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.

### **Present Regulations**

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 Regulation**

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

#### **Subsection (a) of Section 1.95, Title 14, CCR**

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.

*Necessity:* This provision is included to clarify that the Commission reserves its authority to adopt recreational fishing regulations for salmon and Pacific halibut pursuant to the regular rulemaking process.

Subsection (b) of Section 1.95, Title 14, CCR

Proposed subsection (b)(1) provides that there are two processes by which State recreational fishing regulations for salmon and Pacific halibut may conform to federal regulations.

*Necessity:* This provision is included for clarity.

Proposed subsection (b)(2) of Section 1.95 outlines the standard conformance process to be used for annual regulations or corrections to annual regulations.

Proposed subsection (b)(2)(A) provides that no later than 10 days after publication in the Federal Register of any NMFS annual regulation affecting salmon or Pacific halibut, or any correction to an annual regulation affecting such species, the Commission shall submit amended State recreational fishing regulations to the Office of Administrative Law for publication in the California Code of Regulations and shall file amended State recreational fishing regulations with the Secretary of State.

*Necessity:* This provision is included to ensure that State regulations conform to federal regulations.

Proposed subsection (b)(2)(B) provides that no later than 10 days after publication in the Federal Register of any NMFS annual regulation affecting salmon or Pacific halibut, or any correction to an annual regulation affecting such species, the following shall occur:

- The Department of Fish and Wildlife (Department) shall inform the public, via news release, of the Federal Register in which the applicable fishing regulations are published and the effective date of the conformed State regulations. [Subsection (b)(2)(B)1.]
- The Commission shall mail or email the Department news release to any person, group of persons or small business enterprise that has filed with the Commission a request for notice of, or the Commission believes to be interested in, recreational fishing regulations for salmon or Pacific halibut. [Subsection (b)(2)(B)2.]
- To the extent practicable, the Department shall provide information on any changes to the applicable State recreational fishing regulations through public contact, electronic notification, and online and printed publications. [Subsection (b)(2)(B)3.]

Proposed subsection (b)(2)(C) provides that an update on the conformed State recreational fishing regulations shall be included on the agenda of the next regularly-scheduled Commission meeting.

*Necessity:* This provision is included to ensure that the public is informed of how to access the annual federal regulation, or correction to an annual federal regulation, to which State regulations automatically conform and to ensure that the public is informed of the changes to State regulations.

Proposed subsection (b)(3) of Section 1.95 outlines the conformance process to be used for in-season changes to regulations.

Proposed subsection (b)(3)(A) provides that State recreational fishing regulations for salmon shall conform to applicable in-season changes to federal regulations and that such changes are publically noticed through the NMFS ocean salmon hotline.

Proposed subsection (b)(3)(B) provides that State recreational fishing regulations for Pacific halibut shall conform to applicable in-season changes to federal regulations and that such changes are publically noticed through the NMFS Area 2A Pacific halibut hotline.

*Necessity:* This provision is included to ensure that the public is informed of how to access the in-season changes to federal regulation to which State regulations automatically conform, and to ensure that the public is informed of the changes to State regulations.

Subsection (c) of Section 1.95, Title 14, CCR

This proposed subsection 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 regulations.

*Necessity:* This provision is included to ensure that consistent State regulations are in effect concurrently with federal regulations. This provision is needed to reduce public confusion.

Subsection (d) of Section 1.95, Title 14, CCR

This proposed subsection 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.

*Necessity:* This provision is included to clarify that the Commission reserves its authority to adopt State recreational fishing regulations for federally-managed species pursuant to the regular rulemaking process.

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 regulation 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.

- (b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Section 7110, Fish and Game Code.

Reference: Section 7110, Fish and Game Code.

- (c) Specific Technology or Equipment Required by Regulatory Change: None.

- (d) Identification of Reports or Documents Supporting Regulation Change: None.

- (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 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 Council would continue to recommend regulations for federal waters, NMFS 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 proposed regulation, or would be more cost effective to 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 measures are needed.

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 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.

VII. Economic Impact Assessment:

- (a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State:

The Commission does not anticipate any significant impacts on the creation or elimination of jobs, because the regulatory action does not alter existing conditions. The intent is to improve regulatory efficiency in State conformance with federal regulations.

- (b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State:

The Commission does not anticipate any significant impacts on the creation of new business or the elimination of existing businesses in California. The intent is to improve regulatory efficiency in State conformance with federal regulations. The regulatory action does not alter existing conditions.

- (c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State:

The Commission does not anticipate any significant impacts on the expansion of businesses currently doing business in California. The intent is to improve regulatory efficiency in State conformance with federal regulations.

- (d) Benefits of the Regulation to the Health and Welfare of California Residents:

The Commission does not anticipate benefits to the health and welfare of California residents. The intent is to improve regulatory efficiency in State conformance with federal regulations. The regulatory action does not alter existing conditions.

- (e) Benefits of the Regulation to Worker Safety:

The Commission does not anticipate any benefits to worker safety because this regulatory action will not impact working conditions or worker safety.

- (f) Benefits of the Regulation to the State's Environment:

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.

(g) Other Benefits of the Regulation:

Concurrence with Federal Law:

The proposed regulations will establish an automatic process which may be used to bring State recreational fishing regulations into alignment with federal regulations.

## 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.