

Act time frames from Section 202 to Section 265 of the Fish and Game Code, and moving the Commission's authority to adopt emergency regulations from Section 240 to Section 399 of the Fish and Game Code. These were organizational changes only. In accordance with these changes to the Fish and Game Code, sections 202 and 240 are removed from, and sections 265 and 399 are added to, the authority and reference citations for Section 27.80, Title 14, CCR. Senate Bill 1473 also repealed subdivision (b) of Section 220 of the Fish and Game Code; therefore, Section 220 is removed from the list of citations in Section 27.80.

No other modifications were made to the originally proposed language of the Initial Statement of Reasons.

- VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations:
Two written comments were received via email on February 14, 2017, both submitted by the same person.

Comment 1: Don Thompson, e-mail received on February 15, 2017

1. He requested that the Commission allow fishing during May and June in the management area south of Pt. Sur in lieu of fishing during the month of April.

Response: Coded-wire tag data has shown that Sacramento River winter Chinook (SRWC), which are both state and federally listed as endangered, are contacted more frequently in the management area south of Pt. Sur, particularly later in the season. This rulemaking is for the salmon fishing season for April 2017 only and this proposal will be considered for the rulemaking action for season after May 1 2017.

2. He commented that the dates of the commercial and recreational ocean salmon fisheries south of Pt. Sur should align.

Response: Coded-wire tag data from commercial and recreational fisheries demonstrate different impacts to SRWC, and commercial impacts are lower. Furthermore, the Federal Biological Opinion requires that the sport fishery in this area open no earlier than the first Saturday in April, and the commercial fishery not earlier than May 1. The two proposed season alternatives offered by industry representatives that are now under consideration by the PFMC each provide two months' fishing time to each sector. The current rulemaking is for the salmon fishing season for April 2017 only.

- VII. 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

VIII. Location of Department Files:

Department of Fish and Wildlife
1416 Ninth Street
Sacramento, California 95814

IX. 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:

The no change alternative would maintain existing regulations which do not provide an ocean salmon recreational fishing season for 2017. Federal regulations are anticipated to open the ocean salmon recreational fishing regulations south of Horse Mountain on April 1, 2017. The State must conform its ocean recreational fishing regulations for salmon in State waters (zero to three miles offshore) to the federal regulations for consistency and to avoid public confusion. 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 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.

X. 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 businesses, including the ability of California

businesses to compete with businesses in other states. The Department anticipates status quo fishing levels for April 2017 as compared to the April 2016 ocean salmon sport fishing season.

- (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 that the proposed regulations will have any impact on the creation or elimination of jobs, the creation or elimination of businesses or the expansion of businesses in California because no changes in fishing activity levels are expected .

The Commission anticipates benefits to the health and welfare of California residents. Salmon sport fishing contributes to increased mental health of its practitioners, provides opportunities for multi-generational family activities and promotes respect for California's environment by the future stewards of California's natural resources.

The Commission anticipates benefits to the State's environment in the sustainable management of salmon resources.

Additional benefits of the proposed regulations are concurrence with federal law, and promotion of businesses that rely on recreational ocean salmon fishing.

The Commission does not anticipate 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:

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) coordinates west coast management of recreational and commercial ocean salmon fisheries in the federal fishery management zone (three to 200 miles offshore) along the coasts of Washington, Oregon and California. The annual PFMC ocean salmon regulation recommendations are subsequently implemented by the National Marine Fisheries Service (NMFS) effective on May 1 of each year.

California's recreational salmon fishing regulations need to conform to the federal regulations to achieve optimum yield in California under the federal Salmon Fishery Management Plan. The Fish and Game Commission (Commission) adopts regulations for the ocean salmon recreational fishery in State waters (zero to three miles offshore) which are consistent with these federal fishery management goals.

Present Regulations

Regulations for 2016 [subsections 27.80(c) and (d)] authorized ocean salmon recreational fishing seven days per week north of Horse Mountain including Humboldt Bay from May 16 through May 31, June 16 through June 30, July 16 through August 16, and September 1 through September 5, 2016. Between Horse Mountain and Point Arena, ocean salmon recreational fishing was authorized seven days per week from April 2 to November 13, 2016. Between Point Arena and Pigeon Point, ocean salmon recreational fishing was authorized seven days per week from April 2 to October 31, 2016. Between Pigeon Point and Point Sur, ocean salmon recreational fishing was authorized seven days per week from April 2 to July 15, 2016. For areas south of Point Sur, ocean salmon recreational fishing was authorized seven days per week from April 2 to May 31, 2016. The bag limit for all areas in 2016 was two fish per day (all species except coho). The areas north of Point Arena had a minimum size limit of 20 inches total length. The area between Point Arena and Pigeon Point had a minimum size limit of 24 inches total length through April 30, 2016 and 20 inches total length thereafter. Areas south of Pigeon Point had a minimum size limit of 24 inches total length. Since the existing regulations pertained only to the 2016 season, amendment of these regulations is essential to allow for any fishing in State waters during 2017.

Proposed Regulations

Two separate Commission actions are necessary to conform State regulations to federal rules that will apply in 2017. The first action would amend subsection 27.80(c), establishing salmon fishing regulations for the month of April 2017 consistent with federal regulations for the federal fishery management zone off California. Recreational salmon fishing regulations for May 1 through the end of 2017 will be considered in the second rulemaking action, tentatively scheduled for adoption in April 2017.

For public notice purposes and to facilitate Commission discussion, the Department of Fish and Wildlife (Department) is proposing the following regulations to encompass the range of federal ocean salmon regulations that are expected to be in effect April 1 through April 30, 2017. This approach will allow the Commission to adopt State ocean salmon recreational fishing regulations to conform to those in effect in federal ocean waters shortly after the federal rules are promulgated.

- (1) North of Horse Mountain and in Humboldt Bay: The fishery shall remain closed in this area during April. The remainder of the 2017 season will be decided in April by the PFMC and Commission and the section will be amended pursuant to the regulatory process.
- (2) South of Horse Mountain: The season, if any, may open on a date within the range of April 1 through April 30, 2017. The proposed daily bag limit will be from zero to two fish, and the proposed minimum size will be from 20 to 26 inches total length. The exact opening date, along with daily bag limit, minimum size, and days of the week open will be determined by the Commission, considering federal regulations applicable to each area for April 2017 and may be different for each area.

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. The legislature has delegated authority to the Commission to adopt sport fishing regulations in general (Sections **200, 205 and 265**, Fish and Game Code) and salmon sport fishing regulations specifically (Section 316.5, Fish and Game Code). The proposed regulations are consistent with regulations for sport fishing in marine protected areas (Section 632, Title 14, CCR) and with general sport fishing regulations in Chapters 1 and 4 of Subdivision 1 of Division 1, Title 14, CCR. Commission staff has searched the California Code of Regulations and has found no other State regulations related to the recreational take of salmon in the ocean.

On March 15, 2017, the Commission adopted regulations as follows:

- (1) For 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 2017 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 will run April 1, 2017 through April 30, 2017. Fishing is authorized 7 days per week. The minimum size will be twenty inches total length. The bag limit remains at two salmon per day.**
- (3) For all areas south of Point Arena: The season will run April 1, 2017 through April 30, 2017. Fishing is authorized 7 days per week. The minimum size will be twenty-four inches total length. The bag limit remains at two salmon per day.**

Updates to Authority and Reference Citations Based on Recent Legislation

Senate Bill 1473 (Stats. 2016, Ch. 546) made organizational changes to the Fish and Game Code that became effective January 1, 2017. The changes included moving the Commission's exemptions from specified Administrative Procedure Act time frames from Section 202 to Section 265 of the Fish and Game Code, and

moving the Commission's authority to adopt emergency regulations from Section 240 to Section 399 of the Fish and Game Code. These were organizational changes only. In accordance with these changes to the Fish and Game Code, sections 202 and 240 are removed from, and section 265 and 399 are added to, the authority and reference citations for Section 27.80, Title 14, CCR. Senate Bill 1473 also repealed subdivision (b) of Section 220 of the Fish and Game Code; therefore, Section 220 is removed from the list of authority and reference citations in Section 27.80.

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