

STAFF SUMMARY FOR JUNE 21-22, 2017

28. FISHERIES AUTOMATIC CONFORMANCE PROCESS**Today's Item****Information** ☒**Action** ☐

Discuss proposed automatic conformance process regulations.

Summary of Previous/Future Actions

- Notice hearing Apr 26-27, 2017; Van Nuys
- **Today's discussion hearing Jun 21-22, 2017; Smith River**
- Adoption hearing Aug 16-17, 2017; Sacramento

Background

For species managed under federal fishery management plans or regulation, FGC usually takes concurrent action to conform State recreational regulations to federal regulations adopted by the National Marine Fisheries Services (NMFS); this dual process is redundant and inefficient. The proposed regulation, Section 1.95, Title 14, will establish a process through which State recreational fishing regulations for salmon and Pacific halibut will automatically conform to federal regulations, unless FGC adopts regulations for said species using the regular rulemaking process.

For annual regulations or corrections to annual regulations for salmon and Pacific halibut, the proposed regulation would require, no later than 10 days after federal regulations are published in the Federal Register, that:

- FGC submit amended State regulations to the Office of Administrative Law for publication in the California Code of Regulations and file the amended State regulations with the Secretary of State;
- DFW issue a news release announcing the Federal Register in which the federal regulations are published and the effective date of the conformed State regulations;
- FGC mail or email the news release to interested parties;
- To the extent practicable, DFW provide information on any changes to the State regulations via public contact, electronic notification, and online and printed publications.

The proposed regulation would also require that an update on the conformed State regulations be included on the agenda of the next regularly-scheduled FGC meeting.

For in-season changes to regulations for salmon and Pacific halibut, the proposed regulation indicates that State regulations shall conform to the applicable federal regulations publicly noticed through the NMFS ocean salmon hotline and NMFS Area 2A Pacific halibut hotline, respectively.

Significant Public Comments (N/A)**Recommendation (N/A)**

STAFF SUMMARY FOR JUNE 21-22, 2017

Exhibits

1. [DFW memo, received Apr 11, 2017](#)
2. [Initial statement of reasons](#)
3. [Draft notice of exemption](#)

Motion/Direction (N/A)

2017 APR 11 AM 8:17

Memorandum

Date: April 10, 2017

To: Valerie Termini
Executive Director
Fish and Wildlife Commission

From: Charlton H. Bonham
Director



Subject: **Agenda Item for the April 26-27 Fish and Game Commission Meeting; Request for Authorization to Publish Notice of the Commission's Intent to Add Section 1.95, Title 14, California Code of Regulations, RE: Process for Automatic Conformance with Federal Regulations**

The Department of Fish and Wildlife (Department) requests that the Fish and Game Commission (Commission) authorize publication of notice of its intent to add regulations to establish a Commission process through which State recreational fishing regulations for salmon and Pacific halibut will automatically conform to federal regulations (Section 1.95, Title 14, CCR). This will allow for discussion and adoption at the June and August 2017 Commission meetings, respectively.

For species managed under federal fishery management plans or regulations, the Commission usually takes concurrent action to conform State recreational regulations to federal regulations, which are adopted through an open and deliberative federal rulemaking process. This is done in recognition of federal jurisdiction and to ensure consistency, but this dual process is redundant and inefficient with timing mismatches between the State and federal adoption processes.

Under current State law (Fish and Game Code Section 7110), the 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.

The proposed regulation provides for recreational regulations for salmon and Pacific halibut to be established through the automatic conformance process unless the Commission adopts regulations using the regular rulemaking process and specifically declares at the time of adoption the intent to deviate from the automatic conformance process.

A Notice of Exemption (NOE) is also attached. Since the NOE is not anticipated to change, this early submission gives the Commission notice of the Department's recommendation to rely on a California Environmental Quality Act (CEQA) categorical exemption for this rulemaking. The following paragraphs describe staff's analysis of use of a categorical exemption under the CEQA.

Categorical Exemptions to Protect Natural Resources and the Environment

In adopting a process for automatic conformance of State recreational regulations to federal regulations, the Commission relied for purposes of CEQA on the Class 7 and 8 categorical exemptions. In general, both exemptions apply to agency actions to protect natural resources and the environment. The regulations describe the process through which State recreational fishing regulations will automatically conform to federal regulations for salmon and Pacific halibut in federal waters of the ocean off California.

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 (also referred to as federal rules) establishing season dates and other management measures, it is important that the State and federal regulations be effective concurrently. Consistency of regulations 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)].

This proposed action is undertaken to assure the maintenance and enhancement of fishery resources and the marine environment. The Department has determined there are neither significant cumulative impacts of successive projects of the same type in the same place, nor is there a reasonable possibility the proposed action will have a significant effect on the environment due to unusual circumstances. Accordingly, the Department recommends that the Commission determine the proposed action to be the proper subject of the CEQA Class 7 and 8 Categorical Exemptions.

If you have any questions regarding this item, please contact Craig Martz, Regulations Unit Manager at (916) 653-4674 or Craig.Martz@wildlife.ca.gov.

Attachment

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Valerie Termini, Executive Director
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April 10, 2017
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STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

Add Section 1.95

Title 14, California Code of Regulations

Re: Process to Conform State Recreational Fishing Regulations to Federal Regulations

I. Date of Initial Statement of Reasons: March 22, 2017

II. 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 17, 2017 |
| | | Location: | Sacramento, CA |

III. Description of Regulatory Action:

- (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

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 (also referred to as federal rules) establishing season dates and other management measures, and also important that the State and federal regulations be effective concurrently. Consistency of regulations 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 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.]

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.

Regulatory Language

Section 1.95 is added to read:

1.95. Process to Conform State Recreational Fishing Regulations to Federal Regulations.

(a) The commission establishes the process in subsection (b) to automatically conform state recreational fishing regulations for the fish species listed in subsections (a)(1) through (a)(2). Conforming regulations established through subsection (b) shall govern unless the commission adopts regulations for said species 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.

(1) Salmon as defined in Section 1.73.

(2) Pacific halibut (*Hippoglossus stenolepis*).

(b) Automatic Process to Conform State Recreational Fishing Regulations to Federal Regulations.

(1) Recreational fishing regulations for fish species listed in subsections (a)(1) through (a)(2) in state waters shall conform to applicable federal regulations enacted by the National Marine Fisheries Service by the process described in subsection (b)(2) or by the process described in subsection (b)(3).

(2) Process for Annual or Corrective Actions.

(A) No later than 10 days after publication in the Federal Register of any National Marine Fisheries Service annual regulation for the species listed in subsection (a), or any correction to an annual regulation affecting such species, the commission shall submit amended recreational fishing regulations to the Office of Administrative Law for publication in the California Code of Regulations, and shall file amended recreational fishing regulations with the Secretary of State.

(B) Notification of State Conformance Action.

No later than 10 days after publication in the Federal Register of any National Marine Fisheries Service annual regulation for the species listed in subsection (a), or any correction to an annual regulation affecting such species, the following shall occur:

1. The 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 regulations.

2. 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 the species listed in subsection (a).

3. To the extent practicable, the department shall provide information on any changes to applicable fishing regulations through public contact, electronic notification, and online and printed publications.

(C) An update on the conformed recreational fishing regulations for the species listed in subsection (a) shall be included on the agenda of the next regularly-scheduled commission meeting.

(3) Process for In-Season Changes.

(A) Salmon. Recreational fishing regulations for salmon in state waters shall conform to applicable in-season changes to federal regulations. Public notification of any in-season change to state salmon regulations to conform to in-season changes to federal regulations is made through the National Marine Fisheries Service ocean salmon hotline at (800) 662-9825.

(B) Pacific Halibut. Recreational fishing regulations for Pacific halibut in state waters shall conform to applicable in-season changes to federal regulations. Public notification of any in-season change to state Pacific halibut regulations to conform to in-season changes to federal regulations is made through the National Marine Fisheries Service Area 2A Pacific halibut hotline at (800) 662-9825.

(c) Effective Date. The effective date of regulations conformed pursuant to subsection (b) shall be the same as the effective date of the federal regulation.

(d) Nothing in this section controls the adoption or validity of commission regulations pertaining to the species identified in subsection (a) on matters that federal regulations do not address.

Note: Authority cited: Section 7110, Fish and Game Code. Reference: Section 7110, Fish and Game Code.

Notice of Exemption

Appendix E

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

County Clerk

County of: N/A

From: (Public Agency): CA Fish and Game Commission
1416 Ninth Street, Room 1320
Sacramento, CA 95814

(Address)

Project Title: Section 1.95 Process for Automatic Conformance to Federal Regulations

Project Applicant: N/A

Project Location - Specific:

Statewide

Project Location - City: N/A

Project Location - County: N/A

Description of Nature, Purpose and Beneficiaries of Project:

This is a process through which State recreational fishing regulations will automatically conform to federal regulations for salmon and Pacific halibut in federal waters of the ocean off California

Name of Public Agency Approving Project: California Fish and Game Commission

Name of Person or Agency Carrying Out Project: California Department of Fish and Wildlife

Exempt Status: **(check one):**

- ☐ Ministerial (Sec. 21080(b)(1); 15268);
- ☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
- ☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- ☒ Categorical Exemption. State type and section number: Cal. Code Regs., tit. 14, §§ 15307, 15308
- ☐ Statutory Exemptions. State code number: _____

Reasons why project is exempt:

See attached.

Lead Agency

Contact Person: Valerie Termini

Area Code/Telephone/Extension: (916) 653-4899

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? ☒ Yes ☐ No

Signature: _____ Date: 8/17/2017 Title: Executive Director

☒ Signed by Lead Agency ☐ Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: _____

August 17, 2017

ATTACHMENT TO NOTICE OF EXEMPTION
Adoption of Process for Automatic Conformance to Federal Regulations

The California Fish and Game Commission (Commission) took final action under the Fish and Game Code and the Administrative Procedure Act (APA) with respect to the proposed project on August 17, 2017. In taking its final action for the purposes of the California Environmental Quality Act (CEQA, Pub. Resources Code, § 21000 *et seq.*), the Commission adopted the regulations relying on the categorical exemption for “Actions by Regulatory Agencies for Protection of Natural Resources” contained in CEQA Guidelines section 15307, and the categorical exemption for “Actions by Regulatory Agencies for Protection of the Environment” contained in CEQA Guidelines section 15308. (Cal. Code Regs., tit. 14, §§ 15307, 15308.)

Categorical Exemptions to Protect Natural Resources and the Environment

In adopting a process for automatic conformance of State recreational regulations to federal regulations, the Commission relied for purposes of CEQA on the Class 7 and 8 categorical exemptions. In general, both exemptions apply to agency actions to protect natural resources and the environment. The regulations describe the process through which State recreational fishing regulations will automatically conform to federal regulations for salmon and Pacific halibut in federal waters of the ocean off California.

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 (also referred to as federal rules) establishing season dates and other management measures, and also important that the State and federal regulations be effective concurrently. Consistency of regulations 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)].

This proposed action is undertaken to assure the maintenance and enhancement of fishery resources and the marine environment. The Commission has determined there are neither significant cumulative impacts of successive projects of the same type in the same place, nor is there a reasonable possibility the proposed action will have a significant effect on the environment due to unusual circumstances. Accordingly, the Commission concludes that the proposed action is properly subject to the CEQA Class 7 and 8 Categorical Exemptions.