

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

Amend Subsection 27.80 (d)
Title 14, California Code of Regulations
Re: Ocean Salmon Sport Fishing Regulations effective May 1, 2017

I. Date of Initial Statement of Reasons: September 21, 2016

II. Date of Final Statement of Reasons: April 13, 2017

III. Dates and Locations of Scheduled Hearings:

(a) Notice Hearing: Date: December 7, 2016
Location: San Diego, CA

(b) Discussion Hearing Date: February 9, 2017
Location: **Rohnert** Park, CA

(c) Adoption Hearing: Date: April 13, 2017
Location: Teleconference

IV. Update:

Pacific Fishery Management Council, Preseason III Report; Council Adopted Management Measures and Environmental Assessment Part 3 For 2017 Ocean Salmon Fishery Regulations, April 2017, was added to the rulemaking file after publication of the 45-day notice. Pursuant to Fish and Game Code Section 265, this document is exempt from Government Code Section 11347.1.

On April 13, 2017, the California Fish and Game Commission (Commission) adopted the regulations as proposed, including the specific season dates, size limits, and bag limits listed below, for recreational ocean salmon fishing in State waters from May through November 2017. The State regulations will allow for alignment with the Federal regulations on season dates, size limits, and daily bag limits for the remainder of 2017.

(1) For all waters of the ocean north of Horse Mountain and in Humboldt Bay:
The fishery shall remain closed in this area.

(2) For the area between Horse Mountain and Point Arena: The season will run May 1 through May 31 and August 15 through November 12, 2017. Fishing is authorized seven days per week. The minimum size limit will be 20 inches total length. The bag limit remains at two salmon per day.

(3) For the area between Point Arena and Pigeon Point: The season will run May 15 through October 31, 2017. Fishing is authorized seven days per

week. The minimum size limit will be 20 inches total length. The bag limit remains at two salmon per day.

- (4) For the area between Pigeon Point and Point Sur: The season will run May 1 through July 15, 2017. Fishing is authorized seven days per week. The minimum size limit will be 24 inches total length. The bag limit remains at two salmon per day.
- (5) For the area south of Point Sur: The season will run May 1 through May 31, 2017. Fishing is authorized seven days per week. The minimum size limit will be 24 inches total length. The bag limit remains at two salmon per day.

The fishery opened in April in some areas under a separate state regulatory action. This action aligns all State regulations with new federal regulations, which take effect May 1, 2017.

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 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.

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

Comment 1: Eileen Cooper, verbal, April 13, 2017

She expressed gratitude to the Pacific Fishery Management Council (PFMC) for adopting ocean salmon fishing regulations with severe limitations to protect the Klamath River fall Chinook.

Response: Supports proposal.

Comment 2: Janet Gilbert, verbal, April 13, 2017

She asked if there is ongoing monitoring of the salmon population off the coast in order to project how many fish will return, whether poor ocean conditions, such

as higher water temperatures, are impacting the fish, and if data is available on offshore salmon populations.

Response: The Department's Ocean Salmon Project has an active ocean salmon fishery monitoring program that employs staff coast wide during both the commercial and recreational ocean salmon fisheries to record harvest data and collect heads from fish with a clipped adipose fin, which indicates the presence of a coded-wire tag. There are many factors influencing the health of salmon populations and ocean conditions, particularly warmer water temperatures, certainly play a role. Most monitoring data is publicly available on the Pacific Fishery Management Council's website at the following link, <http://www.pcouncil.org/salmon/salmon-management-documents/>.

Comment 3: Don Thompson, e-mail received on February 14, 2017

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. Considering the increased probability of contacting SRWC later in the season, the PFMC and FGC chose to take a more precautionary approach by closing the season south of Pt. Sur before impacts are known to increase. The season will end May 31.

Comment 4: Don Thompson, e-mail received on February 14, 2017

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. While the recreational and commercial seasons start one month apart, on April 1 and May 1, respectively, the duration of each season is identical at 61 days.

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:

The no change alternative would maintain existing regulations which do not provide an ocean salmon recreational fishing season within the May to November 2017 period. 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 **National Marine Fisheries Service** could occur if State regulations are in conflict with federal regulations.

(c) Consideration of Alternatives:

In view of the 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:

Although the recommendations of the PFMC for the 2017 ocean salmon season are unknown at this time, the Department anticipates that recreational salmon fishing effort will be similar to the 2015 season. For the purpose of evaluating potential economic impacts of the 2017 ocean salmon regulations, the Commission analyzed possible reductions in ocean salmon recreational effort ranging from 0-percent (no change) to a

5-percent and a 10-percent reduction from the number of angling trips in 2015. The base year used for estimating the 2017 economic impacts is the 2015 salmon season, the latest full year of economic data.

The projections conducted for 2017, representing 100-percent (82,000 angler days), and 95-percent (77,900 angler days), and 90-percent (74,000 **angler days**) levels of ocean salmon angling effort, are not likely to precipitate significant statewide adverse economic impacts directly affecting businesses, including the ability of California businesses to compete with businesses in other states. Additionally, any reduction in angling opportunity would be undertaken with the intent of ensuring the health of the resource and thus also preventing longer-term adverse economic impacts.

Data from the Department indicate that during the 2015 salmon season, recreational fishermen participated in 82,000 angler days of ocean salmon fishing and generated an estimated \$13.7 million (2016\$) in total economic output to the State. The projected levels of fishing effort for the 2017 salmon season are 82,000 angler days, 78,000 angler days, and 73,800 angler days, equivalent to 100-, 95-, and 90-percent levels of effort, respectively. With these projected 2017 levels of angler effort, the associated fishing expenditures by fishermen would generate an estimated \$13.7 million, \$13 million and \$12.3 million (2016\$) in total economic output for the State, respectively. Thus, relative to the 2015 salmon season, the total incremental effects (direct, indirect, and induced) of the 2017 projections on State economic output range from no change (the same \$13.7 million); a 5-percent decrease (-\$684 thousand); to a 10-percent decrease (-\$1.4 million) in total economic output from the recreational ocean salmon fishery.

- (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:

Approximately 111 jobs were indirectly supported by recreational ocean salmon angling during the 2015 salmon season. Thus, relative to the 2015 salmon season, the 2017 projections (100-, 95-, and 90-percent levels of effort) represent potential incremental effects on employment ranging from zero new jobs (no change) to a loss of 6 to 11 jobs statewide; the potential incremental effects on the creation or elimination of businesses is anticipated to range from no impact to insignificant impacts on the elimination of businesses in the state. A 10-percent decrease in angling effort may have minimal impacts in some localized areas that lack industry diversification and have a heavy reliance on recreational fishing and tourism; and potential incremental effects on the expansion of businesses range from no effect to the minor contraction of some business activities in the recreational ocean salmon fishing areas.

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 the State regulations to federal rules that will apply in 2017. This proposed regulation would amend subsection 27.80(d), establishing salmon fishing regulations for May 1 through the end of 2017. Recreational salmon fishing regulations for the month of April 2017 **were** considered in a separate rulemaking action, **and were effective on April 1, 2017.**

For public notice purposes and to facilitate Commission discussion, the Department of Fish and Wildlife is proposing the following regulations to encompass the range of federal ocean salmon regulations that are expected to be in effect on or after May 1, 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.

- (1) North of Horse Mountain and in Humboldt Bay: The season, if any, may occur within the range of May 1 through September 30, 2017.

- (2) Between Horse Mountain and Pigeon Point: The season, if any, may occur within the range of May 1 to November 12, 2017.
- (3) South of Pigeon Point: The season, if any, may occur within the range of May 1 to October 1, 2017.
- (4) For all areas, 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 and closing dates, along with daily bag limit, minimum size, and days of the week open will be determined in April by the Commission considering federal regulations and may be different for each subarea.

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 April 13, 2017, the Commission adopted regulations as recommended by the Department, including the specific season dates, size limits, and bag limits listed below:

- (1) For all waters of the ocean north of Horse Mountain and in Humboldt Bay: The fishery shall remain closed in this area.**
- (2) For the area between Horse Mountain and Point Arena: The season will run May 1 through May 31 and August 15 through November 12, 2017. Fishing is authorized seven days per week. The minimum size limit will be 20 inches total length. The bag limit remains at two salmon per day.**
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(5) For the area south of Point Sur: The season will run May 1 through May 31, 2017. Fishing is authorized seven days per week. The minimum size limit will be 24 inches total length. The bag limit remains at two salmon per day.

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