STAFF SUMMARY FOR JUNE 10-11, 2015

19. INLAND FISHERIES AT RISK DUE TO DROUGHT

Today's Item **Information ☐** **Action ☒**

(A) Adoption of emergency regulation to address inland fisheries at risk due to drought conditions:

I. Add Section 8.01, Title 14, California Code of Regulations (CCR), to create a process for temporarily closing rivers to fishing (Alternative I);

OR

II. Amend Subsection 7.50(b)(118), Title 14, CCR, to close 5.5 miles of the Merced River to fishing (Alternative II).

(B) Discuss the long-term approach to addressing inland fisheries at risk under varied water quality and quantity conditions

Summary of Previous/Future Actions

- **Today's adoption hearing** **Jun 10-11, 2015; Mammoth Lakes**

Background

(A) I - Add Section 8.01, Title 14, CCR, to create a process for temporarily closing rivers to fishing

This proposed emergency regulation would authorize DFW to close waters of the state to angling if the director or his or her designee determines one or more the following conditions have been met:

- Water temperatures in occupied habitat exceed 70° Fahrenheit for over eight hours a day for three consecutive days.
- Dissolved oxygen levels in occupied habitat drop below 5 mg/L for any period of time over three consecutive days.
- Fish passage is impeded or blocked for fish species that rely on migration as part of a life history trait.
- Water levels for ponds, lakes and reservoirs drop below 10% of their capacity.
- Adult breeding population levels are estimated to be below 500 individuals.

This would create an additional process, similar to those found in Section 8.00, but not limited exclusively to low-flow closures. Conditions that would allow re-opening are also specified.

(A) II - Amend Subsection 7.50(b)(118), Title 14, CCR, to close 5.5 miles of the Merced River to fishing

The alternative is to adopt case-by-case emergency closures during drought conditions, beginning with a fishing closure of a portion of the Merced River from Crocker-Huffman Dam downstream to the Snelling Road Bridge, a distance of approximately 5.5 miles, through

December 31. Additional proposed emergency closures would likely be brought to FGC in Aug and Oct, with the possibility of requests for special meetings between regular meetings to address emergency situations.

(B) Discuss the long-term approach to addressing inland fisheries at risk under varied water quality and quantity conditions

Staff will share the concept for a long-term approach, also described in Exhibit 13C.1 under Agenda Item 13C.

Recommendation

FGC staff: Alternative I

DFW: Alternative I

Exhibits

1. DFW memo and statement of proposed emergency action for Section 8.01, Title 14, CCR
2. DFW memo, received May 28, 2015, and statement of proposed emergency regulatory action for Section 7.50(b)(118), Title 14, CCR

Motion/Direction

Alternative I

Moved by _____ and seconded by _____ that the Commission finds adopting the proposed emergency regulations is necessary for the addition of immediate process for temporarily closing rivers to fishing, as established in Section 8.01, Title 14, California Code of Regulations, as recommended by staff.

OR

Alternative II

Moved by _____ and seconded by _____ that the Commission finds adopting the proposed emergency regulations is necessary for the immediate protection of inland waters of the Merced River from angling due to drought conditions as stated in Section 7.50(b)(118), Title 14, California Code of Regulations, as recommended by staff.

State of California
Department of Fish and Wildlife

Memorandum

Date: May 27, 2015

To: Sonke Mastrup
Executive Director
Fish and Game Commission

From: Charlton H. Bonham
Director

Subject: **Emergency Statement to Add Section 8.01, Title 14, California Code of Regulations, Re: Measures for Fisheries at Risk due to Drought Conditions**

The hydrological conditions in 2015 are expected to deteriorate from the record low 2014 conditions. Consequently, environmental conditions resulting from the drought may require temporary restrictions on fishing to protect fish populations and sustain future opportunity. In response to the continued extreme drought conditions, the Department of Fish and Wildlife (Department) and the Fish and Game Commission (Commission) have determined that a new approach is needed to give the Department effective tools to provide quicker response to the deteriorating water quality and quantity conditions in California's rivers, lakes and streams for 2015.

To ensure that fisheries are protected under critical conditions stemming from the drought, the Department is proposing a set of triggers to guide fishing closure and reopening actions. Closures would be based on the most current information available collected by professional staff trained in the associated fields. Criteria would be monitored at specific sites with an emphasis on listed fish species, species of special concern, and gamefish.

The proposed emergency regulation would authorize the department to close a water of the state to angling if the director, or his or her designee, determines one or more the following conditions have been met:

- Water temperatures in occupied habitat exceed 70° Fahrenheit for over eight hours a day for three consecutive days.
- Dissolved oxygen levels in occupied habitat drop below 5 mg/L for any period of time over three consecutive days.
- Fish passage is impeded or blocked for fish species that rely on migration as part of a life history trait.
- Water levels for ponds, lakes and reservoirs drop below 10% of their capacity.
- Adult breeding population levels are estimated to be below 500 individuals.

The regulation would further provide that closed waters will be reopened by the Department when the Director, or his or her designee, determines all of the following conditions have been met:

- Water temperatures in occupied habitat do not exceed 70° Fahrenheit for over eight hours a day for seven consecutive days.
- Dissolved oxygen levels in occupied habitat rise above 5 mg/L and are maintained at that level for seven consecutive days.
- Fish passage is available and that no impediment exists to strand or concentrate adults or juveniles during their migration.
- Water levels for ponds, lakes and reservoirs have recovered to greater than 10% of their capacity.
- Adult breeding populations are estimated to be recovered to greater than 500 individuals.

Justification and associated data for closure and reopening decisions will be provided to the Commission for any water that is subject to a fishing closure.

The Department and the Commission will work together to formulate a regular rulemaking proposal that will refine the approach and regulatory language based on experiences learned, feedback from the public, and revisions to increase the efficacy of this emergency action.

If you have any questions regarding this item, please contact Stafford Lehr, Chief, Fisheries Branch, by telephone at (916) 327-8840 or by e-mail at Stafford.Lehr@wildlife.ca.gov. The public notice for this rulemaking should identify Roger Bloom, Fisheries Program Manager, as the Department's point of contact. Mr. Bloom can be reached at (916) 445-3777.

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CALIFORNIA FISH AND GAME COMMISSION
STATEMENT OF PROPOSED EMERGENCY REGULATORY ACTION

Emergency Action to
Add Section 8.01,
Title 14, California Code of Regulations
Re: Special Measures for Fisheries at Risk due to Drought Conditions

I. Statement of Facts Constituting the Need for Emergency Regulatory Action

California continues to suffer under severe drought conditions with record low snow packs in 2014 and 2015. In early 2014, Governor Edmund G. Brown Jr. proclaimed a State of Emergency for California directing state officials to take all necessary actions to prepare for the record level of drought conditions and also signed an Executive Order redoubling state drought actions with additional measures to strengthen the state's response to drought. On April 1, 2015, the Governor ordered state agencies to impose statewide mandatory water restrictions that will save water, increase enforcement against water waste, streamline the state's drought response, and invest in new drought resilient technologies for California.

The hydrological conditions in 2015 are expected to deteriorate from the record low 2014 conditions. The Department of Fish and Wildlife (Department) continues to evaluate and manage the changing impacts of drought on threatened and endangered species and species of special concern, and develop contingency plans for state Wildlife Areas and Ecological Reserves to manage reduced water resources in the public interest.

Statewide water quality and quantity in many systems is likely to be inadequate to support fisheries as the summer progresses, resulting in impeded passage of spawning fish, increased vulnerability to mortality from predation and physiological stress, and increased angling harvest and/or hooking mortality. Furthermore, survival of eggs and juvenile fish in these systems over the coming months will be extremely low. The historically low water conditions will concentrate coldwater fish populations into shrinking pools of cold water habitat making them easy prey for illegal angling methods such as snagging, increased hooking mortality due to legal catch and release, over-harvest, as well as other human-related disturbances within their freshwater habitat. When coupled with drought-related environmental stressors, such as high water temperature, low dissolved oxygen, and severely reduced suitable habitat, these stressors can seriously affect reproductive success and survival rates.

Since 2014, the Department has worked with the Fish and Game Commission (Commission), using the best available science, to determine whether restricting fishing in certain areas will become necessary and prudent as drought conditions persist. The Department and the Commission have determined that a temporary approach is needed to give the Department effective tools to respond more rapidly to the deteriorating water quality and quantity conditions in California's waters for 2015.

Regulatory Proposal

Environmental conditions resulting from the drought may require temporary restrictions on fishing to protect fish populations and sustain future opportunity. These conditional changes may affect each waterbody and fish population differently based on hydrological responses to the drought. Increased angling mortality, harvest, and angling pressure are the key components used to evaluate potential effects associated with degraded environmental conditions and will need to be evaluated on a water by water basis and over time as conditions change.

To ensure that fisheries are protected under critical conditions stemming from the drought, the Department is proposing a set of triggers to guide fishing closure and reopening decisions. The Department's decision to close or open a water will be based on the most current information available, collected by professional staff trained in the associated fields. Criteria for evaluating aquatic conditions are based on site-specific monitoring efforts with an emphasis on listed fish species, species of special concern, and gamefish.

The following proposed criteria will be used to determine if an emergency fishing closure or associated reopening is warranted:

Any water of the state not currently listed in Section 8.00 of these regulations may be closed to fishing by the Department when the Director, or his or her designee, determines one or more the following conditions have been met:

- Water temperatures in occupied habitat exceed 70° Fahrenheit for over eight hours a day for three consecutive days.
- Dissolved oxygen levels in occupied habitat drop below 5 mg/L for any period of time over three consecutive days.
- Fish passage is impeded or blocked for fish species that rely on migration as part of a life history trait.
- Water levels for ponds, lakes and reservoirs drop below 10% of their capacity.
- Adult breeding population levels are estimated to be below 500 individuals.

All waters closed pursuant to this section will be reopened by the Department when the Director, or his or her designee, determines all of the following conditions have been met:

- Water temperatures in occupied habitat do not exceed 70° Fahrenheit for over eight hours a day for seven consecutive days.
- Dissolved oxygen levels in occupied habitat rise above 5 mg/L and are maintained at that level for seven consecutive days.
- Fish passage is available and that no impediment exists to strand or concentrate adults or juveniles during their migration.

- Water levels for ponds, lakes and reservoirs have recovered to greater than 10% of their capacity.
- Adult breeding populations are estimated to be recovered to greater than 500 individuals.

Justification and associated data for closure and reopening decisions will be provided to the Commission for any water that is subject to a fishing closure.

The Department and the Commission will work together to formulate a regular rulemaking proposal that will refine the approach and associated language based on experiences learned, feedback from the public, and revisions to increase the efficacy of this emergency action.

II. 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) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

(b) Nondiscretionary Costs/Savings to Local Agencies:

None.

(c) Programs Mandated on Local Agencies or School Districts:

None.

(d) 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.

(e) Effect on Housing Costs:

None.

III. Authority and Reference

The Fish and Game Commission proposes this emergency action pursuant to the authority vested by sections 200, 202, 205, 240, and 315 of the Fish and Game Code and to implement, interpret, or make specific sections 200, 202, 205, 240, and 315 of said Code.

IV. Section 240 Finding

Pursuant to Section 240 of the Fish and Game Code, the Commission finds that the adoption of this regulation is necessary for the immediate conservation, preservation, or protection of birds, mammals, reptiles, or fish, including, but not limited to, any nests or eggs thereof.

Informative Digest (Plain English Overview)

California continues to suffer under severe drought conditions with record low snow packs in 2014 and 2015. In early 2014, Governor Edmund G. Brown Jr. proclaimed a State of Emergency for California directing state officials to take all necessary actions to prepare for the record level of drought conditions and also signed an Executive Order redoubling state drought actions with additional measures to strengthen the state's response to drought. On April 1, 2015, the Governor ordered state agencies to impose statewide mandatory water restrictions that will save water, increase enforcement against water waste, streamline the state's drought response, and invest in new drought resilient technologies for California.

The hydrological conditions in 2015 are expected to deteriorate from the record low 2014 conditions. The Department of Fish and Wildlife (Department) continues to evaluate and manage the changing impacts of drought on threatened and endangered species and species of special concern, and develop contingency plans for state Wildlife Areas and Ecological Reserves to manage reduced water resources in the public interest.

Statewide water quality and quantity in many systems is likely to be inadequate to support fisheries as the summer progresses, resulting in impeded passage of spawning fish, increased vulnerability to mortality from predation and physiological stress, and increased angling harvest and/or hooking mortality. Furthermore, survival of eggs and juvenile fish in these systems over the coming months will be extremely low. The historically low water conditions will concentrate coldwater fish populations into shrinking pools of cold water habitat making them easy prey for illegal angling methods such as snagging, increased hooking mortality due to legal catch and release, over-harvest, as well as other human-related disturbances within their freshwater habitat. When coupled with drought-related environmental stressors, such as high water temperature, poor water quality, and severely reduced suitable habitat, these stressors can seriously affect reproductive success and survival rates.

Since 2014, the Department has worked with the Fish and Game Commission (Commission), using the best available science, to determine whether restricting fishing in certain areas will become necessary and prudent as drought conditions persist. The Department and the Commission have determined that a temporary approach is needed to give the Department effective tools to respond more rapidly to the deteriorating water quality and quantity conditions in California's rivers and streams for 2015.

The following proposed criteria will be used to determine if an emergency fishing closure or associated reopening is warranted:

Any water of the state not currently listed in Section 8.00 of these regulations may be closed to fishing by the Department when the Director, or his or her designee, determines one or more of the following conditions have been met:

- Water temperatures in occupied habitat exceed 70° Fahrenheit for over eight hours a day for three consecutive days.

- Dissolved oxygen levels in occupied habitat drop below 5 mg/L for any period of time over three consecutive days.
- Fish passage is impeded or blocked for fish species that rely on migration as part of a life history trait.
- Water levels for ponds, lakes and reservoirs drop below 10% of their capacity.
- Adult breeding population levels are estimated to be below 500 individuals.

All waters closed pursuant to this section will be reopened by the Department when the Director, or his or her designee, determines all of the following conditions have been met:

- Water temperatures in occupied habitat do not exceed 70° Fahrenheit for over eight hours a day for seven consecutive days.
- Dissolved oxygen levels in occupied habitat rise above 5 mg/L and are maintained at that level for seven consecutive days.
- Fish passage is available and that no impediment exists to strand or concentrate adults or juveniles during their migration.
- Water levels for ponds, lakes and reservoirs have recovered to greater than 10% of their capacity.
- Adult breeding populations are estimated to be recovered to greater than 500 individuals.

Justification and associated data for closure and reopening decisions will be provided to the Commission for any water that is subject to a fishing closure.

The Department and the Commission will work together to formulate a regular rulemaking proposal that will refine the approach and regulatory language based on experiences learned, feedback from the public, and revisions to increase the efficacy of this emergency action.

Benefits: The proposed regulation will provide benefits to the environment through the conservation and preservation of listed species, species of special concern, and gamefish populations.

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Legislature has delegated authority to the Commission to promulgate sport fishing regulations (sections 200, 202, 205, 240, and 315 Fish and Game Code).

Regulatory Language

Section 8.01, Title 14, CCR is amended to read:

Section 8.01. Special ~~Gear Provisions~~Measures for Fisheries at Risk due to Drought Conditions.

(a) In response to continued extreme drought conditions, the commission has established a quick response process to temporarily close fisheries experiencing degraded environmental conditions that may affect fish populations or their habitat within waters of the state. The criteria set forth in subsections (b) and (c) are intended to ensure that fisheries are protected under critical conditions stemming from the drought. These criteria will be monitored in statewide inland fisheries, and they will be evaluated on a water by water basis over time as conditions change.

(b) The department may close to angling any waters of the state not currently listed in Section 8.00 of these regulations if the director, or his or her designee, finds one or more of the following conditions have been met:

(A) Water temperatures in occupied habitat exceed 70° Fahrenheit for over eight hours a day for three consecutive days

(B) Dissolved oxygen levels in occupied habitat drop below 5 mg/L for any period of time over three consecutive days.

(C) Fish passage is impeded or blocked for fish species that rely on migration as part of a life history trait.

(D) Water levels for ponds, lakes and reservoirs drop below 10% of their capacity.

(E) Adult breeding population levels are estimated to be below 500 individuals.

(c) Waters closed pursuant to subsection (b) shall be reopened by the department when the director, or his or her designee, finds all of the following conditions have been met:

(A) Water temperatures in occupied habitat do not exceed 70° Fahrenheit over eight hours a day for seven consecutive days

(B) Dissolved oxygen levels in occupied habitat rise above 5 mg/L and are maintained at that level over seven consecutive days.

(C) Fish passage is available and no impediment exists to strand or concentrate adults or juveniles during their migration.

(D) Water levels for ponds, lakes and reservoirs have recovered to greater than 10% of their capacity.

(E) Adult breeding population levels are estimated to be recovered to greater than 500 individuals.

(d) It shall be unlawful to take fish in any waters of the state closed to angling pursuant to this Section.

(e) Notification of department actions.

(1) The department shall maintain a list of closed waters of the state and update that list on Wednesday of each week by 1:00 pm. In the event that water conditions change later in the week, the fishing status for each specific water will not change until the day following the next Wednesday. It shall be the responsibility of the angler to use the telephone number provided on the department's website to obtain the current status of any water. The number to call for information is (916) 445-7600.

Note: Authority cited: Sections 200, 202~~ and 210~~, 205, 240, and 315, Fish and Game Code. Reference: Sections 200, 202, 205~~ and 210~~, 240, and 315, Fish and Game Code.

State of California
Department of Fish and Wildlife

Memorandum

Date: May 26, 2015

To: Sonke Mastrup
Executive Director
Fish and Game Commission

From: Charlton H. Bonham
Director

Subject: Emergency Statement to Amend Subsection (b)(118) of Section 7.50, Title 14, California Code of Regulations, Re: Emergency Angling Closure Due to Low Flow Conditions

The Department of Fish and Wildlife (Department) is proposing to temporarily close the lower Merced River to angling. The proposed regulatory change would implement an emergency closure of the Merced River through December 31, 2015 from Crocker-Huffman Dam (C-H Dam) downstream to the Snelling Road bridge, a distance of approximately 5.5 miles, to increase survival of adult wild rainbow trout/steelhead by reducing hooking-related mortality.

In April 2015, Merced Irrigation District (Merced ID) notified the Department that it will not deliver water to its Main Canal this water year due to drought related lack of storage. The Department is concerned that the combination of a lack of a Merced ID delivery season combined with a minimum pool reduction will result in elevated water temperatures in the reach of Merced River downstream of C-H Dam where rainbow trout reside.

On the lower Merced River, historically low stream flows have concentrated juvenile and adult wild rainbow trout/steelhead into shrinking pools of cold water making them easy prey for poachers. These fish are particularly vulnerable to illegal angling methods such as snagging, and they experience increased hooking mortality due to legal catch and release angling targeting hatchery trout and steelhead. In addition, these fish experience other human-related disturbances within their spawning habitats. When coupled with drought-related environmental stressors, such as high water temperature, poor water quality, and severely reduced suitable habitat, these human stressors can seriously affect reproductive success and adult survival rates.

The Department believes that, under these extreme conditions, it is prudent to temporarily close the lower Merced River to angling in order to eliminate angling as an additional stressor on the existing rainbow trout/steelhead population. This stream closure will also serve to deter poaching and snagging activity since all angling will be prohibited. The proposed action is necessary to conserve the wild rainbow trout/steelhead population by protecting as many adult fish as possible.

If you have any questions regarding this item, please contact Stafford Lehr, Chief, Fisheries Branch, by telephone at (916) 327-8840 or by e-mail at Stafford.Lehr@wildlife.ca.gov. The public notice for this rulemaking should identify Dean Marston, Fisheries Program Manager, as the Department's point of contact. Mr. Marston can be reached at (559) 243-4005 ext. 122.

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CALIFORNIA FISH AND GAME COMMISSION
STATEMENT OF PROPOSED EMERGENCY REGULATORY ACTION

Emergency Action to
Amend subsection (b)(118) of Section 7.50,
Title 14, California Code of Regulations
Re: Emergency Angling Closure Due to Low Flow Conditions

I. Statement of Facts Constituting the Need for Emergency Regulatory Action

California continues to suffer under severe drought conditions. In early 2014, Governor Edmund G. Brown Jr. proclaimed a State of Emergency for California directing state officials to take all necessary actions to prepare for the record level of drought conditions and also signed an Executive Order redoubling state drought actions with additional measures to strengthen the state's response to drought.

On April 1, 2015 following the lowest snowpack ever recorded and no projected end to the drought conditions in sight, Governor Edmund G. Brown Jr. ordered state agencies to impose statewide mandatory water restrictions that will save water, increase enforcement against water waste, streamline the state's drought response, and invest in new technologies that will make California more drought resilient.

The Department of Fish and Wildlife (Department) continues to evaluate and manage the changing impacts of drought on threatened and endangered species and species of special concern, and develop contingency plans for state Wildlife Areas and Ecological Reserves to manage reduced water resources in the public interest. The Department is also working with the Fish and Game Commission, using the best available science, to determine whether restricting fishing in certain areas will become necessary and prudent as drought conditions persist.

The Department conducts statewide monitoring of rivers and streams that are subject to these historically low flow conditions. Flows in many river systems will become inadequate as summer progresses, impeding passage of spawning adults, subjecting them to physiological stress, increasing their vulnerability to mortality from both predation and increased angling harvest and/or hooking related stress. Furthermore, survival of eggs and juvenile fish in these systems over the coming months is likely to be extremely low as the current drought conditions continue.

The historically low stream flows have concentrated juvenile and adult wild rainbow trout/steelhead into shrinking pools of cold water making them easy prey for poachers. These fish are particularly vulnerable to illegal angling methods such as snagging, and they experience increased hooking mortality due to legal catch and release angling targeting hatchery trout and steelhead. In addition, these fish experience other human-related disturbances within their spawning streams. When coupled with drought-related environmental stressors, such as high water temperature, poor water quality, and severely reduced suitable

habitat, these human stressors can seriously affect reproductive success and adult survival rates.

Merced River

Both resident and anadromous (steelhead) rainbow trout exist in the Merced River downstream of Crocker-Huffman Dam (C-H Dam). C-H Dam is located approximately seven miles downstream of Lake McClure and is the impoundment structure necessary for Merced Irrigation District (Merced ID) to divert water into its Main Canal. Water temperatures in the reach of the lower Merced River downstream of C-H Dam are of concern during the late spring through early fall time period, and are influenced in large part by water supply, Merced ID's water conveyance system and delivery operations (a.k.a. release schedule), and minimum instream flow schedule levels. In April 2015, Merced ID notified the Department that it will not deliver water to its Main Canal this water year due to drought-related lack of storage. To clarify, in the absence of Merced ID delivering water to its Main Canal, water in the Merced River warms rapidly during the summer months prior to reaching C-H Dam because of the reduced amount of water traveling through the reach of the Merced River located between Exchequer Dam and C-H Dam (i.e., reduced flow volume warms more quickly than elevated flow volume).

The Department is concerned that the combination of a lack of a Merced ID delivery season combined with a minimum pool reduction will result in elevated water temperatures in the reach of Merced River downstream of C-H Dam where rainbow trout reside. In response to this concern, the Department has conducted rainbow trout (*Oncorhynchus mykiss*) population, and fishery habitat quality monitoring efforts in the lower Merced River during the spring and summer of 2014 and the spring of 2015. The purpose of these monitoring efforts is to identify the number of rainbow trout in the anadromous reach of the lower Merced River, and to determine the water temperature quality of the over summering habitat available to rainbow trout in this river reach. Through these data collection efforts, the Department has learned that the available habitat area on the lower Merced River is shrinking as air temperatures increase during the summer, and that rainbow trout population abundance is also shrinking. It has become apparent that rainbow trout are moving upstream to find water temperature refugia, but fewer trout are being detected over time as this upstream migration occurs.

The Department believes that the number and condition of rainbow trout will continue to decline through the summer and early fall, due to drought-related instream flow reductions that have resulted in low instream flow levels and warmer water temperatures. As rainbow trout move upstream to seek cooler water they become isolated in a narrower reach of the lower Merced River making them susceptible to increased angling pressure. Even though the current regulations are designed for non-lethal catch and release, additional angling pressure on already stressed rainbow trout will substantially increase the likelihood that the relatively few surviving rainbow trout will die.

The Department believes that, under these extreme conditions, it is prudent to temporarily close the lower Merced River to angling in order to eliminate angling as an additional stressor on the existing rainbow trout population. This stream closure will also serve to deter poaching and snagging activity since all angling will be prohibited. The proposed action is necessary to conserve the wild rainbow trout/steelhead population by protecting as many adult fish as possible.

Subsection 7.00(e) provides the seasons, size, and bag and possession limits for trout and salmon for waters in the South Central District which are not otherwise specified in Section 7.50. Subsection 7.50(b)(118) provides the season, size, bag and possession limits for trout occurring in the anadromous reach of the lower Merced River.

The following proposed regulatory changes would implement the emergency angling closure through December 31, 2015 to increase survival of juvenile and adult wild rainbow trout/steelhead by reducing hooking-related mortality.

Section 7.50(b)(118) would be amended to include:

- Complete fishing closure from Crocker-Huffman Dam downstream to the Snelling Road bridge, a distance of approximately 5.5 miles, through December 31.

- From the Snelling Road bridge downstream to the Schaffer bridge on Oakdale Road. This section will remain open to fishing through October 31 with existing gear restrictions and bag and possession limits.

- From the Schaffer bridge on Oakdale Road downstream to the mouth. This section will remain open to fishing through October 31 with existing gear restrictions and bag and possession limits.

Additional streams closures are currently being evaluated by the Department for future actions as needed.

II. 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) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

(b) Nondiscretionary Costs/Savings to Local Agencies:

None.

(c) Programs Mandated on Local Agencies or School Districts:

None.

(d) 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.

(e) Effect on Housing Costs:

None.

III. Authority and Reference

The Fish and Game Commission proposes this emergency action pursuant to the authority vested by sections 200, 202, 205, 215, 220, 240, 315, and 316.5 of the Fish and Game Code, and to implement, interpret, or make specific Fish and Game Code sections 200, 202, 205, , 215, 220, and 315.

IV. Section 240 Finding

Pursuant to Section 240 of the Fish and Game Code, the Commission finds that the adoption of this regulation is necessary for the immediate conservation, preservation, or protection of birds, mammals, reptiles, or fish, including, but not limited to, any nests or eggs thereof.

Informative Digest (Plain English Overview)

California continues to suffer under severe drought conditions. In early 2014, Governor Edmund G. Brown Jr. proclaimed a State of Emergency for California directing state officials to take all necessary actions to prepare for the record level of drought conditions and also signed an Executive Order redoubling state drought actions with additional measures to strengthen the state's response to drought.

On April 1, 2015 following the lowest snowpack ever recorded and no projected end to the drought conditions in sight, Governor Edmund G. Brown Jr. ordered state agencies to impose statewide mandatory water restrictions that will save water, increase enforcement against water waste, streamline the state's drought response, and invest in new technologies that will make California more drought resilient.

Since 2014, the Department of Fish and Wildlife (Department) has continued to evaluate and manage the changing impacts of drought on threatened and endangered species and species of special concern, and develop contingency plans for state Wildlife Areas and Ecological Reserves to manage reduced water resources in the public interest. The Department is also working with the Fish and Game Commission, using the best available science, to determine whether restricting fishing in certain areas will become necessary and prudent as drought conditions persist.

The Department conducts statewide monitoring of rivers and streams that are subject to these historically low flow conditions. Flows in many river systems will become inadequate as summer progresses, impeding passage of spawning adults, subjecting them to physiological stress, increasing their vulnerability to mortality from both predation and increased angling harvest and/or hooking related stress. Furthermore, survival of eggs and juvenile fish in these systems over the coming months is likely to be extremely low as the current drought conditions continue.

The historically low stream flows have concentrated juvenile and adult wild rainbow trout/steelhead into shrinking pools of cold water making them easy prey for poachers. These fish are particularly vulnerable to illegal angling methods such as snagging, and they experience increased hooking mortality due to legal catch and release angling targeting hatchery trout and steelhead, as well as other human-related disturbances within their spawning streams. When coupled with drought-related environmental stressors, such as high water temperature, poor water quality, and severely reduced suitable habitat, these human stressors can seriously affect reproductive success and adult survival rates.

Merced River

Both resident and anadromous rainbow trout exist in the Merced River downstream of Crocker-Huffman Dam (C-H Dam). C-H Dam is located approximately seven miles downstream of Lake McClure and is the impoundment structure necessary for Merced Irrigation District (Merced ID) to divert water into its Main Canal. Water temperatures in the reach of the lower Merced River downstream of C-H Dam are of concern during the late spring through early fall time period, and are influenced in large part by water supply, Merced ID's water conveyance system and delivery operations (a.k.a. release

schedule), and minimum instream flow schedule levels. In April 2015, Merced ID notified the Department that it will not deliver water to its Main Canal this water year due to drought-related lack of storage. To clarify, in the absence of Merced ID delivering water to its Main Canal, water in the Merced River warms rapidly during the summer months prior to reaching C-H Dam because of the reduced amount of water traveling through the reach of the Merced River located between Exchequer Dam and C-H Dam (i.e., reduced flow volume warms more quickly than elevated flow volume).

The Department is concerned that the combination of a lack of a Merced ID delivery season combined with a minimum pool reduction will result in elevated water temperatures in the reach of Merced River downstream of C-H Dam where rainbow trout reside. In response to this concern, the Department has conducted rainbow trout (*Oncorhynchus mykiss*) population, and fishery habitat quality monitoring efforts in the lower Merced River during the spring and summer of 2014 and the spring of 2015. The purpose of these monitoring efforts is to identify the number of rainbow trout in the anadromous reach of the lower Merced River, and to determine the water temperature quality of the over summering habitat available to rainbow trout in this river reach. Through these data collection efforts, the Department has learned that the available habitat area on the lower Merced River is shrinking as air temperatures increase during the summer, and that rainbow trout population abundance is also shrinking. It has become apparent that rainbow trout are moving upstream to find water temperature refugia, but fewer trout are being detected over time as this upstream migration occurs.

The Department believes that the number and condition of rainbow trout will continue to decline through the summer and early fall, due to drought-related instream flow reductions that have resulted in low instream flow levels and warmer water temperatures. As rainbow trout move upstream to seek cooler water they become isolated in a narrower reach of the lower Merced River making them susceptible to increased angling pressure. Even though the current regulations are designed for non-lethal catch and release, additional angling pressure on already stressed rainbow trout will substantially increase the likelihood that the relatively few surviving rainbow trout will die.

The Department believes that, under these extreme conditions, it is prudent to temporarily close the lower Merced River to angling in order to eliminate angling as an additional stressor on the existing rainbow trout population. This stream closure will also serve to deter poaching and snagging activity since all angling will be prohibited. This action is necessary to conserve the wild rainbow trout population by protecting as many adult fish as possible.

Subsection 7.00(e) provides the seasons, size, and bag and possession limits for trout and salmon for waters in the South Central District which are not otherwise specified in Section 7.50. Subsection 7.50(b)(118) provides the season, size, bag and possession limits for trout occurring in the anadromous reach of the lower Merced River.

The following proposed regulatory changes would implement the emergency closure through December 31, 2015 to increase survival of juvenile and adult wild rainbow trout/steelhead by reducing hooking-related mortality.

The following proposed regulatory changes would implement the emergency angling closure through December 31, 2015 to increase survival of juvenile and adult wild rainbow trout/steelhead by reducing hooking-related mortality.

Section 7.50(b)(118) would be amended to include:

- Complete fishing closure from Crocker-Huffman Dam downstream to the Snelling Road bridge, a distance of approximately 5.5 miles, through December 31.

- From the Snelling Road bridge downstream to the Schaffer bridge on Oakdale Road. This section will remain open to fishing through October 31 with existing gear restrictions and bag and possession limits.

- From the Schaffer bridge on Oakdale Road downstream to the mouth. This section will remain open to fishing through October 31 with existing gear restrictions and bag and possession limits.

Additional streams closures are currently being evaluated by the Department for future actions as needed.

Benefits: The proposed regulation will provide benefits to the environment through the conservation and preservation of steelhead and wild rainbow trout populations.

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. The Legislature has delegated authority to the Commission to promulgate sport fishing regulations (sections 200, 202, 205, 315, and 316.5, Fish and Game Code).

Regulatory Language

§7.50. Alphabetical List of Waters with Special Fishing Regulations.

Subsection (b)(118) of 7.50, Title 14, CCR is amended to read:

Body of Water	***Open Season and Special Regulations***	***Daily Bag and Possession Limit***
(118) Merced River (Merced Co.).		
(A) From Crocker-Huffman Dam downstream to the ~~Schaffer bridge on Oakdale Road.~~ Snelling Road bridge, a distance of approximately 5.5 miles.	Jan. 1 through ~~Oct. 31~~[OAL to insert effective date]. Only artificial lures with barbless hooks may be used.	2 hatchery trout or hatchery steelhead** 4 hatchery trout or hatchery steelhead** in possession
	Closed to all fishing [OAL to insert effective date] through Dec. 31.	
(B) From the Snelling Road bridge downstream to the Schaffer bridge on Oakdale Road.	Jan. 1 through Oct. 31. Only artificial lures with barbless hooks may be used.	2 hatchery trout or hatchery steelhead** 4 hatchery trout or hatchery steelhead** in possession
(~~B~~C) From the Schaffer bridge on Oakdale Road downstream to the mouth.	Jan. 1 through Oct. 31. Bait may be used from Jan. 1 through Oct. 31. However, from April 1 through the Friday preceding the fourth Saturday in May, bait may be used only with single hooks having a gap between 1/2 and 1 inch, or with multiple hooks having a gap between 1/4 and 1/2 inch.	2 hatchery trout or hatchery steelhead** 4 hatchery trout or hatchery steelhead** in possession

* Wild Chinook salmon are those not showing a healed adipose fin clip and not showing a healed left ventral fin clip.
**Hatchery trout or steelhead in anadromous waters are those showing a healed adipose fin clip (adipose fin is absent). Unless otherwise provided, all other trout and steelhead must be immediately released. Wild trout or steelhead are those not showing a healed adipose fin clip (adipose fin is present).
Note: Authority cited: Sections 200, 202, 205, 215, 220, 240, 315 and 316.5, Fish and Game Code. Reference: Sections 200, 202, 205, 206, 215, 315, and 316.5, Fish and Game Code.