

**Notice of Proposed Changes in Regulations  
of the Fish and Game Commission**

(Continuation of Register 2003, No. 35-Z, and Commission Meeting of August 2, 2003)

**(NOTE: To be responsive to public input on proposed changes in the sport fishing regulations, the Commission is exercising its powers under Section 202 of the Fish and Game Code. Some changes to the proposed regulations may not be available to the public for the full public comment period prior to adoption. See the text of this notice.)**

NOTICE IS HEREBY GIVEN that the Fish and Game Commission, pursuant to the authority vested by sections 200, 202, 205, 206 and 220 of said Code, proposes to amend sections 1.17, 1.59, 2.09, 2.10, 5.00, 5.50, 5.75, 7.00, 7.50, 8.00, 27.60, 43 and 195, Title 14, California Code of Regulations (CCR), as part of the proposed Sport Fishing Regulations for years 2004 and 2005 (as explained in the following two paragraphs).

Proposed changes to sections as set forth in the first notice regarding Sport Fishing Regulations (Notice Register 2003, No. 35-Z, published August 29, 2003) remain the same, **except for additional public recommendations proposed for Sections 7.00, 7.50, and 29.15 (see Informative Digests below).**

**Also, proposed changes to the Department of Fish and Game recommendation to amend subsection 7.50(b)(178), Title 14, CCR has been withdrawn at the request of the department. At the early August meeting of the Commission, the Department submitted Initial Statements of Reasons for an angling regulation change on Silver King Creek (Alpine County). The change was associated with a restoration project for Paiute cutthroat trout, a federally listed threatened species. The restoration project has been suspended until further notice, and the regulation change is now not necessary.**

**In addition, Sausal Creek (Alameda Co.) and tributaries, subsection 7.50(b)(172.2), Title 14, CCR has been added to an Amended Initial Statement of Reasons, regarding "South Central Sport Fishing District Regulations, adding additional steelhead waters to the Alphabetical List of Waters with Special Fishing Regulations" with the following Updated Informative Digest:**

Current regulations in known steelhead waters of the South Central Sport Fishing District are directed at providing catch-and-release angling opportunities for adult steelhead during December through February. Trout fishing during the summer general trout season in steelhead streams is prohibited. Recent information has identified five additional streams in the South Central Sport Fishing District as possible steelhead streams that are currently not regulated under steelhead angling regulations. These streams are currently regulated under the general trout season which allows for the harvest of 5-trout per day. To prevent unnecessary mortality on ESA-listed juvenile steelhead and to cooperate with NOAA-Fisheries in the protection and recovery of threatened steelhead, the Department is proposing a regulation change to prohibit summer trout fishing and allow no-harvest angling during the winter steelhead season from December 1 through March 7 in the following five streams: 1) Codornices Creek (Alameda Co.), 2) Coyote Creek downstream from Upper Penitencia Creek (Santa Clara Co.), 3) Upper Penitencia Creek (Santa Clara Co.), 4) Pinole Creek (Contra Costa Co.) and 5) Stevens Creek downstream of Stevens Reservoir (Santa Clara Co.). During this period fishing would be allowed only on Saturdays, Sundays, Wednesdays, legal holidays and opening and closing days. Only barbless hooks could be used. This proposed change will make regulations in the above streams consistent with other steelhead streams in the South Central Sport Fishing District.

**In addition, current regulations on Sausal Creek, a small urban stream in Alameda County, allow for fishing during the general trout season from the last Saturday in April through November 15, with a five-fish daily bag limit. Local residents have become interested in restoring Sausal Creek that has been degraded because of urbanization, unnatural flows, sedimentation, and contaminants. Along with restoration efforts, many of the local residents have expressed interest in reducing any harvest of trout. Most of the observed angling activity in this stream is by children. Although little data is available determine the impact of current regulations on the trout population, to honor the concerns from the local citizens and maintain angling opportunities in an urban area, the Department recommends changing the regulations for Sausal Creek to a zero bag limit, with artificial lures and barbless hooks only.**

## **Informative Digest/Policy Statement Overview**

### **Subsection (b)(1) of Section 7.00 - Gear Restrictions in Shasta and Tehama Counties**

Central Valley steelhead, *Oncorhynchus mykiss*, listed as threatened by NOAA Fisheries in 1998 and Central Valley spring-run Chinook salmon, *Oncorhynchus tshawytscha*, listed as threatened by NOAA Fisheries and the Fish and Game Commission in 1999, warrant maximum protection from anglers pursuing resident trout in tributaries to the Sacramento River. There are currently bait and hook restrictions on the tributaries of Shasta and Tehama counties currently listed in the special regulations section. Those anadromous streams without special regulations, however, do not have bait, harvest or hook restrictions other than the general statewide regulations regarding these items. This proposed regulation would eliminate the use of bait and barbed hooks in anadromous waters in Shasta and Tehama counties in the general regulations for the Sierra District. When regulations for anadromous waters in Shasta and Tehama counties were adopted in 2001, gear restrictions in the general district section were inadvertently omitted from the regulations. This oversight allows the use of bait and barbed hooks in waters where no trout or salmon are allowed to be harvested and thus could subject the fish to unnecessary injury and mortality.

### **Subsection (f) of Section 7.00, and Subsections (b)(168.6), (b)(170.1), (b)(170.5), (b)(171.6), (b)(172.3), (b)(190), (b)(193.5) of Section 7.50 - Southern District Steelhead Waters**

Steelhead trout populations within the Southern California Steelhead Evolutionarily Significant Unit (ESU), from the Santa Maria River (inclusive) to Malibu Creek, were listed by the federal government as endangered in October 1997. On May 2, 2002, the National Marine Fisheries Service (NMFS) extended the range of the Southern California Steelhead ESU from Malibu Creek to the Mexican border.

Current general regulations for the Southern Fishing District allow fishing all year with a five-fish bag limit in all streams of Orange, San Bernardino, Riverside, and portions of Los Angeles counties, except for waters listed in Special Fishing Regulations. Regulations for streams in San Diego County allow fishing all year with artificial lures and barbless hooks only, and a two-fish bag limit, except for waters listed in Special Fishing Regulations.

In recognition of the new range extension and to comply with federal Endangered Species Act, NMFS and the Department are recommending that anadromous portions of all streams in the newly extended range be closed to all fishing. Specific streams listed in the Special Fishing Regulations that this proposal will affect include: San Juan Creek (Orange County), San Mateo Creek (San Diego and Riverside counties), Santa Margarita River (San Diego and Riverside counties), San Luis Rey River (San Diego County), Sweetwater River (San Diego County), and Topanga Creek (Los Angeles County). In addition the District General Regulations will include closures to anadromous portions of streams not named in the Special Fishing Regulation section. For angler clarification, the Department is proposing to describe the anadromous sections of Arroyo Trabucco Creek and Santa Ynez River, and add these streams to the list of waters with special regulations.

### **Subsection (b)(72.5) of Section 7.50 - Guadalupe River**

Current regulations allow fishing in the Guadalupe River from the last Saturday in May through November 15 with a five-fish, trout and salmon bag limit. The Guadalupe River below Guadalupe Reservoir is an anadromous stream that currently supports steelhead trout and Chinook salmon. Steelhead trout are listed as federally threatened according to the Endangered Species Act. The Department is recommending a regulation change that eliminates the harvest of resident trout, steelhead trout or salmon in the Guadalupe River below Guadalupe Reservoir, but allows catch-and-release fishing for trout and salmon during last Saturday in May through November 15. The Department is also proposing that anglers may use only artificial lures with barbless hooks.

Available evidence does not support the contention that legal angling is suppressing the Chinook salmon population that has recently developed in the Guadalupe River. However, the Department is supporting

this regulation request, that includes a zero bag limit for salmon, to simplify the regulations, and encourage continued cooperative efforts by several government and private agencies, and local citizens directed at restoring anadromous salmonid habitat in the Guadalupe River. Because the Chinook salmon in Guadalupe River are not considered unique and are not listed as threatened or endangered, future consideration may be given to allowing a limited harvest, if Chinook population levels warrant.

#### **Subsection (b)(91.1) of Section 7.50 - Anadromous Waters of the Trinity River**

Current regulations close the Trinity River from the Old Lewiston Bridge to the Highway 299 West Bridge at Cedar Flat, and from Hawkins Bar Bridge (Road to Denny) downstream to the mouth of the Trinity to all fishing from April 1 through the Friday preceding the fourth Saturday in May. These closures were intended to reduce the incidental catch and mortality of hatchery-origin juvenile steelhead trout during the peak downstream migration of April and May. The Department is proposing a year-round open season for these sections of river because the current regulations are not necessary and the proposed changes will simplify the regulations. Trinity River Hatchery, for the last 10 years, has met or exceeded steelhead egg-taking requirements. After discussion with hatchery management, a proposed year-round open season should have no effect on the fish program there. Department biologists have determined that steelhead population levels are currently at a level that will allow angling during April and May, and any incidental harvest of juvenile steelhead would not significantly affect the steelhead population. Basin quotas for Chinook salmon will still be maintained in these sections of river, and all seasonal closures for adult Chinook salmon will be designed to maximize and distribute the harvest of adult fall-run Chinook salmon while managing the fishery within the impact quota.

Current regulations in the Trinity River from the Highway 299 West Bridge at Cedar Flat downstream to the Hawkins Bar Bridge (Road to Denny) allow angling during the fourth Saturday in May through August 31, and from December 1 through March 31. These regulations prohibit fishing during the peak migration period of juvenile hatchery-origin steelhead (April and May) and when peak spawning occurs for adult fall-run Chinook salmon (September through November) to reduce the incidental catch and mortality of juvenile steelhead trout and to protect fall-run Chinook salmon spawners. The Department is proposing to eliminate the closure during April and May in this section of river because the current regulations are not necessary and the proposed changes will simplify the regulations. Trinity River Hatchery, for the last 10 years, has met or exceeded steelhead egg-taking requirements. After discussion with hatchery management, a proposed year-round open season should have no effect on the fish program there. Department biologists have determined that steelhead populations levels are currently at a level that will allow angling during April and May, and any resulting incidental harvest of juvenile steelhead would not significantly affect the steelhead population. The protection of spawning fall Chinook salmon will still be maintained in this section of river. The Department is proposing that no salmon over 22 inches total length may be retained from the South Fork Trinity River downstream to the confluence with the Klamath from April 1 through the Friday preceding Memorial Day.

#### **Subsection (b)(158) of Section 7.50, - Salinas River**

Current regulations for the Salinas River and tributaries upstream of the Arroyo Seco River confluence (including San Antonio drainages) allow for a five-trout daily bag limit from the last Saturday in April through November 15. Due to the presence of federally threatened steelhead in the upstream (southern) reaches of the Salinas River, the Department and NOAA Fisheries is recommending eliminating the harvest of trout and changing the regulations to catch-and-release only, zero harvest. Although access to the ocean for anadromous fish is prevented by stream-flow management in some years, the trout present in the upper reaches are considered to be genetically linked to steelhead stocks.

Also present in the upper Salinas River drainage are warm-water fisheries that do not target trout and are considered the predominate fisheries in these reaches during the summer-fall period. Because of the popular warm-water fishery, the Department is recommending a gear restriction of barbless hooks only that will reduce hooking mortality for trout while allowing anglers to fish for warm water species.

Anadromous portions of the Salinas River drainage that this proposal will affect are defined as:

- a. Mainstem Salinas River above the Arroyo Secor River to State Highway 58.
- b. Santa Antonio River below San Antonio Reservoir and Dam.
- c. Paso Robles Creek and all its tributaries.
- d. Graves Creek and its branches/tributaries.
- e. Atascadero Creek.
- f. Santa Margarita Creek and its tributaries.

**Subsection (b)(178.5) of Section 7.50 - Sisquoc Creek**

Steelhead trout populations within the Southern California Steelhead Evolutionarily Significant Unit (ESU), from the Santa Maria River (inclusive) to Malibu Creek, were listed by the federal government as endangered in October 1997. On May 2, 2002, the National Marine Fisheries Service (NMFS) extended the range of the Southern California Steelhead ESU from Malibu Creek to the Mexican border.

Current regulations for Sisquoc Creek and tributaries allow fishing all year with a five-fish daily bag limit. Because Sisquoc Creek is within the Southern California Steelhead ESU and contains potential habitat for endangered steelhead, the Department has discontinued stocking catchable trout in this watershed. Although stocking has ceased, the Department would like to maintain no-harvest fishing opportunities while supporting restoration efforts to aid the recovery of endangered Southern California steelhead. To help satisfy these goals, the Department and NOAA Fisheries are recommending changing angling regulations to a zero bag limit with gear restrictions of artificial lures and barbless hooks only, open season all year.

**Section 29.15 - Abalone.**

Under existing regulation (Section 29.15, Title 14, CCR), abalone may be only taken for sport purposes north of a line drawn due west magnetic from the center of the mouth of San Francisco Bay. Current regulations specify: seasons, hours, daily limits, special gear provisions, measuring devices, abalone report card requirements, and sizes.

Members of the public have requested that Section 29.15 be reviewed for clarification. The following is a summary of the changes proposed for Section 29.15, Title 14, CCR:

- (a) require an abalone report card only for persons required to have a sport fishing license;
- (b) require persons taking abalone from a boat to complete their abalone report card immediately upon returning and boarding the boat;
- (c) specify that the correct way to make a hole in the abalone punch card is by removing the punched section;
- (d) make it the responsibility of the license agent to record the abalone report card number on the fishing license, and the fishing license number on the abalone report card;
- (e) change the name of the "abalone report card" to "abalone permit report card";
- (f) minor editorial changes are (also) proposed to improve the clarity and consistency of the regulations.

**NOTICE IS GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the City Council Chambers, City Hall, 777 Cypress Avenue, Redding, CA, on October 3, 2003, at 8:30 a.m., or as soon thereafter as the matter may be heard. Written comments may also be submitted to the Fish and Game Commission office at the address given below.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Hubbs-Sea World Research Institute, 2595 Ingraham Street, San Diego, CA, on November 7, 2003, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments may be submitted on or before Friday, October 31, 2003 at the address given below, or by fax at (916) 653-5040, or by e-mail to [FGC@dfg.ca.gov](mailto:FGC@dfg.ca.gov), but must be received no later than Friday, November 7, 2003 at the hearing in San Diego. All correspondence, including E-mail, must include the true name and mailing address of the commenter.

**NOTICE IS FURTHER GIVEN** that any person interested may present statements, orally or in writing, relevant to

this action at a hearing to be held at the Resources Building Auditorium, 1416 Ninth Street, Sacramento, CA, on December 5, 2003, at 8:30 a.m., to consider adoption of the proposed Sport Fishing Regulations for the 2004 and 2005 seasons. Additional testimony on the proposed regulations may be received if substantive changes result from the November 7, 2003, meeting or if regulatory alternatives are under consideration.

Draft environmental documents associated with the proposed regulatory actions are made available for comment commencing September 10, 2003. Oral or written comments relevant to these documents will be received at the October 3, 2003, meeting in Redding. Written comments on these documents may be submitted to the Commission office (address given herein) until 5:00 p.m., October 27, 2003. Draft environmental documents are available for review at the Commission office and at the Department of Fish and Game's headquarters office (same address as Commission). Copies of the documents are also available for review at the Department offices in Redding, Rancho Cordova, Yountville, Fresno, Bishop, Eureka, Menlo Park, Monterey, Chino and San Diego. **NO WRITTEN COMMENTS ON THE DRAFT ENVIRONMENTAL DOCUMENTS WILL BE ACCEPTED AFTER 5:00 P.M. ON OCTOBER 27, 2003.**

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John M. Duffy, Assistant Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to John M. Duffy or Jon Snellstrom at the preceding phone number. Jim Hopelain, (916) 445-3597, (Inland) Fisheries Program Branch, and Don Schultze (916) 651-7670, (Ocean Fishing) Marine Region have been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the above address. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.dfg.ca.gov>.

#### **Availability of Modified Text**

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from agency program staff.

#### **Impact of Regulatory Action**

**Subsection (f) of Section 7.00, and Subsections (b)(168.6), (b)(170.1), (b)(170.5), (b)(171.6), (b)(172.3), (b)(190), and (b)(193.5) of Section 7.50, Re: Southern District Steelhead Waters.**

**Subsection (b) of Section 7.00, Re: Gear Restrictions in Shasta and Tehama Counties.**

**Subsections (b)(42.3), (b)(50.8), (b)(135.8), (b)(139.7), (b)(172.7) and (b)(187.5) of Section 7.50, Re: South Central Sport Fishing District Regulations, adding additional steelhead waters to the Alphabetical List of Waters with Special Fishing Regulations.**

**Subsection (b)(72.5) of Section 7.50, Re: Guadalupe River (Santa Clara County).**

**Subsection (b)(91.1) of Section 7.50, Re: Anadromous Waters of the Trinity River.**

**Subsection (b)(158) of Section 7.50, Re: Salinas River.**

**Subsection (b)(178.5), of Section 7.50, Re: Sisquoc Creek.**

**Section 29.15, Re: Abalone**

- (a) Significant Adverse Economic Impact on Businesses, including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposed changes are expected to result in roughly as much angling effort as currently occurs, so should not result in a net change in angler related expenditures.

- (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: None:

- (c) Cost Impacts on a Representative Private Person or Business:

The Commission 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: None.

- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

John M. Duffy  
Assistant Executive Director

Dated: September 18, 2003