

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

(Continuation of Register 2003, No. 37-Z and Commission Meeting of August 4, 2003; and Register 2003, No. 39-Z, and Commission Meeting of August 29, 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, 220 and 315 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 205, 206 and 220 of said Code, proposes to amend sections 1.17, 1.59, 2.10, 5.00, 5.50, 5.75, 7.00, 7.50, 8.00 and 27.60, 29.15, 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 and second notices regarding Sport Fishing Regulations (Notice Register 2003, Nos. 37-Z and 39-Z, published September 14, 2003 and September 26, 2003) remain the same, **except for additional public recommendations proposed for Subsection 7.50(b)(68) and 8.00 (see Informative Digests below).**

In addition, changes have also been proposed to subsections 7.50(b)(156)(E) (see Informative Digests below).

Informative Digests/Policy Statement Overview

Subsection (b)(68) of Section 7.50, Re: Feather River Salmon and Steelhead

Sacramento River system spring-run Chinook salmon are listed as threatened under both State and federal endangered species acts. Although the population has remained stable in recent years, the Department is attempting to better differentiate the spring and fall runs, and is proposing to reduce the current level of spring-run Chinook harvest.

Current regulations in the Feather River allow angling for spring-run Chinook salmon, and based on recent angler survey results, approximately 2,000 spring Chinook are harvested in the Feather River by anglers during the period April through June. During January 1 through September 30, up to 3 salmon per day are allowed to be harvested from the Highway 70 Bridge to the mouth of Honcut Creek, and 2 salmon per day from the mouth of Honcut Creek to the Feather River mouth.

The Department is concerned that the present harvest level of spring-run Chinook salmon in the Feather River is too great to affect recovery for this threatened species. ~~This concern is supported by the inability of Feather River Hatchery to meet its egg production goal of 7 million eggs because of insufficient numbers of spawners. Last year, the spring-run Chinook egg take was 2.3 million eggs, only 33 percent of the goal.~~

To accomplish reduced harvest of spring-run Chinook salmon in the Feather River, the Department is recommending the closure of some areas to fishing and reducing the bag limit during the period when spring-run Chinook are most vulnerable to angling. These changes include: (a) prohibit angling from the Table Mountain bicycle bridge to the Highway 70 Bridge during ~~March 4~~ July 16 through December 31, ~~(b) from the Highway 70 Bridge to the Feather River mouth, reduce the salmon bag limit to 0 during March 4 through July 31,~~ and (c) prohibit fishing all year within an area ~~100 yards upstream or downstream of the Thermalito Afterbay outlet.~~

~~Under the proposed regulations, anglers will still have the opportunity to catch and retain 3 Chinook salmon during the peak fishing months of August and September.~~ (b) from the Highway 70 Bridge to the Feather River mouth Highway 20 bridge, reduce the salmon bag limit to ~~0~~ **1** during March 1 through July 31 **15**, and (c) ~~prohibit fishing all year within an area 100 yards upstream and downstream of the Thermalito Afterbay outlet.~~ Under the proposed regulations, anglers will still have the opportunity to catch and retain 3 Chinook salmon during the peak fishing months of August and September. **(c) Reduce the bag limit to 0 from Highway 20 to the Feather River mouth during March 1 through July 15 to prevent the harvest of Yuba River spring-run Chinook. Anglers will have an opportunity to harvest three salmon from the Highway 70 bridge to Sunset Pumps from July 16 through September 30, and from Sunset Pumps to the mouth from July 16 through the last day in February.**

~~The Department is also proposing to increase the bag limit of steelhead from 1 to 2 hatchery trout or hatchery steelhead. There is a surplus of hatchery steelhead spawners that should be made available for angler harvest.~~

The Department is also proposing to replace Honcut Creek with Sunset pumps as a dividing point between regulatory subsections. This change will make river sections defined in regulation consistent with creel survey sections thereby facilitating evaluation of angling regulations.

Section 8.00 Re: Low-flow Restrictions for South Central Coast Streams

Current regulations require the Department to close the main stem Carmel River to fishing when stream flows are less than 135 cubic-feet-per-second (cfs). Low-flow closures are generally put in place to avoid excessive and repetitive catch-and-release angling pressure on steelhead that may be trapped in individual pools because stream flows are inadequate to allow them free passage upstream. Low-flow conditions generally occur during years of below normal rainfall.

In order to avoid excessive angler contact of steelhead during low stream flow conditions in the Carmel River and other anadromous streams of the South Central Sport Fishing District, the Department is proposing the following low-flow fishing closures:

1. Carmel River, reduce the low-flow closure trigger from 135 cfs to 80 cfs. The low-flow closure on the Carmel River will be applied to four adjacent creeks, San Jose, Gibson, Malpaso, Soberanes
2. Big Sur River, a 40 cfs low-flow closure. Low flow closures on the Big Sur River would also apply to all other coastal streams of the Big Sur coast in Monterey County from Granite Creek south to Salmon Creek.

The Department is proposing to add low-flow closures for all other steelhead streams in coastal San Mateo, Santa Cruz, and Monterey counties, the lower Salinas River, and one Bay Area stream using gauges on index streams to represent adjacent and analogous watersheds. The specific low-flow values that will trigger angling closures are to be developed based on gauging station flows and measurements of water depth and channel geometry that determine fish passage ability.

It is expected that these values will be available for the 2005 angling regulation cycle. In the interim, the Department is proposing to close the below streams to angling when the Department determines through various sources of information that low stream-flows are impeding fish passage and fish are being exposed to excessive angling pressure without means of escape. Streams proposed to be used for low-flow gauging that could trigger angling closures are:

3. Pajaro River and all its tributaries ~~(between 40 to 150 cfs).~~ **based on the lower Pajaro River USGS gauge.**
4. Salinas River, lower main stem below its confluence with the Arroyo Seco River **based on the USGS Salinas River gauge near Spreckels; and also the Arroyo Seco River based on both the USGS Arroyo Seco gauge near Greenfield and the Spreckels gauge in Monterey County.**
5. Arroyo Seco River based on both the USGS Arroyo Seco gauge near Greenfield ~~(between 40 to 150~~

~~cfs) and at the Spreckels gauge in Monterey County. (between 40 to 250 cfs).~~

6. Aptos and Soquel creeks ~~(between 8 to 50 cfs)~~ based on the USGS Soquel Creek gauge in Santa Cruz County.

7. San Lorenzo River and adjacent streams north to Waddell Creek in Santa Cruz County. ~~(between 40 to 140 cfs).~~

8. Pescadero Creek ~~(between 8 to 50 cfs)~~ and San Mateo County coastal streams from Elliot Creek to Milagro Creek.

~~9. Coyote Creek downstream of its confluence with Upper Penitencia Creek, and Upper Penitencia Creek. (20 to 40 cfs).~~

Subsection (b)(156)(E) of Section 7.50 Re: Angling Regulations in the Sacramento River

Current regulations in the Sacramento River from Keswick Dam downstream to the Deschutes Road bridge in Redding allow the take of one wild trout and one hatchery trout from April 30 through August 30, and zero wild trout and one hatchery trout from August 31 through March 31. These regulations have proven to be confusing and potentially unnecessarily restrictive, and may not provide suitable protection for steelhead.

This proposal recommends opening this section of the Sacramento River to fishing all year with a one trout, 16-inch maximum, daily bag limit. The zero bag limit for salmon and the required use of barbless hooks remains unchanged.

The proposed change will continue to provide the protection necessary for the wild trout and salmon populations by retaining the current zero bag limit on salmon and minimizing take on wild trout to insignificant levels. The 16-inch size restriction is intended to protect federally Threatened wild steelhead. Studies have shown that trout less than 16 inches in length have not been to the ocean. Juvenile wild steelhead typically smolt and leave the system before they reach 10 inches in length. It can be safely assumed that nearly all trout between 10 and 16 inches are resident fish. Anglers in this reach of the Sacramento River rarely take trout smaller than 10 inches. Therefore, essentially all potentially harvested fish will be wild trout (resident), with no impact to wild steelhead.

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 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. 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 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.

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, Robert R. Treanor, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to Robert Treanor 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 reason, 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

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 Businessmen to Compete with Businesses in Other States:

Subsection (b)(68) of Section 7.50, Re: Feather River Salmon and Steelhead Section 8.00 Re: Low-flow Restrictions for South Central Coast Streams

The proposed action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Subsection (b)(156)(E) of Section 7.50 Re: Angling Regulations in the Sacramento River

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 maintain angler satisfaction and provide necessary protection to the wild trout and salmon fishery.

Re: All Proposed Changes.

- (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

Dated: October 14, 2003

Robert R. Treanor
Executive Director