

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

Amend Section 5.79, Section 5.80, Section 5.81,
Section 27.92, and subsections (c) of Section 701
Title 14, California Code of Regulations
Re: Sturgeon Regulations

- I. Date of Initial Statement of Reasons: August 31, 2009
- II. Date of Pre-adoption Statement of Reasons: November 9, 2009
- III. Date of Final Statement of Reasons: December 10, 2009
- IV. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: August 6, 2009
Location: Woodland, CA
 - (b) Discussion Hearing: Date: October 1, 2009
Location: Woodland, CA
 - (c) Discussion Hearing: Date: November 5, 2009
Location: Woodland, CA
 - (d) Adoption Hearing: Date: December 10, 2009
Location: Los Angeles, CA
- V. Update:

The Fish and Game Commission adopted Option 2 with a complete closure for sturgeon fishing from January 1 to December 31 at its December 10, 2009 meeting.
- VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations:

Public comments received on this proposal and the Department's responses are listed in the attached Public Comments on Proposed Regulatory Changes and Department Responses document.
- VII. 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

VIII. Location of Department files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

No alternatives were identified.

(b) No Change Alternative:

A no change alternative would likely result in no change to the take by anglers of green sturgeon. The Department feels an unacceptable level of impact of this listed species would continue and be inconsistent with the upcoming NOAA Fisheries Green Sturgeon Section 4(d) ruling.

(c) Consideration of Alternatives:

In view of the information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed, or would be as effective and less burdensome to affected private persons than the proposed regulation.

X. 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:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of

California businesses to compete with businesses in other states. A small number of fishing guides are reported to target green sturgeon with their clients, which would not result in a significant statewide adverse economic impact.

- (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 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)

Proposal Overview

Green sturgeon, *Acipenser medirostris*, is one of the most ancient and prized game fish of North America. The history of sturgeon fisheries throughout the world has been one of overexploitation which has resulted in severe population decline. Green sturgeon are found in rivers only from British Columbia south to the Central Valley Basin. In California, spawning populations have been lost in the last 30 years in the Eel, South Fork Trinity, and San Joaquin Rivers. It is likely that the Sacramento, Klamath, and Rogue Rivers are the only locations where green sturgeon spawn today.

On April 7, 2006, NOAA Fisheries listed the southern distinct population segment, or DPS, of North American green sturgeon as threatened under the Endangered Species Act. In the nearly three years since the ruling, many agencies have focused attention on the biological and angling aspects of the green sturgeon fishery in the Sacramento River. The upcoming NOAA Fisheries Green Sturgeon Section 4(d) ruling is expected to document the upper Sacramento River above Colusa as the main green sturgeon spawning habitat for the species for California.

Most recently, direct observation from Department enforcement personnel, Central Valley Angler Survey data, and Sturgeon Fishing Report Card data have revealed a targeted catch and release fishery on green sturgeon between Butte City and the Red Bluff Diversion Dam. Section 5.81, Title 14, California Code of Regulations (CCR), prohibits the take and possession of green sturgeon. Federal and state biological and enforcement staff feel that present regulations are inadequate to fully protect this sensitive listed species. In addition, green sturgeon are often confused with white sturgeon and are targeted heavily by fishing guides and anglers with catch and release fishing in a few deep holes in the Sacramento River from Butte City and the Red Bluff Diversion Dam.

Section 1.80, Title 14, CCR, defines take as "Hunt, pursue, catch, capture or kill fish, amphibians, reptiles, mollusks, crustaceans or invertebrates or attempting to do so." Similar to recent action on Central Valley salmon, the Department feels that strong measures are needed to reduce fishing impact on green sturgeon. It is also expected that the upcoming NOAA Fisheries Green Sturgeon Section 4(d) ruling will require reduction of green sturgeon impacts in the upper Sacramento River.

The Department is proposing to increase protection for this listed species by prohibiting all catch and release fishing for any sturgeon in upper Sacramento River. This proposal will reduce the green sturgeon encounters by 22-23% overall and the catch and release of green sturgeon on their main spawning grounds will be stopped with reduction in the statewide sturgeon fishing opportunities of less than 5%. The Department is proposing the following options to facilitate Commission discussion:

Option 1: Closure on the Sacramento River from Keswick Dam to the Highway 32 Bridge.

- 1) Year round or a range of dates to be developed from Commission discussion and public input.
- 2) Gear restrictions of no wire leaders and no lamprey or any type of shrimp as bait.

Option 2: Closure on the Sacramento River from Keswick Dam to the Highway 162 Bridge.

- 1) Year round or a range of dates to be developed from Commission discussion and public input.
- 2) Gear restrictions of no wire leaders and no lamprey or any type of shrimp as bait.

Analysis of Sturgeon Fishing Report Card Data

The 2007 report card data in Table 1 shows the reach of the Sacramento River from Red Bluff to Colusa as the area of highest green sturgeon encounters (22% of the total annual green sturgeon releases). The months of highest green sturgeon releases were December to February (25% of the area total) and September to November (57% of the area total). The corresponding white sturgeon data for the same area in Table 2 was 5% of the total annual white sturgeon catch and the months of highest white sturgeon catch were March to May (89% of the area total).

The 2008 report card data in Table 3 shows the reach of the Sacramento River from Red Bluff to Colusa as the area of highest green sturgeon encounters (23% of the total annual green sturgeon releases). The months of highest green sturgeon releases were December to February (36% of the area total) and June to August (36% of the area total). The corresponding white sturgeon data for the same area in Table 4 was 3% of the total annual white sturgeon catch and the months of highest white sturgeon catch were March to May (91% of the area total).

Table 1. 2007 Green Sturgeon Release Data from Sturgeon Fishing Report Card (Report card was implemented in March 2007)

Location	Fish release percentage for each area					Area % of total releases
	Dec	Mar-May	Jun-Aug	Sep-Nov	Unk date	
Sacramento: Red Bluff to Colusa	25%	3%	15%	57%		22%
Sacramento: Colusa to Knights Landing	44%	33%		11%	11%	3%
Sacramento: Knights Landing to Rio Vista	13%	38%	6%	44%		5%
Sacramento: Rio Vista to Chipps Island	27%	16%	6%	45%	5%	20%
Feather River			100%	0%		1%
American River				0%		0%
Sacramento Deepwater Ship Channel		33%		67%		1%
Yolo Bypass				0%		0%
Montezuma Slough	36%	29%	7%	29%		5%
Napa River	14%	57%	14%	14%		2%

Petaluma River				100%		0%
San Joaquin: Upstream of HWY 140 bridge				0%		0%
San Joaquin: HWY 140 bridge to Stockton				0%		0%
San Joaquin: Stockton to Sherman Lake	13%	27%	15%	46%		15%
Old River						0%
San Pablo Bay	25%	60%	10%	5%		6%
Carquinez Strait	31%	31%	15%	23%		4%
Suisun Bay	13%	30%	10%	47%		10%
Grizzly Bay	14%	21%	7%	57%		5%
San Francisco Bay: North of HWY 80	50%			50%		1%
San Francisco Bay: South of HWY 80		100%				0%
Ocean: North of Golden Gate Bridge						0%
Ocean: Golden Gate Bridge to Point Sur						0%
Ocean: Point Sur to San Diego						0%
Any reservoir or lake						0%
Unknown	50%			50%		1%

Table 2. 2007 White Sturgeon Catch and Retention Data from Sturgeon Fishing Report Card (Report card was implemented in March 2007)

Location	Fish catch percentage for each area					Area % of total catch
	Dec	Mar-May	Jun-Aug	Sep-Nov	Unk date	
Sacramento: Red Bluff to Colusa	2%	89%	2%	8%		5%
Sacramento: Colusa to Knights Landing	4%	92%		4%		5%
Sacramento: Knights Landing to Rio Vista	12%	71%	3%	13%		11%
Sacramento: Rio Vista to Chipps Island	19%	22%	3%	55%	1%	14%
Feather River		100%				0%
American River						0%
Sacramento Deepwater Ship Channel	30%	24%	6%	41%		4%
Yolo Bypass						0%
Montezuma Slough	24%	43%	4%	28%	1%	9%
Napa River	15%	56%	15%	13%	2%	4%
Petaluma River		60%		40%		0%
San Joaquin: Upstream of HWY 140 bridge						1%
San Joaquin: HWY 140 bridge to Stockton						1%
San Joaquin: Stockton to Sherman Lake	26%	13%	6%	55%		3%
Old River						0%
San Pablo Bay	14%	72%	9%	5%		6%
Carquinez Strait	19%	30%	35%	16%		3%
Suisun Bay	20%	26%	10%	43%		19%
Grizzly Bay	16%	25%	5%	54%		4%
San Francisco Bay: North of HWY 80		83%	17%			0%
San Francisco Bay: South of HWY 80	36%	49%	2%	13%		4%
Ocean: North of Golden Gate Bridge						0%
Ocean: Golden Gate Bridge to Point Sur	100%					0%

Ocean: Point Sur to San Diego						0%
Any reservoir or lake						0%
Unknown	12%	49%	10%	30%		8%

Table 3. 2008 Green Sturgeon Release Data from Sturgeon Fishing Report Card

Location	Fish release percentage for each area				Area % of total releases
	Dec-Feb	Mar-May	Jun-Aug	Sep-Nov	
Sacramento: Red Bluff to Colusa	36%	11%	36%	16%	23%
Sacramento: Colusa to Knights Landing		100%			1%
Sacramento: Knights Landing to Rio Vista	50%	38%		13%	3%
Sacramento: Rio Vista to Chipps Island	37%	20%	4%	39%	19%
Feather River					0%
American River					0%
Sacramento Deepwater Ship Channel	38%	38%		25%	3%
Yolo Bypass					0%
Montezuma Slough	58%	33%	8%		5%
Napa River	50%	33%		17%	3%
Petaluma River	100%				0%
San Joaquin: Upstream of HWY 140 bridge					0%
San Joaquin: HWY 140 bridge to Stockton					0%
San Joaquin: Stockton to Sherman Lake	33%	25%	11%	31%	15%
Old River					0%
San Pablo Bay	40%	20%	10%	30%	4%
Carquinez Strait	56%	22%	11%	11%	4%
Suisun Bay	39%	33%	14%	14%	15%
Grizzly Bay		33%		67%	1%
San Francisco Bay: North of HWY 80	50%		50%		1%
San Francisco Bay: South of HWY 80	75%	25%			2%
Ocean: North of Golden Gate Bridge					0%
Ocean: Golden Gate Bridge to Point Sur					0%
Ocean: Point Sur to San Diego					0%
Any reservoir or lake					0%
Unknown				100%	1%

Table 4. 2008 White Sturgeon Catch and Retention Data from Sturgeon Fishing Report Card

Location	Fish catch percentage for each area				Area % of total catch
	Dec-Feb	Mar-May	Jun-Aug	Sep-Nov	
Sacramento: Red Bluff to Colusa	5%	91%	4%		3%
Sacramento: Colusa to Knights Landing	29%	67%		4%	7%
Sacramento: Knights Landing to Rio Vista	34%	53%	1%	12%	16%
Sacramento: Rio Vista to Chipps Island	37%	31%	5%	27%	16%

Feather River					0%
American River					0%
Sacramento Deepwater Ship Channel	45%	31%	2%	23%	4%
Yolo Bypass					1%
Montezuma Slough	41%	40%	2%	16%	5%
Napa River	36%	47%	11%	6%	4%
Petaluma River	75%	25%			0%
San Joaquin: Upstream of HWY 140 bridge					0%
San Joaquin: HWY 140 bridge to Stockton					1%
San Joaquin: Stockton to Sherman Lake	43%	17%	4%	36%	3%
Old River					0%
San Pablo Bay	45%	47%	2%	6%	7%
Carquinez Strait	34%	39%	14%	13%	4%
Suisun Bay	32%	37%	12%	19%	15%
Grizzly Bay	44%	22%	6%	28%	3%
San Francisco Bay: North of HWY 80	60%	30%		10%	1%
San Francisco Bay: South of HWY 80	73%	11%	2%	13%	10%
Ocean: North of Golden Gate Bridge	0%	50%		50%	0%
Ocean: Golden Gate Bridge to Point Sur					0%
Ocean: Point Sur to San Diego	100%				0%
Any reservoir or lake			100%		0%
Unknown	32%	48%	4%	16%	1%

Analysis of Central Valley Angler Survey Data

From Hamilton City (Hwy 32 Bridge) to Red Bluff Diversion Dam

The 2007-2008 CV survey data indicates that 3,000 angler hours were expended in this area or 1.9% of the total CV angler effort on sturgeon fishing in the Sacramento River. The months of reported green sturgeon releases were September (15 fish), November (38 fish), and December (23 fish). The months of recorded white sturgeon catch were August (17 fish), and October (30 fish) and the months of recorded white sturgeon releases were September (15 fish), October (45 fish), November (47 fish), and December (12 fish).

The 2008-2009 CV survey data indicates that 4,000 angler hours were expended in this area or 1.3% of the total CV angler effort on sturgeon fishing in the Sacramento River. The months of recorded green sturgeon releases were July (53 fish), September (26 fish), October (16 fish), November (7 fish), and December (24 fish). No white sturgeon were reported to have been kept and 7 white sturgeon were reported as released in November.

From Colusa (River Rd. Bridge) to Hamilton City (Hwy 32 Bridge)

The 2007-2008 CV survey data indicates that 9,200 angler hours were expended in this area or 5.8% of the total CV angler effort on sturgeon fishing in the Sacramento River. No green sturgeon were reported to have been released. The months of recorded white

sturgeon catch were March (31 fish), April (42 fish), and May (18 fish) and no white sturgeon were reported to have been caught or released.

The 2008-2009 CV survey data indicates that 12,200 angler hours were expended in this area or 3.8% of the total CV angler effort on sturgeon fishing in the Sacramento River. The month of recorded green sturgeon releases were April (9 fish). The months of recorded white sturgeon catch were March (49 fish), April (79 fish), and May (13 fish) and 44 white sturgeon were reported as released in April.

Present Regulations

Section 5.79, Title 14, CCR, contains the requirements, procedures and regulations that are specific to the White Sturgeon Report Card for Inland Waters.

Section 5.80, Title 14, CCR, contains the White Sturgeon daily bag and possession limits, season dates, methods of take, and other special regulations.

Section 5.81, Title 14, CCR, contains the Green Sturgeon special regulations.

Section 27.92, Title 14, CCR, contains the requirements, procedures and regulations that are specific to the White Sturgeon Report Card for Ocean Waters.

Section 701, Title 14, CCR, lists sport fishing forms, form revision dates, associated annual fees, and other related information.

Proposed Regulations

For public notice purposes to facilitate Commission discussion, the Department is proposing the following changes to current regulations:

Amend sections 5.80 and 5.81

There are two proposed regulatory options to add the following language to subsection (h) to Section 5.80 and subsection (c) to Section 5.81

Option 1: Special Sierra and Valley District Sturgeon Closure for varied dates from January 1 to December 31. The final range of dates will be determined by the Commission.

1. It is unlawful to fish for any sturgeon on the Sacramento River from Keswick Dam to the Highway 32 Bridge.
2. It is unlawful to use wire leaders.
3. It is unlawful to use lamprey or any type of shrimp as bait.

This proposal will provide adequate protection of green sturgeon but leave an identified fishing location where green sturgeon are known to be concentrated still vulnerable to excessive catch and release fishing by fishing guides and anglers pushed off the upper river by the proposed closure.

Option 2: Special Sierra and Valley District Sturgeon Closure for varied dates from January 1 to December 31. The final range of dates will be determined by the Commission.

1. It is unlawful to fish for any sturgeon on the Sacramento River from Keswick Dam to the Highway 162 Bridge.
2. It is unlawful to use wire leaders.
3. It is unlawful to use lamprey or any type of shrimp as bait.

This proposal will provide maximum protection of green sturgeon.

For both options:

Amend Sections 5.79 and 27.92

The proposal is to add the following language as subsection (b)(6) and (c)(3) to both sections: If the sturgeon has a department reward disk attached, write the reward disk number in the space provided on the report card.

Revisions to Sturgeon Fishing Report Card

This proposed regulation change modifies the sturgeon sport card to add a check box to allow the angler to indicate if they did not fish for sturgeon during the year, add new catch areas, a field to record the number of a Department Reward Disk from tagged sturgeon. These proposed changes will assist analysis of the report card data.

The Fish and Game Commission adopted Option 2 with a complete closure for sturgeon fishing from January 1 to December 31 at its December 10, 2009 meeting.