

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

Amend Section 7.00 and subsection (b)(68) of Section 7.50
Title 14, California Code of Regulations
Re: Oroville-Thermalito Complex Regulations
For Take of Non-Indigenous Coho Salmon

- I. Date of Initial Statement of Reasons: July 12, 2011
- II. Date of Final Statement of Reasons: November 18, 2011
- III. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: September 15, 2011
Location: Redding, CA
 - (b) Discussion Hearing: Date: October 20, 2011
Location: Monterey, CA
 - (c) Adoption Hearing: Date: November 17, 2011
Location: Santa Barbara, CA
- IV. Update:

The Fish and Game Commission adopted the proposed changes to the regulations at its November 17, 2011 meeting.
- V. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations:
 - (1) Bill Cochran, Department of Water Resources, letter dated November 9, 2011:
 - a. Requests the proposed regulation change state Fish Barrier Pool instead of Feather River from the Diversion Pool Dam to the Fish Barrier Dam in sections 7.00 and 7.50(b)(68).
 - b. Requests that the last sentence in the third paragraph in the Informative Digest be deleted.
 - c. Requests to open the tributaries above Lake Oroville to the take of non-Indigenous Coho Salmon

Response:

- a. Do Not Accept. The name Fish Barrier Pool is not commonly used on existing maps available to the general public and the Department used known locations on the Feather River in this regulatory action for clarity and to maintain continuity with the other subsections (b)(68) of Section 7.50.
- b. Do Not Accept. All fish stockings in state waters are required to be approved by the Department pursuant to Section 6401, Fish and Game Code.
- c. This comment does not address the recreational fishery regulations below the Oroville Dam and can not therefore be addressed in this particular regulatory procedure.

VI. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:

California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VII. Location of Department files:

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

VIII. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

No alternatives were identified.

(b) No Change Alternative:

The no change alternative would leave existing regulations in place with reduced fishing opportunities and possible enforcement issues.

(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.

IX. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

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. The proposed changes will offer more fishing opportunities with no adverse economic impacts.

- (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)

The Department of Fish and Game (Department) is proposing an amendment to the General District sport fishing regulations for the Oroville-Thermalito Complex (Diversion Pool, Forebay, and Afterbay) and the Feather River between the Diversion Pool Dam and Fish Barrier Dam. This proposal would expand the take of non-indigenous Coho salmon, which are currently limited to Lake Oroville proper, to include the Oroville-Thermalito Complex and the Feather River between the Diversion Pool Dam and Fish Barrier Dam.

Current Valley District regulations allow take of non-indigenous Coho salmon only in Lake Oroville. Bag and possession limits for the Oroville-Thermalito Complex and the Feather River between the Diversion Pool Dam and Fish Barrier Dam are already under the current Valley District regulations and would not require any special fishing regulations for these waters.

The Department and Department of Water Resources (DWR) have been working cooperatively to develop a successful cold water fishery in Lake Oroville. This is based, in part, on a requirement in DWR's FERC license of the Oroville Hydroelectric facility to provide a cold water fishery. DWR and the Department began stocking on an experimental basis hatchery raised non-indigenous Coho salmon into Lake Oroville in 2002. Based on the success of the non-indigenous Coho salmon fishery in Lake Oroville and the Lake Oroville Coho Salmon Stocking Risk Assessment (DWR, 2004) the Department approved stocking of hatchery raised non-indigenous Coho salmon into Lake Oroville with the stipulation that all stocked Coho be marked with an adipose fin clip and a coded wire tag.

There has been growing evidence over the last few years that planted non-indigenous Coho salmon are escaping from Lake Oroville. Recent boat based electrofishing surveys conducted in the Oroville-Thermalito Complex showed highest concentration of non-indigenous Coho salmon closest to Lake Oroville Dam. Escapement appears to be greatest during wet years though some escapement seems to happen in all years. This proposal would allow harvest by the existing popular Oroville-Thermalito Complex fishery of non-indigenous Coho salmon that escape Lake Oroville.

Concern has been raised over the potential impact that escaped non-indigenous Coho salmon could have on native salmonids in either the anadromous waters of the Feather River or in other streams and rivers with runs of native Coho salmon. Of particular concern is the potential for interbreeding with native Coho salmon stocks. Although the likelihood of the planted fish out-migrating, surviving predation and ocean fisheries, straying, and successfully spawning is extremely low, the current status of native stocks makes this a real concern. In response the Department is now requiring all non-indigenous Coho salmon planted in Lake Oroville to be triploid (sterile). In 2011, the Department approved the first experimental plant of 18,000 triploid non-indigenous Coho salmon into Lake Oroville.

Planting triploid non-indigenous Coho salmon will alleviate the potential for interbreeding in future years and this proposed regulation amendment will help continue the non-indigenous Coho salmon fishery in the Oroville-Thermalito Complex. As data show the non-indigenous Coho salmon density rapidly decreasing with distance from the dam, and a vast majority the flow from Lake Oroville goes through the Oroville-Thermalito Complex, this proposed regulation amendment targets escaped non-indigenous Coho salmon where they are most likely to be encountered. Due to extremely low numbers, a non-indigenous Coho salmon fishery is not warranted in the anadromous reaches of the Feather River and these fish are not anticipated to impact native fishes either through competition or predation.

Current Regulations

Section 7.00, CCR, Title 14, allows the take of non-indigenous Coho salmon in only Lake Oroville under the General District bag and possession limit of 5 fish for the Valley District.

Proposed Regulations

Section 7.00, CCR, Title 14, will be revised to expand the take of non-indigenous Coho salmon to the Oroville-Thermalito Complex (Diversion Pool, Forebay, and Afterbay) and the Feather River between the Diversion Pool Dam and Fish Barrier Dam. The current General District bag and possession limit of 5 fish for the Valley District will remain in place.

This change will allow for take of non-indigenous Coho salmon to reduce the possible threat to the anadromous waters of the Feather River over the near term until the diploid stocks already in the lake are depleted, and will provide for increased opportunity for the public over the long term if and when some triploid fish escape in the future.

Subsection (b)(68) of Section 7.50, CCR, Title 14, will be revised to clarify current enforcement practices and public understanding that all non-anadromous waters of the Oroville-Thermalito Complex and areas of the Feather River above the Fish Barrier Dam are subject to the General District regulations for the Valley District.

The Fish and Game Commission adopted the proposed changes to the regulations at its November 17, 2011 meeting.