

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

VII. Location of Department Files:

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

VIII. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

No alternatives were identified.

(b) No Change Alternative:

The no change alternative would leave existing regulations in place with reduced fishing opportunities.

(c) Consideration of Alternatives:

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

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 fishing areas that will be affected are few and remote, and the number of anglers that will be affected is relatively small. In addition, the proposed changes will offer more fishing opportunities with potential increases in economic activity related to spending by recreational anglers.

(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; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The proposed regulations would provide additional recreational angling opportunities, primarily during the winter months. However, the increase in fishing activity is anticipated to be limited relative to recreational angling effort statewide. Therefore the Commission does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing business or the expansion of businesses in California.

The Commission anticipates benefits to the health and welfare of California residents. Providing opportunities for a salmon and trout sport fishery encourages consumption of a nutritious food.

The Commission does not anticipate any non-monetary benefits to worker safety.

The Commission anticipates benefits to the environment by the sustainable management of California's sport fishing resources.

(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 Wildlife (Department) is proposing to amend trout and salmon angling rules for waters with special fishing regulations in three general areas:

1. Re-open waters to trout and salmon fishing that were unintentionally closed during the 2012 sport fishing regulation change cycle
2. Provide winter angling opportunities on two trout waters in California
3. Additional revisions are being proposed to improve regulatory enforcement and correct regulatory issues.

Eel River

During the 2012 sport fishing regulation change cycle, the Department inadvertently deleted the "0" (zero) from the daily bag limit for all anadromous waters in Section 7.50(b) of Title 14, CCR. As a result, the Department unintentionally closed all anadromous waters to catch and release (C & R) fishing for salmon, including the Eel River. This proposed regulation change is to reinstate the historic Chinook salmon C & R sport fishery on the Eel River System.

Strong public opposition to the regulation change and inadvertent closure of the targeted Eel River Chinook salmon C & R sport fishery was voiced through print and internet media as well as numerous calls received by regional CDFW personnel. The popular Chinook salmon sport fishery has existed on the Eel River for more than 100 years and in the mid 1990's regulations were changed to allow only C & R salmon fishing with zero retention of Chinook salmon. Local and out of area anglers participate in the annual Chinook salmon C & R sport fishery and support local tackle shops, drift boat guides, lodging, and gas, food and lodging businesses.

The abundance of Chinook salmon has been at very high levels for several years, and their exposure to angling is minimized above the estuary by low flow closure or high, turbid flow and the requirement of barbless hooks also reduces injury to any fish encountered. The Eel River Chinook salmon population has sustained a C & R sport fishery for the last sixteen years, and CDFW has determined that under current regulations the Eel River system can support reinstatement of the inadvertently terminated C & R zero bag limit Chinook salmon sport fishery.

Edson Creek

During the 2012 sport fishing regulation change cycle, the Department submitted a fishing regulation change proposal on Edson Creek, Siskiyou County. The proposed regulation included closing Edson Creek and all tributaries to fishing all year. The proposed regulation was adopted by the Fish and Game Commission and implemented on January 1, 2013. A misidentification on the stream order has unintentionally closed Dry Creek (a tributary to Edson Creek) to fishing. The original intent of the regulation change was to close Edson Creek upstream from the confluence with Dry Creek.

The regulation in its current state will impact the recreational use at a USDA Forest Service Campground on Trout Creek (tributary to Dry Creek), a popular area for anglers

to target McCloud redband trout, which is also a qualifying fish for the California Heritage Trout Challenge.

Dry Creek and Trout Creek do not contain genetically distinct McCloud redband trout, but a slightly introgressed version between coastal rainbow trout and McCloud redband trout. While these introgressed fish still qualify for the Heritage and Wild Trout Challenge and have potential restoration value, they are not “genetically distinct” McCloud redband trout. McCloud redband trout are currently isolated in four small streams - Edson, Moosehead, Sheepheaven, and Swamp creeks.

The Department expects no change to the fish population due to the reopening of this important fishery. The Dry and Trout creek fisheries have remained in a self-sustaining state since 1977 when restocked by the Department.

Davis Lake

Davis Lake is currently listed as a special regulation under Section 7.50 due to past efforts to remove the pike from Davis Lake. However, Davis Lake no longer requires special fishing regulations and is covered under the Sierra District General Regulations, Section 7.00(b). Therefore, Lake Davis should be removed from Section 7.50, Special Fishing Regulations.

Beardsley Afterbay

There is an enforcement issue with the way subsection (b)(187)(A) for the Middle Fork Stanislaus River is currently worded. The intent of the regulation is to include Beardsley Afterbay as part of the Middle Fork Stanislaus River. However, as currently written which does not include the word Afterbay, one can easily say the river begins downstream of the Afterbay dam and use the general rules for lakes/reservoirs in the Afterbay. The courts may dismiss a citation if a person claims they thought the Beardsley Afterbay was a reservoir. The proposed amendment will make it clear that the Afterbay is considered part of the Middle Fork Stanislaus River.

Upper Trinity River

In response to requests from both anglers and businesses in northern Trinity County, Cal-Trout with the support of the Trinity County Fish and Game Commission, and the Trinity County Board of Supervisors, is seeking opening a catch and release winter fishery season on the Upper Trinity River (UTR). Opening the UTR to fishing through the winter would open approximately 13.8 miles of fishing opportunities during the winter season. CalTrout is seeking to have this regulation change effective for the 2013-2014 winter season.

To assess the effects of year-around angling on the UTR, Department Heritage and Wild Trout staff conducted surveys that encompassed the proposed winter fishery season during the months of November 2010 through March 2011 and November 2011 through April 2012. In 2012, a survey was added during the open fishing season (last Saturday in April – November 15) to compare with off-season results. Sampling included direct observation (snorkel survey), hook and line, and flow to fish-ability observations.

In comparison with other northern California trout fisheries, the UTR fish observed (trout per mile) was relatively low. Although the sampling techniques were strategically chosen to best sample the river with available resources, it is uncertain whether the frequency of sampling (limited due to environmental conditions and staffing) was able to detect the adfluvial component of this fishery or migratory movement of resident fish.

The number of anglers that may take advantage of recreational angling opportunities in the UTR during an open winter season is unknown, but because of its relative remoteness, distance from major living areas, seasonality of adfluvial fish, inclement weather, and low densities of fish altogether, angling pressure would most likely be minimal and sporadic. The Department finds no biological reason to not open the UTR for winter angling opportunities. In addition, opening up a winter fishery to provide recreational angling where there would be no conflicts with native species, falls under the principal mission of the Department's Strategic Plan for Trout Management, especially where the waters have not been historically fishless.

West Walker River

In response to demands from both anglers and businesses in northern Mono County, the Mono County Fisheries Commission (MCFC) is seeking an addition of catch and release angling on two contiguous sections of the West Walker River. The MCFC, local businesses and interested anglers are seeking to increase the fishing opportunities in Mono County and specifically winter angling opportunities. Currently there are four small sections of two streams and two rivers that are open to year-round and specifically winter fishing in Mono County. Often the Upper Owens River and Lower Deadman Creek are inaccessible to anglers even though they are open to fishing. The East Walker River and Hot Creek are much more accessible and see the majority of angling pressure. Opening the West Walker River to catch and release fishing through the winter would provide a fifth open water, add one that is more accessible than the Upper Owens or Deadman Creek and potentially relieve some of the angling pressure on Hot Creek and the East Walker River.

The proposed opening of the West Walker River for a winter angling season is supported by the Antelope Valley Regional Planning Committee, Northern Mono Chamber of Commerce, High Sierra Flycasters, Antelope Valley Lions Club, and the Mono County Board of Supervisors.

Benefits of the Proposed Regulations

It is the policy of this state to encourage the conservation, maintenance, and utilization of the living resources of the ocean and inland waters under the jurisdiction and influence of the state for the benefit of all the citizens of the State. In addition, it is the policy of this state to promote the development of local California fisheries in harmony with federal law respecting fishing and the conservation of the living resources of the ocean and inland waters under the jurisdiction and influence of the State. The objectives of this policy include, but are not limited to, the maintenance of sufficient populations of all species of aquatic organisms to ensure their continued existence and the maintenance of a sufficient resource to support a reasonable sport use. Adoption of scientifically-based trout and salmon seasons, size limits, and bag and possession limits provides for the maintenance of sufficient populations of trout and salmon to ensure their continued existence.

The benefits of the proposed regulations are concurrence with Federal law, sustainable management of California's trout and salmon resources, and promotion of businesses that rely on recreational sport fishing in California.

The Commission does not anticipate non-monetary benefits to the protection of public health and safety, worker safety, the prevention of discrimination, the promotion of fairness or social equity and the increase in openness and transparency in business and government.

Compatibility with State Regulations

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. Section 20, Article IV, of the State Constitution specifies that the Legislature may delegate to the Fish and Game Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to regulate recreational fishing in waters of the state (sections 200, 202, and 205, Fish and Game Code). The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Commission has searched the California Code of Regulations and finds no other state agency regulations pertaining to recreational fishing seasons, bag and possession limits. Further, the Commission has determined that the proposed regulations are neither incompatible nor inconsistent with existing federal regulations.

The meeting location for the October and November meetings were changed after the Initial Statement of Reasons was prepared and the public notice reflected the meeting change.

The Fish and Game Commission adopted the proposed regulations at its November 6, 2013 meeting.

Regulatory Language

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

Repeal subsection (b)(53.8) of Section 7.50, Title 14, CCR:

<i>Body of Water</i>	<i>Open Season and Special Regulations</i>	<i>Daily Bag and Possession Limit</i>
(53.8) Davis Lake (Plumas Co.)	All Year	5 per day, 10 in possession

Subsection (b)(63) of Section 7.50, Title 14, CCR, is amended as follows:

<i>Body of Water</i>	<i>Open Season and Special Regulations</i>	<i>Daily Bag and Possession Limit</i>
(63) Eel River (Humboldt, Lake, Mendocino and Trinity cos.). Also see Section 8.00(a).		
ALL WATERS OF THE EEL RIVER DRAINAGE EXCEPT THOSE LISTED BELOW ARE CLOSED TO ALL FISHING.		
(A) Main stem.		
1. From mouth to Fulmor Road, at its paved junction with the south bank of the Eel River.	All year. Only artificial lures with barbless hooks may be used from April 1 through the Friday preceding the fourth Saturday in May. Only barbless hooks may be used from fourth Saturday in May through Mar. 31.	<u>Catch and Release of Chinook salmon</u> 2 hatchery trout or hatchery steelhead** 4 hatchery trout or hatchery steelhead** in possession
2. From Fulmor Road, at its paved junction with the south bank of the Eel River, to South Fork Eel River.	All year. Only artificial lures with barbless hooks may be used from Apr. 1 through Sept. 30. Only barbless hooks may be used from Oct. 1 through Mar. 31.	<u>Catch and Release of Chinook salmon</u> 2 hatchery trout or hatchery steelhead** 4 hatchery

		trout or hatchery steelhead** in possession
3. From South Fork Eel River to Cape Horn Dam. (See also Pillsbury Lake tributaries (7.50(b)(138)).	Jan. 1 through Mar. 31 and Fourth Saturday in May through Sept. 30. Only artificial lures with barbless hooks may be used.	<u>Catch and Release of Chinook salmon</u> 2 hatchery trout or hatchery steelhead** 4 hatchery trout or hatchery steelhead** in possession
	Apr. 1 through the Fourth Friday in May and Oct. 1 through Dec. 31.	Closed to all fishing
(B) Van Duzen River.		
1. Main stem and tributaries above Eaton Falls, located about 1/2 mile upstream of the mouth of the South Fork (Little Van Duzen) and 2 1/2 miles west of Dinsmore.	Last Saturday in Apr. through Nov. 15.	5
2. Main stem from its junction with the Eel River to the end of Golden Gate Drive near Bridgeville (approximately 4,000 feet upstream from the Little Golden Gate Bridge).	Fourth Saturday in May through Mar. 31. Only artificial lures with barbless hooks may be used from the fourth Saturday in May through Sept. 30. Only barbless hooks may be used from Oct. 1 through Mar. 31.	<u>Catch and Release of Chinook salmon</u> 2 hatchery trout or hatchery steelhead** 4 hatchery trout or hatchery steelhead** in possession
	Apr. 1 to Fourth Friday in May.	Closed to all fishing
(C) South Fork Eel River from mouth to Rattlesnake Creek.	Fourth Saturday in May through Mar. 31. Only artificial lures with barbless hooks may be used from the fourth Saturday in May through Sept. 30. Only barbless hooks may be used from Oct. 1 through Mar. 31.	<u>Catch and Release of Chinook salmon</u> 2 hatchery trout or

		hatchery steelhead** 4 hatchery trout or hatchery steelhead** in possession
	Apr.1 to Fourth Friday in May.	Closed to all fishing
(D) Middle Fork Eel River.		
1. Middle Fork main stem from mouth to Bar Creek.	Jan. 1 through May 31 and July 16 through Sept. 30. At all times, only artificial lures with barbless hooks may be used.	2 hatchery trout or hatchery steelhead** 4 hatchery trout or hatchery steelhead** in possession
	Jun. 1 through July 15 and Oct. 1 through Dec. 31.	Closed to all fishing
2. Middle Fork tributaries above Indian Dick/Eel River Ranger Station Road	Last Saturday in Apr. through Nov.15. Maximum size limit: 14 inches total length.	5
3. Middle Fork and tributaries above mouth of Uhl Creek.	Last Saturday in Apr. through Nov. 15. Maximum size limit: 14 inches total length. Only artificial lures with barbless hooks may be used.	2
4. Balm of Gilead Creek and tributaries above falls 1 1/4 miles from mouth.	Last Saturday in Apr. through Nov. 15. Maximum size limit: 14 inches total length. Only artificial lures with barbless hooks may be used.	2
5. North Fork of Middle Fork and tributaries above mouth of Willow Creek.	Last Saturday in Apr. through Nov. 15. Maximum size limit: 14 inches total length. Only artificial lures with barbless hooks may be used.	2

Subsection (b)(115) of Section 7.50, Title 14, CCR, is amended as follows:

<i>Body of Water</i>	<i>Open Season and Special Regulations</i>	<i>Daily Bag and Possession Limit</i>
(115) McCloud River and tributaries (Shasta and Siskiyou cos.).		
(A) Moosehead Creek and all	Closed to all fishing all year.	

tributaries.		
(B) McKay Creek and all tributaries including Sheepheaven Spring.	Closed to all fishing all year.	
(C) Edson Creek and all tributaries, <u>excluding Dry Creek</u> .	Closed to all fishing all year.	
(D) Swamp Creek and all tributaries.	Last Saturday in Apr. through Nov. 15. Only artificial lures with barbless hooks may be used.	0
(E) McCloud River from McCloud Dam downstream to confluence of Ladybug Creek.	Last Saturday in Apr. through Nov. 15. Only artificial lures with barbless hooks may be used.	2
(F) McCloud River from confluence of Ladybug Creek downstream to lower boundary of the U.S. Forest Service loop (southern boundary of section 36, T38N, R3W).	Last Saturday in Apr. through Nov. 15. Only artificial lures with barbless hooks may be used.	0
(G) McCloud River from the lower boundary of the U.S. Forest Service loop (southern boundary of section 36, T38N, R3W) downstream to the upper boundary of the McCloud River Club (southern boundary of section 14, T37N, R3W).	Closed to all fishing all year.	

Subsection (b)(187) of Section 7.50, Title 14, CCR, is amended as follows:

<i>Body of Water</i>	<i>Open Season and Special Regulations</i>	<i>Daily Bag and Possession Limit</i>
(187) Stanislaus River, Middle Fork (Tuolumne Co.).		
(A) From Beardsley Dam downstream to the U. S. Forest Service footbridge at Spring Gap (<u>including the Beardsley Afterbay</u>).	Last Saturday in Apr. through Nov. 15. Only artificial lures with barbless hooks may be used.	2
(B) From the U.S. Forest Service footbridge at Spring Gap to New Melones Reservoir.	Last Saturday in Apr. through Nov. 15	2

Subsection (b)(195.1) is added to Section 7.50, Title 14, CCR, as follows:

<i>Body of Water</i>	<i>Open Season and Special Regulations</i>	<i>Daily Bag and Possession Limit</i>

<u>(195.1) Trinity River, above Trinity Dam (Trinity County) from the confluence with Tangle Blue Creek, (Hwy. 3) downstream (south) to the mouth of Trinity Lake, approximately 13.8 miles.</u>	<u>Nov. 16 through the Friday preceding the last Saturday in April. Only artificial lures with barbless hooks may be used.</u>	<u>0</u>
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Subsection (b)(205.5) is added to Section 7.50, Title 14, CCR, as follows:

<i>Body of Water</i>	<i>Open Season and Special Regulations</i>	<i>Daily Bag and Possession Limit</i>
<u>(205.5) West Walker River (Mono County) from the confluence with the Little Walker River (Hwy. 395 bridge at mile marker 96) downstream (north) to the inlet of Topaz Lake.</u>	<u>Nov. 16 through the Friday preceding the last Saturday in April. Only artificial lures with barbless hooks may be used.</u>	<u>0</u>

* 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 and 316.5, Fish and Game Code.