**TITLE 14. Fish and Game Commission**
**Notice of Proposed Changes in Regulations**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 215, 220, 240, 315 and 316.5, Fish and Game Code and to implement, interpret or make specific sections 200, 202, 205, 206, 215, and 316.5 of said Code, proposes to repeal subsection (b)(53.8), amend subsections (b)(63), (b)(115), and (b)(187), and add subsections (b)(195.1) and (b)(205.5) of Section 7.50, Title 14, California Code of Regulations, relating to alphabetical list of waters with special fishing regulations.

## 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.

**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 Crowne Plaza Ventura Beach Hotel, 450 E Harbor Blvd., Ventura, California, on Wednesday, October 2, 2013, at 8:30 a.m., or as soon thereafter as the matter may be heard.

**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 Embassy Suites, 50-777 Santa Rosa Plaza, La Quinta, California, on Wednesday, November 6, 2013, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before October 25, 2013 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on November 1, 2013. All comments must be received no later than November 6, 2013 at the hearing in La Quinta. If you would like copies of any modifications to this proposal, please include your name and mailing address.

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, Sonke Mastrup, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Sonke Mastrup or Sheri Tiemann at the preceding address or phone number. **Mr. Stafford Lehr, Chief, Fisheries Branch, telephone at (916) 327-8840, has 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 address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at http://www.fgc.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 representative 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 the agency program staff.

**Impact of Regulatory Action/Results of the Economic Impact Analysis**

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 Business, 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.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

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, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Sonke Mastrup
Executive Director

Dated: August 28, 2013