

CALIFORNIA FISH AND GAME COMMISSION
STATEMENT OF PROPOSED EMERGENCY REGULATORY ACTION

Emergency Action to
Amend subsection (b)(156.5)(B) of Section 7.50,
Title 14, California Code of Regulations
Re: Emergency Closure Due to Low Flow Conditions

I. Statement of Facts Constituting the Need for Emergency Regulatory Action

On January 17, 2014 the Governor proclaimed a State of Emergency to exist in California due to severe drought conditions. As part of the declaration, the Governor ordered the Department of Fish and Wildlife (Department) to work with the California Fish and Game Commission (Commission), using the best available science, to determine whether restricting fishing in certain areas will become necessary and prudent as drought conditions persist. On April 25, 2014 the Governor issued an Executive Order (EO) to proclaim a continuation of the State of Emergency based ongoing drought conditions. This EO and the original orders are still in place and specifically direct the Department to monitor winter-run Chinook salmon in the Sacramento River and tributaries.

Sacramento River winter-run Chinook salmon suffered a 95% loss of the 2014 natural production brood year due to low reservoir storage and elevated water temperatures caused by the ongoing drought. Estimated mortality in 2015 is predicted to be similar to 2014. Current projections indicate that similar water conditions could occur in 2016. Chinook salmon return to their natal rivers and streams every three years to spawn. Therefore, it is vital to protect this year's cohort to prevent extinction of winter-run Chinook salmon. State and federal agencies are working together to help ensure there is sufficient cold water to prevent a third year cohort collapse. This could be accomplished via the State Water Resources Control Board process or a change in the appropriate reasonable and prudent alternative actions outlined in the 2009 Biological Opinion on the Long-Term Operations of the Central Valley Project and State Water Project.

The Drought Operations Plans have outlined measures to try and prevent extinction of winter-run Chinook salmon which include: increased hatchery production, enhanced monitoring, and increased rescue efforts. Maximizing adult spawning numbers is critical to the population. Department staff have evaluated the 2015 winter-run Chinook salmon spawning locations and have concluded that all but two observed redds were above the Highway 44 bridge. Although fishing for winter-run Chinook salmon in this reach of the Sacramento River is not allowed under current regulations, incidental by-catch by anglers has been documented to occur, especially during low flow periods. Even if returned to the water, incidental by-catch adds unnecessary stress on winter-run Chinook salmon resulting in the potential loss of adults before spawning. A fishing closure in the holding and spawning areas of winter-run will add to protections for a Federal and State Endangered fish facing a high risk of extinction.

The Sacramento River from Keswick Dam downstream to the Red Bluff Diversion Dam (RBDD) is a Commission designated Wild Trout Water and provides some of the best

rainbow trout fishing in California. The proposed emergency fishing closure from the Keswick Dam to the Highway 44 bridge is a 5.5 mile (about nine percent) reduction in areas open to fishing upstream of the RBDD. Although this represents a small portion of the fishery, it is one of the most popular reaches for both shore based and boat anglers. The Department does not propose a permanent closure but a temporary 4-month suspension of fishing (April 1 through July 31) and will annually assess the success of all efforts to protect the winter-run Chinook salmon population.

Pursuant to Section 8.01, Title 14, California Code of Regulations, the Department Director has authority to temporarily close fisheries experiencing degraded environmental conditions due to drought. The criteria used to determine if an emergency fishing closure is warranted were developed to protect legal fisheries. Winter-run Chinook salmon is a state and federally-listed endangered species and, as stated above, fishing for winter-run Chinook salmon is not allowed. As a result, the Director cannot use his authority under Section 8.01 to protect this species. For this reason, the Department is requesting the Commission take emergency action to implement a temporary fishing closure on the Sacramento River to protect winter-run Chinook salmon.

PROPOSED ACTION BY THE COMMISSION:

The Department acknowledges the importance of this sport fishery and understands any closure to angling will likely have a substantial effect to both local anglers and anglers travelling from other parts of the State. However, given the gravity and magnitude of the current situation facing winter-run Chinook salmon, the Department acting under the directives of the State and Federal Endangered Species Acts, and the orders and provisions contained in the aforementioned 2014 Proclamations and EO's will be requesting the Commission through emergency action to close the Sacramento River downstream from Keswick Dam to the Highway 44 bridge. If adopted, this emergency closure would take effect upon final approval by the Office of Administrative Law and end July 31, 2016. Normal fishing opportunities would resume August 1, 2016.

Amend Sacramento River subsection (b)(156.5)(B) of Section 7.50, Title 14, CCR, to close all fishing in the Sacramento River from 650 feet below Keswick Dam to the Highway 44 bridge, from the effective date of the emergency regulation (about April 1, 2016) through July 31, 2016.

II. 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) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

- (b) Nondiscretionary Costs/Savings to Local Agencies:

None.

- (c) Programs Mandated on Local Agencies or School Districts:

None.

- (d) 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.

- (e) Effect on Housing Costs:

None.

III. Authority and Reference

The Fish and Game Commission proposes this emergency action pursuant to the authority vested by sections 200, 202, 205, 215, 220, 240, 315, and 316.5 of the Fish and Game Code and to implement, interpret, or make specific sections 200, 202, 205, 206, 215 and 316.5 of said Code.

IV. Section 240 Finding

Pursuant to Section 240 of the Fish and Game Code, the Commission made the finding that the adoption of this regulation is necessary for the immediate conservation, preservation, or protection of birds, mammals, reptiles, or fish, including, but not limited to, any nests or eggs thereof.

Informative Digest (Plain English Overview)

On January 17, 2014 the Governor proclaimed a State of Emergency to exist in California due to severe drought conditions. As part of the declaration, the Governor ordered the Department of Fish and Wildlife (Department) to work with the California Fish and Game Commission (Commission), using the best available science, to determine whether restricting fishing in certain areas will become necessary and prudent as drought conditions persist. On April 25, 2014 the Governor issued an Executive Order (EO) to proclaim a continuation of the State of Emergency based on ongoing drought conditions. This EO and the original orders are still in place and specifically direct the Department to monitor winter-run Chinook salmon in the Sacramento River and tributaries.

Sacramento River winter-run Chinook salmon suffered a 95% loss of the 2014 natural production brood year due to low reservoir storage and elevated water temperatures caused by the ongoing drought. Estimated mortality in 2015 is predicted to be similar to 2014. Current projections indicate that similar water conditions could occur in 2016. Chinook salmon return to their natal rivers and streams every three years to spawn. Therefore, it is vital to protect this year's cohort to prevent extinction of winter-run Chinook salmon. State and federal agencies are working together to help ensure there is sufficient cold water to prevent a third year cohort collapse. This could be accomplished via the State Water Resources Control Board process or a change in the appropriate reasonable and prudent alternative actions outlined in the 2009 Biological Opinion on the Long-Term Operations of the Central Valley Project and State Water Project.

The Drought Operations Plans have outlined measures to try and prevent extinction of winter-run Chinook salmon which include: increased hatchery production, enhanced monitoring, and increased rescue efforts. Maximizing adult spawning numbers is critical to the population. Department staff have evaluated the 2015 winter-run Chinook salmon spawning locations and have concluded that all but two observed redds were above the Highway 44 bridge. Although fishing for winter-run Chinook salmon in this reach of the Sacramento River is not allowed under current regulations, incidental by-catch by anglers has been documented to occur, especially during low flow periods. Even if returned to the water, incidental by-catch adds unnecessary stress on winter-run Chinook salmon resulting in the potential loss of adults before spawning. A fishing closure in the holding and spawning areas of winter-run will add to protections for a Federal and State Endangered fish facing a high risk of extinction.

The Sacramento River from Keswick Dam downstream to the Red Bluff Diversion Dam (RBDD) is a Commission designated Wild Trout Water and provides some of the best rainbow trout fishing in California. The proposed emergency fishing closure from the Keswick Dam to the Highway 44 bridge is a 5.5 mile (about nine percent) reduction in areas open to fishing upstream of the RBDD. Although this represents a small portion of the fishery, it is one of the most popular reaches for both shore based and boat anglers. The Department does not propose a permanent closure but a temporary 4-month suspension of fishing (April 1 through July 31) and will annually assess the success of all efforts to protect the winter-run Chinook salmon population.

Pursuant to Section 8.01, Title 14, California Code of Regulations, the Department Director has authority to temporarily close fisheries experiencing degraded environmental conditions due to drought. The criteria used to determine if an emergency fishing closure is warranted were developed to protect legal fisheries. Winter-run Chinook salmon is a state and federally-listed endangered species and, as stated above, fishing for winter-run Chinook salmon is not allowed. As a result, the Director cannot use his authority under Section 8.01 to protect this species. For this reason, The Department is requesting the Commission take emergency action and implement a temporary fishing closure on the Sacramento River to protect winter-run Chinook salmon.

A meeting has been scheduled on Friday, January 29, 2016 from 4:00-5:30 p.m. at the Public Library at 1100 Parkview Avenue in Redding to receive initial public input regarding this emergency action.

PROPOSED ACTION BY THE COMMISSION:

The Department acknowledges the importance of this sport fishery and understands any closure to angling will likely have a substantial effect on both local anglers and anglers travelling from other parts of the State. However, given the gravity and magnitude of the current situation facing winter-run Chinook salmon, the Department acting under the directives of the State and Federal Endangered Species Acts, and the orders and provisions contained in the aforementioned 2014 Proclamations and EO's will be requesting the Commission through emergency action to close the Sacramento River downstream from Keswick Dam to the Highway 44 bridge. If adopted, this emergency closure would take effect upon final approval by the Office of Administrative Law and end July 31, 2016. Normal fishing opportunities would resume August 1, 2016.

Amend Sacramento River subsection (b)(156.5)(B) of Section 7.50, Title 14, CCR, to close all fishing in the Sacramento River from 650 feet below Keswick Dam to the Highway 44 bridge, from the effective date of the emergency regulation (about April 1, 2016) through July 31, 2016.

Benefits: The proposed regulation will provide benefits to the environment through the conservation and preservation of the endangered winter-run Chinook salmon population.

The proposed regulation is neither inconsistent nor incompatible with existing State regulations. The Legislature has delegated authority to the Commission to promulgate sport fishing regulations (sections 200, 202, 205, 315, and 316.5, Fish and Game Code).