

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

Amend Sections 1.05, 1.11, 1.61, 2.10, 2.25, 5.35, 5.41, 5.88,
Subsection (b) of Section 7.00, Subsection (b) of Section 7.50,
and Subsection (b) of Section 8.00; Repeal Section 1.60;
and Add Sections 1.18 and 2.05,
Title 14, California Code of Regulations
Re: Freshwater Sport Fishing Regulations

- I. Date of Initial Statement of Reasons: June 2, 2017
- II. Date of Pre-adoption Statement of Reasons: November 1, 2017
- III. Date of Final Statement of Reasons: December 12, 2017
- IV. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: August 16, 2017
Location: Sacramento
 - (b) Discussion Hearing Date: October 11, 2017
Location: Atascadero
 - (c) Adoption Hearing: Date: December 6, 2017
Location: San Diego

V. Update:

The proposal to amend Title 14, Section 1.74, Sport Fishing Report Card Requirements, was removed from the regulatory package and recommended as a no change alternative.

No other changes have been made in the originally proposed regulatory language.

The Fish and Game Commission adopted the proposed regulations as described in the Pre-Adoption Statement of Reasons, without changes, at its December 6, 2017 meeting.

VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations:

See Appendix A to the Final Statement of Reasons.

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 Wildlife
1416 Ninth Street
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

No alternatives we identified.

(b) No Change Alternative:

The no change alternative would leave existing regulations in place.

(c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purpose 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.

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

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:
- (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 expected impact of the proposed regulations on the amount of fishing activity is anticipated to be minimal 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

This California Department of Fish and Wildlife (Department) proposal combines Department and public requests for changes to Title 14, California Code of Regulations (CCR), for the 2017 Sport Fishing Regulations Review Cycle. This proposal will reduce foul-hooking of salmon, protect Shasta crayfish, protect salmon released above Shasta Dam, clarify regulations for artificial lures and bait, increase protection for Chinook Salmon and steelhead in the lower American River, increasing bow fishing opportunities, update the sport fishing report card requirements, and make needed corrections to existing regulations. The proposed regulatory changes are needed to reduce public confusion and improve regulatory enforcement.

The Department is proposing the following changes to current regulations:

ROCK CREEK (SHASTA COUNTY) CLOSURE TO PROTECT SHASTA CRAYFISH

Shasta crayfish (*Pacifastacus fortis*) is listed as an Endangered Species pursuant to the California Endangered Species Act (Fish & G. Code, § 2050 et seq.)(Cal. Code Regs., tit. 14, § 670.5(B)) and the federal Endangered Species Act (16 U.S.C. § 1531 et seq.)(53 Fed.Reg. 38460-38465 (1988)). The current distribution for Shasta crayfish includes small and isolated spring fed areas in the Fall and Pit River drainages (Shasta County). Rock Creek, in the Hat Creek Drainage, was historically occupied by Shasta crayfish and was recently restored to provide refuge for and aid in the survival of the species. The Department is proposing to close Rock Creek to all fishing all year from Rock Creek spring downstream to Baum Lake. The proposed closure will protect Shasta crayfish and its habitat.

Proposal: Add subsection (b)(151.5) to Section 7.50, Special Fishing Regulations
Add Rock Creek, in the Hat Creek Drainage, to the Special Fishing Regulations with an all year fishing closure to protect Shasta crayfish.

CLARIFICATION OF NO TAKE OF SALMON IN THE SACRAMENTO AND MCCLOUD RIVERS AND TRIBUTARIES ABOVE SHASTA LAKE

The National Marine Fisheries Service (NMFS) and the US Bureau of Reclamation (BOR) are conducting feasibility studies for the reintroduction of winter and spring-run Chinook Salmon into the McCloud and Sacramento rivers. As part of a Fish Passage Pilot Project, federal agencies will be introducing an experimental release of Chinook Salmon into the Sacramento and McCloud drainages starting in 2017 or 2018 and continuing indefinitely. It is imperative that these rivers and their tributaries above Shasta Lake are closed to salmon fishing to reduce salmon loss and increase the success of the Fish Passage Project.

Proposal: Add new language to Subsection (b) of Section 7.00, District General Regulations, and to subsection (b)(115), McCloud River, in Section 7.50, Special Fishing Regulations.

Amend the Sierra District Regulations to clarify that all rivers and associated tributaries above Shasta Lake are closed to the take of salmon, and amend subsection (b)(115) of Section 7.50 to direct readers to the District General Regulations. These changes will protect Chinook Salmon when they are reintroduced into the upper Sacramento and McCloud rivers above the Shasta Lake.

AMERICAN RIVER (NIMBUS BASIN) FISHING CLOSURE

Under current regulations, the American River (in Sacramento County) from Nimbus Dam to the Hazel Avenue bridge piers is open to fishing all year (Section 7.50 (b)(5)(A)), and from the Hazel Avenue bridge piers to the U.S. Geological Survey gauging station cable crossing about 300 yards downstream from the Nimbus Hatchery fish weir is open to fishing January 1 through August 15 (Section 7.50(b)(5)(B)). The current request for closure is designed to protect Chinook Salmon and Central Valley steelhead trout, which will utilize this section of the river for both in-river spawning and rearing along with essential hatchery operations.

The BOR and the Department have completed a joint EIS/EIR for the Nimbus Hatchery Fish Passage Project (Project). The primary goal of the Project is to maintain a fully functional system of collecting adult Chinook Salmon and Central Valley steelhead trout sufficient to meet the hatchery's mitigation goals. Phase 1 of the Project extends the Nimbus Hatchery fish ladder 1500 feet (.30 miles) upstream into the Nimbus Basin. With the completion of the new fish ladder, Phase 2 of the Project will permanently remove the existing Nimbus Hatchery fish weir, and spawning gravel injections will be completed within the section of river associated with section 7.50(b)(5)(B). A gravel restoration and side channel creation project to create spawning and rearing habitat in the Nimbus Basin was completed in 2014.

However, the Project has the potential to affect Chinook Salmon and Central Valley steelhead trout holding, spawning, and rearing in this section of the lower American River. Additionally, under current hatchery operations, large numbers of adult Chinook Salmon and Central Valley steelhead trout hold below the existing fish weir located below the Hazel Avenue bridge before being routed to the fish ladder located at the south end of weir. Fish that enter the hatchery that are not ripe for spawning are released back into the river through the outfall, located approximately 100 feet below the existing fish ladder. As a result, current hatchery operations utilize a small portion of the river below the weir to cycle fish in and out of the hatchery. However, once the existing fish ladder is moved upstream into the Nimbus Basin, the length of river utilized for hatchery operations will increase by approximately 1,500 feet. With completion of the Project, holding, spawning, and rearing Chinook Salmon and Central Valley steelhead trout will distribute throughout the hatchery operations area. As a result, the entire

section of river should be close to fishing all year to ensure successful hatchery operations.

Consequently, if the regulations are not changed by the Fall of 2018, anglers will continue fishing in the Nimbus Basin downstream to the USGS gauging station and target holding and spawning Chinook Salmon and Central Valley steelhead trout. Although Section 2.35 states that fishing shall not take place within 250 feet of a fish ladder, this would have little effect in protecting salmon and steelhead under the new configuration. The new ladder entrance would be greater than 250 feet from where salmon are expected to hold until the ladder is opened to allow salmon and steelhead into the Nimbus Hatchery. The regulation change would also provide the American River Trout Hatchery and Nimbus Hatchery with greater protection from contamination by the New Zealand Mud Snail (NZMS), which have been documented adjacent to the hatchery in Section 7.50(b)(5)(B).

Proposal: Amend subsections (b)(5)(A) and (b)(5)(B) of Section 7.50, Special Fishing Regulations

Combine subsections 7.50(b)(5)(A) and 7.50(b)(5)(B) and close this section of river to fishing all year.

ARTIFICIAL LURE AND BAIT DEFINITION CHANGES

The purpose of the regulation change is to clarify that no scents or flavors shall be used on lures on waters where only artificial lures with barbless hooks may be used. After consulting with wildlife officers on this subject, it has become clear there is some subjectivity in interpreting the current regulation which has resulted in inconsistency and confusion. By clarifying this definition, enforcement will have a lesser problem enforcing this rule and the public will have a clearer description of this rule.

The definition of a lure (Section 1.60) would be removed from the Freshwater Sport Fishing Regulations and only "artificial lure" would be used. With this change, three substitutions in the current regulations would need to be made: (1) Section 1.05 Angling; (2) Section 1.61, Non-buoyant Lure; and (3) Section 2.10 (3), Hook and Weight Restrictions. In all three sections lure would be changed to artificial lure. In addition, the definition of artificial lure would be amended to clarify that only non-scented and non-flavored lures may be used. Lastly, there is currently no definition of bait in Title 14. A definition of bait is needed to help clarify when scents and flavors can be used.

Proposal: Repeal Section 1.60, Amend Section 1.11, Artificial Lure, and add Section 1.18, Bait

Amend the current definition of artificial lure and add a definition of bait.

ALLOW BOW AND ARROW FISHING FOR CATFISH

The bow and arrow fishing community has requested the opportunity to fish for catfish in certain waters in the state. Bowfishers have expressed that they often encounter catfish

in their pursuit for carp and would like to be able to take catfish as well. This request was considered by CDFW law enforcement and regional biologists who determined that bowfishing for bullhead and catfish could be allowed on waters with large carp populations and that are popular for bowfishing. These waters include the Sacramento San Joaquin Delta, Lake Isabella in Kern County and Big Bear Lake in San Bernardino County. Allowing bowfishing for catfish on these waters will increase fishing opportunities for bowfishers.

Proposal: Amend Section 2.25, Bow and Arrow Fishing

Amend Section 2.25 to allow bowfishing for bullhead and catfish in the Delta, Big Bear Lake, and Lake Isabel.

REVISION OF MENDOCINO, SONOMA, AND MARIN COUNTIES LOW FLOW CLOSURE TIME PERIOD TO ALING WITH THE ADULT STEELHEAD SEASON

Section 8.00(b) established a season for special low flow conditions for Mendocino, Sonoma, and Marin County coastal streams; however, the current end date extends the length of the low flow season past the adult steelhead fishing season on most coastal stream (except Russian River) which provides an unnecessary protection and may potentially confuse anglers. The current sport fishing regulations provides fishing in coastal streams of Mendocino, Sonoma, and Marin counties from the fourth Saturday in May through March 31, except for the Russian River which is open all year. Gear restrictions change from November 1 through March 31, to accommodate fishing for adult steelhead on all Mendocino, Sonoma, and Marin County coastal streams. There is no need for the season of special low flow conditions to extend beyond March 31, as most streams (except Russian River) are closed to any fishing from April 1 until the fourth Saturday in May, which is prior to the end of the current low flow season. The Russian River is the exception because it is open year round due to other sport fisheries such as American shad and smallmouth bass. For consistency, the Russian River should be included in this change, but it would result in the potential reduction of protected days under a low flow closure between April 1 and the fourth Saturday in May (52-57 days depending upon the calendar year). The loss of this additional protection on the Russian River is not likely to be significant as the bulk of the steelhead will have spawned and angler effort targeting steelhead will be low in the months of April and May. The steelhead population on the Russian River is also unlike other coastal streams because it is supplemented with hatchery steelhead. Additionally, the Russian River is a flow regulated stream and flows are likely to be higher in April and May than other coastal streams and less likely to be subject to a low flow closure due to water releases. Conforming the low flow closure season with the end of the adult steelhead fishing season on Mendocino, Sonoma, and Marin County coastal streams helps simplify regulations and reduces confusion between the fishing season and low flow closure season and it would not significantly impact the Russian River steelhead population in the event of low flow conditions in the months of April and May.

Proposal: Amend Subsection (b) of Section 8.00, Low-Flow Restrictions

Revise Section 8.00 (b) to redefine the season of the Special Low Flow Conditions to coincide with the end of the adult steelhead fishing season on March 31.

CRAYFISH

In alignment with the proposal to close Rock Creek to fishing to protect Shasta crayfish, Section 5.35 would need to be amended to add Rock Creek to the list of waters where take of crayfish is prohibited. Rock Creek is in the Hat Creek Drainage in Shasta County.

Proposal: Amend Section 5.35, Crayfish

Amend Section 5.35 to add Rock Creek to the list of waters where fishing for crayfish is prohibited.

STEELHEAD REPORT AND RESTORATION CARD REQUIREMENTS

Department staff reassessed the fisheries management objectives of the Steelhead Report and Restoration Card and determined that the data being collected, location codes, and reporting instructions and requirements can be simplified. In order to accomplish this, verbiage within Section 5.88 must be changed.

Proposal: Amend Section 5.88, Steelhead Report and Restoration Card Requirements

Remove reference to “wild” steelhead because it is not legal to retain a wild steelhead, and remove the requirement to report the number of hours that were fished for steelhead.

RESTRICT LEADER LENGTH TO LESS THAN SIX FEET TO REDUCE POTENTIAL FOUL-HOOKING (SNAGGING) OF SALMON AND STEELHEAD

The Department and the Fish and Game Commission (Commission) have struggled for years to eliminate and/or regulate snagging salmon. This has proven difficult given some of the spawning aggregations, habitat, and creative snagging techniques that have evolved over time. Water operations, changes in angling ethics, and population growth likely have also contributed to this ongoing problem. After struggling with these issues statewide, the Commission directed the Department to find a solution.

In 2014, the Department formulated a snagging working group to help evaluate the issue through a structured decision making process. Department staff and angling stakeholders participated in multiple meetings. One action resulting from this effort was a directed study to assess the efficacy of a reduced leader length in relation to the “flossing” fishing techniques based angling/snagging rig. Although this technique/rig is not the only gear that can be used to purposefully foul-hook salmon, it is currently legal and very effective when used in the right habitat (Feather, American, Sacramento, Yuba, and Klamath rivers) with high densities of spawning/migrating salmon. The results of the study showed a significant correlation with foul-hooking (82-94%) regardless of the leader length and a reduction in landing rates for the shortest leader.

Proposal: Add Section 2.05 to Title 14, Leader Length Restriction

Add the six foot leader length restriction to Title 14, Chapter 2, Article 1, to reduce foul-hooking of salmon and steelhead in anadromous waters.

Minor Editorial Corrections for Clarity

In addition to the above proposals, minor editorial corrections are proposed to correct typographical errors and to improve regulation clarity.

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.

Update

The proposal to add Section 2.05, Title 14, CCR: Leader Length Restriction – Department Fisheries biologists conducted a field study in 2014, in an attempt to determine how leader length affected inadvertent foul-hooking of salmon. They determined that the longer the leader length, the higher the number of salmon that were inadvertently foul-hooked. The field study determined that reducing the leader length would reduce the number of fish that would be foul hooked.

Although the study showed the greatest reductions of leader length to less than three (3) feet showed the greatest decrease in the number of fish foul-hooked, a regulation that would reduce a leader length to less than three feet, would begin to affect many other common and legal fishing methods that employ the use of leaders. Therefore the department recommended and requested the Commission adopt a maximum six (6) foot leader length as the best alternative to reduce snagging, but still allow for greater angling opportunities while using a leader.

The proposal to amend Title 14, Section 1.74, CCR: Sport Fishing Report Card Requirements has been removed from this rulemaking. The proposed changes to

Section 1.74, Sport Fishing Report Card Requirements, would affect all sport fish report card holders, including marine sport card holders. These constituents were not notified of the proposed regulation changes and, thus, were not given the opportunity to provide comments. As a result, the department has recommended a no change alternative, and this proposal is being postponed pending public notice to all interest parties potentially affected by the proposed regulatory action.

Regarding Section

No other changes have been made in the originally proposed regulatory language.

The Fish and Game Commission adopted the proposed regulations as described in the Pre-Adoption Statement of Reasons, without changes, at its December 6, 2017 meeting.