

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

Amend Subsections (b)(5), (b)(68), and (b)(156.5) of Section 7.50,
Title 14, California Code of Regulations
Re: Alphabetical List of Waters with Special Fishing Regulations:
Central Valley Chinook Salmon Sport Fishing

- I. Date of Initial Statement of Reasons: September 16, 2016
- II. Date of Final Statement of Reasons: April 28, 2017
- III. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: December 8, 2016
Location: San Diego
 - (b) Discussion Hearing Date: February 8, 2017
Location: Rohnert Park
 - (c) Adoption Hearing: Date: April 26, 2017
Location: Van Nuys

IV. Update:

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.

At its April 26, 2017 public meeting, the Fish and Game Commission (Commission) adopted regulations for the 2017 bag and possession limits for Central Valley fall-run Chinook Salmon in the American, Feather, and Sacramento rivers, maintaining the bag and possession limits it had adopted in 2016:

- (1) A daily bag limit of 2 Chinook Salmon
- (2) A possession limit of 4 Chinook Salmon

In addition, the Commission voted to close to fishing the Sacramento River between Keswick Dam and the Highway 44 bridge from April 1 to July 31 to protect winter-run Chinook Salmon.

Updates to Authority and Reference Citations Based on Recent Legislation

Senate Bill 1473 (Stats. 2016, Ch. 546) made organizational changes to the Fish and Game Code that became effective January 1, 2017. The changes included moving the Commission's exemptions from specified Administrative Procedure Act time frames from Section 202 to Section 265 of the Fish and Game Code, moving the Commission's effective date procedures from Section 215 to Section 270 of the Fish and Game Code and moving the Commission's authority to adopt

emergency regulations from Section 240 to Section 399 of the Fish and Game Code. In accordance with these changes to the Fish and Game Code, sections 202, 215 and 240 are removed from, and sections 265, 270 and 399 are added to, the authority and reference citations for Section 7.50. Senate Bill 1473 also repealed subdivision (b) of Section 220 of the Fish and Game Code; therefore, Section 220 is removed from the list of authority and reference citations in Section 7.50.

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

Comment by Andrew Wood, e-mail received March 30, 2017: supports the California Department of Fish and Wildlife (Department) recommendation to close the Sacramento River from 650 feet below Keswick Dam to the Hwy 44 bridge from April 1 through July 31 to protect salmon, steelhead, and rainbow trout.

Response: On April 26, the Commission voted to adopt the Department's recommendation to close the Sacramento River from 650 feet below Keswick Dam to the Hwy 44 bridge from April 1 through July 31 to protect winter-run Chinook Salmon.

Comment by Diana Marmorstein, e-mail received April 24, 2017: requests a zero bag limit on Central Valley Chinook Salmon because salmon populations are in danger and there should be no sport fishing on fish species in peril.

Response: Adoption of scientifically-based Central Valley Chinook Salmon bag and possession limits provides for the maintenance of sufficient populations of Chinook Salmon to ensure their continued existence. No changes on angling are needed in most of the Sacramento River system in 2017 due to limitations on ocean fishing opportunity, implemented to protect Klamath and winter-run Chinook Salmon stocks. As a result, the Department recommended and the Commission adopted a two fish daily bag and four fish possession limit for the 2017 Central Valley Chinook Salmon sport fishing season.

Comment by Kim Richard, Environmental Chair for the Democrats of Napa Valley, oral testimony received at April 26, 2017 meeting: concerned about salmon in the Napa River. Requested information on salmon monitoring

Response: The number of salmon in the Napa River fluctuates from year to year and no salmon fishing is currently allowed in the Napa River. While there is no active salmon monitoring of the Napa River, the Department does work with county staff and local volunteers to check on the status of the population.

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, Suite 1320
Sacramento, California 95814

VII. Location of Department Files:

California Department of Fish and Wildlife
1416 Ninth Street, 12th Floor
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. The no-change alternative would not be consistent with **the goal of protecting this year's predicted small cohort of winter-run Chinook Salmon to prevent its extinction. The no-change alternative would not be consistent with** state policy to maintain harmony with federal and international law related to fisheries management, while the proposed regulations will allow the state to harmonize its bag and possession limits with National Marine Fisheries Service (NMFS) regulations.

(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.

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 are necessary for the continued preservation of the resource and therefore the prevention of 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; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses or the expansion of businesses in California. The minor variations in the bag and possession limits as may be established in the regulations are, by themselves, unlikely to impact business.

The Commission anticipates benefits to the health and welfare of California residents. Providing opportunities for a Chinook Salmon sport fishery encourages consumption of a nutritious food. The Commission anticipates benefits to the environment by the sustainable management of California's Chinook Salmon resources.

Adoption of scientifically-based Central Valley Chinook Salmon bag and possession limits provides for the maintenance of sufficient populations of Chinook Salmon to ensure their continued existence. The benefits of the proposed regulations are in concurrence with federal law, sustainable management of Central Valley Chinook Salmon resources, and promotion of businesses that rely on Central Valley Chinook Salmon sport fishing.

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

- (d) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (e) 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 current, 2016, sport fishing regulations allow for Chinook Salmon fishing in the American, Feather and Sacramento rivers. The Department of Fish and Wildlife (Department) is recommending new Chinook Salmon bag and possession limits in the American, Feather, and Sacramento rivers for the 2017 season.

The Pacific Fishery Management Council (PFMC) is responsible for adopting recommendations for the management of recreational and commercial ocean salmon fisheries in the Exclusive Economic Zone (three to 200 miles offshore) off the coasts of Washington, Oregon, and California. When approved by the Secretary of Commerce, these recommendations are implemented as ocean salmon fishing regulations by the National Marine Fisheries Service (NMFS).

The PFMC will develop the annual Pacific coast ocean salmon fisheries regulatory options for public review at its March 2017 meeting and develop the final PFMC regulatory recommendations for adoption by NMFS at its April 2017 meeting.

Based on the action taken by NMFS and the recommendation of the Department, the Commission will adopt bag and possession limits for the American, Feather, and Sacramento rivers, which may:

- (1) allow for additional harvest of Chinook Salmon if low instream flow conditions persist due to the existing drought to reduce impacts to spawning habitat;
- (2) increase or decrease the current Chinook Salmon bag and possession limits based on the PFMC salmon abundance estimates and recommendations for ocean harvest for the coming season; and
- (3) establish special closure area for winter-run Chinook Salmon protection on the Sacramento River between Keswick Dam and Highway 44 bridge from April 1 to July 31.

Proposed Regulations

Because the PFMC/NMFS recommendations are not known at this time, a range (shown in brackets in the text below) of bag and possession limits is indicated where it is desirable to continue Chinook Salmon fishing in the American, Feather and Sacramento rivers. The open seasons and proposed range of bag and possession limits for Central Valley fall-run Chinook Salmon stocks are as follows:

American River, subsection 7.50(b)(5)

- (A) From Nimbus Dam to the Hazel Avenue bridge.

July 16 through December 31 with a bag limit of [0-4] Chinook Salmon and a possession limit of [0-8] Chinook Salmon.

- (B) From Hazel Avenue bridge to the USGS gauging station cable crossing near Nimbus Hatchery.

July 16 through August 15 with a bag limit of [0-4] Chinook Salmon and a possession limit of [0-8] Chinook Salmon.

- (C) From the USGS gauging station cable crossing near Nimbus Hatchery to the SMUD power line crossing the southwest boundary of Ancil Hoffman Park.

July 16 through December 31 with a bag limit of [0-4] Chinook Salmon and a possession limit of [0-8] Chinook Salmon.

- (D) From the SMUD power line crossing at the southwest boundary of Ancil Hoffman Park to the Jibboom Street bridge.

July 16 through October 31 with a bag limit of [0-4] Chinook Salmon and a possession limit of [0-8] Chinook Salmon.

- (E) From the Jibboom Street bridge to the mouth.

July 16 through December 16 with a bag limit of [0-4] Chinook Salmon and a possession limit of [0-8] Chinook Salmon.

Feather River, subsection 7.50(b)(68)

- (D) From the unimproved boat ramp above the Thermalito Afterbay Outfall to the Live Oak boat ramp.

July 16 through October 15 with a bag limit of [0-4] Chinook Salmon and a possession limit of [0-8] Chinook Salmon.

- (E) From the Live Oak boat ramp to the mouth.

July 16 through December 16 with a bag limit of [0-4] Chinook Salmon and a possession limit of [0-8] Chinook Salmon.

Sacramento River below Keswick Dam, subsection 7.50(b)(156.5)

- (C) From Deschutes Road bridge to the Red Bluff Diversion Dam.

August 1 through December 16 with a bag limit of [0-4] Chinook Salmon and a possession limit of [0-8] Chinook Salmon.

- (D) From the Red Bluff Diversion Dam to the Highway 113 bridge.

July 16 through December 16 with a bag limit of [0-4] Chinook Salmon and a possession limit of [0-8] Chinook Salmon.

- (E) From the Highway 113 bridge to the Carquinez Bridge.

July 16 through December 16 with a bag limit of [0-4] Chinook Salmon and a possession limit of [0-8] Chinook Salmon.

Special Winter-Run Closure

Sacramento River winter-run Chinook Salmon suffered losses to juvenile natural production of 95% and greater for the years 2014 and 2015 brood years due to low reservoir storage and elevated water temperatures caused by the ongoing drought. Chinook Salmon return to their natal rivers and streams every three years to spawn. In 2017 the drought depleted natural juveniles from the 2014 brood year will return as

adults to spawn. Therefore, it is vital to protect this year's predicted small 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 allow for successful spawning survival. 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 **NMFS 2009 Biological Opinion and Conference Opinion** on the Long-Term Operations of the Central Valley Project and State Water Project.

During the drought, efforts coordinated through the Real Time Drought Operations Management Team have included measures to protect 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 recent winter-run Chinook Salmon spawning locations and have concluded that the majority of winter-run spawning occurs 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 **of winter-run Chinook Salmon** by anglers has been documented to occur, especially during low flow periods. Even if returned to the water, incidental **by-catch adds 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 **Chinook Salmon** will add to protections for a **fish listed as endangered under the federal and state endangered species laws and** 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 closure from 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 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 is proposing a permanent closure of fishing (April 1 through July 31) in this area and will annually assess the success of all efforts to protect the winter-run Chinook Salmon population.

Sacramento River below Keswick Dam, subsection 7.50(b)(156.5)

(B) From 650 feet below Keswick Dam to Deschutes Road bridge.

1. From 650 feet below Keswick Dam to the Highway 44 bridge.

January 1 through March 31 with a bag limit of 2 hatchery trout or hatchery steelhead and 4 hatchery trout or hatchery steelhead in possession.

Closed to all fishing from April 1 to July 31.

Open from August 1 through December 16 with a bag limit of 2 hatchery trout or hatchery steelhead and 4 hatchery trout or hatchery steelhead in possession.

2. From the Highway 44 bridge to the Deschutes Road bridge.

All year with a bag limit of 2 hatchery trout or hatchery steelhead and 4 hatchery trout or hatchery steelhead in possession.

Benefits of the regulations

As set forth in Fish and Game Code Section 1700 it is “the policy of the state to encourage the conservation, maintenance, and utilization of the living resources of the ocean and other waters under the jurisdiction and influence of the state for the benefit of all the citizens of the state and to promote the development of local fisheries and distant-water fisheries based in California in harmony with international law respecting fishing and the conservation of the living resources of the oceans and other waters under the jurisdiction and influence of the state.”

Adoption of scientifically-based Central Valley Chinook Salmon bag and possession limits provides for the maintenance of sufficient populations of Chinook Salmon to ensure their continued existence. The benefits of the proposed regulations are in concurrence with Federal law, sustainable management of the Central Valley Chinook Salmon resources, and promotion of businesses that rely on Central Valley Chinook Salmon sport fishing.

Consistency with State and Federal Regulations

Article IV, section 20 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 (Fish & Game Code, §§ 200, 205, 265). 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.

Update

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.

At its April 26, 2016 meeting, the Fish and Game Commission adopted the following bag and possession limits for each subsection described in the Informative Digest for Central Valley fall-run Chinook salmon in the American, Feather, and Sacramento rivers:

- (1) A daily bag limit of 2 Chinook salmon (unchanged from 2015-16 levels)

(2) A possession limit of 4 Chinook salmon (unchanged from the 2015-16 levels)

In addition, the Commission voted to close to fishing the Sacramento River between Keswick Dam and Highway 44 bridge from April 1 to July 31 to protect winter-run Chinook Salmon.