

CALIFORNIA FISH AND GAME COMMISSION
STATEMENT OF PROPOSED EMERGENCY REGULATORY ACTION

Emergency Action to
Add Section 8.02,

Title 14, California Code of Regulations

Re: Special Measures for Sport Fishing to Protect Public Health from the Immediate
Threat Posed by COVID-19

Date of Emergency Statement: April 15, 2020

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

COVID-19 is a respiratory disease caused by a novel coronavirus and transmitted by person-to-person contact and community spread. The COVID-19 outbreak has been characterized as a pandemic by the World Health Organization and determined by the federal Centers for Disease Control and Prevention (CDC) to be a serious public health risk. Federal, state, local and tribal public health guidance regarding the COVID-19 emergency is evolving rapidly and requires quick action by government entities to reduce the spread and public health impact of the virus.

On March 4, 2020, Governor Gavin Newsom declared a State of Emergency to exist in California as a result of the threat of COVID-19. Due to the rapid spread of COVID-19 throughout California, the Governor issued Executive Order N-33-20 on March 19, 2020, ordering all individuals living in the state of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors.

CDC and the California Department of Public Health (CDPH) state that maintaining physical distancing of at least six feet is necessary to help prevent the rapid spread of COVID-19. The state of California understands the public's need to enjoy the benefits of nature and the outdoors, and public health officials are advising the public to walk, run, hike, and bike in their local areas but not to congregate in the outdoors. Congregations of the public while seeking outdoor recreation has led to a number of local and state measures to help promote physical distancing. On March 29, 2019, the California Department of Parks and Recreation closed vehicular access at all state parks; on April 3 it temporarily closed over 50 state parks properties and continues to work with local health officials to temporarily close additional state parks in response to the outbreak. In addition, cities and counties across California have implemented various local ordinances to restrict access to public areas such as beaches, bike paths, and parks to slow the spread of COVID-19.

The Commission recognizes the need to swiftly respond to dynamic public health and safety concerns arising from the COVID-19 emergency. Given the California Department of Fish and Wildlife's (CDFW) expertise in understanding sport (including recreational) fishing throughout the state, and the behavior of sport fishers as it relates to those fisheries, CDFW and the California Fish and Game Commission (Commission) have determined that a temporary, adaptive

approach is needed to give CDFW the ability to suspend or restrict certain or all inland and marine waters to sport fishing or restrict the taking of any fish species.

Many fisheries are defined by calendar dates, typically with an “opener” and a “closing” date. When the season opens, people regularly travel to fish, and congregate in parking lots, near waterways, on trails and access paths, on boat ramps, and in other areas, taking advantage of the newly opened fishing season. Various fisheries are currently open to sport fishing throughout the state. Other fisheries are scheduled to open to sport fishing soon, including fisheries that attract high levels of public participation. For example, the groundfish sport fishing season opened April 1, 2020 between Point Conception, Santa Barbara County and Point Arena, Mendocino County and will open on May 11, 2020 north of Point Arena, Mendocino County. Inland trout sport fishing in waters across the state (36 counties) is scheduled to open on April 25, 2020, notably in the Sierra District, comprising all or a portion of the counties listed in Section 6.35 of Title 14, CCR, including Inyo and Mono counties.

The recreational ocean salmon fishing season is set by the National Marine Fisheries Service on advice from the Pacific Fishery Management Council (PFMC), of which California is a member. California’s PFMC members and recreational salmon representatives recommended delaying to April 30, 2020 the salmon seasons that were set to open on April 4, 2020 south of Pigeon Point (in San Mateo County) and on April 11, 2020 north of Pigeon Point. Ocean salmon openers typically draw fishers from across the state to coastal ports to launch private boats at launch ramps and board charter boat trips.

On March 31, the National Marine Fisheries Service heeded the advice of PFMC and took “in-season” action to delay California’s recreational ocean salmon fishery through the month of April. The in-season delay mechanism exists within PFMC procedures, is well-understood by stakeholders, and is used to manage fisheries in near real-time. Recreational salmon season dates and regulations that will take effect on or after May 1, 2020 in all areas of California will be determined at the April 5-9, 2020 PFMC meeting when PFMC will make a recommendation to the National Marine Fisheries Service.

Although the delayed recreational ocean salmon season will reduce potential crowds at coastal access points, CDFW is working with local officials to monitor fisher behavior associated with existing ocean fishing opportunities.

Travel and potential concentration of fishers at “choke points” where it may not be possible to maintain six feet of separation (e.g., launch ramps, parking lots, etc.) have the potential to increase the spread of COVID-19. In addition, when traveling for a fishing trip, a fisher has the potential to travel to remote, small towns, often stopping at gas stations or convenience marts, tackle shops, fast food and other restaurants, marinas or boat launches, and/or hotels/motels. The travel can lead to inadvertent transmission of the virus to the local business attendants or employees, even if the fisher is asymptomatic (i.e., not exhibiting any symptoms of infection). Transmission risks of COVID-19 resulting from the aggregation and travel of fishers may require temporary restrictions on fishing to protect public health and reduce the spread of COVID-19.

Given the risks and guidance to avoid unnecessary travel and maintain physical distancing, CDFW and the Commission are seeing a patchwork of locally-based decisions limiting access, such as closures of launch ramp facilities and charter boat operations, and restrictions to harbor and marina access. Limiting the potential for transmission in certain areas by limiting access can inadvertently lead to aggregations of fishers in unrestricted areas, leading to higher probability for increased rates of COVID-19 transmission, or increase competition for the remaining opportunities, potentially leading to vandalism or injuries. Navigating a patchwork of limitations from multiple sources and jurisdictions may lead to confusion in the regulated public.

Of note, the April 25, 2020 inland trout fishery opening date across 36 counties in California represents an annual event that typically draws a high tourism influx to Inyo, Mono, and other counties in the Sierra District. A well-established tradition among many families, fishers often travel from several hours away for this particular opening weekend, where accommodations are often booked many months in advance. CDFW is receiving correspondence and increasing interest from fishers, guides, and certain Sierra District counties regarding potential delays for the inland trout opener or season due to concerns for potential transmission of COVID-19 from outside the area, and limited health infrastructure in the small towns hosting the openers. Any delay for an opener in a county would be expected to push fishers to neighboring counties where the opening day may remain intact.

Importantly, this approach includes specific public engagement and accountability measures. CDFW's memorandum to the Commission and supporting regulatory materials were posted on the Commission's website and distributed to both CDFW's and the Commission's mailing lists almost 36 hours before the scheduled emergency Commission meeting on Thursday April 9, 2020, well in advance of the legally-mandated 1-hour notice. In addition, CDFW and Commission conducted stakeholder outreach before the Thursday meeting so that the public was made aware of the meeting. Further, the actual emergency regulation incorporates transparency mechanisms: The regulation is limited in time to less than 60 days, expiring on May 31, 2020, and requires reporting and accountability before the Commission during scheduled public meetings in April 2020 and May 2020.

The Commission finds that this emergency situation requires prompt action and that delaying action to allow for notice and public comment is inconsistent with the public interest. This situation poses such an immediate, serious harm that the Commission is utilizing the provisions in Government Code Sections 11346.1(a)(3) and 11349.6(b) and Section 50(a)(5)(B) of Title 1, CCR, which allow the Commission to forgo typical notification of emergency action and public comment period.

In order to have this regulation take effect in advance of upcoming fishery opening dates (e.g., opening of inland trout fishing on April 25, 2020), the Commission does not have enough time to provide advance notice of this emergency rulemaking action and receive public comments for five days. As described above, every day that this action is delayed will likely result in serious

harm to the public health and safety of fishers based on the transmission risks of COVID-19. Taking immediate action to provide CDFW with authority to suspend, delay, or restrict fishing is necessary to significantly alleviate that harm.

II. Proposed Emergency Regulations

To ensure that fishers, local communities, and government employees are protected from increased risk of transmission of COVID-19, the CDFW director will consider public health and safety guidance from federal, state, tribal, and local governments to guide the decision whether to delay, suspend, or restrict sport or recreational fishing for particular species or areas. Issuing temporary restrictions will be based on:

- (1) Current public health guidance from the director of CDPH,
- (2) Current public health guidance from the primary public health official of any county or tribe that would be affected by the delay, suspension or restriction on take,
- (3) Current public health guidance from CDC, and
- (4) The need to preserve public safety based on input from state, federal, tribal, or local law enforcement and other government agencies.

The director's decision to delay, suspend or restrict fishing, or to lift suspensions or restrictions, in any waters or to restrict the taking of any fish species, or lift such restrictions, will be based on the most current information available, considering public health and safety guidance from federal, state, tribal, and local officials, and in consultation with the president of the Commission. Special attention will be focused on areas and regions where aggregations of fishers have been historically known to occur, waters or areas where new aggregations are occurring, water or areas that experience a significant number of non-resident fishers, and/or areas and counties that have limited emergency and health services available. The director will report to the Commission on any decision made pursuant to Section 8.02.

III. Identification of Reports or Documents Supporting Regulation Change

- (1) Executive Order N-33-20, Governor Newsom, March 19, 2020
- (2) Order of the State Public Health Officer, CDPH, March 19, 2020
- (3) Implementation of Mitigation Strategies for Communities with Local COVID-19 Transmission, CDC, March 12, 2020
- (4) Mono County request for postponement of regular fishing season and California Department of Fish and Wildlife (CDFW) fish stocking in Mono County, April 1, 2020
- (5) Inyo County request for postponement of regular fishing season and California Department of Fish and Wildlife (CDFW) fish stocking in Inyo County, April 7, 2020

- (6) Alpine County request for postponement of regular fishing season and California Department of Fish and Wildlife (CDFW) fish stocking in Alpine County, April 8, 2020

IV. 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:

The Commission expects that there will be costs to the State in the form of reduced revenue from fishing license and report card sales (estimated at a maximum to be \$15.2 million, depending upon the extent of actions taken), and reduced revenue to state and local governments from reduced sales tax (see the addendum to the STD 399, Economic and Fiscal Impact Statement for details). Federal funding to the state, specifically allocations from the Sport Fish Restoration Act, while hard to predict, may decline, if license sales numbers fall enough to impact the allocation algorithm used by the U.S. Fish and Wildlife Service. Potential savings to state agencies could occur with an anticipated reduction in COVID-19 infections and, therefore, a potentially reduced need for emergency response services from state agencies.

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

This emergency regulation could decrease visitors to local, state, or federal areas where sport fishing is allowed, and result in reduced fee revenues for boat launches, local visitor expenditures, sales tax and transient occupancy tax to certain areas with high fishing activity. Local agencies may see savings resulting from a reduced need for emergency response if sport fishing restrictions result in fewer COVID-19 infections.

- (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.

V. Authority and Reference

The Commission adopts this emergency action pursuant to the authority vested by sections 200, 205, and 399 of the Fish and Game Code and to implement, interpret, or make specific sections 200, 205, and 399 of the Fish and Game Code.

VI. Section 399 Finding

The proposed emergency regulation is necessary to protect public health and safety, consistent with Executive Order N-33-20 and the latest guidance from state and federal public health authorities. The Commission recognizes the need for a swift, temporary, adaptive approach to respond to dynamic public health and safety concerns arising from the COVID-19 response. This emergency regulation is necessary to quickly respond to COVID-19 public health guidance and public safety needs to prevent and mitigate transmission of COVID-19. The Commission finds that the director can more promptly respond to changing circumstances and shifting guidance from public health organizations than the Commission can, as a body. An inability to respond quickly to the changing public health and safety needs across the state poses an immediate, serious harm to California citizens. This emergency regulation would authorize the director, in consultation with the president of the Commission, to manage sport (including recreational) fishing in California in accordance with the latest public health guidance and the need to ensure public safety to prevent or limit potential transmission of the virus that could occur as a result of a fishing trip.

Pursuant to Section 399, subdivision (b), of the Fish and Game Code, the Commission finds, based on the information above, that adopting this regulation is necessary for the immediate preservation of the public peace, health and safety, and general welfare.

Informative Digest

The COVID-19 outbreak has been characterized as a pandemic by the World Health Organization and determined by the federal Centers for Disease Control and Prevention (CDC) to be a serious public health risk. The Governor's March 19, 2020, Executive Order requires all individuals residing in California to stay at home except as needed to maintain continuity of operations of the federal critical infrastructure sectors. Federal, state, local and tribal public health guidance regarding the COVID-19 emergency is evolving rapidly and requires quick action by government entities to reduce the spread and public health impact of the virus.

Recent developments illustrate the tension between the public's desire to enjoy the benefits of nature and the outdoors and the need to maintain physical distancing. A number of local and state measures have been put in place to help promote physical distancing among members of the public. In addition, cities and counties across California have implemented various local ordinances to restrict access to public areas, such as beaches, bike paths and parks, to slow the spread of COVID-19.

In some California fisheries, recreational and sport (hereinafter referred to as "sport") fishing may pose a high risk of increasing the spread of COVID-19, which would exacerbate the public health crisis. Travel and potential concentration of fishers at locations where it may not be possible to maintain six feet of separation (e.g., gas stations, launch ramps, parking lots, etc.) has the potential to increase the spread of COVID-19. Further, sport fishing in certain fisheries may increase the number of social interactions between fishers and employees of businesses that provide goods and services to those fishers, which has the potential to further increase the fast spread of COVID-19.

Transmission risks of COVID-19 resulting from the aggregation and travel of fishers may require temporary restrictions on fishing to protect public health and reduce the spread of COVID-19. The California Department of Fish and Wildlife (CDFW) and the California Fish and Game Commission (Commission) has determined that a temporary, adaptive approach is needed to give CDFW the ability to suspend sport fishing in any waters of the state or restrict the taking of any fish species to protect public health and safety from the immediate threat posed by COVID-19.

The proposed addition of Section 8.02, Title 14, CCR, grants CDFW the authority to temporarily suspend, delay, or restrict sport fishing if the director of CDFW, or his designee, in consultation with the president of the commission or his designee, finds that such closure or restriction is necessary to protect public health from the immediate threat posed by COVID-19.

Any suspension, delay or restriction on fishing shall supersede any other sport fishing regulation, including those implemented in accordance with Section 1.95 of Title 14, CCR, for automatic conformance to federal regulations for salmon and Pacific halibut.

The director's decision to delay, suspend or restrict fishing, or to lift suspensions or restrictions, in any waters or to restrict the taking of any fish species, or lift such restrictions, will be based on the most current information available, considering public health and safety guidance from federal, state, tribal, and local officials, and in

consultation with the president of the Commission. Special attention will be focused on areas or regions where large gatherings of fishers have been historically known to occur, areas where new gatherings are occurring, water or areas that experience a significant number of non-resident fishers, and or areas or regions that have limited emergency and health services available.

The director will report to the Commission on any decision made pursuant to Section 8.02 and that report will be a standing agenda item before the Commission, providing an opportunity for public input.

Commission staff has searched the CCR and has found no other state regulation relating to the Commission's delegation of authority to CDFW to delay, suspend or restrict sport fishing due to public health concerns of COVID-19 and therefore concludes that the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

Regulatory Language

Section 8.02, Title 14, CCR is added to read:

§ 8.02. Special Measures for Sport Fishing to Protect Public Health from the Immediate Threat Posed by COVID-19.

(a) The commission has established a quick response process to temporarily suspend, delay, or restrict sport (also known as recreational) fishing to protect public health from the immediate threat posed by COVID-19, including deviation from the automatic conformance process for salmon and Pacific halibut provided in Section 1.95.

(b) The department shall temporarily close any waters of the state to sport fishing or restrict the sport take of any species of fish if the director, or his designee, after consulting with the president of the commission, or the president's designee, finds that such action is necessary to protect public health from the immediate threat posed by COVID-19 after considering:

(1) Current public health guidance from the director of the California Department of Public Health,

(2) Current public health guidance from the primary public health official of any county or Native American tribal government that would be affected by the closure or restriction on take,

(3) Current public health guidance from the federal Centers for Disease Control and Prevention, and

(4) The need to preserve public safety based on input from state, federal, tribal, or local law enforcement or other government agencies.

(c) The department shall reopen any waters or lift any restrictions on the taking of a fish species imposed pursuant to subsection (b) when the director, or his designee, after consulting with the president of the commission, or the president's designee, and after considering current public health guidance and the need to preserve public safety, finds that the closures of those waters or restrictions on the taking of a fish species is no longer necessary to protect public health from the immediate threat posed by COVID-19.

(d) It shall be unlawful to take fish in any waters of the state closed to sport fishing or in violation of any restrictions imposed on the sport take of a fish species pursuant to this section.

(e) The department shall maintain a list of affected waters and restrictions on the taking of a fish species imposed pursuant to subsection (b) and update that list daily by 7:00 pm. The fishing status for each specific water or fish species shall take effect at 12:01 am on the day immediately following the update. It shall be the responsibility of the fisher to use the telephone number provided below or to check the department's website at <https://www.wildlife.ca.gov/Regulations> to obtain the current status of any water and restrictions on the taking of a fish species. The number to call for information is (916) 445-7600.

(f) At each regularly-scheduled commission meeting, the department shall report on any action taken pursuant to this section since the previous report. While this regulation is in effect, the commission shall maintain a standing agenda item for this report to allow for public comment and commission discussion. The department shall consider any discussion or vote by the commission and public comment during those agenda items to determine whether further action is warranted under subsection (b).

(g) This section shall remain in effect through May 31, 2020, and shall be repealed effective June 1, 2020.

Note: Authority cited: Sections 200, 205 and 399, Fish and Game Code. Reference: Sections 200, 205 and 399, Fish and Game Code.