

State of California
Fish and Game Commission
Final Statement of Reasons for Regulatory Action

Amend Sections 2.35 and 7.00, and Subsections (b)(5), (b)(68), (b)(124),
and (b)(156.5) of Section 7.50
Title 14, California Code of Regulations
Re: Central Valley Sport Fishing Regulations

I. Dates of Statements of Reasons

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|---------------------------------------|-------------------------|
| (a) Initial Statement of Reasons | Date: November 18, 2019 |
| (b) Pre-adoption Statement of Reasons | Date: April 28, 2020 |
| (c) Final Statement of Reasons | Date: May 14, 2020 |

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing

Date: December 11, 2019	Location: Sacramento, CA
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(b) Discussion Hearing

Date: February 21, 2020	Location: Sacramento, CA
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(c) Discussion Hearing

Date: April 16, 2020	Location: Teleconference
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(d) Adoption Hearing

Date: May 14, 2020	Location: Teleconference
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III. 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.

The Pacific Fishery Management Council (PFMC) reviewed west-coast salmon stocks and has projected the in-river recreational harvest impact to be approximately 41,000 adult Sacramento River fall-run Chinook Salmon for the 2020 season. Regulatory options 1-3 in the Initial Statement of Reasons (ISOR) encompassed varying ranges of sport fishing bag and possession limits based on PFMC's projection. To target PFMC's projection, the Department of Fish and Wildlife (Department) recommended Option 1 in the ISOR, which allows for take of any size Chinook Salmon up to the daily bag possession limits. The Department did not recommend Option 2 (limited adult, and grilse fishery – jacks or jills) or Option 3 (grilse-only fishery).

The Department recommended a daily bag limit of two fish, and a possession limit of four fish of any size for the lower American, Sacramento, and Mokelumne rivers. This will result in no change

to the current bag and possession limits on these waters. The reason for this relatively conservative approach for these waters is that the Department remains concerned about rebuilding of the fall-run Chinook Salmon stock in the upper Sacramento River basin and on the American River.

In contrast, the Department recommended an increased daily bag limit of three fish and an increased possession limit of six fish for the Feather River (subsection 7.50(b)(68)). As in other recent years, the Department anticipates high returns of adult hatchery fish to the Feather River. It is the Department's judgement that the Feather River can support a higher harvest rate than in 2019 and still contribute proportionately to PFMC's minimum escapement goal for the Sacramento River basin of approximately 142,000 hatchery and natural-area adult spawners. The Department recommended a higher level of utilization on the Feather River because the basin-wide escapement is estimated at between 233,000 and 243,000 adults.

At its May 14, 2020 teleconference, the Commission adopted Option 1 (take and possession of any size Chinook Salmon up to the daily bag and possession limits); a daily bag limit of two fish, and a possession limit of four fish for the lower American, Sacramento, and Mokelumne rivers; and a daily bag limit of three fish and a possession limit of six fish for the Feather River. In addition, the Commission adopted all other Department-recommended changes as described in the ISOR.

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

Public comments received on or prior to April 16, 2020 were responded to in the Pre-adoption Statement of Reasons (PSOR) (see attached). These included:

- James Stone (President of NorCal Guides and Sportsmen's Association) – April 16, 2020 Commission meeting
- Aoibheann Cline (Congressional Sportsmen's Foundation) – April 16, 2020 Commission meeting.

The Commission concurs with the Department's recommended responses to comments in the PSOR.

Public comments received after April 16, 2020 are addressed below.

Comment by Mark Smith (NorCal Guides and Sportsmen's Association) received at the May 14, 2020 Commission teleconference. Supports the two-week extension on the Sacramento River above Red Bluff Diversion Dam and supports the two-fish bag limit on the Sacramento River and three-fish bag limit on the Feather River.

Response: Support noted. The Commission adopted these proposals.

V. 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, CA 95814

VI. Location of Department Files

Department of Fish and Wildlife
1416 Ninth Street
Sacramento, CA 95814

VII. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change

No alternatives were identified by or brought to the attention of Commission staff that would have the same desired regulatory effect.

(b) No Change Alternative

Chinook Salmon Bag and Possession Limits

The no change alternative would leave existing 2019 regulations in place. The no change alternative would not allow for appropriate harvest rates, while the proposed regulations will allow the state to harmonize its bag and possession limits with NMFS' regulations.

Extend Chinook Salmon Sport Fishing Season on the Sacramento River

The no change alternative would leave existing 2019 regulations in place, and current fishing opportunity on the Sacramento River would not change.

Remove Exception for Take of Coho Salmon in the Feather River

The no change alternative would leave the existing regulation in place, which is no longer relevant and, therefore, could be confusing to anglers.

Prohibit Fishing at Concrete Flood Control Weirs

The no change alternative would leave existing regulations in place, exposing state or federally-listed as endangered or threatened species to angling opportunity.

(c) Consideration of Alternatives

In view of information currently possessed, no 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.

VIII. 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, while providing inland sport fishing opportunities and thus, 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 significant adverse economic impacts but acknowledges the potential for short-term negative impacts on the creation or elimination of jobs within the state. The Commission anticipates no adverse impacts on the creation of new business, the elimination of existing businesses or the expansion of businesses in California. Minor variations in the bag and possession limits and/or the implementation of a size limit are unlikely to significantly impact the volume of business activity. The loss of up to 27 jobs with Option 3 is not expected to eliminate businesses because reduced fishing days will be partially offset by the extension of the salmon fishing season by two weeks on a portion of the Sacramento River from the Deschutes Road bridge to the Red Bluff Diversion Dam, and by opportunities to fish for grilse Chinook Salmon and other species.

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 Chinook Salmon resources in the Central Valley.

The Commission does not anticipate any benefits to worker safety.

Other benefits of the proposed regulations are concurrence with federal fishery management goals and promotion of businesses that rely on Central Valley sport fishing.

- (c) 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.

- (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

Unless otherwise specified, all section references in this document are to Title 14 of the California Code of Regulations.

Current regulations in subsections (b)(5), (b)(68), (b)(124), and (b)(156.5) of Section 7.50 prescribe the 2019 seasons and daily bag and possession limits for Sacramento River fall-run Chinook Salmon (*Oncorhynchus tshawytscha*; SRFC) sport fishing in the American, Feather, Mokelumne, and Sacramento rivers, respectively. Collectively, these four rivers constitute the “Central Valley fishery” for SRFC for purposes of this document. Each year, the Department of Fish and Wildlife (Department) recommends new Chinook Salmon bag and possession limits for consideration by the Fish and Game Commission (Commission) to align the fishing limits with up-to-date management goals, as set forth below.

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 2020 meeting and will adopt its final regulatory recommendations at its April 2020 meeting based on the PFMC salmon abundance estimates and recommendations for ocean harvest for the coming season. Based on the April 2020 recommendation by PFMC, the Department will recommend specific bag and possession limit regulations to the Commission at its April 16, 2020 meeting. The Commission will then consider adoption of the Central Valley sport fishing regulations at its May 14, 2020 teleconference.

Proposed Regulations

CHINOOK SALMON BAG AND POSSESSION LIMITS

The Department recognizes the uncertainty of SRFC in-river harvest projections. Therefore, for the 2020 Central Valley fishery, the Department is presenting three regulatory options for the Commission’s consideration to tailor 2020 Central Valley fishery management to target 2020 in-river fisheries harvest projections.

- Option 1 is the most liberal of the three options, and allows take of any size Chinook Salmon up to the daily bag and possession limits.
- Option 2 allows for take of a limited number of adult Chinook Salmon, with grilse Chinook Salmon making up the remainder of the daily bag and possession limits.
- Option 3 is the most conservative option, and allows for a grilse-only Chinook Salmon fishery.

All three options will also increase fishing opportunities on Chinook Salmon by extending the Chinook Salmon sport fishing season on the Sacramento River from the Deschutes Road bridge to the Red Bluff Diversion Dam from a closure date of December 16 to a closure date of December 31.

A minor correction will also be made to subsections 7.50(b)(124)(A), (B), and (D), to ensure consistency in the format in which the daily bag and possession limit for hatchery trout or hatchery steelhead is displayed in the regulatory text.

All options would be applicable to the following river segments and time periods:

American River, subsection 7.50(b)(5):

- (B) 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 October 31
- (C) From the SMUD power line crossing at the southwest boundary of Ancil Hoffman Park to the Jibboom Street bridge, July 16 through December 31
- (D) From the Jibboom Street bridge to the mouth, July 16 through December 16

Feather River, subsection 7.50(b)(68):

- (D) From the unimproved boat ramp above the Thermalito Afterbay Outfall to 200 yards above the Live Oak boat ramp, July 16 through October 31
- (E) From 200 yards above the Live Oak boat ramp to the mouth, July 16 through December 16

Mokelumne River, subsection 7.50(b)(124):

- (A) From Comanche Dam to Elliott Road, July 16 through October 15
- (B) From Elliott Road to the Woodbridge Irrigation District Dam and including Lodi Lake, July 16 through December 31
- (D) From the Lower Sacramento Road bridge to the mouth, July 16 through December 16

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 31
- (D) From the Red Bluff Diversion Dam to the Highway 113 bridge, July 16 through December 16.
- (E) From the Highway 113 bridge to the Carquinez Bridge, July 16 through December 16.

The following options are provided for Commission consideration:

Option 1 – Any Size Chinook Salmon Fishery

This option is the Department's preferred option if the **2020** SRFC stock abundance forecast is sufficiently high to avoid the need to constrain inland SRFC harvest.

Bag limit of [0-4] Chinook Salmon.

Possession limit - [0-12] Chinook Salmon.

Option 2 – Limited Adult and Grilse Salmon Fishery

Bag limit of [0-4] Chinook Salmon of which no more than [0-4] fish over 27 inches total length may be retained.

Possession limit - [0-12] Chinook Salmon of which no more than [0–4] fish may be over 27 inches total length.

Option 3 – Grilse Salmon Fishery Only

Bag limit of [0-4] Chinook Salmon less than or equal to 27 inches total length.

Possession limit - [0-12] Chinook Salmon less than or equal to 27 inches total length.

EXTEND CHINOOK SALMON SPORT FISHING SEASON ON THE SACRAMENTO RIVER

Sport fishing interests have requested the Chinook Salmon sport fishing season on the Sacramento River be extended from the current December 16 closure date to December 31 to enhance late-season fishing opportunity on the river. At issue is regulating the closure date to minimize contact in the fishery with federally and state-listed as endangered winter-run Chinook Salmon.

The Department supports extending the fishing season from December 16 to December 31 upstream of the Red Bluff Diversion Dam (River Mile (RM) 243), which will provide late season fishing for late-fall-run Chinook Salmon without negatively impacting winter-run Chinook Salmon.

Proposal: Amend subsection 7.50(b)(156.5)(C), Sacramento River

Extend the Chinook Salmon sport fishing season on the Sacramento River from the Deschutes Road bridge to the Red Bluff Diversion Dam to December 31.

REMOVE EXCEPTION FOR TAKE OF COHO SALMON IN THE FEATHER RIVER

Section 7.00 includes an exception for the take of Coho Salmon in Lake Oroville and Oroville-Thermalito Complex, and the Feather River from the Diversion Pool Dam to the Fish Barrier Dam. Section 7.00 also includes an exception for incidentally hooked Coho Salmon in the same area. Coho Salmon have not been stocked in Lake Oroville since 2013. Coho Salmon are no longer planted in the Feather River water impoundments. Therefore, the exceptions for take and incidentally hooked Coho Salmon stated in Section 7.00 should be removed.

Proposal: Amend Section 7.00, Re: Take of Coho Salmon in the Feather River

Remove exception for take and incidentally hooked Coho Salmon in Lake Oroville and Oroville-Thermalito Complex, and the Feather River from the Diversion Pool Dam to the Fish Barrier Dam.

PROHIBIT FISHING AT CONCRETE FLOOD CONTROL WEIRS

Annually, during the rainy season, fish often get trapped below the concrete flood control weirs on the Sacramento River. Fish trapped in these areas are often state or federally-listed as endangered or threatened species and, therefore, should not be exposed to angling opportunity. Subsections 7.50(b)(156.5)(D) and (E) include a “Note” which states that it is unlawful to take fish 0-250 feet downstream from the overflow side of the Moulton, Colusa, Tisdale, Fremont, and Sacramento weirs. However, there is no regulation in place that makes angling near flood control weirs unlawful. Section

2.35 prohibits angling near fishways and egg-taking stations, dams, weirs or racks with fishways or egg-taking stations, and the upstream side of fish screens; but does not apply to areas, except for Fremont Weir, described in the notes in subsections 7.50(b)(156.5)(D) and (E).

Proposal 1: Amend Section 2.35, Regarding Take of Fish at Weirs

Amend Section 2.35 to include and differentiate flood control weirs in the Central Valley from other types of weirs and include a fishing closure of 0-250 feet downstream from the overflow side of Moulton, Tisdale, Fremont, and Sacramento weirs.

Proposal 2: Amend subsections 7.50(b)(156.5)(D) and (E), Sacramento River

Remove Note which states it is unlawful to take fish 0-250 feet downstream from the overflow side of the Moulton, Colusa, Tisdale, Fremont, and Sacramento weirs. These fishing closures will now be stipulated in Title 14, Section 2.35, with the exception of the Colusa Weir.

Benefits of the Proposed Regulations

The Commission anticipates benefits to the environment in the sustainable management of Central Valley Chinook Salmon resources. Other benefits of the proposed regulations are consistency with federal fishery management goals, health and welfare of California residents, and promotion of businesses that rely on Central Valley Chinook Salmon sport fishing.

Consistency and Compatibility with Existing 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 and Game Code sections 200, 205, 315 and 316.5). 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 Chinook Salmon recreational fishing seasons, bag, and possession limits for Central Valley sport fishing.

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.

PFMC reviewed west-coast salmon stocks and has projected the in-river recreational harvest impact to be approximately 41,000 adult Sacramento River fall-run Chinook Salmon for the 2020 season. Regulatory options 1-3 in the Initial Statement of Reasons (ISOR) encompassed varying ranges of sport fishing bag and possession limits based on PFMC's projection. To target PFMC's projection, the Department recommended Option 1, which allows for take of any size Chinook Salmon up to the daily bag possession limits.

The Department recommended a daily bag limit of two fish, and a possession limit of four fish of any size for the lower American, Sacramento, and Mokelumne rivers. This will result in no change to the current bag and possession limits on these waters.

The Department recommended an increased daily bag limit of three fish and an increased possession limit of six fish for the Feather River (subsection 7.50(b)(68)).

At its May 14, 2020 teleconference, the Commission adopted Option 1 and the Department-recommended bag and possession limits for SRFC as follows:

American, Mokelumne, and Sacramento rivers

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

Feather River

- (1) A daily bag limit of 3 Chinook Salmon
- (2) A possession limit of 6 Chinook Salmon

A non-substantive edit for spelling has been made in the heading of Section 2.35.

In addition, the Commission adopted all other Department-recommended changes as described in the ISOR.