

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

Amend Subsections (b)(4), (b)(43), (b)(66),
and (b)(80) of Section 7.40

Title 14, California Code of Regulations
Re: Central Valley Sport Fishing Regulations

I. Dates of Statement of Reasons:

- (a) Initial Statement of Reasons Date: December 11, 2020
- (b) Final Statement of Reasons Date: May 11, 2021

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing

Date: December 10, 2020 Location: Webinar/Teleconference

(b) Discussion Hearing

Date: April 14, 2021 Location: Webinar/Teleconference

(c) Adoption Hearing

Date: May 11, 2021 Location: Webinar/Teleconference

III. Update

The Pacific Fishery Management Council (PFMC) reviewed west-coast salmon stocks and has projected the in-river recreational harvest impact to be approximately 21,800 adult Sacramento River fall-run Chinook Salmon for the 2021 season for the American, Feather, Mokelumne, and Sacramento rivers (collectively, these four rivers constitute the “Central Valley fishery” for purposes of this regulatory action). 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:

- Option 1 allows for take of any size Chinook Salmon up to the daily bag and possession limits,
- Option 2 (limited adult, and grilse fishery – jacks or jills), or
- Option 3 (grilse-only fishery).

Based on PFMC projections, at the May 11, 2021 Commission meeting, the Department of Fish and Wildlife (Department) recommended the following specific size, bag and possession limits, and season dates for Sacramento River fall-run Chinook Salmon:

- Option 1: Allow the take of any size Chinook Salmon up to the daily bag and possession limits.

- Maintain the same bag and possession limits as 2020 for the American, Mokelumne and Sacramento rivers (bag limit of 2 Chinook salmon and a possession limit of 4 Chinook Salmon).
- Decrease the bag and possession limits from 2020 for the Feather River from a bag limit of 3 Chinook Salmon and a possession limit of 6 Chinook Salmon to a bag limit of 2 Chinook Salmon and a possession limit of 4 Chinook Salmon. The reason for this relatively conservative approach for this water is that the Department remains concerned about rebuilding of the fall-run Chinook Salmon stock for the Feather River basin.
- Maintain the same season dates as 2020.

At its May 11, 2021 meeting, 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, Feather, Sacramento, and Mokelumne rivers.

OAL file # 2020-1204-02s (Simplification of Statewide Inland Sport Fishing Regulations) was approved March 1, 2021, revising the baseline regulatory text in subsection 7.40, Title 14, California Code of Regulations (CCR), for this Central Valley sport fishing rulemaking. Non-substantive edits to capitalization and punctuation were made to the “new” baseline regulatory language in four places. In subsections 7.40(b)(43) for the Feather River and 7.40(b)(80) for the Sacramento River, the abbreviation for the word counties “Cos.” was changed to lowercase “cos.” for consistency with the abbreviations listed in sections 7.40 and 7.50 of Title 14, CCR. In subsection 7.40(b)(66) for the Mokelumne River, paragraph (B), a period was added after the word “steelhead**”. Similarly, in subsection 7.40(b)(80) for the Sacramento River, paragraph (E), a period was added after “Dec. 31”. In addition, the Commission adopted all other Department-recommended changes as described in the ISOR.

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

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

April 14, 2021 – Mark Smith, Northern California Guides and Sportsman’s Association (oral comment)

Expressed continued support of the variety of options on the table with regards to the Central Valley sport fishery. Stated that the ocean salmon fishery is expected to change for 2021, and that he is looking forward to seeing what the PFMC puts forward to help pinpoint the seasons for the Central Valley inland allotment. Expressed appreciation for the continued utilization of the May teleconference to allow discussion of the PFMC projections and subsequent Department recommendation.

April 29, 2021 – Richard Fox (written comment)

Mr. Fox stated that as long as there is gill netting allowed, there will always be low salmon numbers. This comment is outside the scope of the proposed revisions to the Central Valley sport

fishing regulations, considering that gill netting is not allowed in the four Central Valley waters under state law.

May 11, 2021 - Mark Smith, Northern California Guides and Sportsman's Association (oral comment)

Supported the Department's recommendation for the Central Valley season and thanked the Commission for holding the May meeting and expressed hope that the Commission will continue holding meetings in May in the future. Emphasized that the inland fishery is suffering, and we have missed the escapement goals for 11 out of the last 14 years. Believes something is wrong with the modeling and assessments on returning stocks. Expressed that only shore anglers were able to take advantage of the increased bag limit on the Feather River last year, due to low water and sediment from the Oroville Dam incident and collapsed banks that resulted, making fishing by boats difficult. Stated that we are not allowing enough fish to return and the condition of the fish, in many cases, is unsurvivable. If the harvest for the upcoming season is expected to be half of that from this past season, then the upcoming season may be abysmal. Expressed appreciation to the attention the Department is paying to the thiamine issue with the salmon, but it's easier to do with hatchery fish; the Department should shift to focusing on getting natural spawners. Believes the inland fisheries problems will only get worse and that we should be talking about contingencies for hatchery management for the upcoming years.

Response: The Commission and Department appreciate the support from NorCal Guides in its recommendation for the 2021 Central Valley salmon season and share its concerns about the status of the Sacramento Basin fall-run fishery. The Commission adopted the Department recommendation. Not all of the following response pertain to the Central Valley proposed regulations for 2021; however, the Department is providing a response as overview for the fishery as a whole. The Department continues to use the best available information developed from monitoring of ocean and inland fisheries, escapement to hatcheries and natural spawning areas, and through assessment of coded-wire tag recoveries to provide as much opportunity as possible for inland fishing in balance with conservation objectives. Fishery performance is driven primarily by salmon abundance. While the influence of some factors on salmon abundance can be predicted with a relatively high level of certainty, there are other factors, like river flow and ocean productivity, that vary unpredictably and confound forecasting. Even though great progress has been made with development of the Sacramento Index over the last dozen years or so, the Department in partnership with the National Marine Fisheries Service (NMFS) continues to work toward improving its estimation methods and forecasting tools as new techniques and data inputs become available.

Several factors likely contributed to relatively poor fishery performance for both shore and boat anglers on the Feather River and elsewhere this past season. The overriding factor was lower-than-expected abundance. The Feather River bag and possession limits were increased for the 2020 season in anticipation of 1) high returns of Feather River Hatchery fall-run Chinook Salmon from the 2017 brood, and 2) decreased ocean harvest of Sacramento Basin fall-run Chinook Salmon as a result of Klamath River stocks constraining ocean salmon harvest. Contrary to these predictions, adult fall-run Chinook Salmon returns to the Feather River were about 32,000 fish below the 20-year moving average of 81,441 adults. This low abundance negatively affected harvest opportunity on the Feather River.

A second major factor was river conditions. Releases from the Oroville Project were relatively low during the fall-run Chinook Salmon upstream migration period in 2020. Without a high flow through the Thermalito Afterbay, salmon did not congregate as they typically do at the afterbay outlet, where they become readily available to both shore and boat anglers. Instead, the salmon appear to have continued migrating upstream through the low-flow channel and out of the legal fishing area. California is now in the second year of yet another drought cycle, which is likely going to negatively affect fishing conditions in similar fashion on the Feather River and elsewhere in the Central Valley in 2021, as well.

Finally, contact rates with salmon in the inland sport fishery may have been influenced by migration timing, especially in the lower Sacramento Basin and Mokelumne River. Migration timing for fall-run Chinook Salmon has become progressively later over the last 10-20 years, in particular as monitored on the American River. Significantly later spawning runs, driven largely by reservoir-controlled river temperature conditions, uncouples the legal fishing period from the period of fish presence. As a result, fishery performance is poor during the anticipated period of fish presence, which discourages continued angler effort, and negatively affects angler satisfaction. The Department anticipates that this will continue to pose a significant management challenge, especially relative to forecasted changes in climate in central California.

The Department is actively engaged with water managers in discussions over anticipated river conditions in 2021 and is currently taking actions to safeguard hatchery production from poor river conditions. The Department is proactively trucking millions of hatchery-raised juvenile fall-run Chinook Salmon from Central Valley hatcheries to San Pablo Bay, San Francisco Bay, and ocean net pens this spring. Trucking bypasses 50 to more than 100 miles of poor river conditions where estimated losses of juvenile salmon have been very high during dry water years. Several measures are being taken to minimize mortality from predation, in part by minimizing learned behaviors by predators. Salmon are being released both at night and during daylight, utilizing both direct releases and net-pen acclimation techniques. The Department has added new release sites and is rotating releases among sites. Collectively, these actions will enhance juvenile salmon survival rates, with the ultimate objective of increasing abundance for fisheries and escapement 2-4 years from now.

V. 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

The no change alternative would leave existing 2020 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 the NMFS' regulations.

VI. 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 42 jobs with Option 3 is not expected to eliminate businesses because reduced fishing days will be partially offset 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)(4), (b)(43), (b)(66), and (b)(80) of Section 7.40 prescribe the 2020 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 2021 meeting and will adopt its final regulatory recommendations at its April 2021 meeting based on the PFMC salmon abundance estimates and recommendations for ocean harvest for the coming season. Based on the April 2021 recommendation by PFMC, the Department will recommend specific bag and possession limit regulations to the Commission at its April 14, 2021 meeting. The Commission will then consider adoption of the Central Valley sport fishing regulations at its May 11, 2021 meeting.

Proposed Regulations

Chinook Salmon Bag and Possession Limits

The Department recognizes the uncertainty of SRFC in-river harvest projections. Therefore, for the 2021 Central Valley fishery, the Department is presenting three regulatory options for the Commission’s consideration to tailor 2021 Central Valley fishery management to target 2021 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 options would be applicable to the following river segments and time periods:

American River, subsection 7.40(b)(4):

- (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 7.40(b)(43):

- (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 7.40(b)(66):

- (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 7.40(b)(80):

- (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 2021 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.

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 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 sport 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 sport fishing seasons, bag, and possession limits for Central Valley sport fishing.

Update

The PFMC reviewed west-coast salmon stocks and has projected the in-river recreational harvest impact to be approximately 21,800 adult Sacramento River fall-run Chinook Salmon for the 2021 season. Based on PFMC projections, at the May 11, 2021 Commission meeting, the Department recommended the following specific size, bag and possession limits, and season dates for Sacramento River fall-run Chinook Salmon:

- **Option 1: Allow the take of any size Chinook Salmon up to the daily bag and possession limits.**
- **Maintain the same bag and possession limits as 2020 for the American, Mokelumne and Sacramento rivers (bag limit of 2 Chinook Salmon and a possession limit of 4 Chinook Salmon).**
- **Decrease the bag and possession limits from 2020 for the Feather River from a bag limit of 3 Chinook Salmon and a possession limit of 6 Chinook Salmon to a bag limit of 2 Chinook Salmon and a possession limit of 4 Chinook Salmon.**
- **Maintain the same season dates as 2020.**

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