

STAFF SUMMARY FOR DECEMBER 15-16, 2021

14. EMERGENCY LOW-FLOW INLAND SPORT FISHING RESTRICTIONS**Today's Item**Information ☐Action ☒

Discuss and consider adopting emergency regulations for low flow inland sport fishing restrictions due to drought conditions.

Summary of Previous/Future Actions

- FGC adopted low-flow protective measures 2014 and 2015
- **Today's adoption hearing** **Dec 15-16, 2021; Webinar/Teleconference**

Background

On Apr 21, 2021, Governor Newsom proclaimed a state of emergency in Mendocino and Sonoma counties due to drought conditions in the Russian River Watershed, and directed state officials to take immediate action to prepare for and mitigate the effects of drought conditions within the watershed. On May 10, 2021, Governor Newsom also proclaimed a state of emergency in the Klamath River, Sacramento-San Joaquin Delta, and Tulare Lake Watershed counties due to drought, adding 39 counties, including Del Norte and Humboldt. The Governor ordered DFW to evaluate the minimum instream flows and other actions needed to protect salmon, steelhead, and other native fishes in critical stream systems in the State and to consider emergency regulations to establish minimum drought instream flows.

Low-flow inland sport fishing regulations currently require DFW to determine whether flows at any of the designated gauging stations is less than the minimum flows specified for particular stream reaches; if DFW determines the flows are below the minimum specified, the regulation closes the stream reach to fishing for a specified time period. The low-flow inland sport fishing restrictions for streams are listed in subsections 8.00(a) and 8.00(b), and the streams in those subsections are commonly referred to as "north coast" and "central coast," respectively; section 7.40 contains special regulations for some of those streams.

Many coastal streams from Point Conception to the California/Oregon Border are already in extreme low-flow conditions. This year, all streams subject to the current low-flow inland sport fishing closures under subsections 8.00(a) and 8.00(b) have been closed to angling since the low-flow angling restriction period began on Oct 1. DFW anticipates that most streams will experience low-flow conditions past the current restriction end dates of Jan 31 and Mar 31. Under low-flow conditions, steelhead and threatened and endangered salmon are prevented from migrating beyond the estuary and lower reaches, causing them to congregate in any available large body of water. If current low-flow sport fishing restrictions are not extended, the fish could be subject to lawful and unlawful fishing, which could further adversely affect already stressed populations.

DFW and FGC staff believe that under the extreme conditions of the current drought, and potentially a prolonged drought, it is necessary to extend the potential closure periods in the current low-flow inland sport fishing restrictions for the north coast and central coast streams to remove angling as an additional stress on steelhead and salmon populations during low-flow periods; the low-flow closure periods for these areas should be extended to eight months,

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beginning Sep 1 and ending Apr 30. The Sep 1 to Apr 30 time period is what is anticipated to be the maximum time the conditions will endure or, in some cases, the timing coincides with when a fishing season ends or begins. The proposed action is necessary to conserve wild steelhead and salmon populations by protecting as many adult fish as possible.

DFW proposes to amend current low-flow inland sport fishing closure regulations to provide additional protection to fish species under the high likelihood that drought conditions will persist. Significant amendments include:

- implementing a low-flow angling restriction on the section of the Eel River from the mouth to Fulmor Road, at its paved junction with the south bank of the Eel River, Sep 1 through Apr 30;
- extending the low-flow closure period for a different stretch of the Eel River as well as the Mad River, Mattole River, Redwood Creek, Smith River and Van Duzen River (currently Oct 1 through Jan 31, four months) to Sep 1 through Apr 30, eight months;
- adding a low-flow gear restriction from the mouth of the Eel River to Fulmor Road at its paved junction with the south bank of the Eel River; and
- extending the low-flow closure period (currently Oct 1 through Mar 31, six months) for the Mendocino, Sonoma, and Marin counties coastal streams to Sep 1 through Apr 30, eight months.

In considering emergency action, FGC must determine the magnitude of potential harm, the existence of a crisis situation, the immediacy of the need, and whether the anticipation of harm has a basis firmer than simple speculation. All available information indicates that conditions in these waters will worsen and emergency action must be taken to protect adult steelhead trout, Coho salmon, and coastal Chinook salmon populations.

Significant Public Comments (N/A)

Recommendation

FGC staff: Adopt the proposed emergency action as recommended by DFW with a January 31, 2022 effective date.

DFW: Amend regulations to extend the locations and permitted time in which fishing may be prohibited in specific streams due to drought conditions, to protect native fish populations.

Exhibits

1. [DFW memo, received Nov 30, 2021](#)
2. [Draft emergency statement](#)
3. [Proposed regulatory text](#)
4. [Draft economic and fiscal impact analysis \(STD 399\)](#)
5. [DFW presentation](#)

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Motion

The Commission determines, pursuant to Section 399 of the California Fish and Game Code, that adopting this regulation is necessary for the immediate conservation, preservation, or protection of birds, mammals, fish, amphibians, or reptiles, including but not limited to their nests or eggs.

The Commission further determines, pursuant to Section 11346.1 of the Government Code, that an emergency situation exists and finds this proposed regulation is necessary to address the emergency.

Moved by _____ and seconded by _____ that the Commission adopts the emergency regulation to amend sections 7.40 and 8.00, low-flow inland sport fishing restrictions, due to drought conditions.

State of California
Department of Fish and Wildlife

Memorandum

Date: November 22, 2021

Original on file,
Received November 30, 2021

To: Melissa Miller-Henson, Executive Director
Fish and Game Commission

From: Charlton H. Bonham
Director

Subject: **Agenda Item for the December 2021 Fish and Game Commission Meeting.
Re: Emergency Action to Amend Subsections (b)(40)(A) and (b)(40)(B) of
Section 7.40, and Subsections (a) - (b) of Section 8.00, Low-Flow Restrictions,
Title 14, California Code of Regulations**

The Department of Fish and Wildlife (Department) is proposing to expand the low-flow closure periods for the North Coast and Central Coast areas to September 1 through April 30. The proposed regulations would amend subsections (b)(40) of Section 7.40 and subsections (a) and (b) of Section 8.00 through emergency action.

Transmittal of the attached Findings of Emergency and Statement of Proposed Emergency Regulatory Action to the Fish and Game Commission (Commission) will allow the Commission to consider adopting the emergency rulemaking at its December 15, 2021, meeting. The emergency regulation, if adopted, will continue for a period of 180 days with the possibility of two 90-day extensions. Discussions are ongoing concerning whether a separate permanent rulemaking (i.e., Certificate of Compliance), or making these proposed changes permanent may be included in another rulemaking in 2022 will be necessary.

If you have any questions or need additional information, please contact Valerie Cook, Acting Chief, Fisheries Branch, at (916) 616-6366. The Department point of contact for this emergency rulemaking should identify Environmental Program Manager, Jonathan Nelson. He can be reached at (916) 376-1641.

Attachment

ec: Garry Kelly, Acting Deputy Director
Wildlife and Fisheries Division

Valerie Cook, Acting Branch Chief
Fisheries Branch

Melissa Miller-Henson, Executive Director
Fish and Game Commission
November 22, 2021
Page 2

Karen Mitchell, Senior Environmental Scientist
Fisheries Branch

Manfred Kittel, Env. Program Manager
Bay Delta Region (Region 3)

Brett Kormos, Env. Program Manager
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CALIFORNIA FISH AND GAME COMMISSION
FINDING OF EMERGENCY AND
STATEMENT OF PROPOSED EMERGENCY REGULATORY ACTION

Emergency Action to Amend
Subsection (b)(40)(A) of Section 7.40
Subsections (a) and (b) of Section 8.00,
Title 14, California Code of Regulations (CCR)
Re: Low Flow Fishing Restrictions Due to Drought Conditions

Date of Statement: November 3, 2021

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

Background

On April 21, 2021, Governor Gavin Newsom proclaimed a State of Emergency to exist in Mendocino and Sonoma counties due to drought conditions in the Russian River Watershed in California and directed state officials to take immediate action to prepare for and mitigate the effects of drought conditions within the Russian River Watershed. The Department of Fish and Wildlife (Department) was ordered to evaluate and take immediate measures to protect terrestrial and aquatic species, increase water use efficiency on state Wildlife Areas and Ecological Reserves to maintain habitat for vulnerable species, and respond to human-wildlife interactions related to the drought. The Department was also ordered to work with commercial and recreational salmon fishing and tribal representatives to develop strategies to address salmon fishery impacts.

On May 10, 2021, Governor Newsom proclaimed a State of Emergency to also exist in the Klamath River, Sacramento-San Joaquin Delta, and Tulare Lake Watershed counties due to drought. The Governor ordered the Department to evaluate the minimum instream flows and other actions needed to protect salmon, steelhead, and other native fishes in critical stream systems in the State and to consider emergency regulations to establish minimum drought instream flows. The proclamation adds 39 counties, including Del Norte and Humboldt, to the Governor's April 21 drought emergency proclamation and provides new authority for the existing drought emergency for Mendocino and Sonoma counties.

Section 7.40, Title 14, CCR, Alphabetical List of Hatchery Trout, Hatchery Steelhead, and Salmon Waters with Special Fishing Regulations, currently sets forth the angling regulations in California streams with respect to Body of Water, Open Season and Special Restrictions, Daily Bag and Possession Limit. Every Body of Water listed is subject to Section 8.00 Low-Flow Restrictions, however, one exception is the stretch of the Eel River from the Pacific Ocean (mouth) upstream to Fulmor Road. The first objective of the proposed emergency amendment described below is to include this stretch of the Eel River in the Low-Flow Restrictions.

Section 8.00, Title 14, CCR, Low-Flow Restrictions, currently sets forth the criteria for angling closures in California streams in any year between October 1 and, depending on the body of water, either January 31 or March 31, when flows are deemed too low for passage of migrating adults. The streams are constantly monitored by the Department.

Occasionally circumstances such as drought, fire, or other environmental factors may require further restriction beyond the scope of the present regulation. In 2014, the Commission adopted similar emergency regulations extending the low-flow closure period for the North Coast and Central Coast areas, and the emergency regulation expired when no further action was required. Similarly, the primary objective of the proposed emergency amendment described below is to expand the temporal window of the Low-Flow Restriction authority to allow for protection of the fisheries during critically-dry conditions that occur outside of the closure periods currently defined in Section 8.00.

At this time, many coastal streams from Point Conception to the California/Oregon Border are already in extreme low-flow conditions. This year, 2021, all streams subject to low-flow closures under subsections 8.00(a) and 8.00(b) have been closed to angling since the low-flow angling restriction period began on October 1. The Department anticipates that most streams will experience low-flow conditions past the current restriction end dates of (a) January 31 and (b) March 31. Under low-flow conditions, steelhead and threatened and endangered salmon are prevented from migrating beyond the estuary and lower reaches, causing them to congregate in any available large body of water. If low-flow fishing restrictions are not extended, the fish could be subject to lawful and unlawful fishing techniques.

The Department believes that under these extreme conditions of the current drought, and possibly a prolonged period, it is prudent to extend the low-flow angling closure periods to September 1 through April 30, eight months, for the North Coast and Central Coast areas to eliminate angling as an additional stress on steelhead and salmon populations. This action is necessary to conserve wild steelhead and salmon populations by protecting as many adult fish as possible.

II. Proposed Emergency Regulations

The Department is proposing the following emergency regulatory changes:

- ***Subsection 7.40(b)(40)(A)1. Amend Eel River Special Fishing Regulation.***
 - Add a reference to “Section 8.00(a)(1)(A) Low-Flow Restrictions” implementing a low-flow fishing restriction between September 1 through April 30 on this stretch of the Eel River from mouth to Fulmor Road, at its paved junction with the south bank of the Eel River.
 - This subsection currently does not have low-flow closure criteria because it is a unique section that includes both estuary and stream conditions. To be more protective of listed and targeted game fish during low flows, the Department is proposing to implement the low-flow closure criteria on this section of the Eel River when the criteria in Section 8.00(a)(1) is under enforcement.
 - The Department recognizes that there are other targeted fisheries (crab, lamprey) in the estuarian section of the river, therefore, the Department is proposing a hook and line gear restriction for this section when low-flow closures are being implemented in 8.00(a)(1). This will still allow use of other legal fishing methods for targeting crab and lamprey.

- ***Subsection 7.40(b)(40)(A)2. Amend Eel River Special Fishing Regulation***
 - Delete the reference “Section 8.00(a)(1)” and add the reference “Section 8.00(a)(1)(B) Low-Flow Restrictions”.
 - This part of the Eel River has been subject to the low-flow restrictions but because of renumbering of Section 8.00(a)(1), this change is necessary.
- ***Subsection 8.00(a) Amend Low Flow Restrictions.***
 - In the first paragraph of the regulatory text, extend the low-flow closure period for a different stretch of the Eel River as well as the Mad River, Mattole River, Redwood Creek, Smith River and Van Duzen River (currently October 1 through January 31, four months) to September 1 through April 30 (eight months).
 - This change is necessary to increase the survival of adult Steelhead Trout, Coho Salmon and Coastal Chinook Salmon during these extreme drought conditions.
 - There is a minor typographical error in 8.00(a) which is corrected from “though” to “through” and has no effect on the regulation.
- ***Subsection 8.00(a)(1) Amend Eel River Low Flow Restrictions.***
 - Add subsection (A) to 8.00(a)(1) “From mouth to Fulmor Road at its paved junction with the south bank of the Eel River.” Also add mention that when a Low-Flow Closure occurs in this section of the Eel River it will be “closed to hook-and-line fishing; other legal fishing methods are allowed during this timeframe.”
 - The Department recognizes that there are other targeted fisheries (crab, lamprey) in the estuarian section of the river, therefore, the Department is proposing a hook-and-line gear restriction for this section when low-flow closures are being implemented in 8.00(a)(1). This will still allow use of other legal fishing methods for targeting crab and lamprey.
 - The stream flow will be monitored as follows: Minimum Flow: 350 cfs at the gauging station near Scotia.
 - The addition of these provisions is necessary to increase the survival of adult Steelhead Trout, Coho Salmon and Coastal Chinook Salmon during these extreme drought conditions.
 - The current provision in 8.00(a)(1) is renumbered to 8.00(a)(1)(B) with no changes in the regulatory text.
 - There are no proposed changes to subsections 8.00(a)(2) through (7).
- ***Subsection 8.00(b) Amend Low Flow Restrictions.***
 - In the first paragraph, extend the low-flow closure period (currently October 1 through March 31, six months) for the Mendocino, Sonoma, and Marin County coastal streams to September 1 through April 30 (eight months).

- This change is necessary to increase the survival of adult Steelhead Trout, Coho Salmon and Coastal Chinook Salmon during extreme drought conditions.
- There is a minor typographical error in the third paragraph which is corrected from “though” to “through” and has no effect on the regulation.

III. Findings for the Existence of an Emergency

Presently, the Commission considered the following factors in determining that an emergency does exist at this time:

The magnitude of potential harm:

The salmon and steelhead fisheries are important ecological, cultural, and recreational resources in the State of California. The Department has determined that the current drought conditions will continue to impact stream flows and prevent or delay the movement of migrating anadromous fish, including wild Steelhead Trout, Coho Salmon and Coastal Chinook Salmon, which can seriously affect reproductive success and adult survival rates.

The existence of a crisis situation:

The Department has determined that low stream flows will concentrate adult wild salmon and steelhead into shrinking pools of cold water making them easy prey for poachers, illegal angling methods such as snagging, increased hooking mortality due to legal catch and release angling targeting hatchery steelhead, as well as other human-related disturbances within their spawning streams. When coupled with drought-related environmental stressors, such as elevated water temperature, poor water quality, and severely reduced suitable habitat, these human stressors can seriously affect reproductive success and adult survival rates. Emergency action is necessary now to protect adult Steelhead Trout, Coho Salmon, and Coastal Chinook Salmon populations in a timely manner.

The immediacy of the need:

The Department is already observing stream flows in many of our coastal systems that are below the defined low-flow thresholds to allow passage of spawning adults, increasing their vulnerability to mortality from predation, physiological stress, and fishing. Furthermore, survival of eggs and juvenile fish in these systems over the coming months is likely to be extremely low as the current drought conditions continue.

Whether the anticipation of harm has a basis firmer than simple speculation:

On April 21, 2021, Governor Gavin Newsom proclaimed a State of Emergency to exist in Mendocino and Sonoma counties due to drought conditions in the Russian River Watershed in California and directed state officials to take immediate action to prepare for and mitigate the effects of drought conditions within the Russian River Watershed.

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: None.
- (b) Nondiscretionary Costs/Savings to Local Agencies: None.
- (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.
- (e) Effect on Housing Costs: None.

V. Technical, Theoretical, and/or Empirical Studies, Reports, or Documents Relied Upon: None.

VI. Authority and Reference

Section 7.40:

Authority cited: Sections 200, 205, 265, 270, 315, 316.5, 399 and 2084, Fish and Game.

Reference: Sections 200, 205, 265, 270, 316.5 and 2084, Fish and Game Code.

Section 8.00:

Authority cited: Sections 200, 205, 265, 270, and 399, Fish and Game Code.

Reference: Sections 200, 205, and 265, Fish and Game Code.

VII. Fish and Game Code Section 399 Finding

In accordance with subdivision (a) of section 399 of the Fish and Game Code, the Commission finds that adopting this regulation is necessary for the immediate conservation, preservation, or protection of adult Steelhead Trout, Coho Salmon, and Coastal Chinook Salmon during the State of Emergency proclaimed to exist in California and directs state officials to take immediate action to prepare for and mitigate the effects of drought conditions.

Informative Digest (Policy Statement Overview)

Emergency Regulatory Action

On April 21, 2021, Governor Gavin Newsom proclaimed a State of Emergency to exist in Mendocino and Sonoma counties due to drought conditions in the Russian River Watershed in California and directed state officials to take immediate action to prepare for and mitigate the effects of drought conditions within the Russian River Watershed. On May 10, 2021, Governor Newsom proclaimed a State of Emergency to also exist in the Klamath River, Sacramento-San Joaquin Delta, and Tulare Lake Watershed Counties due to drought. The Governor ordered the Department to evaluate the minimum instream flows and other actions needed to protect salmon, steelhead, and other native fishes in critical stream systems in the State and to consider emergency regulations to establish minimum drought instream flows. The proclamation adds 39 counties, including Del Norte and Humboldt, to the Governor's April 21 drought emergency proclamation and provides new authority for the existing drought emergency for Mendocino and Sonoma counties.

The California Department of Fish and Wildlife (Department) proposes to amend sections 7.40 Special Fishing Regulations, and 8.00, Low-Flow Restrictions, Title 14, California Code of Regulations, thus providing additional protection to fish species if drought conditions were to persist. The amendments include the following:

- Subsection 7.40(b)(40)(A)1. Amend Eel River Special Fishing Regulation.
 - Implement a low-flow angling restriction on the section of the Eel River from mouth to Fulmor Road, at its paved junction with the south bank of the Eel River, September 1 through April 30, and reference subsection 8.00(a)(1)(A).
- 7.40(b)(40)(A)2. Amend Eel River Special Fishing Regulation
 - Delete the reference "Section 8.00(a)(1)" and add the reference "Section 8.00(a)(1)(B) Low-Flow Restrictions."
- Subsection 8.00(a) Amend Low-Flow Restrictions.
 - In the first paragraph of the regulatory text, extend the low-flow closure period for a different stretch of the Eel River as well as the Mad River, Mattole River, Redwood Creek, Smith River and Van Duzen River (currently October 1 through January 31, four months) to September 1 through April 30, eight months.
- Subsection 8.00(a)(1) Amend Eel River Low-Flow Restrictions.
 - Add subsection (A) to 8.00(a)(1) "From of the Eel River from the mouth to Fulmore Road at its paved junction with the south bank of the Eel River." Also add mention that when a Low-Flow Closure occurs in this section of the Eel River it will be "closed to hook-and-line fishing; other legal fishing methods are allowed during this timeframe."
- Subsection 8.00(b) Amend Low-Flow Restrictions.

- In the first paragraph, extend the low-flow closure period (currently October 1 through March 31, six months) for the Mendocino, Sonoma, and Marin County coastal streams to September 1 through April 30, eight months.

The Department believes that, under the extreme conditions of the current drought, and possibly a prolonged period, it is prudent to extend the low-flow angling closure periods for the North Coast and Central Coast areas to eliminate angling as an additional stress on steelhead and salmon populations. This action is necessary to conserve wild steelhead and salmon populations by protecting as many adult fish as possible.

Existence of an Emergency and Need for Immediate Action;

To determine whether an emergency exists, the California Fish and Game Commission (Commission) considered the following factors: the magnitude of potential harm; the existence of a crisis situation; the immediacy of the need; and, whether the anticipation of harm has a basis firmer than simple speculation.

Benefits:

The major benefit under the proposed emergency action is to provide additional protection to fish species (particularly steelhead and salmon) if drought conditions were to persist. The Low-Flow Restrictions give the Department an option, during drought conditions, to close waters to angling to reduce the loss of adult fish.

Benefits of the Regulation to the State's Environment:

The Commission anticipates benefits to the state's environment by sustainably managing California's inland fisheries resources. The environmental risk arising from the proposed rule are not regarded as significant, as the rule manages the resource more conservatively than existing regulation.

Pursuant to Section 399 of the Fish and Game Code, the Commission finds that the adoption of this emergency regulation is necessary for the conservation, preservation, and protection of fish in the affected waters.

Consistency and Compatibility with Existing State 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 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 the adjustment of low-flow seasonal restrictions for inland sportfishing regulations with regards to minimum flows designated at gauging stations.

Emergency Regulatory Text

Section 7.40, Title 14, CCR, is amended as follows:

§ 7.40. Alphabetical List of Hatchery Trout, Hatchery Steelhead, and Salmon Waters with Special Fishing Regulations.

. . . [No changes to subsection 7.40(a)]

. . . [No changes to subsections 7.40(b)(1) through (39)]

Body of Water	Open Season and Special Restrictions	Daily Bag and Possession Limit
(40) Eel River (Humboldt, Lake, Mendocino and Trinity Cos.) All waters of the Eel River Drainage except those listed below are closed to all fishing.	Section 8.00 Low-Flow Restrictions also apply.	
(A) Main Stem.		
1. From mouth to Fulmor Road, at its paved junction with the south bank of the Eel River. <u>Also see Section 8.00(a)(1)(A), Low-Flow Restrictions.</u>	All year. Only artificial lures with barbless hooks may be used from Apr. 1 through the Fri. preceding the fourth Sat. in May through Mar. 31.	Catch and release of Chinook Salmon. 2 hatchery trout or hatchery steelhead**. 4 hatchery trout or hatchery steelhead** in possession.
2. From Fulmor Road, at its paved junction with the south bank of the Eel River, to South Fork Eel River. <u>Also see Section 8.00(a)(1) Low-Flow Restrictions. Also see Section 8.00(a)(1)(B), Low-Flow Restrictions.</u>	All year. Only artificial lures with barbless hooks may be used from Apr. 1 through Sep. 30. Only barbless hooks may be used from Oct. 1 through Mar. 31.	Catch and release of Chinook Salmon. 2 hatchery trout or hatchery steelhead**. 4 hatchery trout or hatchery steelhead** in possession.
3. From South Fork Eel River to Cape Horn Dam.	Jan. 1 through Mar. 31 and fourth Sat. in May through Sep. 30. Only artificial lures with barbless hooks may be used. Apr. 1 through the fourth Fri. in May and Oct. 1 through Dec. 31.	Catch and release of Chinook Salmon. 2 hatchery trout or hatchery steelhead**. 4 hatchery trout or hatchery steelhead** in possession. Closed to all fishing.

. . . [No changes to subsections 7.40(b)(40)(B) through (D)]

. . . [No changes to subsections 7.40(b)(41) through (123)]

Note: Authority cited: Sections 200, 205, 265, 270, 315, 316.5, 399 and 2084, Fish and Game Code. Reference: Sections 200, 205, 265, 270, 316.5 and 2084, Fish and Game Code.

Emergency Regulatory Language

Section 8.00, Title 14, CCR, is amended as follows:

§ 8.00. Low-Flow Restrictions.

(a) Eel River, Mad River, Mattole River, Redwood Creek, Smith River and Van Duzen River. Stream closures: Special Low Flow Conditions. From ~~September 1 for the Mad River only and October 1 for all other streams through January 31~~ September 1 through April 30, any of the stream reaches listed in subsection (1) through (7) below shall be closed to all angling on Tuesday and Wednesday when the department determines that the flow on the previous Monday at any of the designated gauging stations is less than the minimum flows set forth in subsections (1) through (7); any of the stream reaches listed in subsections (1) through (7) below shall be closed to all angling on Thursday and Friday when the department determines that the flow on the previous Wednesday at any of the designated gauging stations is less than the minimum flows set forth in subsections (1) ~~though~~ through (7); any of the stream reaches listed in subsections (1) through (7) below shall be closed to all angling from Saturday through Monday when the department determines that the flow on the previous Friday at any of the designated gauging stations is less than the minimum flows set forth in subsections (1) through (7). Notwithstanding this provision, the department may close or keep a stream reach closed to fishing when the minimum flow is exceeded on the scheduled flow determination day if the department is reasonably assured that the stream flow is likely to decrease below the minimum flow as specified in subsections (a)(1)–(7) of Section 8.00 before or on the next flow-determination date. In addition, the department may reopen a stream at any time during a closed period if the minimum flow as specified in subsections (a)(1)–(7) of Section 8.00 is exceeded and the department is reasonably assured that it will remain above the minimum flow until the next scheduled Monday, Wednesday, or Friday flow determination. The department shall make information available to the public by a telephone recorded message updated, as necessary, no later than 1:00 p.m. each Monday, Wednesday, and Friday as to whether any stream will be open or closed to fishing. It shall be the responsibility of the angler to use the telephone number designated in the sport fishing regulations booklet to obtain information on the status of any stream.

(1) Eel River

(A) From the mouth to Fulmor Road, at its paved junction with the south bank of the Eel River. Closed to hook-and-line fishing; other legal fishing methods are allowed during this timeframe.

Minimum Flow: 350 cfs at the gauging station near Scotia.

(B) The main stem Eel River from the paved junction of Fulmor Road with the Eel River to the South Fork Eel River.

Minimum Flow: 350 cfs at the gauging station near Scotia.

...[No changes to subsections 8.00 (a)(2) through (7)]

(b) Mendocino, Sonoma, and Marin County coastal streams: Stream Closures: Special Low Flow Conditions. From ~~October 1 through March 31~~ September 1 through April 30 as follows:

Any of the stream reaches listed in subsections (1) through (4) below shall be closed to all angling on Tuesday and Wednesday when the department determines that the flow on the previous Monday at the applicable designated gauging stations is less than the minimum flows set forth in subsections (1) through (4).

Any of the stream reaches listed in subsections (1) through (4) below shall be closed to all angling on Thursday and Friday when the department determines that the flow on the previous Wednesday at the applicable designated gauging stations is less than the minimum flows set forth in subsections (1) ~~though~~ through (4).

Any of the stream reaches listed in subsections (1) through (4) below shall be closed to all angling from Saturday through Monday when the department determines that the flow on the previous Friday at the applicable designated gauging stations is less than the minimum flows set forth in subsections (1) through (4).

Notwithstanding this provision, the department may close or keep a stream reach closed to fishing when the minimum flow is exceeded on the scheduled flow determination day if the department is reasonably assured that the stream flow is likely to decrease below the minimum flow as specified in the corresponding subsections (b)(1) through (4) before or on the next flow-determination date.

In addition, the department may reopen a stream at any time during a closed period if the minimum flow as specified in the corresponding subsections (b)(1) through (4) is exceeded and the department is reasonably assured that it will remain above the minimum flow until the next scheduled Monday, Wednesday, or Friday flow determination.

The department shall make information available to the public by a telephone recorded message updated, as necessary, no later than 1:00 p.m. each Monday, Wednesday, and Friday as to whether any stream will be open or closed to fishing. It shall be the responsibility of the angler to use the telephone number designated in the sport fishing regulations booklet to obtain information on the status of any stream.

THE NUMBER TO CALL FOR INFORMATION IS (707) 822-3164 for Mendocino County and (707) 944-5533 for Sonoma, Marin, and Napa counties.

...[No changes to subsections 8.00(b)(1) through (4)]

...[No changes to subsection 8.00(c)]

NOTE: Authority cited: Sections 200, 205, 265 and 270, Fish and Game Code. Reference: Sections 200, 205 and 265, Fish and Game Code

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (Rev. 10/2019)

DRAFT DOCUMENT**ECONOMIC IMPACT STATEMENT**

DEPARTMENT NAME Fish and Game Commission	CONTACT PERSON David Thesell	EMAIL ADDRESS fgc@fgc.ca.gov	TELEPHONE NUMBER 916 902-9291
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Amend Subsection(b)(40)(A)(1)Section 7.40,Subsections (a)&(b)Section 8.00,Title 14, Re: Low Flow Closures			NOTICE FILE NUMBER Z

A. ESTIMATED PRIVATE SECTOR COST IMPACTS *Include calculations and assumptions in the rulemaking record.*

1. Check the appropriate box(es) below to indicate whether this regulation:

- | | |
|--|---|
| <input type="checkbox"/> a. Impacts business and/or employees | <input type="checkbox"/> e. Imposes reporting requirements |
| <input type="checkbox"/> b. Impacts small businesses | <input type="checkbox"/> f. Imposes prescriptive instead of performance |
| <input type="checkbox"/> c. Impacts jobs or occupations | <input type="checkbox"/> g. Impacts individuals |
| <input type="checkbox"/> d. Impacts California competitiveness | <input checked="" type="checkbox"/> h. None of the above (Explain below): |

Emergency Regulation only requires Fiscal Impact Assessment***If any box in Items 1 a through g is checked, complete this Economic Impact Statement.******If box in Item 1.h. is checked, complete the Fiscal Impact Statement as appropriate.***2. The _____ estimates that the economic impact of this regulation (which includes the fiscal impact) is:
(Agency/Department)

- ☐ Below \$10 million
- ☐ Between \$10 and \$25 million
- ☐ Between \$25 and \$50 million
- ☐ Over \$50 million *[If the economic impact is over \$50 million, agencies are required to submit a [Standardized Regulatory Impact Assessment](#) as specified in Government Code Section 11346.3(c)]*

3. Enter the total number of businesses impacted: _____

Describe the types of businesses (Include nonprofits): _____

Enter the number or percentage of total
businesses impacted that are small businesses: _____

4. Enter the number of businesses that will be created: _____ eliminated: _____

Explain: _____

5. Indicate the geographic extent of impacts: ☐ Statewide
☐ Local or regional (List areas): _____

6. Enter the number of jobs created: _____ and eliminated: _____

Describe the types of jobs or occupations impacted: _____

7. Will the regulation affect the ability of California businesses to compete with
other states by making it more costly to produce goods or services here? ☐ YES ☐ NO

If YES, explain briefly: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (Rev. 10/2019)

ECONOMIC IMPACT STATEMENT (CONTINUED)**B. ESTIMATED COSTS** *Include calculations and assumptions in the rulemaking record.*

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ _____

a. Initial costs for a small business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

b. Initial costs for a typical business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

c. Initial costs for an individual: \$ _____ Annual ongoing costs: \$ _____ Years: _____

d. Describe other economic costs that may occur: _____

2. If multiple industries are impacted, enter the share of total costs for each industry: _____

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements.
Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted. \$ _____4. Will this regulation directly impact housing costs? ☐ YES ☐ NO

If YES, enter the annual dollar cost per housing unit: \$ _____

Number of units: _____

5. Are there comparable Federal regulations? ☐ YES ☐ NO

Explain the need for State regulation given the existence or absence of Federal regulations: _____

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ _____

C. ESTIMATED BENEFITS *Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. Briefly summarize the benefits of the regulation, which may include among others, the health and welfare of California residents, worker safety and the State's environment: _____

2. Are the benefits the result of: ☐ specific statutory requirements, or ☐ goals developed by the agency based on broad statutory authority?

Explain: _____

3. What are the total statewide benefits from this regulation over its lifetime? \$ _____

4. Briefly describe any expansion of businesses currently doing business within the State of California that would result from this regulation: _____

D. ALTERNATIVES TO THE REGULATION *Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (Rev. 10/2019)

ECONOMIC IMPACT STATEMENT (CONTINUED)

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation: Benefit: \$ _____ Cost: \$ _____

Alternative 1: Benefit: \$ _____ Cost: \$ _____

Alternative 2: Benefit: \$ _____ Cost: \$ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: _____
_____4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? ☐ YES ☐ NOExplain: _____
_____**E. MAJOR REGULATIONS** *Include calculations and assumptions in the rulemaking record.****California Environmental Protection Agency (Cal/EPA) boards, offices and departments are required to submit the following (per Health and Safety Code section 57005). Otherwise, skip to E4.***1. Will the estimated costs of this regulation to California business enterprises **exceed \$10 million**? ☐ YES ☒ NO***If YES, complete E2. and E3******If NO, skip to E4***

2. Briefly describe each alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

(Attach additional pages for other alternatives)

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 1: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 2: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

4. Will the regulation subject to OAL review have an estimated economic impact to business enterprises and individuals located in or doing business in California exceeding \$50 million in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through 12 months after the major regulation is estimated to be fully implemented?

☐ YES ☐ NO*If YES, agencies are required to submit a [Standardized Regulatory Impact Assessment \(SRIA\)](#) as specified in Government Code Section 11346.3(c) and to include the SRIA in the Initial Statement of Reasons.*

5. Briefly describe the following:

The increase or decrease of investment in the State: _____
_____The incentive for innovation in products, materials or processes: _____
_____The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (Rev. 10/2019)

FISCAL IMPACT STATEMENT**A. FISCAL EFFECT ON LOCAL GOVERNMENT** *Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

- ☐ 1. Additional expenditures in the current State Fiscal Year which are reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

- ☐ a. Funding provided in _____

Budget Act of _____ or Chapter _____, Statutes of _____

- ☐ b. Funding will be requested in the Governor's Budget Act of _____

Fiscal Year: _____

- ☐ 2. Additional expenditures in the current State Fiscal Year which are NOT reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

Check reason(s) this regulation is not reimbursable and provide the appropriate information:

- ☐ a. Implements the Federal mandate contained in _____

- ☐ b. Implements the court mandate set forth by the _____ Court.

Case of: _____ vs. _____

- ☐ c. Implements a mandate of the people of this State expressed in their approval of Proposition No. _____

Date of Election: _____

- ☐ d. Issued only in response to a specific request from affected local entity(s).

Local entity(s) affected: _____

- ☐ e. Will be fully financed from the fees, revenue, etc. from: _____

Authorized by Section: _____ of the _____ Code;

- ☐ f. Provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each;

- ☐ g. Creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

- ☐ 3. Annual Savings. (approximate)

\$ _____

- ☐ 4. No additional costs or savings. This regulation makes only technical, non-substantive or clarifying changes to current law regulations.

- ☒ 5. No fiscal impact exists. This regulation does not affect any local entity or program.

- ☐ 6. Other. Explain _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (Rev. 10/2019)

FISCAL IMPACT STATEMENT (CONTINUED)**B. FISCAL EFFECT ON STATE GOVERNMENT** *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*☐ 1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

It is anticipated that State agencies will:☐ a. Absorb these additional costs within their existing budgets and resources.☐ b. Increase the currently authorized budget level for the _____ Fiscal Year☐ 2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

☒ 3. No fiscal impact exists. This regulation does not affect any State agency or program.☒ 4. Other. Explain See Addendum.**C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS** *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*☐ 1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

☐ 2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

☒ 3. No fiscal impact exists. This regulation does not affect any federally funded State agency or program.☐ 4. Other. Explain _____

FISCAL OFFICER SIGNATURE

DocuSigned by:


Nicole Nelson

DF1882FB319E4E4

DATE

11/22/2021

The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.

AGENCY SECRETARY

DATE



Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399.

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER

DATE



STD399 ADDENDUM

Emergency Action to Amend Subsection (b)(40)(A) of Section 7.40 Subsections (a) and (b) of Section 8.00, Title 14, California Code of Regulations (CCR)

Re: Low Flow Fishing Restrictions Due to Drought Conditions

The proposed emergency regulation would add a low-flow restriction between September 1 through April 30 on the stretch of Eel River from the mouth to Fulmor Road at its paved junction with the south bank of the Eel River. It would also extend the low-flow closure period for a different stretch of the Eel River as well as the Mad River, Mattole River, Redwood Creek, Smith River and Van Duzen River (currently October 1 through January 31, four months) to September 1 through April 30 (eight months). It would also extend the low-flow closure period (currently October 1 through March 31, six months) for the Mendocino, Sonoma, and Marin County coastal streams to September 1 through April 30 (eight months).

Economic Impact Statement

Emergency regulations do not require an economic impact statement; only fiscal impacts must be evaluated (California Government Code Section 11346.1).

Fiscal Impact Statement

A. FISCAL EFFECT ON LOCAL GOVERNMENT

The proposed amendment to Section 7.40 and 8.00 Title 14, CCR will not have the potential for a fiscal effect on local governments.

B. FISCAL EFFECT ON STATE GOVERNMENT

The Commission anticipates no fiscal effect on State government as a result of this emergency action.

The potential for fiscal effects to the California Department of Fish and Wildlife (Department) were evaluated through a review of data on steelhead trout cards, north coast salmon cards, and 1- or 2-day fishing licenses sales. The review did not support the hypothesis of declines in sales as a direct result of the extension of the low flow regulations by two to four months, depending on the specific river areas. The proposed additional months have a lower likelihood of closures being triggered by low flow than during the months currently established in regulation. Additionally, these sport fishing license items apply to a longer span of time, and a broader geographic area than the proposed amendments affect such that purchase decisions are influenced by many factors outside of the proposed action.

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS

The proposed amendment to Section 7.40 and 8.00 Title 14, CCR will not have the potential for a fiscal effect on the federal funding of state programs.

Emergency Regulations Low Flow Restrictions

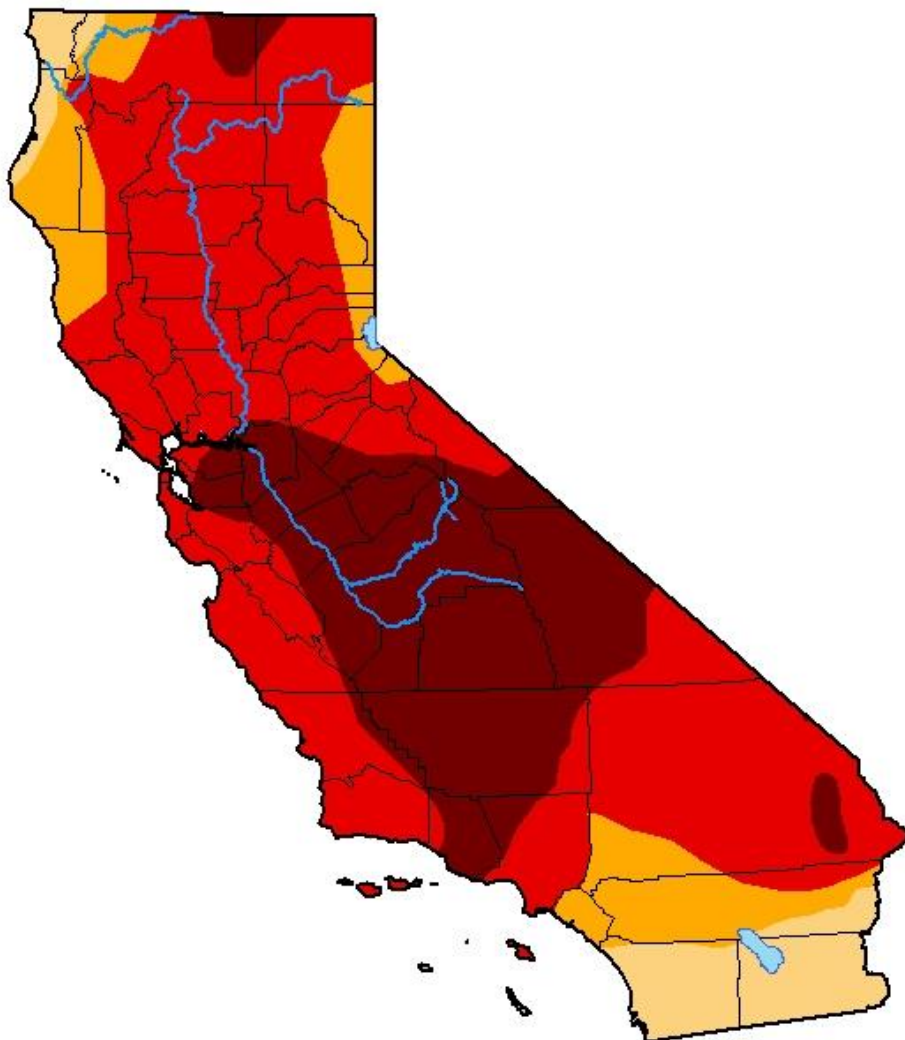


**Fish and Game Commission Meeting
December 15, 2021
Jonathan Nelson
Environmental Program Manager**









U.S. Drought Monitor California

November 23, 2021
(Released Wednesday, Nov. 24, 2021)
Valid 7 a.m. EST



Intensity:

-  None
-  D0 Abnormally Dry
-  D1 Moderate Drought
-  D2 Severe Drought
-  D3 Extreme Drought
-  D4 Exceptional Drought

The Drought Monitor focuses on broad-scale conditions. Local conditions may vary. For more information on the Drought Monitor, go to <https://droughtmonitor.unl.edu/About.aspx>

Author:

Richard Heim
NCEI/NOAA



droughtmonitor.unl.edu

Drought Emergency Proclamation April 21, 2021

- Mendocino and Sonoma cos. due to drought conditions in Russian River Watershed
- State officials directed to take immediate action to prepare for and mitigate the effects of drought conditions
- CDFW ordered to evaluate and take immediate measures to protect terrestrial and aquatic species

Drought Emergency Proclamation May 10, 2021

- Klamath River, Sacramento-San Joaquin Delta, and Tulare Lake Watershed cos.
- Adds 39 counties to the April 21 Proclamation
- CDFW ordered to evaluate minimum instream flows and other actions needed to protect salmon and steelhead
- CDFW ordered to consider emergency regulations to establish minimum drought instream flows

Need for Emergency Regulation Change

- North and Central Coast areas are experiencing severe to extreme drought conditions
- Low flow conditions likely to continue past restriction end dates (i.e., January 31 and March 31)
- Low flows impede passage of migrating adult salmon and steelhead
- Fish are vulnerable to poaching, illegal angling methods, and hooking mortality

Proposed Emergency Regulations

- Amend Title 14, Section 8.00, Low Flow Restrictions
 - Subsection (a), extend angling closure period to September 1 through April 30 (i.e., 4 additional months)
 - Subsection (b), extend angling closure period to September 1 through April 30 (i.e., 2 additional months)

Proposed Emergency Regulations

- Amend Section 8.00(a)(1)
 - Add lower section of the Eel River to Low Flow Restrictions
 - Section 7.40(b)(A)1. Eel River – From mouth to Fulmor Road, at its paved junction with the south bank of the Eel River
 - Closed to hook-and-line fishing; other legal fishing methods are allowed during this timeframe

**North and Central Coast
Low Flow Restrictions
Title 14, Sections 8.00 (a) and (b)**



Thank You/Questions



Photo credit: NOAA Fisheries