

CALIFORNIA FISH AND GAME COMMISSION  
STATEMENT OF PROPOSED EMERGENCY REGULATORY ACTION  
FOR READOPTION OF EMERGENCY REGULATIONS

Readoption of Subsection (b)(40)(A) of Section 7.40  
and 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: May 6, 2022

**I. Emergency Regulation in Effect to Date**

The California Fish and Game Commission (Commission) approved an emergency rulemaking amending Subsection (b)(40)(A) of Section 7.40 and Subsections (a) and (b) of Section 8.00, Title 14, CCR which became effective on January 31, 2022. The emergency addresses concerns for low-flow streams angling closures due to persistent drought conditions. The adoption of the emergency has been necessary to increase the survival of adult Steelhead Trout, Coho Salmon, and Coastal Chinook Salmon during drought conditions. The current emergency rule will expire on August 1, 2022.

**II. Request for Approval of Readoption of Emergency Regulations**

The current emergency rule will expire unless it is readopted for an additional 90 days, through the end of October. A regular rulemaking to adopt permanent provisions for low-flow was approved for publication for notice by the Commission at its April hearing. The effective date of the permanent regulations will be January 1, 2023. Due to the current provisions, September 2022 would not be covered without the extension of the emergency. This potential low-flow period is fully covered with the adoption of the emergency extension.

**This readoption seeks to make one adjustment to regulatory language in subsection 8.00(a)(1)(A) regarding the Eel River estuary. This change will allow angling from shore in the Eel River Estuary downstream of the Cock Robin Island Bridge.**

**This change is necessary to allow shore angling opportunity for perch and other non-salmonid species while still allowing protections for Steelhead Trout, Coho and Coastal Chinook salmon.**

**III. Statement of Facts Constituting the Need for Readoption of the 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, 2021 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, and Daily Bag and Possession Limit. Certain waters listed in Section 7.40 are subject to Section 8.00 Low-Flow Restrictions, including the Eel River. However, one stretch of the Eel River from the Pacific Ocean (mouth) upstream to Fulmor Road currently does not have low-flow closure criteria because it's 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. Therefore, 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. Last year, in 2021, all streams subject to low-flow angling 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.

#### **IV. Proposed Action by the Commission**

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. Prior to the final adoption and effective date of a permanent regulation, this action to extend the emergency low-flow period is necessary to conserve wild steelhead and salmon populations by protecting as many adult fish as possible.

The Commission proposes the readoption of subsection (b)(40)(A) of Section 7.40 and subsections (a) and (b) of Section 8.00, Title 14, CCR, that is the same as previously adopted.

## **V. 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.

## VI. Readoption Criteria

### Same as or Substantially Equivalent

Pursuant to Government Code Section 11346.1(h), a readoption may be approved only if the text is “the same as or substantially equivalent to an emergency regulation previously adopted by that agency.” The language proposed for this rulemaking is the same as the language of the original emergency regulation, **with the exception of the addition of language in subsection 8.00(a)(1)(A) regarding the Eel River Estuary. This change is substantially equivalent because it is still protective of Steelhead Trout, Coho Salmon and Coastal Chinook Salmon.**

### Substantial Progress

Government Code Section 11346.1(h) specifies “Readoption shall be permitted only if the agency has made substantial progress and proceeded with diligence to comply with subdivision (e) [of Sections 11346.2 through 11347.3, inclusive].” A rulemaking in compliance with these sections is currently ongoing and scheduled for public hearing and adoption in June 2022

## VII. 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.

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

## IX. 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.

## **X. 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 readopting 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)

### Readoption of 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 Fish and Game Commission (Commission) approved an emergency rulemaking amending Subsection (b)(40)(A) of Section 7.40 and Subsections (a) and (b) of Section 8.00, Title 14, CCR which became effective on January 31, 2022. The emergency addresses concerns for low-flow streams angling closures due to persistent drought conditions. The adoption of the emergency has been necessary to increase the survival of adult Steelhead Trout, Coho Salmon, and Coastal Chinook Salmon during drought conditions. The current emergency rule will expire on August 1, 2022.

The current emergency rule will expire unless it is readopted for an additional 90 days, through the end of October. A regular rulemaking to adopt permanent provisions for low-flow was approved for publication for notice by the Commission at its April hearing. The effective date of the permanent regulations will be January 1, 2023. Due to the current provisions, September 2022 would not be covered without the extension of the emergency. This potential low-flow period is fully covered with the adoption of the emergency extension.

**This re-adoption seeks to make one adjustment to regulatory language in subsection 8.00(a)(1)(A) regarding the Eel River estuary. This change will allow hook-and-line fishing from shore in the Eel River Estuary downstream of the Cock Robin Island Bridge.**

**This change is necessary to allow shore angling opportunity for perch and other non-salmonid species while still allowing protections for Steelhead Trout, Coho and Coastal Chinook salmon.**

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. Prior to the final adoption and effective date of a permanent regulation, this action to extend the emergency low-flow period is necessary to conserve wild steelhead and salmon populations by protecting as many adult fish as possible.

The Commission proposes the readoption of subsection (b)(40)(A) of Section 7.40

and subsections (a) and (b) of Section 8.00, Title 14, CCR, that is the same as previously adopted.

### **Same as or Substantially Equivalent**

Pursuant to Government Code Section 11346.1(h), a readoption may be approved only if the text is “the same as or substantially equivalent to an emergency regulation previously adopted by that agency.” The language proposed for this rulemaking is the same as the language of the original emergency regulation, **with the exception of the addition of language in subsection 8.00(a)(1)(A) regarding the Eel River Estuary. This change is substantially equivalent because it is still protective of Steelhead Trout, Coho Salmon and Coastal Chinook Salmon.**

### **Substantial Progress**

Government Code Section 11346.1(h) specifies “Readoption shall be permitted only if the agency has made substantial progress and proceeded with diligence to comply with subdivision (e) [of Sections 11346.2 through 11347.3, inclusive].” A rulemaking in compliance with these sections is currently ongoing and scheduled for public hearing and adoption in June 2022

### **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 though the Fri. preceding the fourth Sat. in May. Only barbless hooks may be used from 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. <del>Also see Section 8.00(a)(1) Low-Flow Restrictions.</del> <u>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.	Catch and release of Chinook Salmon. 2 hatchery trout or hatchery steelhead**. 4 hatchery trout or hatchery steelhead*** in possession.
	Apr. 1 through the fourth Fri. in May and Oct. 1 through Dec. 31.	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;~~ closed to angling. Except that downstream of Cock Robin Island Bridge angling from shore for non-salmonids, shall be permitted. ~~other legal~~ Legal fishing methods other than angling 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