

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections **200, 205, 265, 270, 315, 316.5, 399 and 2084** of the Fish and Game Code and to implement, interpret or make specific Sections **200, 205, 265, 270, 316.5 and 2084** of said Code, proposes to amend Sections **7.40 and 7.50**, Title 14, California Code of Regulations, relating to inland sport fishing.

Informative Digest/Policy Statement Overview

This California Department of Fish and Wildlife (Department) proposal includes changes to Title 14, California Code of Regulations (CCR), for the 2023 Sport Fishing Regulatory Cycle. This proposal will amend the fishing regulation boundaries for Chorro Creek in San Luis Obispo County and Los Gatos Creek in Santa Clara County, add a new section to the Russian River special fishing regulations that defines the fishing regulations within the Russian River State Marine Recreation Management Area, and delete an error in regulation for Bear Creek in Shasta and Siskiyou counties. The proposed regulatory changes are needed to correct inaccuracies in the current regulations to reduce public confusion and improve regulatory enforcement.

The Department is proposing changes to the following regulations in Title 14, CCR:

- ***Subsection 7.40(b)(27), Chorro Creek (San Luis Obispo Co.)***
 - Under current regulation, the lower portion of Chorro Creek to Morro Bay is open to fishing during the steelhead season, however, this portion overlaps with the Morro Bay State Marine Reserve which does not allow fishing. The boundary of the Reserve is the mean high tide line which the Department is proposing as the new boundary resulting in a reduction of approximately 0.75 miles of Chorro Creek to fishing.
 - The reach of the current regulation on Chorro Creek from South Bay Blvd to confluence with Morro Bay is approximately 1.0 mile. The reach of the new regulation from South Bay Blvd to the mean high tide line will be 0.25 miles legally open to fishing during the steelhead season. (Note that all measurements are approximations taken from Google Earth).
 - It is unknown how much fishing in this section of Chorro Creek, within the Morro Bay State Marine Reserve, occurs during steelhead season annually. Department staff reached out to State Parks staff (who occupy an office directly across the street from this section of Chorro Creek) who indicated that no anglers have been observed fishing this section in recent years.
- ***Subsection 7.40(b)(79), Russian River.***
 - Add subsection (D) for the Russian River State Marine Recreational Management Area (RRSMRMA) to inform anglers that fishing is not allowed in the portion of the Russian River defined as the RRSMRMA. Currently, reference to the RRSMRMA is found only in the Ocean Sport Fishing Regulations booklet, but because anglers fishing the Russian

River are targeting freshwater and anadromous species, they often only check the Freshwater Sport Fishing Regulations booklet. Because there is no reference to the RRSMRMA in the Freshwater Sport Fishing Regulations booklet, anglers may mistakenly fish in the RRSMRMA. The addition of a subsection 7.40(b)(79)(D) for the RRSMRMA, which would reference Section 632(b)(37), would clarify that fishing is not allowed in the portion of the Russian River defined as the RRSMRMA.

- **Subsection 7.50(b)(7), Bear Creek.**

- The current sport fish regulations list Bear Creek, Shasta and Siskiyou cos. in two different Special Fishing Regulation (7.50(b)) sections which describe conflicting regulations for the same water. The legacy regulation for Bear Creek 7.50(b)(7) should have been removed when the Fall River Complex regulation (7.50(b)(47), Bear Creek (H) was implemented on January 1, 2023. To correct the conflicting regulations the Department is proposing the following changes for Bear Creek:

Remove Section 7.50(b)(7) Bear Creek and tributaries (Shasta and Siskiyou cos.) between Ponderosa Way bridge and confluence with Fall River and keep Section 7.50(b)(47) Fall River Complex (Shasta and Siskiyou cos.), (H) Bear Creek (downstream of Ponderosa Way bridge).

- **Subsection 7.50(b)(81), Los Gatos Creek.**

- Sections 7.50(b)(81) and 7.40(b)(47) currently conflict. Camden Avenue drop is downstream of Vasona Lake meaning there is an overlap of the trout and steelhead regulations in 2.13 miles of Los Gatos Creek downstream of Vasona Lake. The intent was to protect anadromous fish below barriers and allow for different regulations above barriers where resident trout are present.

Although there is a significant fish barrier at Camden drop structure, steelhead have been observed upstream of the structure in very wet years. The Vasona Lake dam is a complete barrier to anadromy. The regulations should clearly define consistent boundaries and protect our Federally ESA threatened population of Central California Coast steelhead (*Oncorhynchus mykiss*).

This proposed regulation change would amend Section 7.50(b)(81) to the following – Los Gatos Creek (Santa Clara Co.) upstream **of Vasona Lake dam** including Lexington Reservoir and all tributaries. This regulation change would be replacing “Camden drop” with “Vasona Lake Dam.” The number of anglers that would be affected by this change is expected to be small.

Benefits of the Proposed Regulations

As stated in Fish and Game Code Section 1700, Conservation of Aquatic Resources, it is the policy of this state to encourage the conservation, maintenance, and utilization of the living resources of the ocean and other waters under the jurisdiction and influence of the state for the benefit of all the citizens of the state and to promote the development of local fisheries and distant water fisheries based in California in harmony with international law, respecting fishing and the conservation of the living resources of the ocean and other waters under the jurisdiction and influence of the state. The objectives of this policy include, but are not limited to, the maintenance of sufficient populations of all species of aquatic organisms to ensure their continued existence, and the maintenance of a sufficient resource to support a reasonable sport use. Adoption of scientifically-based sport fish seasons, size limits, and bag and possession limits provides for the maintenance of sufficient populations sport fish to ensure their continued existence.

The benefits of the proposed regulations are consistent with the sustainable management of California's sport fisheries, general health and welfare of California residents, and promotion of businesses that rely on sport fishing throughout California.

Consistency and Compatibility with Existing Regulations

Article IV, Section 20 of the State Constitution specifies that the Legislature may delegate to the Fish and Game Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to regulate recreational fishing in waters of the state (Fish and Game Code sections 200, 205, 315, and 316.5). The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Commission has searched the California Code of Regulations and finds no other state agency regulations pertaining to trout sport fishing seasons, bag, and possession limits.

Public Participation

Comments Submitted by Mail or Email

It is requested, but not required, that written comments be submitted on or before **September 28, 2023** at the address given below, or by email to FGC@fgc.ca.gov. Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on **October 5, 2023**. If you would like copies of any modifications to this proposal, please include your name and mailing address. Mailed comments should be addressed to Fish and Game Commission, PO Box 944209, Sacramento, CA 94244-2090.

Meetings

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to

this action at a hearing to be held in **River Lodge Conference Center, 1800 Riverwalk Drive**, in **Fortuna**, California, which will commence at **8:00 a.m.** on **August 22, 2023** and may continue at **8:00 a.m.** on **August 23, 2023**. This meeting will also include the opportunity to participate via webinar/teleconference. Instructions for participation in the webinar/teleconference hearing will be posted at www.fgc.ca.gov in advance of the meeting or may be obtained by calling 916-653-4899. Please refer to the Commission meeting agenda, which will be available at least 10 days prior to the meeting, for the most current information.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in **San Jose**, California, which will commence at **8:00 a.m.** on **October 11, 2023** and may continue at **8:00 a.m.**, on **October 12, 2023**. The exact location of this meeting has not yet been determined. As soon as this information is available, but not less than ten days before the hearing, a continuation notice will be sent to interested and affected parties providing the exact location. The continuation notice will also be published on the Commission's website. This meeting will also include the opportunity to participate via webinar/teleconference. Instructions for participation in the webinar/teleconference hearing will be posted at www.fgc.ca.gov in advance of the meeting or may be obtained by calling 916-653-4899. Please refer to the Commission meeting agenda, which will be available at least 10 days prior to the meeting, for the most current information.

Availability of Documents

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikethrough format can be accessed through the Commission website at www.fgc.ca.gov. The regulations as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Melissa Miller-Henson, Executive Director, Fish and Game Commission, 715 P Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above-mentioned documents and inquiries concerning the regulatory process to Melissa Miller-Henson or David Haug at FGC@fgc.ca.gov or at the preceding address or phone number. **Sarah Mussulman, Inland Fisheries Program Manager, Department of Fish and Wildlife, sarah.mussulman@wildlife.ca.gov, has been designated to respond to questions on the substance of the proposed regulations.**

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 265 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in sections 11343.4, 11346.4, 11346.8 and 11347.1 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action/Results of the Economic Impact Assessment

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, 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 provide clarification of existing regulations that 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 adverse impacts on the creation or elimination of jobs within the state. The Commission does not anticipate adverse impacts on the creation of new business, the elimination of existing businesses or the expansion of businesses in California. The proposed changes are to provide clarification of existing regulations that are not anticipated to change the level of fishing activity and thus the demand for goods and services related to sportfishing that could impact the demand for labor, nor induce the creation of new businesses, the elimination, nor the expansion of businesses in California.

The Commission anticipates benefits to the environment by the sustainable management of fishery resources throughout the state. The Commission does not anticipate any benefits to the health and welfare of California residents or to worker safety.

- (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. No changes to state agencies or to costs or savings in federal funding are anticipated by the proposed clarification of existing regulations. The Department program implementation and enforcement are projected to remain the same with a stable volume of fishing activity.

- (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.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Melissa Miller-Henson
Executive Director

Dated: July 3, 2023