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# Fish and Game Commission

*Wildlife Heritage and Conservation*
*Since 1870*

**Valerie Termini, Executive Director**
1416 Ninth Street, Room 1320
Sacramento, CA 95814
(916) 653-4899
www.fgc.ca.gov

September 9, 2016

This is to provide you with a copy of the notice of proposed regulatory action relative to Amending sections 1.74, 5.05, 5.40, 5.60, 7.00, 7.50, subsection (a)(1) of Section 29.45, subsection (c) of Section 43, and subsections (c)(3) and (c)(7) of Section 671, Title 14, California Code of Regulations, relating to Sport Fishing regulations, which are published in the California Regulatory Notice Register on September 9, 2016.

Please note the dates of the public hearings related to this matter and associated deadlines for receipt of written comments.

Additional information and all associated documents may be found on the Fish and Game Commission website at http://www.fgc.ca.gov/regulations/2016/index.aspx .

**Kevin Shaffer, Acting Chief, Fisheries Branch, Department of Fish and Wildlife, (916) 327-8841, has been designated to respond to questions on the substance of the proposed *inland* Fishing regulations.**

**Christy Juhasz, Marine Region, Department of Fish and Wildlife, (707) 576-2887, has been designated to respond to questions on the substance of the proposed recreational *razor clam* Fishery regulations.**

Sincerely,

Jon D. Snellstrom
Associate Governmental Program Analyst

Attachment

**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, 202, 205, 206, 215, 220, 240, 315, 316.5, and 2003 of the Fish and Game Code and to implement, interpret or make specific Sections 200, 202, 205, 206, 215, 220 and 316.5 of said Code, proposes to amend Sections 1.74, 5.05, 5.40, 5.60, 7.00, 7.50, subsection (a)(1) of Section 29.45, subsection (c) of Section 43, and subsections (c)(3) and (c)(7) of Section 671, Title 14, California Code of Regulations, relating to Sport Fishing Regulations.

## Informative Digest/Policy Statement Overview – Inland Fisheries

The proposed regulations combine Department of Fish and Wildlife (Department) and public requests for changes to Title 14, California Code of Regulations (CCR), for the 2016 Sport Fishing Regulations Review Cycle. The proposed regulations will increase fishing opportunities for landlocked salmon, increase protection for listed steelhead, remove regulations that are no longer relevant, update nomenclature for amphibians and reptiles, correct regulations pertaining to combined bag and possession limits for trout and landlocked salmon, clarify the bag and possession limits for trout, and update the sport fishing report card requirements. The proposed regulatory changes are needed to reduce public confusion and improve regulatory enforcement.

The Department is proposing the following changes to current regulations:

### Sport Fishing Report Card Requirements

To eliminate public confusion, the Department is proposing to remove outdated requirements for lobster report card when the reporting period was changed in 2013 from annual to a season basis, and update the general sport fishing report card requirements.

Proposal: Amend Section 1.74, Sport Fishing Report Card Requirements
Repeal outdated requirements to lobster report cards that are no longer applicable and propose minor changes for clarity.

### Eastman Lake

The US Army Corps of Engineers is requesting the Department to remove the closure at Eastman Lake because bald eagles are no longer nesting in the closure area. The conditions at the reservoir have changed and the closure is no longer effective or relevant. Water levels have changed so drastically that the location of the buoy line is not consistent with the regulations.

Proposal: Remove Special Fishing Regulations Subsections 7.50(b)(62A) and (62B), Eastman Lake
Removal of the existing closure area will open the lake to fishing year-round.

### Reptile and Amphibian Nomenclature Updates

The scientific understanding of the relationships of amphibians and reptiles has changed since the regulations were adopted. The current lists in California Code of Regulations, Title 14, Section 5.05, 5.60, 43(c)(1), 671(c)(3), and 671(c)(7) include some names that are no longer considered valid by the scientific community. In addition, some species that were thought to be only one have been split into two or more species. This can lead to confusion by Law Enforcement and permittees/licensees regarding whether a species is allowed to be possessed or not. An updated list of common and scientific names of amphibians and reptiles was developed to clarify which currently recognized species are represented by the existing names

in the sport fishing, native reptile captive propagation, and restricted species regulations. The proposed changes to 5.05, 5.60, and 43(c)(1) are consistent with the May 2016 version of the Department's "Complete List of Amphibian, Reptile, Bird and Mammal Species in California," available at http://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=87155. Nomenclature changes to restricted species in 671 were obtained from the International Union for Conservation of Nature (IUCN, http://www.iucnredlist.org/) and in consultation with herpetological experts.

The proposed changes are solely taxonomic and will not result in a change of sport take or restricted status, with the exception of Batrachoseps pacificus and Thamnophis sirtalis in 5.05 and 5.60, respectively. The latter corrects the accidental omission of San Mateo County from the special closure area, making the closure consistent with the take language, which specifies no T. s. tetrataenia, a fully protected species listed as endangered under both the federal and California Endangered Species Acts (ESA and CESA, respectively) may be taken with a sport fishing license. The former interprets the intent of allowing B. pacificus to be taken with sport fishing license. Prior to 2002, B. pacificus was considered a very widespread species, ranging from the Central Coast and Channel Islands, Baja California, and the central and southern Sierra Nevada. It was subsequently split into several species, many of which have very small ranges and some of which are species of special concern. Additionally, some of the common species' ranges overlap with those of protected species and are difficult to identify morphologically. Batrachoseps pacificus, as it is currently recognized, only occurs on the Channel Islands. The only currently recognized species that is relatively widespread and occurs in an area that does not overlap any currently recognized sensitive Batrachoseps spp. and used to be part of the B. pacificus complex is B. major. Therefore, we propose to replace B. pacificus with B. major. This change requires inclusion of a special closure to protect B. major aridus, which is listed as endangered under ESA and CESA, but it occurs in an area far separated from the rest of the species and any other Batrchoseps spp.

Proposal: Update Sections 5.05, 5.60, 43(c)(1), 671(c)(3) and (c)(7), Amphibians, Reptiles, and Restricted Species, respectively
The proposed changes will replace outdated names with valid, currently recognized names and will include the new names of the species that were split, where appropriate.

**District General Regulations and Special Fishing Regulations Update for Clarity**
To eliminate public confusion and potential enforcement issues, the Department is proposing to further define the bag and possession limits for trout in the District General and Special Fishing regulations sections by adding the word "trout" in the bag and possession limit column in subsections 7.00(a) through (g) and 7.50(b). Updating the tables will provide consistency with the proposed updated text in sections 7.00 and 7.50(a).

Proposal: Amend Subsections (a) through (g) of Section 7.00, District General Regulations, and Subsection (b) of 7.50, Special Fishing Regulations,
Add the word "trout" throughout Section 7.00, subsections (a) through (g), and Section 7.50, subsection (b), to clarify that bag and possession limits are specific to trout, unless stated otherwise.

**San Clemente Lake**
San Clemente Dam was removed recently (Summer 2015) to provide unimpeded steelhead access upstream. With the removal of the dam no reservoir remains, therefore there is no body of water to list.

Proposal: Amend Special Fishing Regulations subsection (b)(165) of Section 7.50, San Clemente Lake
Remove special regulation for San Clemente Lake.

**Los Padres Reservoir**
Los Padres Dam has had a fish trap located downstream where adult steelhead are captured and trucked upstream of the dam. A floating fish collector is being constructed in Los Padres Reservoir and will be completed in Fall 2015. The fish collector is designed to allow passage downstream of steelhead trout, from kelts to juveniles. Since Los Padres is accessible to steelhead, there should be no take of rainbow trout which, with access to the ocean, can become anadromous. Therefore, given the ability to assume an anadromous form, rainbow trout should not be allowed to be taken. All fish taken should be limited to brown trout.

Proposal: Amend Special Fishing Regulations subsection (b)(105) of Section 7.50, Los Padres Reservoir
Prohibit take of rainbow trout in Los Padres Reservoir to reduce take of listed steelhead.

**Las Garzas Creek Tributaries**
Allowing a partial fishing season on this Carmel River tributary is inconsistent with other regulations for the Carmel River watershed. Removing this creek would result in consistent regulations in the Carmel River watershed.

Proposal: Amend Special Fishing Regulations subsection (b)(97) of Section 7.50, Las Garzas Creek and Tributaries Remove Las Garzas Creek and its tributaries from the Special Fishing Regulations.

**Increase Fishing Opportunity for Landlocked Salmon**
Landlocked salmon are stocked into select lakes and reservoirs and are a highly sought after game fish. In the Freshwater Sport Fishing Regulations the statewide daily bag and possession limit is five landlocked salmon in combination. In some reservoirs the landlocked salmon (Kokanee) are abundant, but only obtain a small overall length (<12" TL). Anglers are unsatisfied with only being allowed to take five landlocked salmon per day of this small size. Anglers would like to take and possess more of these small fish each angling day.

To increase angler satisfaction with the landlocked salmon fishery at select waters, the Department proposes an increase to the daily bag and possession limit on select waters. This proposal recommends a daily bag limit increase from five to ten fish per day and possession limit increase from ten to twenty fish, but no more than five can be Chinook salmon. Waters for which the bag and possession limits are recommended for change include: Trinity Lake (Trinity Co.), Lake Pardee (Amador Co.), New Bullards Bar Reservoir (Yuba Co.), Bucks Lake (Plumas Co.), and Scotts Flat Reservoir, Upper (Nevada Co.).

Proposal: Add Subsections (b)(27.5), (b)(130.6), (b)(135.4), (b) 174.1), and (b)(194.6) to Section 7.50, Special Fishing Regulations Add Trinity Lake, Lake Pardee, New Bullards Bar Reservoir, Bucks Lake, and Upper Scotts Flat Reservoir to the Special Fishing Regulations with a 10 landlocked salmon daily bag limit and 20 landlocked salmon possession limit.

**Clarify New Regulation for Landlocked Salmon**
In 2015, the Department created a new definition for landlocked salmon and established a daily bag limit of 5 fish and a possession limit of 10 fish as defined in sections 1.57 and 5.41, respectively. The words "or landlocked" were mistakably added to Section 7.00 and, as a result, the adopted language does not significantly change the original regulation for bag and

possession limits. The bag and possession limit for trout and salmon (i.e., now landlocked salmon), is still in combination as opposed to a separate limit for trout and another for landlocked salmon. Also, language in 7.50(a) states "trout and salmon in combination." This section also needs to be revised as landlocked salmon and Chinook salmon have their own bag and possession limits and are not meant to be combined with trout bag and possession limits. Therefore, the Department is proposing to revise language in 7.00 and 7.50 that is incorrect or no longer relevant to the existing sport fishery.

Proposal: Amend Section 7.00, District General Regulations, and subsection (a) of 7.50, Special Fishing Regulations.
Revise the language in both sections to read "daily bag and possession limits, unless otherwise noted, mean the total number of trout."

**Minor Editorial Corrections for Clarity**
In addition to the above proposals, minor editorial corrections are proposed to correct typographical errors and to improve regulation clarity.

**Recreational Razor Clam Fishery (Humboldt County)**
Under existing law, razor clams may be taken for recreational purposes with a sport fishing license subject to regulations prescribed by the Fish and Game Commission (Commission). Current regulations for clams specify bag and possession limits, open/closed fishing areas by year, fishing hours and gear restrictions. The proposed regulation change is in response to public recommendations including Humboldt Area Saltwater Angers and Humboldt County Board of Supervisors, and would restore the original location of the management boundary at Little River Beach, Humboldt County.

The razor clam management boundary line at Little River Beach, commonly referred to as Clam Beach, is a seasonal creek, named Strawberry Creek, that was meant to divide the beach into approximate equal segments that could be fished in alternate years. Since the adoption of this regulation in 1953 in response to a decline in larger clams, this natural creek has meandered southward by 0.6 miles from its original location, resulting in a larger area in the northern section open for clamming during odd-numbered years. In even-numbered years, clammers now have to travel quite far south from the beach access point, the south county parking lot, to reach the smaller, southern section of the beach. The original location of the creek divided the beach relatively near where a county-maintained public parking lot exists today.

Rotating areas for clamming has been shown to encourage the recovery and productivity of clam beds for future seasons while relieving fishing pressure on alternate years so that clams can grow unmolested. As a result of the southward migration of the creek boundary line, the goal of an annual rotation of effort somewhat equally distributed between north and south sections of the beach has been compromised. The amendment would address the following:

1. Replace reference to the Strawberry Creek boundary with the boundary line due west from the county parking lot trailhead located at 40° 59.67' north latitude.
2. Also replace the name Little River Beach with Clam Beach while using the former name parenthetically.

**Consistency and Compatibility with State Regulations**
The proposed regulations are neither inconsistent nor incompatible with existing state regulations. Section 20, Article IV, 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 adopt sport fishing regulations (sections 200, 202 and 205, Fish and Game Code). 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 sport fishing.

## Benefits of the Proposed Regulations

It is the policy of this state to encourage the conservation, maintenance, and utilization of the living resources of the ocean and inland waters under the jurisdiction and influence of the state for the benefit of all the citizens of the State. In addition, it is the policy of this state to promote the development of local California fisheries in harmony with federal law respecting fishing and the conservation of the living resources of the ocean and inland 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 trout and salmon seasons, size limits, and bag and possession limits provides for the maintenance of sufficient populations of trout and salmon to ensure their continued existence. The Commission additionally anticipates benefits to the razor clam resource and its fishery in Humboldt County. The proposed regulation changes are intended to provide increased clam fishing opportunity in even-numbered years by increasing the size of the open southern Clam Beach management zone, thereby restoring the original intent of the regulation. The Commission anticipates benefits to the environment by the sustainable management of California's resources.

The benefits of the proposed regulations are concurrence with Federal law, sustainable management of California's sport fishing resources, and promotion of businesses that rely on recreational sport fishing in California.

**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 the Red Lion Inn, 1929 4th Street, Eureka, California, on Thursday, October 20, 2016 at 8:00 a.m., or as soon thereafter as the matter may be heard.

**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 the Hilton Garden Inn San Diego Mission Valley/Stadium, 3805 Murphy Canyon Road, San Diego, California, on December 8, 2016, at 8:00 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before 5:00 p.m. on November 17, 2016 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 December 2, 2016. All comments must be received no later than December 8, 2016, at the hearing in San Diego, California. If you would like copies of any modifications to this proposal, please include your name and mailing address.

## Availability of Documents

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, Valerie Termini, Executive Director, Fish and Game Commission, 1416 Ninth 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 Valerie Termini or Jon Snellstrom at the preceding address or phone number. Kevin Shaffer, Acting Chief, Fisheries Branch, Department of Fish and Wildlife, (916) 327-8841, has been designated to respond to questions on the substance of the proposed Inland Fishing regulations. Christy Juhasz, Marine Region, Department of Fish and Wildlife, (707) 576-2887, has been designated to respond to questions on the substance of the proposed Recreational Razor Clam Fishery regulations. Copies of the Notice of Proposed

Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout can be accessed through our website at http://www.fgc.ca.gov.

## 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 202 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 and 11346.8 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 is not anticipated to have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because the expected impact of the proposed regulations on the amount of fishing activity is anticipated to be minimal relative to recreational angling effort statewide.

(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 expected impact of the proposed regulations on the amount of fishing activity is anticipated to be minimal relative to recreational angling effort statewide. Therefore the Commission does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing business or the expansion of businesses in California.

The Commission anticipates benefits to the health and welfare of California residents. Providing opportunities for a salmon and trout sport fishery encourages consumption of a nutritious food.

The Commission does not anticipate any non-monetary benefits to worker safety.

The Commission anticipates benefits to the environment by the sustainable management of California's sport fishing resources.

(c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

(e) Nondiscretionary Costs/Savings to Local Agencies: None.

(f) Programs Mandated on Local Agencies or School Districts: None.

(g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.

(h) Effect on Housing Costs: None.

## 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

Valerie Termini
Executive Director

Dated: August 30, 2016