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## Fish and Game Commission



February 6, 2014

### NOTICE OF PROPOSED EMERGENCY ACTION Low Flow Closures to Fishing Due to Drought Conditions

Pursuant to the requirements of Government Code section 11346.1(a)(1), the Fish and Game Commission (FGC) is providing notice of proposed emergency action with regards to the above-entitled emergency regulation.

#### SUBMISSION OF COMMENTS

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a Notice of the Proposed Emergency Action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the OAL, the OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, e-mail or fax, relevant to the proposed emergency regulatory action. Written comments submitted via U.S. mail, e-mail or fax must be received at the OAL within five days after FGC submits the emergency regulations to the OAL for review.

Please reference submitted comments as regarding "Low Flow Closures to Fishing Due to Drought Conditions" addressed to:

Mailing Address: Reference Attorney  
Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814

California State  
Fish and Game Commission  
Attn: Jon Snellstrom  
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For the status of the FGC submittal to the OAL for review, and the end of the five-day written submittal period, please consult the Web site of the OAL at <http://www.oal.ca.gov> under the heading "Emergency Regulations."

CALIFORNIA FISH AND GAME COMMISSION  
STATEMENT OF PROPOSED EMERGENCY REGULATORY ACTION

Emergency Action to  
Amend Subsection (e)(2) of Section 7.00,  
Subsections (b)(5) and (b)(155) of Section 7.50,  
and Subsections (a) and (b) of Section 8.00  
Title 14, California Code of Regulations  
Re: Low Flow Closures to Fishing Due to Drought Conditions

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

The long range precipitation forecast for most of California predicts below normal rainfall through at least April 30, 2014. California and parts of western Oregon witnessed their driest year on record in 2013, according to statistics from the National Weather Service. As a result, 85 percent of California was categorized in severe drought. According to the California Department of Water Resources, many lakes and reservoirs are less than 40 percent capacity as of December 31, including Lake Shasta (37 percent), Folsom Lake (19 percent), Lake Oroville (36 percent) and San Luis Reservoir (30 percent).

Many coastal streams from Point Conception to the California/Oregon Border remain in extreme low flow conditions with their current low flow fishing restrictions ending soon. The low flow conditions have prevented steelhead and threatened and endangered salmon from migrating beyond the estuary and lower reaches, causing them to congregate in any available large body of water. These fish will be subject to lawful and unlawful fishing techniques, if the current low flow fishing restrictions are lifted. These low flow conditions have also resulted in many estuaries being blocked by sand bars effectively stopping any fish from leaving the river system.

The Department of Fish and Wildlife (Department) has made observations on the American River of newly hatched Chinook salmon fry emerging from moist gravel with no surrounding water, massive predation by birds on newly hatched fry and young-of-the-year, and large areas of exposed gravel and disconnected tributaries due to reduced releases from Nimbus Dam. Many of the tributaries to the Russian River have serious fish passage concerns due to reduced releases from the Coyote Dam. There have been multiple announcements from water districts and local municipalities within the American and Russian river watersheds of mandatory water restrictions due to these low river flows and no rain predicted in the foreseeable future.

On January 16, 2014, the U.S. Department of Agriculture (USDA) designated portions of 11 drought-ridden western and central states as primary natural disaster areas, highlighting the financial strain the lack of rain is likely to bring to farmers in those regions. The federal disaster declaration includes counties in Colorado, New Mexico, Nevada, Kansas, Texas, Utah, Arkansas, Hawaii, Idaho, Oklahoma and California. While storms have dumped rain and snow in the East,

droughts are persisting or intensifying in the West, according to officials connected with the U.S. Drought Monitor, an index on which the USDA's declarations are based. A ridge of high pressure is to blame for keeping storms off the Pacific coast and guiding them to the East. Poor snowpack is threatening regions dependent on major western rivers.

On January 17, 2014, Governor Edmund G. Brown Jr. proclaimed a State of Emergency for California and directed state officials to take all necessary actions to prepare for drought conditions with California facing water shortfalls in the driest year in recorded state history. The Department was ordered to evaluate and manage the changing impacts of drought on threatened and endangered species and species of special concern, and develop contingency plans for state Wildlife Areas and Ecological Reserves to manage reduced water resources in the public interest. The Department was also ordered to work with the Fish and Game Commission, using the best available science, to determine whether restricting fishing in certain areas will become necessary and prudent as drought conditions persist.

In response to the above federal and state actions, the Department has determined that current historically low stream flows are preventing the movement of migrating anadromous fish, primarily wild steelhead trout. Stream flows in many systems are inadequate 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.

The historically low stream flows have also concentrated adult wild 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 high water temperature, poor water quality, and severely reduced suitable habitat, these human stressors can seriously affect reproductive success and adult survival rates.

The Department believes that, under these extreme conditions, it is prudent to temporarily close these streams in order to eliminate angling as an additional stressor on steelhead populations. Stream closures will also serve to deter poaching and snagging activity since all angling will be prohibited. These actions are necessary to conserve wild steelhead populations by protecting as many adult fish as possible.

Subsection 7.00(e) provides the seasons, size, and bag and possession limits for trout and salmon for waters in the South Central District which are not otherwise specified in Section 7.50. Subsections 7.50(b)(5) and (b)(155) provide the season, size, bag and possession limits for trout and salmon in the American River and Russian River, respectively. Section 8.00 provides fishing restrictions (closures) for specified rivers and streams during low flow conditions.

The following proposed regulatory changes would implement the emergency closure until April 30, 2014 of selected streams to increase survival of adult wild steelhead by reducing hooking-related mortality.

Amend American River, subsections (b)(5)(A)-(C) of Section 7.50, Title 14, CCR. Closure of the American River from Nimbus Dam to the SMUD power line crossing at the southwest boundary of Ancil Hoffman Park until April 30.

Amend Russian River, (b)(155)(A) of Section 7.50, Title 14, CCR. Closure of the Russian River main stem below the confluence of the East Branch of the Russian River until April 30.

Amend Low Flow Restrictions, subsections (a) and (b) of Section 8.00, Title 14, CCR. Extension of the low flow fishing restrictions ending date for the North Coast and Central Coast areas (above San Francisco Bay) until April 30.

Amend South Central District Regulations, subsection (e)(2) of Section 7.00, Title 14, CCR. Close all portions of any coastal stream in Monterey, San Francisco, San Luis Obispo, San Mateo, Santa Clara and Santa Cruz counties, west of any Highway 1 bridge until April 30.

Additional streams closures are currently being evaluated by the Department for future actions as needed.

## II. 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:

There may be a reduction in Steelhead report cards that provide revenue specific to the monitoring and study of the fishery. For the period of the closure, estimates of loss range from 3,750 to 15,000 cards which could result in a revenue loss to the Department of Fish and Wildlife of \$24,375 to \$97,500.

(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.

**III. Authority and Reference**

The Fish and Game Commission proposes this emergency action pursuant to the authority vested by sections 200, 202, 205, 215, 220, 240, 315, and 316.5 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.

**IV. Section 240 Finding**

Pursuant to Section 240 of the Fish and Game Code, the Commission made the finding that the adoption of this regulation is necessary for the immediate conservation, preservation, or protection of birds, mammals, reptiles, or fish, including, but not limited to, any nests or eggs thereof.

## Informative Digest (Plain English Overview)

On January 16, 2014, the U.S. Department of Agriculture (USDA) designated portions of 11 drought-ridden western and central states as primary natural disaster areas, highlighting the financial strain the lack of rain is likely to bring to farmers in those regions. The federal disaster declaration includes counties in Colorado, New Mexico, Nevada, Kansas, Texas, Utah, Arkansas, Hawaii, Idaho, Oklahoma and California. Poor snowpack is threatening regions dependent on major western rivers.

On January 17, 2014, Governor Edmund G. Brown Jr. proclaimed a State of Emergency for California and directed state officials to take all necessary actions to prepare for drought conditions with California facing water shortfalls in the driest year in recorded state history. The Department of Fish and Wildlife (Department) was ordered to evaluate and manage the changing impacts of drought on threatened and endangered species and species of special concern, and develop contingency plans for state Wildlife Areas and Ecological Reserves to manage reduced water resources in the public interest. The Department was also ordered to work with the Fish and Game Commission, using the best available science, to determine whether restricting fishing in certain areas will become necessary and prudent as drought conditions persist.

In response to the above federal and state actions, the Department has determined that the historically low stream flows will prevent the movement of migrating anadromous fish, primarily wild steelhead trout. Stream flows in many systems are inadequate 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. The Department believes that, under these extreme conditions, it is prudent to temporarily close these streams in order to eliminate angling as an additional stressor on steelhead populations. Stream closures will also serve to deter poaching and snagging activity since all angling will be prohibited. These actions are necessary to conserve wild steelhead populations by protecting as many adult fish as possible.

Subsection 7.00(e) provides the seasons, size, and bag and possession limits for trout and salmon for waters in the South Central District which are not otherwise specified in Section 7.50. Subsections 7.50(b)(5) and (b)(155) provide the season, size, bag and possession limits for trout and salmon in the American River and Russian River, respectively. Section 8.00 provides fishing restrictions (closures) for specified rivers and streams during low flow conditions.

The following proposed regulatory changes would implement the emergency closure until April 30, 2014 of selected streams to increase survival of adult wild steelhead by reducing hooking-related mortality.

Amend American River, subsections (b)(5)(A)-(C) of Section 7.50. Title 14, CCR. Closure of the American River from Nimbus Dam to the SMUD power line crossing at the southwest boundary of Ancil Hoffman Park until April 30.

Amend Russian River, (b)(155)(A) of Section 7.50, Title 14, CCR. Closure of the Russian River main stem below the confluence of the East Branch of the Russian River, until April 30.

Amend Low Flow Restrictions, subsections (a) and (b) of Section 8.00, Title 14, CCR. Extension of the low flow restrictions ending date for the North Coast and Central Coast areas (above San Francisco Bay) until April 30.

Amend South Central District Regulations, subsection (e)(2) of Section 7.00, Title 14, CCR. Close all portions of any coastal stream in Monterey, San Francisco, San Luis Obispo, San Mateo, Santa Clara and Santa Cruz counties, west of any Highway 1 bridge until April 30.

Additional streams closures are currently being evaluated by the Department for future actions as needed.

Benefits: The proposed regulation will provide benefits to the environment in the conservation and preservation of wild steelhead populations.

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. The Legislature has delegated authority to the Commission to promulgate sport fishing regulations (sections 200, 202, 205, 315, and 316.5, Fish and Game Code).

## Regulatory Language

Subsection (e)(2) of Section 7.00, Title 14, CCR is amended to read:

### §7.00. District General Regulations.

Unless otherwise provided, waters shown as open to trout and salmon fishing in subsections (a) through (g) below, are open to fishing for other species. Gear restrictions listed in this section apply to the take of all species of fish unless otherwise noted. Every body of water listed in subsections (a) through (g) of Section 7.00 (below) is closed to all fishing, except during the open season as shown. Unless otherwise provided, waters closed to trout and salmon fishing are closed to fishing for all other species, except that these closures do not apply to fishing for amphibians (see Section 5.05), freshwater clams (see Section 5.20), crayfish (see Section 5.35), and lamprey (see Section 5.40), using legal fishing methods other than hook-and-line fishing, and saltwater clams, crabs, ghost shrimp, and blue mud shrimp (see Ocean Regulations Booklet Sections 29.20 to 29.87). Crabs may only be taken using hoop nets or by hand, and Dungeness crab may only be taken within the North Coast District and Sonoma and Mendocino counties.

Daily bag and possession limits, unless otherwise provided, mean the total number of trout and salmon in combination. Unless otherwise provided, no more than one daily bag limit may be possessed. Coho (silver) salmon may not be taken in any of the waters of the State, except in Lake Oroville and Oroville-Thermalito Complex (Diversion Pool, Forebay, and Afterbay) and the Feather River from the Diversion Pool Dam to the Fish Barrier Dam. Incidentally hooked Coho (silver) salmon, except those in Lake Oroville and Oroville-Thermalito Complex (Diversion Pool, Forebay, and Afterbay) and the Feather River from the Diversion Pool Dam to the Fish Barrier Dam, must be immediately released unharmed to the waters where they are hooked. In waters where the bag limit for trout or salmon is zero, fish for which the bag limit is zero must be released unharmed, and should not be removed from the water.

These waters may also be subject to restrictions on fishing methods and gear (sections 2.00 through 2.45), fishing hours (section 3.00), and the use of bait (sections 4.00 through 4.30).

District/Water	Open Season	Daily Bag and Possession Limit
<i>[text for subsections (a) through (d) unchanged]</i>		
(e) South Central District		
(1) All lakes and reservoirs except those listed by name in the Special Regulations.	All year	5
(2) That portion of any stream west of any Highway 1 bridge except those listed by name in the special regulations.	Dec. 1 through Mar. 7 <u>[OAL to insert the day before the effective date]</u> , but only on Sat., Sun.,	2 hatchery trout or hatchery steelhead* 4 hatchery trout or hatchery

District/Water	Open Season	Daily Bag and Possession Limit
(3) All streams in Alameda, Contra Costa, and Santa Clara Counties except those listed by name in the Special Regulations.	Wed., legal holidays and opening and closing days. Only barbless hooks may be used.	steelhead* in possession. Closed to the take of salmon.
(4) All other streams and portions of streams except those listed in subsection (e)(2) above or by name in the Special Regulations.	<u>Closed to all fishing from [OAL to insert effective date] through Apr. 30.</u> Last Saturday in Apr. through Nov. 15	
	Closed to all fishing all year	

*[text for subsections (f) through (g) unchanged]*

Note: Authority cited: Sections 200, 202, 205, 220 and 240, Fish and Game Code.  
Reference: Sections 200, 205 and 206, Fish and Game Code.

Subsections (b)(5) and (b)(155) of Section 7.50, Title 14, CCR are amended to read:

**§7.50. Alphabetical List of Waters with Special Fishing Regulations.**

*[Subsection (a) unchanged]*

(b)

**Daily Bag  
and  
Possession  
Limit**

**Body of Water**

**Open Season and Special Regulations**

*[subsections (b)(1) through (4) unchanged]*

(5) American River (Sacramento Co.)		
(A) From Nimbus Dam to the Hazel Avenue bridge piers.	<u>Closed to all fishing from [OAL to insert effective date] through April 30.</u>	
	<u>Jan. 1 to [OAL to insert the day before the effective date] and May 1 through July 15.</u>	2 hatchery trout or hatchery steelhead** 4 hatchery trout or hatchery steelhead** in possession
	July 16 through Dec. 31.	2 hatchery trout or hatchery steelhead** 4 hatchery trout or hatchery steelhead** in possession 2 Chinook salmon
(B) From Hazel Avenue bridge piers to the U.S. Geological Survey gauging station cable crossing about 300 yards downstream from the Nimbus Hatchery fish rack site.	<u>Closed to all fishing from [OAL to insert effective date] through April 30.</u>	
	<u>Jan. 1 to [OAL to insert the day before the effective date] and May 1 through July 15. Only barbless hooks may be used.</u>	2 hatchery trout or hatchery steelhead** 4 hatchery trout or hatchery steelhead** in possession
	July 16 through Aug. 15. Only barbless hooks may be used.	2 hatchery trout or hatchery

<b>Body of Water</b>	<b>Open Season and Special Regulations</b>	<b>Daily Bag and Possession Limit</b>
		steelhead** 4 hatchery trout or hatchery steelhead** in possession 2 Chinook salmon
(C) From the U.S. Geological Survey gauging station cable crossing about 300 yards downstream from the Nimbus Hatchery fish rack site to the SMUD power line crossing at the southwest boundary of Ancil Hoffman Park.	<u>Closed to all fishing from [OAL to insert effective date] through April 30.</u>	
	Jan. 1 to [OAL to insert the day before the effective date] and <u>May 1 through July 15.</u> Only barbless hooks may be used.	2 hatchery trout or hatchery steelhead** 4 hatchery trout or hatchery steelhead** in possession
	July 16 through Oct. 31. Only barbless hooks may be used.	2 hatchery trout or hatchery steelhead** 4 hatchery trout or hatchery steelhead** in possession 2 Chinook salmon
(D) From the SMUD power line crossing at the southwest boundary of Ancil Hoffman Park downstream to the Jibboom Street bridge.	Jan. 1 through July 15.	2 hatchery trout or hatchery steelhead** 4 hatchery trout or hatchery steelhead** in possession
	July 16 through Dec. 31.	2 hatchery trout or hatchery steelhead** 4 hatchery trout or

<i>Body of Water</i>	<i>Open Season and Special Regulations</i>	<i>Daily Bag and Possession Limit</i>
(E) From the Jibboom Street bridge to the mouth.	Jan. 1 through July 15.	hatchery steelhead** in possession 2 Chinook salmon  2 hatchery trout or hatchery steelhead** 4 hatchery trout or hatchery steelhead** in possession
	July 16 through Dec. 16.	2 hatchery trout or hatchery steelhead** 4 hatchery trout or hatchery steelhead** in possession 2 Chinook salmon
	Dec. 17 through Dec. 31.	2 hatchery trout or hatchery steelhead** 4 hatchery trout or hatchery steelhead** in possession

*[subsections (b)(6) through (154) unchanged]*

(155) Russian River and tributaries (Sonoma and Mendocino Cos.). Also see Section 8.00(b).	<del>All-year.</del> Only artificial lures with barbless hooks may be used from <del>Apr. 1</del> <u>May 1</u> through Oct. 31. Only barbless hooks may be used from Nov. 1 through <del>Mar. 31</del> <u>[OAL to insert the day before the effective date]</u> .	2 hatchery trout or hatchery steelhead** 4 hatchery trout or hatchery steelhead** in possession
	<u>Closed to all fishing from [OAL to insert effective date] through Apr. 30.</u>	

<b>Body of Water</b>	<b>Open Season and Special Regulations</b>	<b>Daily Bag and Possession Limit</b>
(B) Russian River main stem above the confluence of the East Branch and all River tributaries. (See Laguna de Santa Rosa 7.50(b)(93) and Santa Rosa Creek (7.50(b)(172) for non-salmonids only.)	Closed to all fishing all year.	
(C) Russian River within 250 feet of the Healdsburg Memorial Dam.	Closed to all fishing all year.	

*[subsections (b)(156) through (212) unchanged]*

\* Wild Chinook salmon are those not showing a healed adipose fin clip and not showing a healed left ventral fin clip.

\*\*Hatchery trout or steelhead in anadromous waters are those showing a healed adipose fin clip (adipose fin is absent). Unless otherwise provided, all other trout and steelhead must be immediately released. Wild trout or steelhead are those not showing a healed adipose fin clip (adipose fin is present).

Note: Authority cited: Sections 200, 202, 205, 215, 220, 240, 315 and 316.5, Fish and Game Code. Reference: Sections 200, 202, 205, 206, 215 and 316.5, Fish and Game Code.