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8/28/14

August 20, 2014

This is to provide you with a copy of the notice of proposed regulatory action relative to Amending sections 1.45, 2.09, 4.05, 5.00, 5.80, 7.50, 8.00 and 27.90, Title 14, California Code of Regulations, relating to the proposed 2015 Sport Fishing regulations, which are published in the California Regulatory Notice Register on August 22, 2014.

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 www.fgc.ca.gov.

Karen Mitchell, Senior Environmental Scientist, Fisheries Branch, phone (916) 445-0826, has been designated to respond to questions on the substance of the proposed 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, 215, 220, 240, 315 and 316.5; reference sections 200, 205, 206, 215, 220 and 316.5, Fish and Game Code; proposes to Amend Sections 1.45, 2.09, 4.05, 5.00, 5.80, Subsections 7.50(b)(8), (b)(23), (b)(29), (b)(35.5), (b)(45), (b)(50.8), (b)(63), (b)(82), (b)(97), (b)(99), (b)(104), (b)(107), (b)(130), (b)(133), (b)(135), (b)(136), (b)(141), (b)(168), (b)(169), (b)(173), (b)(178), (b)(180), (b)(183), (b)(193), (b)(195.1), (b)(201), and (b)(203.5), Subsection 8.00(a), and Section 27.90, Title 14, California Code of Regulations (CCR), relating to Sport Fish Regulations for the 2015 season.

Informative Digest/Policy Statement Overview

This Department proposal combines Department and public requests for Title 14, California Code of Regulations (CCR) changes for the 2014 Sport Fishing Review Cycle. This proposal will revise regulations on filleting of salmonids, extend low-flow restriction periods due to ongoing drought conditions, increase fishing opportunities for bass and other warm water species, minimize potential take of adult steelhead and native Paiute cutthroat trout, and make clarifications to other regulatory sections to reduce public confusion and improve regulatory enforcement.

The Department is proposing the following changes to current regulations

Filleting of Salmonids in Inland Waters
In 2013, the Department imposed a filleting requirement for all salmonids taken in inland waters. The regulation requires that all salmon and steelhead taken in inland waters where a sport fishing license is required, must be kept in such a condition that species and size can be determined until placed at the angler's permanent residence, a commercial preservation facility or being prepared for immediate consumption. The purpose of this regulation is to protect federally and state-listed salmonids by giving the Department the ability to determine the origin (wild or hatchery), the species (Coho, Chinook or steelhead), and the size (jack or adult) of salmon and steelhead taken, possessed and transported.

The fillet rule is enforced statewide in anadromous waters for all designated angling seasons. Along the California Coast, there are two salmon species (Coho and Chinook) that have overlapping run timings. Chinook salmon can be harvested but Coho salmon are protected and are illegal to harvest. Because of their run timing overlap, the enforcement of the fillet rule is necessary to minimize illegal harvest of Coho salmon.

In the Central Valley there are four runs of Chinook salmon: winter, spring, fall and late-fall, however Coho salmon are not present. Winter and spring-run Chinook salmon are illegal to harvest and are protected through seasonal angling closures on the Sacramento River and its tributaries. Because there is no overlap of protected Chinook runs during the open harvest season (July-December), the fillet rule is not critical for the enforcement of illegal harvest.

Prior to the fillet rule, a large portion of anglers in the Central Valley would fillet their salmon prior to departure from the river for ease of transport and disposal of carcasses. Since the establishment of the rule, many anglers have expressed their disappointment and have asked the Department to provide a compromise to the rule. Based on these reasons, the Department is proposing an exception in the Central Valley to the current fillet rule to allow anglers to fillet their Chinook salmon on site during the Chinook salmon angling season. The exception would

allow the filleting of Chinook salmon from July through December on the Sacramento, American and Feather rivers.

In addition, the Department is adding the definition of a Commercial Preservation Facility to the regulation. The definition encompasses licensed fishing guides which will allow licensed guides to legally fillet salmon and steelhead for their clients.

Modify Dip Net Size Restriction for Landing Nets
Current regulatory language in Section 2.09, Possession of Illegal Gear, restricts the size of landing-type dip nets to 36 inches in greatest dimension. As worded, this regulation restricts the dip net opening and net bag length/depth to 36 inches. This restriction is a hindrance to freshwater anglers trying to land large species such as salmon, striped bass, and sturgeon. The intent of the 36-inch size restriction is to limit the harvest of bait fish. Therefore, the Department is proposing to amend the regulation to allow standard landing-type dip nets to be up to 36 inches in diameter across the net opening and up to 60 inches in net length/depth.

Add Dip Net Size Restriction for Bait Fish
To reduce public confusion and enforcement issues, the Department proposes to amend Section 4.05, Bait Fish Capture Methods, to clarify that dip nets, in addition to traps, may not be over 36 inches in greatest dimension.

Black Bass - Lake Castaic
The current regulation for black bass at Lake Castaic is outdated, and was enacted to protect a "trophy" black bass fishery. Lake Castaic has limiting factors that are not conducive to maintaining a large population of "trophy" black bass. Habitat for juvenile bass and sunfish is limited as shorelines are generally steep in both arms and contain a few small coves. Within these coves aquatic vegetation is lacking due to water level fluctuations. There is also a large healthy population of striped bass. The proposal is to amend the black bass regulation at Lake Castaic from 2 fish at 18 inches to 5 fish at 15 inches. This proposed amendment is the same or similar to other state waters; including but not limited to Lake Hodges, Diamond Valley, Lake Perris and Isabella Lake.

Black Bass - El Capitan Reservoir
The current regulation for black bass at El Capitan reservoir is outdated. There is a healthy population of black bass within the reservoir, and virtually no harvest for consumption. The Department proposes to amend the black bass regulation at El Capitan Reservoir from 5 fish at 15 inches to 5 fish at 12 inches; changing the lake to the statewide minimum for black bass.

White Sturgeon - Method of Take
Sections 5.80(d) and 27.90(d) are currently written using the word, "landing." "Landing" is not defined in the Fish and Game Code. This creates confusion amongst anglers as to what the regulation means by "landing." It also has the potential to create a legal challenge by defendants during the prosecution of an arrest. The proposal is to replace "landing" with "take" which is defined in Title 14, Section 1.80.

White Sturgeon - Angling Boundary
Section 5.80(i) is currently written in conflict with Section 5.80(i)(1)(A) through (C). This conflict creates confusion amongst anglers as to whether or not it is legal to fish for sturgeon on the eastern bank of the Sacramento River in Butte County. This also has the potential to create a legal challenge by defendants during the prosecution of an arrest.

Under the current regulation of Section 5.80(i)(1)(A) through (C) it is unlawful take any sturgeon,

use wire leaders, or use lamprey or shrimp as bait, between Keswick Dam and the Highway 162 Bridge. The Sacramento River flows through Shasta, Tehama, Glenn and Butte counties, between these two landmarks. Section 5.80(i) states the closure is from January 1 to December 31 in Shasta, Tehama and Glenn counties. Butte County has been unintentionally omitted from the regulation.

Big Sur River

Under current regulations, the harvest of hatchery trout and steelhead is allowed on the Big Sur River and tributaries above the upstream end of the gorge pool at the boundary of Pfeiffer Big Sur State Park with the Ventana Wilderness Area. However, this section of the Big Sur River is above a fish barrier and not reachable by anadromous salmonids. Therefore, the Department is proposing to remove the current regulatory language authorizing the harvest of hatchery trout and steelhead and return this section of the Big Sur River to catch and release angling. In addition, this proposal will remove the reference to Section 8.00, Low-Flow Restrictions, from Section (b)(23) as neither subsection of the Big Sur River, (b)(23)(A) or (b)(23)(b), is subject to low flow closures as defined in Section 8.00(c).

Calleguas Creek

The Southern California Steelhead DPS was listed as endangered under the Federal ESA in 1997. The DPS includes all naturally spawned anadromous Oncorhynchus mykiss (steelhead) populations below natural and manmade impassable barriers in streams from the Santa Maria River, Santa Barbara County, California, (inclusive) to the U.S.-Mexico Border.

Despite the location of Calleguas Creek near the center of this endangered DPS, only a single dead adult steelhead trout was collected in Conejo Creek (Calleguas Creek tributary) in April of 2013. The stream is not currently monitored for the presence of steelhead. Very limited steelhead spawning habitat is available in Calleguas Creek and tributaries and all associated creeks are infested with non-native, exotic fish species.

Based on the discovery of the adult steelhead in Conejo Creek, the Department is proposing a seasonal closure for Calleguas Creek and tributaries to minimize the potential take of adult steelhead. Because the creek and its tributaries possess very limited steelhead spawning habitat, and the drainage supports a large non-native fish community, we propose a seasonal closure as opposed to a complete closure to protect adult steelhead, while maintaining opportunities for recreational angling.

The current regulations allow year-round angling on Calleguas Creek and tributaries. There is a 5 fish daily bag/possession limit for trout. The regulation change will be consistent with similar drainages within Region 5 with seasonal closures. These streams will be open to angling from the Saturday proceeding Memorial Day through November 30th. Only artificial lures with barbless hooks may be used and the daily bag and possession limit will read: Open to fishing for non-salmonids only. Closed to the take of trout and steelhead.

Diaz Lake

Diaz Lake is located within the boundary of the Inyo County, Southwestern portion regulation. The Inyo County regulation specifically calls attention to the Cottonwood Creek restrictions as they are within its boundary and have different seasons and bag limits. However, it does not call attention to the Diaz Lake regulation even though it has a second season and bag limit that is different from the Inyo County, Southwestern portion regulation. The proposed regulation change will reference the Diaz Lake restrictions in the Inyo County regulations. Additionally, the Department often receives calls as to whether or not Independence Creek, which is part of the

boundary, is included in the regulation. To clarify, the Department proposes adding a statement that Independence Creek is open to fishing.

Las Garzas Creek
Las Garzas Creek is misspelled as Las *Gazas* Creek in Title 14 and in the Sport Fishing Regulations Booklet. The proposal is to correct the spelling of the word Garzas.

Navarro River, Noyo River, and Ten Mile River
The proposed regulation change is to remove "and tributaries" from the Navarro River, Noyo River, and Ten Mile River fishing regulations. Fishing is currently only allowed in the main stems of the Navarro River, Noyo River, Ten Mile River, and North Fork Ten Mile River. The reference to "and tributaries" in the regulations leads to confusion and requests for clarification from the public. The recommended regulation change clearly identifies the main stems of the Navarro River, Noyo River, Ten Mile River, and North Fork Ten Mile River as the sections open to fishing.

Pit River
The proposed regulation change is for a section of the Pit River within Modoc County running from the Highway 395 bridge/South Fork Pit River crossing downstream to the Highway 299 (Canby) bridge/ Pit River crossing. This proposal would make this section of river open to fishing all year to increase angling opportunities for warm water fish. Currently this section of river is covered under the Sierra District General Regulations for trout, which is open the last Saturday in April through November 15.

Recent and historical surveys indicate that trout are not present within this section of river. Surveys conducted by United States Fish and Wildlife Service, duplicating historic sampling locations, did not find evidence of trout present (USFWS 2003), nor were trout present in the historic samples for the river reach proposed to be opened all year (USFWS 2003 and Vestra 2004). Moreover, many warm water species, such as catfish, green sunfish, blue gill, and possibly bass are present.

Silver King Creek
The Department is proposing to close Silver King Creek and tributaries below the confluence of Tamarack Lake Creek (below Llewellyn Falls) downstream to the confluence with Snodgrass Creek to fishing all year. The proposed regulation change is necessary to protect native Paiute cutthroat trout, which are listed as threatened pursuant to the federal Endangered Species Act, by prohibiting angling in a portion of its historic range below Llewellyn Falls down to Snodgrass Creek. This segment of the stream will be restocked with Paiute cutthroat trout as part of a restoration project. Existing regulations prohibit fishing all year in Silver King Creek and tributaries including lakes above Llewellyn Falls in existing Paiute cutthroat trout habitat.

Trinity River
In 2014, approximately 14 miles of the upper Trinity River were opened to winter angling and the new regulation was added to the Special Fishing Regulations. The same section of the upper Trinity River is also open to angling from the last Saturday in April through November 15 under the North Coast District General Regulations. To avoid public confusion, the Department is proposing to add the April through Nov. 15 angling season to the upper Trinity River Special Fishing Regulations.

Low-Flow Restrictions References
Section 8.00, Low-Flow Restrictions, is referenced throughout the Special Fishing Regulations in Section 7.50. This proposal will add the Section 8.00 title and appropriate subsection to the

existing references so the reader knows what Section 8.00 is and which subsection to refer to. In addition, this proposal will add the reference to Section 8.00 more frequently where the regulation applies. Adding this information will make it easier for anglers to understand and follow the regulations and makes the wording consistent with other references in Section 7.50.

Low-Flow Restriction Time Period

Section 8.00 provides fishing restrictions (closures) for specified rivers and streams during low flow conditions to protect Chinook salmon and steelhead populations.

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. In response to the Governor's proclamation, the Fish and Game Commission adopted on February 5, 2014 emergency sport fishing regulations extending the low flow restrictions on north coast and central coast streams to protect wild steelhead and Chinook salmon populations.

In anticipation of prolonged periods of low flow conditions throughout California in the future, the Department is proposing to permanently extend the annual low flow restrictions to April 30 for the north coast streams for continued protection of wild steelhead and Chinook salmon populations. In addition, this proposal will correct the phone number error in subsection 8.00(a).

Minor Editorial Corrections for Clarity

Additional minor corrections are proposed to correct typographical errors and to improve regulation clarity.

Benefits of the Regulations

The Commission anticipates benefits to the health and welfare of California residents. Trout and salmon are a nutritious food source and increasing inland sport fishery opportunities encourages consumption of this nutritious food. Sport fishing also contributes to increased mental health of its practitioners as fishing is a hobby and form of relaxation for many. Sport fishing also provides opportunities for multi-generational family activities and promotes respect for California's environment by younger generations, the future stewards of California's natural resources.

It is the policy of the state to encourage the conservation, maintenance, and utilization of the living resources of the inland waters under the jurisdiction and influence of the state for the benefit of all its citizens and to promote the development of local California fisheries. 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, taking into consideration the necessity of regulating individual sport fishery bag limits in the quantity that is sufficient to provide a satisfying sport. Adoption of scientifically-based inland 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.

Consistency and Compatibility with Existing 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 regulate recreational fishing in waters of the state (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 recreational fishing seasons, bag and possession limits.

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 Mount Shasta Hatchery Museum, 1 North Old Stage Road, Mount Shasta, California, on Wednesday, October 8, 2014, 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 at the Airtel Plaza Hotel, 7277 Valjean Avenue, Van Nuys, California, on Wednesday, December 3, 2014, 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 November 20, 2014 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on November 26, 2014. All comments must be received no later than December 3, 2014 at the hearing in Van Nuys. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Sonke Mastrup, 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 Sonke Mastrup or Jon Snellstrom at the preceding address or phone number. **Karen Mitchell, senior Environmental Scientist, Fisheries Branch, karen.mitchell@wildlife.ca.gov, (916) 445-0826, has been designated to respond to questions on the substance of the proposed regulations** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission 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 Analysis

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

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, 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 fishing areas that will be affected are limited, and the number of anglers that will be affected is relatively small. In addition, many of the proposed changes will offer increased fishing opportunities with potential increases in economic activity related to spending by sport fish anglers.

(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 proposed regulations would provide additional sport fish angling opportunities in some areas. However, the increase in fishing activity is anticipated to be limited 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 agency 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

Sonke Mastrup
Executive Director

Dated: August 12, 2014