

Memorandum

Date: April 7, 2015

To: Sonke Mastrup
Executive Director
Fish and Game Commission

From: Charlton H. Bonham
Director



Subject: **Emergency Statement to Amend Subsection (b)(156.5)(B) of Section 7.50, Title 14, California Code of Regulations, Re: Emergency Closure of the Sacramento River Due to Low-Flow Conditions**

Attached please find the Statement of Proposed Emergency Regulatory Action to amend subsection (b)(156.5)(B) of Section 7.50, Title 14, California Code of Regulations, Re: Emergency Closure of the Sacramento River Due to Low Flow Conditions.

On January 17, 2014 the Governor proclaimed a State of Emergency to exist in California due to severe drought conditions. As part of the declaration, the Governor ordered the Department of Fish and Wildlife (Department) to work with the California 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.

Sacramento River winter-run Chinook salmon suffered a 95% loss of the 2014 natural production brood year due to low reservoir storage and elevated water temperatures caused by the ongoing drought. Current projections indicate that similar water conditions will occur in 2015. In-river water temperatures below Shasta Reservoir exceeded the State Water Resources Control Board Order: WR 90-5, maximum of 56 degrees Fahrenheit, for approximately half of the incubation period prior to emergence. Department staff have evaluated the 2013 winter-run Chinook salmon spawning locations (similar conditions to 2015) and have concluded that 98% of the in-river spawning occurred between Keswick Dam and the Highway 44 bridge.

Maximizing adult spawning numbers is critical to the population. A fishing closure in the holding and spawning areas of winter-run Chinook salmon will add to protections for a Federal and State Endangered fish facing a high risk of extinction. The proposed emergency fishing closure from the Keswick Dam to the Highway 44 bridge is a 5.5 mile (about nine percent) reduction in areas open to fishing upstream of the Red Bluff Diversion Dam. Although this represents a small portion of the fishery, it is one of the most popular reaches for both shore based and boat anglers. The Department does not propose a permanent closure but a temporary 3-month suspension of fishing and will annually assess the success of all efforts to protect the winter-run Chinook salmon population.

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The proposed regulatory change would implement an emergency closure of the Sacramento River downstream of Keswick Dam to the Highway 44 bridge. If adopted, this emergency closure would take effect upon final approval by the Office of Administrative Law and end July 31, 2015. Normal fishing opportunities would resume August 1, 2015.

If you have any questions or need additional information, please contact Stafford Lehr, Chief, Fisheries Branch, at (916) 328-8840.

Attachments

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CALIFORNIA FISH AND GAME COMMISSION
STATEMENT OF PROPOSED EMERGENCY REGULATORY ACTION

Emergency Action to
Amend subsection (b)(156.5)(B) of Section 7.50,
Title 14, California Code of Regulations
Re: Emergency Closure Due to Low Flow Conditions

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

On January 17, 2014 the Governor proclaimed a State of Emergency to exist in California due to severe drought conditions. As part of the declaration, the Governor ordered the Department of Fish and Wildlife (Department) to work with the California Fish and Game Commission (Commission), using the best available science, to determine whether restricting fishing in certain areas will become necessary and prudent as drought conditions persist. On April 25, 2014 the Governor issued an Executive Order (EO) to proclaim a continuation of the State of Emergency based ongoing drought conditions. This EO and the original orders are still in place and specifically direct the Department to monitor winter-run Chinook salmon in the Sacramento River and tributaries.

Sacramento River winter-run Chinook salmon suffered a 95% loss of the 2014 natural production brood year due to low reservoir storage and elevated water temperatures caused by the ongoing drought. Current projections indicate that similar water conditions will occur in 2015. In-river water temperatures below Shasta Reservoir exceeded the State Water Resources Control Board Order: WR 90-5, maximum of 56 degrees Fahrenheit, for approximately half of the incubation period prior to emergence. Department staff have evaluated the 2013 winter-run Chinook salmon spawning locations (similar conditions to 2015) and have concluded that 98% of the in-river spawning occurred between Keswick Dam and the Highway 44 bridge.

The Drought Operations Plan has outlined measures to try and prevent extinction of winter-run Chinook salmon which include: increased hatchery production, enhanced monitoring, and increased rescue efforts. Maximizing adult spawning numbers is critical to the population. Although fishing for winter-run Chinook salmon in this reach of the Sacramento River is not allowed under current regulations, incidental by-catch by anglers targeting trout has been documented to occur, especially during low flow periods. Even if returned to the water, incidental by-catch adds unnecessary stress on the winter-run Chinook salmon resulting in the potential loss of adults before spawning. A fishing closure in the holding and spawning areas of winter-run will add to protections for a Federal and State Endangered fish facing a high risk of extinction.

The Sacramento River from Keswick Dam downstream to the Red Bluff Diversion Dam (RBDD) is a Commission designated Wild Trout Water and provides some of the best rainbow trout fishing in California. The proposed emergency fishing closure from the Keswick Dam to the Highway 44 bridge is a 5.5 mile (about nine percent) reduction in areas open to fishing upstream of the RBDD. Although this represents a small portion of the fishery, it is one of the most popular reaches for both shore based and boat anglers. The Department does not propose a permanent closure but a temporary 3-month

suspension of fishing and will annually assess the success of all efforts to protect the winter-run Chinook salmon population.

PROPOSED ACTION BY THE DEPARTMENT:

The Department acknowledges the importance of this sport fishery and understands any closure to angling will likely have a substantial effect to both local anglers and anglers travelling from other parts of the State. However, given the gravity and magnitude of the current situation facing winter-run Chinook salmon, the Department acting under the directives of the State and Federal Endangered Species Acts, and the orders and provisions contained in the aforementioned 2014 Proclamations and EO's will be requesting the Commission through emergency action to close the Sacramento River downstream of Keswick Dam to the Highway 44 bridge. If adopted, this emergency closure would take effect upon final approval by the Office of Administrative Law and end July 31, 2015. Normal fishing opportunities would resume August 1, 2015.

Amend Sacramento River subsection (b)(156.5)(B) of Section 7.50, Title 14, CCR, to close all fishing in the Sacramento River from 650 feet below Keswick Dam to the Highway 44 bridge, from the effective date of the emergency regulation (about May 1, 2015) through July 31.

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:

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.

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 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 17, 2014 the Governor proclaimed a State of Emergency to exist in California due to severe drought conditions. As part of the declaration, the Governor ordered the Department of Fish and Wildlife (Department) to work with the California Fish and Game Commission (Commission), using the best available science, to determine whether restricting fishing in certain areas will become necessary and prudent as drought conditions persist. On April 25, 2014 the Governor issued an Executive Order (EO) to proclaim a continuation of the State of Emergency based on ongoing drought conditions. This EO and the original orders are still in place and specifically direct the Department to monitor winter-run Chinook salmon in the Sacramento River and tributaries.

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Benefits: The proposed regulation will provide benefits to the environment through the conservation and preservation of the endangered winter-run Chinook salmon population.

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

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

Subsection (b)(156.5)(B) of Section 7.50, Title 14, CCR, is amended to read:

<i>Body of Water</i>	<i>Open Season and Special Regulations</i>	<i>Daily Bag and Possession Limit</i>
(156.5) Sacramento River and tributaries below Keswick Dam (Butte, Colusa, Contra Costa, Glenn, Sacramento, Solano, Sutter, Tehama and Yolo Cos.)	Also see Sierra District General Regulation (See Section 7.00(b))	
(A) Sacramento River from Keswick Dam to 650 feet below Keswick Dam	Closed to all fishing all year.	
(B) Sacramento River: from 650 feet below Keswick Dam to the Deschutes Road bridge. <u>1. from 650 feet below Keswick Dam to the Highway 44 bridge.</u>	All year. Only barbless hooks may be used. <u>Closed to all fishing from [OAL to insert effective date] through July 31.</u>	2 hatchery trout or hatchery steelhead** 4 hatchery trout or hatchery steelhead** in possession.
	<u>August 1 through December 31. Only barbless hooks may be used.</u>	<u>2 hatchery trout or hatchery steelhead** 4 hatchery trout or hatchery steelhead** in possession.</u>
<u>2. from the Highway 44 bridge to the Deschutes Road bridge.</u>	<u>All year. Only barbless hooks may be used.</u>	<u>2 hatchery trout or hatchery steelhead** 4 hatchery trout or hatchery steelhead** in possession.</u>

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.