

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

Amend Section 1.74, Section 5.87, subsection (b)(180) of Section 7.50,
subsection (a) of Section 8.00, and subsections (b) and (c) of Section 701
Title 14, California Code of Regulations
Re: Report Card and Low-Flow Regulations

I. Date of Initial Statement of Reasons: May 29, 2009

II. Dates and Locations of Scheduled Hearings:

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| (a) | Notice Hearing: | Date: August 6, 2009
Location: Woodland, CA |
| (b) | Discussion Hearing: | Date: October 1, 2009
Location: Woodland, CA |
| (c) | Discussion Hearing: | Date: November 5, 2009
Location: Woodland, CA |
| (d) | Adoption Hearing: | Date: December 11, 2009
Location: West Sacramento, CA |

III. Description of Regulatory Action:

- (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

The Department of Fish and Game proposes the following regulatory changes, relating to angling on north coast streams and sport fishing report cards:

- Require a salmon report card (FG 684 (Rev. 9/09)) in the Smith River [1.74; 5.87; 701(b)].
- Add slight modification to sturgeon report card (FG 683 (Rev. 9/09)) [701(c)].
- Allow only barbless hooks in the Smith River [7.50(b)(180)].
- Change the annual beginning date for low-flow angling restrictions in the Mad River [8.00].
- Clarify the procedure and correct the phone number for implementing north coast low-flow angling restrictions [8.00].
- Extend the low-flow restriction reach of the Middle Fork Eel River, to be consistent with the reach open to fishing [8.00].
- Correct the low-flow restriction reach for the South Fork Smith River, to be consistent with the reaches open to fishing [8.00].

Present Regulations

Section 1.74, Title 14, CCR, contains the general requirements, tagging procedures, and regulations for the following sport fishing cards: Klamath-Trinity Salmon Report Card, Steelhead Report and Restoration Card, Spiny Lobster Report Card, Sturgeon Fishing Report Card, and Abalone Report Card.

Section 5.87, Title 14, CCR, contains the requirements, procedures and regulations that are specific to the Klamath-Trinity Salmon Report Card.

Subsection 7.50(b)(180), Title 14, CCR, contains the Smith River season dates, special regulations, and daily bag and possession limits.

Section 8.00(a), Title 14, CCR, contains the low flow restrictions, flow determination procedures and Department informational numbers for all inland waters.

Section 701, Title 14, CCR, lists sport fishing forms, form revision dates, associated annual fees, and other related information.

Proposed Regulations

For public notice purposes to facilitate Commission discussion, the Department is proposing the following changes to current regulations:

Require Salmon Report Card in Smith River (Sections 1.74; 5.87; 701(b))

Existing regulations require anglers fishing for salmon in the Klamath-Trinity river system to possess and use a Klamath-Trinity Salmon Report Card. Anglers are allowed to retain Chinook salmon in the Klamath-Trinity, and the report card provides the department effort and catch data that are very valuable in managing the continued sustainability of salmon populations there. The only other north coast river where anglers may retain Chinook salmon is the Smith River. However there is no salmon report card requirement in the Smith River, so the fishery is managed without the aid of critical monitoring for effort and catch.

This proposed regulation change would expand the Klamath-Trinity Salmon Report Card requirements to the Smith River, which would provide critical data for the Smith River, enabling better informed fisheries management decisions specific to hatchery and wild Chinook salmon populations in the Smith River. Additionally, there would be a small amount of revenue directed towards data analysis, reporting, and Smith River fisheries monitoring. Also, the report card would be renamed the "North Coast Salmon Report Card" which would simplify the card name and eliminate the need to change the card name in the future if north coast streams are added or deleted.

Add Modification to Sturgeon Report Card (Section 701(c))

This proposed regulation change modifies the sturgeon sport card to add a check box to allow the angler to indicate if they did not fish for sturgeon during the year. This proposed small change will assist analysis of the report date.

Allow only Barbless Hooks in Smith River (Subsection 7.50(b)(180))

Existing regulations for the Smith River allow barbed hooks during September through March in the Middle, North, and South Forks, and during September through April in the main stem.

In 1998, pursuant to a 1998 Memorandum of Agreement (MOA) between DFG and NOAA Fisheries, the Fish and Game Commission (FGC) banned barbed hooks for angling on all north coast anadromous waters. In 2004, the FGC changed Smith River regulations to the present language allowing barbed hooks. DFG opposed the FGC 2004 regulation change. The change potentially increased salmon and steelhead hooking mortality and incidental take of threatened coho salmon, and did not adhere to the MOA. Additionally, the regulation change resulted in inconsistent regulations for terminal gear in north coast anadromous waters.

In 2007, AB 1729, Chapter 285, SEC. 113, Section 7149.45. (a) was enacted, expanding the areas where anglers may use a second rod in California beginning in 2008. Anglers who have a second rod stamp may now fish with two rods in any inland water, except where only artificial lures or barbless hooks are allowed. A result is that anglers may now use two rods in the Smith River when and where barbed hooks are allowed. Anglers using two rods and terminal gear with baited barbed hooks potentially catch more fish and increase hooking mortality.

This proposed regulation change would reenact the barbless hook requirement in the Smith River and would again standardize barbless terminal gear for north coast district anadromous waters. Use of second rods in the Smith River would not be allowed, thus reducing population risk potential for threatened anadromous salmonid species.

Change Beginning Date for Mad River Low-Flow Restrictions (Section 8.00(a))

Existing regulations allow angling in the lower Mad River from the fourth Saturday in May through March 31, with low-flow restrictions in effect from October 1 through January 31. Chinook salmon generally begin to enter and hold in pools in the Mad River during late August or early September. During September, Chinook are easily detected, accessible, and subject to heavy fishing pressure and poaching due to low flow and clear water. DFG regional offices receive numerous calls regarding violators, and the trend for citations is increasing each year.

This proposed regulation change would begin low-flow restrictions in the Mad River on September 1 rather than October 1. It would reduce unlawful take and unnecessary risk to this threatened species.

Clarify Implementation and Correct Phone Number for North Coast Low-Flow Restrictions (Section 8.00(a))

Existing regulations authorize the Department to close or open north coast anadromous stream reaches to angling, based on specified minimum flows at specified gauging stations on specified flow-determination days (Monday, Wednesday, and Friday):

- When the flow is below the minimum on a flow-determination day, the reach is closed starting the day after that flow-determination day, through the next flow-determination day.
- When the flow is above the minimum on a flow-determination day, the Department may close the reach if the Department expects the flow to decrease below the minimum before the next flow-determination day.
- The Department may reopen a reach at any time if the minimum flow is exceeded, and if the Department expects it will remain exceeded until the next flow-determination day.

The wording of the existing regulations is complicated and has resulted in public confusion and numerous inquiries to the Department regarding its authority to close the fishery on the flow-determination day when the flow is above the minimum. Clarification is needed.

This proposed regulation change would add two words (“or on”) to Section 8.00 (a) to clarify implementation. When the flow is above the minimum on a flow-determination day, the Department may close the reach if it expects the flow to decrease below the minimum before “or on” the next flow-determination day. This change would reduce confusion for anglers and Department staff time for public inquiries. Additionally, the north coast low-flow information telephone number at the end of Section 8.00(a) has changed because the information line was relocated from Eureka (707-442-4502) to Arcata (707-822-3164).

Extend Middle Fork Eel River Low-Flow Restrictions Reach (Section 8.00(a)(2))

Existing special stream regulations (Section 7.50(b)(63)(D)) designate a reach of the Middle Fork Eel River, from its mouth upstream to Bar Creek, as open to fishing. This reach is about 35 miles long. The open season in this reach is January through May and July 16 through September. Existing low-flow restriction regulations (Section 8.00(a)(2)) specify the low-flow restriction reach of the Middle Fork Eel as the mouth upstream to the Black Butte River. This reach is about 32 miles long, and low-flow restrictions are in effect October through January.

The result of the above is a 3 mile reach of the Middle Fork Eel (from Black Butte River upstream to Bar Creek) that, during the month of January, is open to fishing but not subject to low-flow closure. This is an inconsistency in the regulations, and it allows angling for adult salmonids in January without the protection of low-flow closure. The main adult salmonid present at this time of year is winter-run steelhead (federally listed as threatened). Additionally, some coastal Chinook, which are also federally listed as threatened, may also be present (January is late in the run).

The proposed regulation change would extend the low-flow restriction reach upstream 3 miles to the mouth of Bar Creek. This would make the low-flow regulations consistent with the special stream regulations, and provide low-flow closure protection in that 3 mile reach.

Reduce Low-Flow Restriction Reach for South Fork Smith River (Section 8.00(a)(7))

Existing special stream regulations (Section 7.50(b)180(C)) designate two reaches on the South Fork Smith River as open to fishing: from the mouth upstream to the County Road (George Tryon) bridge (about 1,000 feet); and from Craigs Creek to Jones Creek (about 14 miles). The reach between those two open reaches (from George Tryon Bridge upstream to Craigs Creek, about 1.9 miles), is closed to fishing.

Existing low-flow restriction regulations (Section 8.00(a)(7)) designate the low-flow restriction reach of the South Fork Smith River as the mouth upstream to Jones Creek, which includes the closed reach from George Tryon Bridge to Craigs Creek. Thus the reach subject to low-flow restriction includes a portion of stream about 1.9 miles long that is closed to fishing all year. This inconsistency is confusing and may lead some anglers to believe the closed reach from George Tryon Bridge to Craigs Creek is actually open to fishing.

This proposed regulation change would correct the inconsistency by reducing the existing low-flow restriction reach to conform with the reaches open to fishing in the special stream regulations. This proposed change would provide better public understanding and compliance with fishing regulations, reduce staff time to address public inquiries, and may spare some anglers a citation.

(b) Authority and Reference Sections from Fish and Game Code for Regulation:

Section 1.74

Authority: Sections 200, 202, 205, 240, 1050, 1053, 1055, 1055.1 and 7380, Fish and Game Code.

Reference: Sections 200, 202, 205, 206, 240, 713, 1050, 1053, 1055, 1055.1, 7149.8, 7380, 7381 and 7382, Fish and Game Code.

Section 5.87

Authority: Sections 200, 202 and 205, Fish and Game Code.

Reference: Sections 200, 202 and 205, Fish and Game Code.

Subsection 7.50(b)(180)

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

Reference: Sections 200, 205, 206, 215 and 316.5, Fish and Game Code.

Section 8.00

Authority: Sections 200, 202, 205, 215 and 220, Fish and Game Code

Reference: Sections 200, 202, 205, 206 and 220, Fish and Game Code.

Section 701

Authority: Sections 200, 202, 205, 220, 713, 1050, 1053, 7149.8 and 7380, Fish and Game Code

Reference: Sections 200, 202, 205, 206, 220, 713, 1050, 1053, 1055, 7149.8 and 7380, Fish and Game Code.

- (c) Specific Technology or Equipment Required by Regulatory Change:

None.

- (d) Identification of Reports or Documents Supporting Regulation Change:

None.

- (e) Public Discussions of Proposed Regulations Prior to Notice Publication:

Several Smith River Advisory Council 2009 public meetings were attended by Department staff where the regulation proposals were discussed.

The proposed regulations were also presented and discussed at Del Norte County Fish and Game Advisory Commission (DNFGAC) public meeting on May 7, 2009 and June 4, 2009. Additionally, the regulation proposal was presented by DNFGAC Chairman to the Del Norte County Board of Supervisors on June 9, 2009,

The Department discussed the regulatory proposal at the Commission's Taucher subcommittee on June 23, 2009 and at the Commission's June meeting on June 24, 2009.

The 45-day comment period provides additional time for review of the proposed amendments.

IV. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change:

No alternatives were identified.

- (b) No Change Alternative:

The no-change alternative does not provide additional angler information requested by various stakeholder groups to improve North Coast CA fisheries management.

- (c) Consideration of Alternatives:

In view of the information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulations are proposed, or would be as effective and less burdensome to affected private persons than the proposed regulations.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment. Therefore, no mitigation is necessary.

VI. 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 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 proposed changes are necessary for the continued preservation of the resource and therefore 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:

None.

- (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.

Informative Digest (Policy Statement Overview)

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