

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

Amend Subsection (b)(178) of Section 7.50, Title 14, CCR
Re: Silver King Creek

- I. Date of Initial Statement of Reasons: December 23, 2008
- II. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: February 5, 2009
Location: Sacramento, California
 - (b) Discussion Hearing: Date: March 5, 2009
Location: Woodland, California
 - (c) Adoption Hearing: Date: April 9, 2009
Location: Lodi, California
- III. Description of Regulatory Action:
 - (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

Current regulations for Silver King Creek (Alpine Co.) downstream of the confluence with Tamarack Lake Creek provide for trout fishing from the last Saturday in April through November 15, with a five-fish daily bag limit and ten-fish possession limit. Angling is permitted in this portion of the drainage, originally occupied by the endemic Paiute cutthroat trout. Nonnative trout now dominate this portion of the system (below Llewellyn Falls, a natural barrier to upstream fish movement), posing an ongoing threat to the native Paiute cutthroat trout. The portion of Silver King Creek and tributaries (including lakes) above Tamarack Lake Creek (within section 7 T7N R22E) is currently closed to fishing year-round to protect Paiute cutthroat trout populations above Llewellyn Falls.

The Department is proposing to increase the bag limit for trout in Silver King Creek downstream of the confluence with Tamarack Lake Creek to the confluence with the Snodgrass Creek (approximately 8 miles of Silver King Creek) to a ten (10) fish daily bag limit and ten (10) fish possession limit. The proposed regulation change will protect Paiute cutthroat trout by: 1) reducing the number of non-native trout available for illegal human-induced translocation upstream into protected Paiute cutthroat trout habitats above Llewellyn Falls; and 2) improving the odds of additional

restoration efforts to eliminate non-native trout from the Silver King Creek drainage downstream from Llewellyn Falls, a natural barrier upstream of the confluence with Snodgrass Creek.

Paiute cutthroat trout are listed as Threatened pursuant to the Federal Endangered Species Act. The adoption of this proposed regulation change will help protect native Paiute cutthroat trout by reducing the overall population of nonnative trout below Llewellyn Falls, thereby reducing the risk of someone moving nonnative trout above Llewellyn Falls. These trout pose a significant threat to the future recovery and protection of pure strain Paiute cutthroat trout that exist above the falls.

This proposed regulation change may indirectly benefit the Paiute cutthroat trout restoration project that will, if approved, involve eradication of nonnative trout in the stream reach downstream of Llewellyn Falls to Snodgrass Creek. Currently, the proposed restoration project is pending due to funding and permitting issues. The proposed action is identified as one of the primary recovery criteria in the Revised Recovery Plan for Paiute Cutthroat Trout. This project is supported by the U.S. Fish and Wildlife Service, U.S.D.A. Forest Service, Humboldt-Toiyabe National Forest, Lahontan Regional Water Quality Control Board, California Trout, and Trout Unlimited.

It is anticipated that if and when the Paiute cutthroat population is expanded and restored, the Department will recommend to the Commission that the recovered fishery be considered as designated Heritage Trout Water under the Department's Heritage and Wild Trout Program.

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

Authority: 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.

- (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:

No public meetings are being held prior to the notice publication. The 45-day comment period provides adequate 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 changes are necessary to safeguard the recovery of a federally threatened species.

(c) Consideration of Alternatives:

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

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

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 regulation affects a short stream reach in a remote wilderness area of northern California and is 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.

- (d) 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.

- (e) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

- (f) Other Nondiscretionary Costs/Savings to Local Agencies:

None.

- (g) Programs Mandated on Local Agencies or School Districts:

None.

- (h) 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

Current regulations for Silver King Creek (Alpine Co.) downstream of the confluence with Tamarack Lake Creek provide for trout fishing from the last Saturday in April through November 15, with a five-fish daily bag limit and ten-fish possession limit. Angling is permitted in this portion of the drainage, originally occupied by the endemic Paiute cutthroat trout. The portion of Silver King Creek and tributaries (including lakes) upstream of Tamarack Lake Creek is currently closed to fishing year-round to protect Paiute cutthroat trout populations above Llewellyn Falls. Currently non-native rainbow trout dominate Silver King Creek below Llewellyn Falls, a natural barrier to upstream fish movement, posing a threat to the native Paiute cutthroat trout residing above the barrier.

The Department is proposing to increase the bag limit for trout in Silver King Creek downstream of the confluence with Tamarack Lake Creek to the confluence with Snodgrass Creek (approximately 8 miles of Silver King Creek) to a ten (10) fish daily bag limit and ten (10) fish possession limit. The proposed regulation change will reduce the number of non-native trout available for illegal human-induced translocation upstream into protected Paiute cutthroat trout habitats above Llewellyn Falls; and 2) reduce the population of non-native trout, thus improving the odds of additional restoration efforts to eliminate non-native trout from the Silver King Creek drainage.

Other existing portions of the watershed currently closed to angling would remain closed.