

**TITLE 14. Fish and Game Commission
Notice of Proposed Changes in Regulations**

NOTICE IS HEREBY GIVEN that the Fish and Game Commission, pursuant to the authority vested by sections 200, 202, 205, 220 and 315 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 205, 206 and 220 of said Code, proposes to add sections 1.54, 5.70 and 5.83; and to amend sections 1.74, 2.00, 2.09, 2.30, 3.00, 5.00, 5.15, 5.30, 5.37, 5.40, 5.51, 5.60, 5.82, 5.87, 7.00, 7.50, 8.00, 27.80, 29.80, 29.90, 700 and 701, Title 14, California Code of Regulations, regarding Sport Fishing Regulations for 2010-2012.

Informative Digest/Policy Statement Overviews

Amend Section 2.00, Section 2.09, Section 2.30, Section 3.00, Section 5.15, Section 5.37, Section 5.51, subsection (e) of Section 5.60, Section 7.00, subsections (a), (b)(12), (b)(19.5), (b)(28.5), (b)(53.8), (b)(68.2), (b)(72.5), (b)(84), (b)(170.5), (b)(171.6), (b)(181), and (b)(187.5) of Section 7.50, Section 27.80, and Section 700, and Add Section 1.54 and subsection (b)(4.5) and (b)(25.3) of Section 7.50, and Repeal subsection (b)(88) of Section 7.50 Title 14, California Code of Regulations

Re: Minor Regulatory Revisions and Cleanup

This Department proposal is a combination of Department and public requests for Title 14, California Code of Regulations (CCR) minor revisions and cleanup for the 2009 triennial sport fishing review cycle. This proposal will repeal the license display requirement, clarify regulations for the take of saltwater species in inland waters, institute new grass carp retention measures, and minor additions to the special regulations.

The Department has also determined that Title 14, CCR, has errors due to incorrect or missing Title 14 updates, incorrect cross-section references, typographic errors, and other regulatory problems that increase public confusion of the regulation's intent and regulation complexity.

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

REPEAL OF DISPLAY REQUIREMENT OF LICENSE

The "wear your license" requirement places a burden on anglers to wear their licenses while fishing and risk losing their licenses, while the benefit to DFG is minimal. The cost of a sport fishing license has increased from \$23.25 in 1994 to \$39.25 in 2009; therefore, it is a bigger expense today to the angler to replace a lost license, stamps and/or report cards.

Section 700(a) requires every angler to display their sport fishing license above their waist while fishing. This regulation was enacted in 1994 to increase license sales and allow wardens to check for compliance from a distance.

While license sales increased slightly in 1994, sales have declined since then. License sales figures have fluctuated over the years and show a slight declining trend. The increase in sales in 1994 can not be verifiably linked to the license display requirement.

The benefit to law enforcement has become irrelevant. Wardens have to check licenses anyway to verify that anglers possess the proper stamps and report cards and to verify that angler catch and effort are recorded on report cards according to regulations. Since the inception of the "wear your license" requirement, additional report cards for sturgeon, spiny lobster and abalone have been added. There are currently five report cards and four stamps that are required for certain areas or species throughout the State. Additionally, wardens need to examine each license to verify that the license belongs to the angler and that it is not simply a piece of colored paper.

Amend Section 700, hunting and fishing license possession and display regulations.

– Remove the requirement to display the sport fishing license on an angler’s outer clothing. This change was a public recommendation that was supported by enforcement to reduce public confusion and simplify regulations.

TAKE OF SALTWATER SPECIES IN INLAND WATERS

Under current regulations there are not provisions allowing for the take of saltwater crabs in inland waters, although sport fishing for saltwater crabs in inland saltwater estuaries is a popular pastime for many sport fishermen. The problem is that many of the popular sport crab fishing estuaries are anadromous waters which are closed to all fishing during much of the time that it is legal to take saltwater crabs.

Both Sections 7.00 and 7.50 state, “Unless otherwise provided, waters shown as open to trout and salmon fishing below, are open to fishing for other species” and “Unless otherwise provided, waters closed to trout and salmon fishing are closed to fishing for all other species”. These sections go on to list some exceptions to the closures, “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 fishing methods other than hook-and-line fishing.”

Sport fishermen often complain to the Department’s Law Enforcement Division (LED) when they cannot fish for crabs in these saltwater estuaries because of stream closures. The LED is proposing to allow take of saltwater species in inland waters under marine regulations under certain conditions.

Amend Section 2.00, general fishing methods.

- Allow for other fishing methods when authorized by regulations.

Amend Section 7.00, trout and salmon district general regulations and subsection 7.50(a) trout and salmon special regulations.

- Allow the take of saltwater clams, crabs, ghost shrimp and blue mud shrimp in inland saltwater areas when trout and salmon are prohibited under certain conditions with hoop nets and by hand. Rigid crab traps will not be allowed due to potential conflicts with listed salmonids. This will clarify the regulations, reduce public confusion and strengthen enforcement measures.

NEW GRASS CARP RETENTION MEASURES

The regulation currently states that no grass carp may be taken or possessed at any time and that any grass carp inadvertently taken must be immediately returned unharmed to the water.

In 2002, Grass carp were discovered in Lake Siskiyou, Siskiyou County, during a routine electrofishing survey. Captured grass carp were tested and found to be fertile and able to reproduce. Due to the extensive reproductive capacity and voracious herbivorous feeding habits all grass carp should be removed from Northern California waters.

If Grass carp are able to escape Brown’s Pond and Lake Siskiyou, the potential for negative impacts on aquatic resources would be severe. The damages would be extensive and would further hinder the Sacramento River’s salmon populations.

Amend Section 5.37, statewide grass carp restrictions.

– Allow for an exception to the possession of grass carp and add reporting requirements in Siskiyou and Shasta counties similar to northern pike regulations to assist with eradication efforts.

BODFISH CREEK ADDITION TO SPECIAL REGULATIONS

Bodfish Creek is a tributary to Uvas Creek in Santa Clara County. Uvas Creek is specifically listed under the Special Regulations as being closed to fishing year round from the Highway 152 bridge up to Uvas Dam, but no reference is made to its tributaries. The General Regulations state at Section 7.00(e) that any body of water in Santa Clara County not called out by name in the Special Regulations is open from the last Saturday in April through November 15. Finally, to further complicate things, the confluence of

Bodfish Creek is below the Highway 152 bridge, which could be interpreted to mean that all of Bodfish Creek is open from December 1 through March 7.

This discrepancy is confusing to anglers and nearly impossible to effectively enforce. Also a conservation measure is being proposed by Santa Clara County Parks (with support from DFG) for re-operation of an on-channel pond (previously known as Sprig Lake) as rearing habitat for juvenile steelhead.

To align with the steelhead protection of Uvas Creek, Bodfish Creek is proposed to be added in the Special Regulations.

Add subsection 7.50(b)(25.3), Bodfish Creek special regulations.

– Add subsection to contain the Bodfish Creek season dates, special regulations, and daily bag and possession limits moved from the general district regulations. This will help provide additional protection to native fishes and reduce public confusion.

UPPER AMERICAN RIVER ADDITION TO SPECIAL REGULATIONS

The Upper American River regulations in the General District Regulations, Section 7.00(b)(6), are proposed to be moved into the Special Regulations, Section 7.50, to place the upper and lower section of the American River in the same regulatory section.

Amend Section 7.00, trout and salmon district general regulations.

- moved upper American River and tributaries regulations into the Special Regulations and renumber the following subsections. This will help clarify the regulations and place all of the American River regulations in the same location.

Add subsection 7.50(b)(4.5), American River and tributaries above Folsom Lake special regulations.

– Add subsection the special regulations to contain the upper American River and tributaries season dates, special regulations, and daily bag and possession limits moved from the general district regulations. This will help clarify the regulations.

OCEAN SALMON OPENERS FOR 2010

The 2010 season openers for all areas below Horse Mountain and size limits were adopted by the Pacific Fishery Management Council in April 2009 but left out the Commission's 2009 salmon regulatory process to reduce the need for additional public notice.

Amend Section 27.80, ocean salmon regulations.

– Add 2010 season openers for all areas below Horse Mountain and size limits. This change will reduce public confusion and align state regulations with federal regulations.

LAKE DAVIS CLEANUP

The California Department of Fish and Game (Department) eradicated northern pike (*Esox lucius*) from Lake Davis in the fall of 2007. In response, special measures were adopted to Sections 5.51 and 7.50(b)(53.8) to 1) temporarily increase the daily bag limit from five to ten trout per day, and 2) require any northern pike caught at Lake Davis, or its tributaries, to be immediately killed and returned to the tributary or lake, rather than be killed and turned into the Department.

These special measures are now expired and this proposal will remove them to clean up the regulatory language and reduce public confusion.

Amend Section 5.51, statewide northern pike restrictions.

– Remove expired regulatory language for clarity.

Amend subsection 7.50(b)(53.8), Davis Lake special regulations.

– Remove expired regulatory language for clarity.

OTHER REGULATORY CLEANUP

The Department is proposing additional minor revisions in the following areas of Title 14, CCR, regulations. While these problems are minor when viewed individually, they must be corrected to clarify regulations, reduce public confusion, align regulations, and improve regulatory enforcement.

Add Section 1.54, Inland Sport Fishing Districts.

- Place a reference to the trout and salmon sport fishing districts which are also used as boundaries in inland non-trout regulations to reduce public confusion.

Amend Section 2.09, Possession of Illegal Gear Regulations.

- Add canals to locations where illegal gear is not allowed to clarify enforcement jurisdiction.

Amend Section 2.30, Statewide Spearfishing Regulations.

- Add tilapia to the authorized species for the Colorado River District as it was lost during previous Title 14 updates.

Amend Section 3.00, Statewide Fishing Hour Regulations.

- Revise table in subsection (b)(D)(2) for clarity and regulation simplification.

Amend Section 5.15, Statewide Catfish and Bulhead Regulations.

- Correct a typographical error from a previous Title 14 update.

Amend subsection (e) of Section 5.60, Methods of Take for Statewide Reptile Regulations.

- Correct cross reference in the "methods of take" subsection to reduce public confusion.

Amend Section 7.00 and subsection 7.50(a), Clarification of District and Special Regulations Restrictions.

- Add clarification that gear restrictions listed in these sections apply to the take of all species of fish unless otherwise noted to reduce public confusion.

- Add clarification that restrictions on fishing methods and gear, fishing hours, and the use of bait contained in other section may also apply to reduce public confusion.

Amend subsection 7.50(b)(12), Arroyo Seco River Special Regulations.

- Remove reference to a footbridge in subsection (A) to reduce public confusion.

Amend subsection 7.50(b)(19.5), Big Bear Lake tributaries special regulations.

- Change the season closing date to the last day in February to cover leap years to reduce public confusion.

Amend subsection 7.50(b)(28.5), Burney Creek Special Regulations.

- Add total length to size limit to reduce public confusion and improve enforcement.

Amend subsection 7.50(b)(68.2), Feather River North Fork Special Regulations.

- Add Butte county to the county list for clarity and to reduce public confusion.

Amend subsection 7.50(b)(72.5), Guadalupe River Special Regulations.

- Remove redundant information from bag limit column. A zero bag limit indicated without a species will apply to all salmonids and fishing for other species is already allowed by subsection. This change will reduce public confusion and align the regulatory language of this subsection with the other special regulations.

Amend subsection 7.50(b)(84), Junction Lake and Tributaries Special Regulations.

- Correct a typographic error in the spelling of Mono County for clarity.

Repeal subsection 7.50(b)(88), Title 14, CCR, is a reserve section that contains duplication regulations.

- Repeal this subsection as it is a partial duplicate of Subsection 7.50(b)(87) to reduce public confusion.

Amend subsection 7.50(b)(170.5), San Mateo Creek and Tributaries Special Regulations.

– Correct abbreviation for county to align the regulatory language of this subsection with the other special regulations.

Amend subsection 7.50(b)(171.6), San Margarita River and Tributaries Special Regulations.

– Correct abbreviation for county to align the regulatory language of this subsection with the other special regulations.

Amend subsection 7.50(b)(181), Sonoma Creek and Tributaries Special Regulations.

– Correct cross reference to Section 8.00(b) to reduce public confusion.

Amend subsection 7.50(b)(187.5), Stevens Creek Special Regulations.

– Remove redundant information from bag limit column. A zero bag limit without a species shown will apply to all salmonids and fishing for other species is already allowed by subsection. This change will reduce public confusion and align the regulatory language of this subsection with the other special regulations.



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

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 683 (Rev. 9/09) in the Smith River [1.74; 5.87; 701(b)].
- Add slight modification to sturgeon report card FG 684 (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.



Amend Section 5.00, Section 5.30, Section 5.40, Section 5.82, subsections (b)(1.5), (b)(128), (b)(147) and (b)(182) of Section 7.50, and Add Section 5.70, Section 5.83 and subsection (b)(181.8) of Section 7.50

Title 14, California Code of Regulations

Re: Sport Fishing Bag Limits

This Department proposal is a combination of Department and public requests for Title 14, California Code of Regulations (CCR) revisions to sport fishing bag limits for the 2009 triennial sport fishing review cycle. This proposal modifies bag limit regulations for black bass in Lake Perris, crappie, sunfish, lamprey, Sacramento splittail, Alameda Creek and tributaries, Nacimiento River, Putah Creek, and Lake Sonoma and tributaries.

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

LAKE PERRIS BLACK BASS REGULATIONS

In October 2005, the Department of Water Resources, Division of Dam Safety, determined the dam at Lake Perris was unsafe due to concerns about stability during an earthquake. An emergency lowering of the lake surface elevation by 25 feet was necessary to meet safety standards. This lowering reduced the water surface area by 20% and the lake volume by 43%. Population estimates for 12 inch and larger largemouth bass conducted pre and post drawdown, have shown a 60 to 67 percent decline in bass numbers. This population decline is due to reduced water volume, lack of suitable habitats, concentration of fish, lack of recruitment and predation. Angling pressure for bass has decreased during this period due to fewer boats allowed to launch and a 75% reduction in the number of team tournaments held.

Recent general fish surveys have confirmed that since the drawdown all year classes of bass are very weak and may not sustain the fishery with normal fishing pressure and harvest. Lake Perris was known as a trophy bass fishery, but under the current recruitment conditions, production of larger fish is in doubt.

Unlike most of the water bodies in southern California, significant portions of bass caught from shore were kept as food. Raising the minimum legal size reduces this impact by restricting anglers to harvesting only larger bass, which are not as common in the areas accessible to shore anglers. The Department has established a successful put-and-take trout fishery and this will help mitigate the impacts to shore anglers wanting fish for consumption. The trout fishery could be experiencing increased utilization, as fish confined to the smaller body of water are more available to the anglers.

Upon completion of the dam repair project and water levels returning to full pool, we estimate the bass fishery will take 5 to 10 years to return to pre-drawdown numbers. The Department is implementing habitat improvement projects within Lake Perris which should help maintain the existing fishery and

expedite recovery with restoration of the water level. Upon re-establishment of the fishery, the regulations will return to the statewide standards for size and bag limits.

The largemouth bass population in Lake Perris has continued to decline since the 2005 drawdown, it is extremely important that approval of this regulation change occur during this cycle.

Amend Section 5.00, Black Bass Regulations.

- Add Perris Lake regulations to establish a bag limit of 2 fish with a minimum size of 15 inches.
- Additional minor changes are proposed for clarity and to reduce public confusion.

CRAPPIE, SUNFISH AND TILAPIA

Presently crappie has a 25 fish bag limit where as sunfish and tilapia have no limit. The Law Enforcement Division has seen an increase in the illegal commercialization of sunfish in recent years. With no bag limit on sunfish, there is no way to regulate the amount of fish that can be taken, therefore increasing the ease of supply for a commercial demand. Sunfish are also commonly used for bait on illegal long lines in inland waters.

The Department's Law Enforcement Division is proposing to establish a statewide combined bag limit of 25 sunfish and crappie to combat illegal commercialization of sunfish and crappie and improve compliance with existing regulations.

Amend Section 5.30, Crappie Regulations.

- Move crappie regulations to Section 5.82 to establish a statewide combined bag limit with sunfish.
- Add cross reference to section 5.82 for clarity.

Amend Section 5.82, Sunfish and Tilapia Regulations.

- Move tilapia regulations to Section 5.83.
- Establish combined bag limit of 25 sunfish and crappie except in Barrett and Upper Otay Lakes where there is a zero bag limit.
- Add crappie size limit of 10 inches for Hodges and El Capitan Lakes.

Add Section 5.83, Tilapia Regulations.

- Add tilapia open seasons of all year except for district and special regulations closures.

LAMPREY REGULATIONS

The Department proposes to establish a bag limit of 5 for Pacific Lamprey within state waters. Pacific Lamprey stocks are depressed throughout much of its west coast range. The Pacific Lamprey Conservation Initiative is an effort presently led by the U.S. Fish and Wildlife Service (FWS) to facilitate communication and coordination relative to the conservation of Pacific lampreys throughout their range. The goal of the initiative is to develop a Pacific Lamprey Conservation Plan that will lead to restored Pacific lamprey populations and improvement of their habitat.

This initiative is addressing the consideration of Pacific Lamprey when implementing instream activities, mercury contamination and bioaccumulation, spawning characteristics, biological and ecological needs, and threats. Department staff are part of this conservation initiative. The Department proposed to establish California bag limits similar to others west coast states as a reasonable management measure.

Amend Section 5.40, Lamprey Regulations.

- Reduce bag limit to 5 lamprey.
- Remove traps from approved methods of take.
- Additional minor changes are proposed for clarity and to reduce public confusion.

SPLITTAIL REGULATIONS

Sacramento splittail is a native minnow once listed as a Threatened Species under Federal Endangered Species Act. The original listing was due to extensive habitat loss and fluctuations in abundance. Though the species is no longer listed, the decision was controversial and under regional examination.

Splittail are the object of a sport fishery primarily focused on the spawning grounds during spawning season. The species is also used as bait. Existing sport fishing regulations have no limits for splittail. This proposal will add protections for splittail that are consistent with new concerns about the species.

Add Section 5.70, Sacramento Splittail Regulations .

- Add bag limit of 2 fish.
- Restrict methods of take to angling only.

ALAMEDA CREEK SPECIAL REGULATIONS

There are substantive efforts underway to provide fish passage over the 100 % migration barriers in the Alameda Creek flood control channel. While working to provide passage for anadromy, members of the Alameda Creek Work Group are, in the meantime, annually relocating anadromous steelhead from below the lower-most barrier in Alameda Creek to locations upstream of this barrier.

As part of early planning efforts to jumpstart the anadromous steelhead run, the Department is currently considering utilizing the land-locked steelhead populations located upstream of San Antonio and Calaveras Reservoirs as a genetic source of steelhead to jumpstart the anadromous run. Genetic tests indicate that these land-locked populations have the genetics of Central California Coast Distinct Population Segment steelhead. Additionally, trapping efforts have indicated that these populations exhibit the behavioral and morphological characteristics of anadromous steelhead in their migration to and from the Calaveras and San Antonio reservoirs.

This proposal will provide protection for the anadromous steelhead that are annually relocated upstream of the barriers in the flood control, as well as increase protection for the possible genetic source of future steelhead enhancements.

Amend subsection 7.50(b)(1.5), Alameda Creek and Tributaries Special Regulations.

- Add year round closure for all species for areas downstream of San Antonio, Calaveras and Del Valle reservoirs.

NACIMIENTO RIVER SPECIAL REGULATIONS

Through 2008, the Department stocked the main stem of the Nacimiento River downstream of Nacimiento Dam with hatchery trout to support a fishing program at Camp Roberts. National Marine Fisheries Services (NMFS) has expressed concern in the past that hatchery trout were being stocked in a steelhead stream.

The Department and NMFS agreed that data would be collected to determine whether steelhead were being impacted by the fishing program. Otoliths were collected between 2002 and 2005. Otolith analysis by NMFS has shown that progeny of anadromous females have been taken during fishing activities in the river. The Department agreed that the stocking program would discontinue if there was evidence that steelhead were present in the mainstem of Nacimiento River downstream of the dam. The current fishing regulations were set to accommodate anglers being able to keep stocked fish.

Presently with the hatchery trout stocking being stopped, the current regulation needs to be changed to allow catch and release fishing using barbless lures. This change is consistent with fishing regulations for other steelhead streams in the South Central District and is more protective for listed steelhead.

Amend subsection 7.50(b)(129), Nacimiento River Special Regulations.

- Establish zero bag limit for main stem below Nacimiento Dam to the confluence with the Salinas River.

- Correct abbreviation for county to align the regulatory language of this subsection with the other special regulations.

PUTAH CREEK SPECIAL REGULATIONS

A high use rainbow trout fishery exists in Putah Creek (Solano and Yolo counties) from Solano Lake to Monticello Dam partially through out-planting of the Department's hatchery produced rainbow trout. However, it is believed that this reach of stream also supports a native wild trout fishery and that this reach of Putah Creek is considered candidate wild trout water. The Department will have a better understanding of the most appropriate management/regulations needed for that fishery following several years of monitoring.

The recent lawsuit brought against the Department on its hatchery out-planting practices resulted in a review of the affects of out-planting trout in this stream reach by the local Department biologist. It was determined that this practice may result in concerns for negative interactions with various listed species.

The out-planting of Department hatchery produced rainbow trout has been discontinued as a result until further studies can be conducted to determine this potential impact. In the absence of hatchery planted trout, angler harvest based on "put and take" management strategies could potentially impact wild populations.

Without the support of hatchery out-planting, there are concerns by the Putah Creek Trout local angling group that a 5 fish general trout limit would deplete this fishery over time in the 10.5 km reach of Putah Creek and Lake Solano.

Amend subsection 7.50(b)(147), Putah Creek Special Regulations.

- Establish zero bag limit for Putah Creek from Solano Lake to Monticello Dam.
- Correct abbreviation for county to align the regulatory language of this subsection with the other special regulations.

SONOMA LAKE SPECIAL REGULATIONS

Dry Creek, tributary to the Russian River in Sonoma County was dammed in 1983 by the US Corps of Engineers, forming what is now Lake Sonoma. The Lake now harbors a small population of large native rainbow trout (formerly sea-run steelhead) which inhabit the cooler deep waters of the lake and are targeted by fisherman during the spring, summer and fall. No stocking of hatchery rainbow trout has occurred although, largemouth bass and catfish have been stocked in the reservoir, so the lake receives year-round fishing interest and moderate fishing pressure.

The local fisherman have raised concerns for the status of the trout population over the last 3 years due to the recent drought conditions, increased fishing pressure and the applicability of a statewide regulation of 5 trout per day on a landlocked population that is not supplemented by hatchery fish. Because of the popular status of the fishery, the integrity of the population, and the interest by fisherman, the lake is currently under assessment and evaluation by the Department for proposed designation as a Wild Trout Water, thus angler surveys have been conducted over the past 18 months. Reconnaissance surveys of lakes' tributary streams where adults spawn have been conducted and the depressed conditions have been verified over the last two years.

Add subsection 7.50 (b)(181.8), Sonoma Lake Special Regulations.

- Establish a year round two fish bag limit for Sonoma Lake.

Amend subsection 7.50(b)(182), Sonoma Lake Tributaries Special Regulations.

- Reduce bag limit in Sonoma Lake tributaries to two fish.



Amend Section 29.80, Title 14, California Code of Regulations
Re: Gear Restrictions

29.80 (b) states that spiny lobster may be taken by baited hoop nets. There is currently no definition of what a baited hoop net is. For many years a hoop net consisted of two hoops connected by net meshing. The top hoop was larger than the bottom hoop. When the hoop net sat on the bottom of the ocean it laid flat. When lobster fed on bait attached to the hoop net they were free to come and go with nothing keeping them in the hoop net. When it was raised to the surface the net meshing stretched out between the hoops and it caught anything that was feeding in the net at the time it was raised.

Within the last couple of years there have been several types of devices developed that are being called hoop nets. These newly created devices are becoming more and more efficient and are beginning to have the design and are fishing like a trap. Section 29.80 (a)(2) prohibits the use of traps to take lobster. These newly designed devices consist of an upper and lower metal hoop. The bottom hoop is approximately 3 feet in diameter. The upper hoop is about 1-2 feet in diameter. The two hoops are separated with 3-4 rigid pieces of metal approximately 6-12 inches in length, which are connected to both hoops so the upper hoop sits about 6-12 inches above the lower hoop. Between the two hoops is mesh netting. When the device sits on the ocean floor, the top hoop is supported by rigid arms which allow the top hoop to sit above the lower hoop with mesh netting raised in between the two hoops. A lobster will climb up the outside of the mesh netting and enter the top of the device. It then climbs into the net to get to the bait. Depending on the height of the upper hoop, the lobster may or may not be able to exit the device. When the lobster needs to make a quick escape, such as when the device is moved, the lobster swims backwards into the mesh netting and cannot escape. It is also questionable whether a small lobster, once inside the net, can crawl out of the net. This could be an issue if the device was lost and the small lobster could not be released back into the open ocean waters.

Wardens in the field are also commenting on the popularity and efficiency of the newly designed devices. The wardens are finding the success of those using the new devices much greater than those using the old style hoop net that lays flat on the ocean floor until lifted. The field wardens feel some of these "devices" act like a trap, however, there is no definition of what a legal hoop net is supposed to look like. A definition of a hoop net is needed to make the methods of take for lobster enforceable.

The Department is providing two options for the definition of a hoop net for the commission to decide on which definition should be used. The definitions will include the traditional style hoop net that lies flat on the ocean floor as well as the new style device that has the second smaller ring that sits 6-12 inches off of the ocean floor.

As of July 1, 2009, the Department had entered data from 2716 lobster report cards. It is estimated that there are 22,000 to 25,000 lobster report cards to be turned in from the 2008 lobster season. Of the 2716 cards, the data showed that there were 790 people using traditional style hoop nets to take lobsters. There were 531 people using the new style devices. The current data shows that there is a 1.81 catch per outing with the old style hoop nets and a 2.43 catch per outing with the new style devices. These figures come from approximately 10% of the total lobster report cards.

By creating a definition of a hoop net that requires the main parts of the hoop net to lay flat on the ground and not have an elevated upper hoop ring, the lobster will be able to more freely move in and out of the hoop net and therefore keep the sport take of lobster at a more historical level and not have a detrimental impact on the overall lobster resource.

Since there is no current definition of a hoop net, enforcement officers have a hard time proving that a modified or newly designed device is trapping the lobster and therefore is considered a trap, which is unlawful to use. With the newly designed device, the device contains both hoops and mesh netting therefore creating a "hoop net." However the design acts as a trap at times.

The current wording in subsection 29.80(b) needs to be written in a way that makes the intention of the section more enforceable. Currently a person may not fish with more than 5 baited hoop nets south of Piont Arguello while taking crabs and lobsters. The wording "fished" and "baited" make this section hard to enforce. In order to meet the elements of a crime, the nets in the water have to be baited. If the lobster or crabs eat the bait when in the water prior to the warden pulling the hoop net, there would be no violation since the net is not baited. New wording needs to be added to the section making the limit for hoop nets, a possession limit, not a "fished" limit. This way the section can be enforceable.

There is a restriction in the regulations that no hooked device be possessed while diving for crustaceans. It is common for wardens to contact divers with spears when diving for lobsters. Some of the spears have barbs (hooked devices) and some do not. Spears, such as Hawaiian slings, usually do not have barbs but do have long handles. The spear is capable of assisting in the take of lobsters without leaving spear holes in the lobster. Enforcement recommends that spears or hooked devices not be allowed to be possessed while diving or attempting to dive for crustaceans.



Amend Section 29.90, Title 14, California Code of Regulations
Re: Spiny Lobsters

Pursuant to Section 29.90, Title 14, CCR, the legal size for spiny lobster is three and one-fourth inches measured in a straight line on the mid-line of the back from the rear edge of the eye socket to the rear edge of the body shell or carapace. This measurement relies on the lobster being kept in a condition where the body stays in a whole condition and the tail is not separated. If a person were to possess only the tail portion of the spiny lobster, there would be no way to determine if the lobster tail possessed came from a legal sized lobster.

Fish and Game Code Section 5508 makes it unlawful to possess on a boat or bring ashore any fish upon which a size or weight limit is prescribed in such a condition that its size or weight cannot be determined. This section makes it unlawful to possess lobster tails on boats or for divers to bring ashore only the tails of the lobster taken. This section does not cover lobster taken on piers or jetties or lobster already brought ashore. If a person is on shore and possesses only the lobster tail there is no way to determine if the lobster was legal size, and there are no requirements to keep a lobster in a whole condition once it is brought on shore.

Biologists for the Department of Fish and Game have attempted to determine a correlation with the tail length and the carapace length of the spiny lobster. However, due to environmental conditions and their method of growth there is not a uniform (or consistent) correlation between the two lengths.

The proposed amendment would require lobster to be kept in a whole condition until being prepared for immediate consumption. This will ensure that a lobster would be kept in a measurable condition and its legal size could be determined when checked on the shore.



NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Yolo Fliers Club, 17980 County Road 94B, Woodland, California, on Thursday, October 1, 2009 at 8:30 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 held at the Yolo Fliers Club, 17980 County Road 94B, Woodland, California, on Thursday, November 5, 2009, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments may be submitted on or before Friday, October 30, 2009 at the address given below, or by fax at (916) 653-5040, or by e-mail to

FGC@fgc.ca.gov, but must be received no later than Thursday, November 5, 2009 at the hearing in Woodland.

NOTICE IS FURTHER GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the State of California, Department of General Services Auditorium, Ziggurat Building, 707 Third Street, First Floor, West Sacramento, California, on December 10, 2009, at 8:30 a.m., to consider adoption of the proposed Sport Fishing Regulations for the 2010 through 2012 seasons. Additional testimony on the proposed regulations may be received if substantive changes result from the November 5, 2009, meeting or if regulatory alternatives are under consideration.

Draft environmental documents associated with the proposed regulatory actions are made available for comment commencing September 18, 2009. Oral or written comments relevant to these documents will be received at the November 5, 2009, meeting in Woodland. Written comments on these documents may be submitted to the Commission office (address given herein) until 5:00 p.m., November 5, 2009. Draft environmental documents are available for review at the Commission office and at the Department of Fish and Game's headquarters office (same address as Commission). Copies of the documents are also available for review at the Department offices in Redding, Rancho Cordova, Yountville, Fresno, Bishop, Eureka, Menlo Park, Monterey, Ontario and San Diego. **NO WRITTEN COMMENTS ON THE DRAFT ENVIRONMENTAL DOCUMENTS WILL BE ACCEPTED AFTER 5:00 P.M. ON NOVEMBER 5, 2009.**

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, John Carlson, Jr., 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 John Carlson, Jr., or Jon D. Snellstrom at the preceding address or phone number.

Scott Barrow, Department of Fish and Game, phone (916) 445-7600, 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

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 Business, including the Ability of California Businesses to Compete with Businesses in Other States:

**Sections 1.54, 2.00, 2.09, 2.30, 3.00, 5.15, 5.37, 5.51, 5.60, 7.00, 7.50, 27.80, and 700, and
Re: Minor Regulatory Revisions and Cleanup**

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.

**Section 1.74, 5.87, 7.50, 8.00, and Section 701
Re: Report Card and Low-Flow Regulations**

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.

**Sections 5.00, 5.30, 5.40, 5.82, 5.70, 5.83, and 7.50
Re: Sport Fishing Bag Limits**

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.

**Section 29.80
Re: Gear Restrictions**

Proposal #1 may have an economic impact on those who currently sell the new style device that has the ring that sits above the ocean floor when deployed. The company that has a patent on the new style devices also manufactures the old style hoop net. If the new style device were banned, they could still sell the old style hoop net throughout the State.

**Section 29.90
Re: Spiny Lobsters**

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 regulation only involves the possession of sport taken lobster.

All Proposed Sections

- (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.

Section 29.80
Re: Gear Restrictions

- (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. People who currently possess the rigid type device may be able to modify the device by cutting off the rigid pieces of metal which would allow the net to lie flat. This device would then fit the proposed definition of a hoop net. The estimated cost of the new style device is \$20 - \$40 without the line and float rigging.

All Other Proposed Sections

- (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.

All Sections

- (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:
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.

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 or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

John Carlson, Jr.
Executive Director

Dated: August 18, 2009