

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

Amend Sections 5.80, 5.81, 27.90, 27.91, and 701
Title 14, California Code of Regulations
Re: SF 2: Sturgeon Sport Fishing Regulations

I. Date of Initial Statement of Reasons: May 25, 2012

II. Dates and Locations of Scheduled Hearings:

(a) Notice Hearing: Date: June 21, 2012
Location: Mammoth Lake, CA

(c) Discussion Hearing: Date: August 9, 2012
Location: Ventura, CA

(d) Adoption Hearing: Date: November 8, 2012
Location: Los Angeles

III. Description of Regulatory Action:

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

Green sturgeon is listed as a threatened species under the federal Endangered Species Act, take of green sturgeon is prohibited except when specifically authorized, and recovery of green sturgeon is a high priority. Management of white sturgeon is a substantial concern and object of an important fishery. Both sturgeon species are long-lived, first spawning occurs at a relatively old age, spawn infrequently thereafter, and egg-laden females are subject to take year-round and system-wide.

On Sturgeon Fishing Report Cards issued for the years 2007-2010, anglers reported keeping 6,488 white sturgeon, releasing 19,892 white sturgeon, and releasing 956 green sturgeon; anglers also failed to report the species of 165 sturgeon they released. A preliminary investigation suggests that anglers under-reported the release of green sturgeon.

The sport fishing regulations for both species are largely based on the premises that it is important to conserve older fish and sturgeon that survive catch-and-release well. The impact of catch-and-release depends in large part on angler technique.

It is common practice for anglers to do the following, each of which contributes to stress of sturgeon that are released:

- use relative light gear and fight sturgeon to exhaustion over a long period,
- use multiple, barbed hooks that require more effort to remove than would a single point, single shank, barbless hook,
- remove sturgeon, including oversized sturgeon, from the water for measurement and often use a snare (often made of wire rope) to control these fish,
- struggle to accurately measure the total length of white sturgeon, because measuring sturgeon total length requires manipulation of the long and flexible upper lobe of the caudal fin.

When released, a stressed sturgeon sometimes dies outright or abandons their spawning run and reabsorbs their eggs.

Improper use of snares can damage sturgeon tissue, including gill tissue, and use of snares likely encourages or enables some anglers to remove oversized sturgeon from the water.

Sturgeon Fishing Report Cards (Cards) are an integral part of Department and legislative efforts to reduce the illegal commercialization of sturgeon. Cards are a relatively inexpensive method of documenting patterns and levels of white sturgeon and green sturgeon catch. Data from Cards are complementary to an on-going sturgeon population study conducted by the Department. Via the establishment of a Fishery Management and Evaluation Plan as allowed under the federal Endangered Species Act, Cards are an integral part of Department efforts to secure authorization for the incidental take of green sturgeon in fisheries. Cards have been free to anglers but paid for by the now obsolete Bay Delta Sport Fishing Enhancement Stamp Fund. Lack of this funding source puts the continued use of Cards at risk.

Proposal Overview

The proposed changes would (1) increase the survival and spawning success of sturgeon caught and released by anglers in California, and would be harmonious with similar regulations in Oregon, Washington, and Idaho and (2) implement a fee for the issuance of Sturgeon Fishing Report Cards.

Each sturgeon-specific element of the proposal is designed to foster the relatively healthy release of fish that anglers may not, or choose not, to retain.

Implementing a fee for the issuance of Sturgeon Fishing Report Cards will fund issuance of Sturgeon Fishing Report Cards, management of resulting data, and reporting of that data.

Present and Proposed Regulations

1) Sections 5.80 and 27.90 currently define the methods and locations for white sturgeon fishing as well as the size and quantity of white sturgeon that may be harvested; and requires use of 'total length' measurements.

This proposal recommends amending sections 5.80 and 27.90 to also prohibit use of snares, hooks other than one single point, single shank, barbless, removal of fish greater than 68 inches long fork length (FL) from the water; and to require use of fork length measurements.

To assure that the harvestable populations of white sturgeon 46-66 inches total length and white sturgeon 40-60 inches fork length are substantially similar, and to preserve the present 20-inch range between the minimum and maximum size limits, the Department considered data on the statistical relationship between white sturgeon total length and white sturgeon fork length ($y = 0.9036x - 1.2162$; $R^2 = 0.987$). When requiring the use of fork length measurements after decades of requiring total length measurements, the states of Oregon and Washington similarly determined that white sturgeon fork length is 90% of total length and revised their state size limits accordingly.

2) Sections 5.81 and 27.91 currently prohibit the take and possession of green sturgeon.

This proposal recommends amending sections 5.81 and 27.91 to also prohibit the removal of green sturgeon from the water.

3) Section 701 currently authorizes issuance of Sturgeon Fishing Report Cards (Cards) for no fee. The use of Bay Delta Sport Fish Enhancement Stamp revenue as the funding source for printing and processing Cards is no longer available.

This proposal includes charging a fee for issuance of each Card. The Department is proposing Section 701 be amended for public notice with a Sturgeon Fishing Report Card fee of \$7.50. The Department costs for the Sturgeon Report Card are shown in Table 1.

Inputs	Hrs	Rate	Total
Report Card Review, Edit and Updates (IT Staff and Programs Combined)	40	\$43	\$ 1,730
Report Card Questions Review, Edit and Updates (IT Staff and Programs Combined)	30	\$43	\$ 1,297
Report Card Data Collection (Key Entry)	7,333	\$19	\$ 140,883
Report Card Data Analysis	80	\$46	\$ 3,694
LRB Operations Cost (prorated for 1 item)			\$ 40,000
Law Enforcement Costs for Report Cards	8,208	\$46	\$ 374,440

Sub Total for Ongoing Costs	\$ 532,045
Admin Overhead (FY 12/13 non-Fed rate 29%)	\$ 162,993
Total Costs	\$ 725,038
<i>Total One time ALDS Cost Amortized</i>	<i>\$ 12,410</i>
Total Annual Costs	\$ 737,448
2010 Report Card Sales	110,000
Price per card with 10% drop in sales	\$7.45

The benefits of the proposed regulations are (1) sustainable management of the white sturgeon population and (2) concurrence with Federal regulation regarding the take of threatened green sturgeon in otherwise-lawful fisheries.

The proposed regulations are neither inconsistent nor incompatible with existing state regulations.

The Commission does not anticipate non-monetary benefits to the protection of public health and safety, worker safety, the prevention of discrimination, the promotion of fairness or social equity and the increase in openness and transparency in business and government.

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

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

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

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

None.

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

[Economic Impact Analysis.](#)

[Public Proposed Regulatory Changes and Department Recommendations For 2012 Inland Sport Fishing Regulations Review Cycle.](#)

DuBois, J., M. Gingras, G. Aasen. 2011. Status and Trends of San Francisco Estuary White Sturgeon. Interagency Ecological Program for the San Francisco Estuary Newsletter 24(1): 50-55.
<http://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=44050>

DuBois J. and M. Gingras. 2011. Using Harvest Rate and Harvest to Estimate White Sturgeon Abundance. Interagency Ecological Program for the San Francisco Estuary Newsletter 24(3): 23-26.

<http://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43532>

DuBois J., T. MacColl, E. Haydt (California Department of Fish and Game). 2012. 2011 sturgeon fishing report card: preliminary data report. Stockton, California. 14 p.

<http://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=44358>

U.S. Federal Register, Volume 75 No. 105 (75 FR 30714). June 2, 2010.

Final rule: Endangered and threatened wildlife and plants: Final rulemaking to establish take prohibitions for the threatened Southern Distinct Population Segment of North American green sturgeon.

[ftp://ftp.delta.dfg.ca.gov/Adult_Sturgeon_and_Striped_Bass/Green%20sturgeon%204\(d\)%20rule%20California%202010.pdf](ftp://ftp.delta.dfg.ca.gov/Adult_Sturgeon_and_Striped_Bass/Green%20sturgeon%204(d)%20rule%20California%202010.pdf)

(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:

The proposed sturgeon-specific regulations are designed and expected to maximize survival and subsequent abundance of the threatened green sturgeon and the white sturgeon without reducing fishing effort, fishing opportunity, or harvest rate. The following alternatives fail to meet one or more of the objectives: (1) Implement a subset of the proposed regulations, (2) implement, on a seasonal basis and/or in a limited geographic area, either the full suite of proposed regulations or a subset thereof, and (3) implement regulations designed and expected to reduce fishing effort, fishing opportunity, and/or harvest rate.

The proposed implementation of a \$7.50 fee for the issuance of each Sturgeon Fishing Report Card is designed and expected to replace a funding source that will be depleted. Therefore, no regulatory alternative exists.

See Table 1 in Public Proposed Regulatory Changes and Department Recommendations for 2012 Inland Sport Fishing Regulations Review Cycle for public comments considered and not accepted.

(b) No Change Alternative:

The no change alternative would leave existing regulations in place, thereby (1) perpetuating preventable harm (harm that is preventable without reducing fishing opportunity) to the threatened green sturgeon and the conservation-dependent white sturgeon and (2) precluding continued use of Sturgeon Fishing Report Cards.

(c) Consideration of Alternatives:

In view of the information currently possessed, no reasonable alternative being considered would be more effective in carrying out the purposes for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the proposed regulation, or would be more cost-effective to the affected private persons and equally effective in implementing the statutory policy or other provision of law.

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.

Economic impacts of fishing are attributable largely to fishing effort, fishing opportunity, and fishing success. The proposed sturgeon-specific regulations would not alter fishing effort or fishing opportunity and would not appreciably alter fishing success. Over time, the proposed regulations are expected to improve fishing success. Neighboring states with sturgeon fisheries are already operating under a suite of regulations substantially similar to the ones proposed here.

The proposed implementation of a \$7.50 fee for the issuance of each Sturgeon Fishing Report Card (1) would constitute a tiny fraction of the cost to anglers for catching sturgeon and (2) is less costly than other methods of collecting equivalent data and thwarting illegal commercialization of sturgeon.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses or the expansion of businesses in California. The potential impacts from the proposed regulations in the Sport Fishing Review Cycle may range from 0 to 16,000 jobs depending on the Commission's final actions. The impacted businesses are generally small businesses employing few individuals and, like all small businesses, are subject to failure for a variety of causes. Additionally, the long-term intent of the proposed action is to increase sustainability in fishable sturgeon stocks and, subsequently, the promotion and long-term viability of these same small businesses.

The Commission anticipates benefits to the health and welfare of California residents. Providing opportunities for the sport fisheries encourages consumption of a nutritious food.

The Commission does not anticipate any non-monetary benefits to worker safety.

The Commission anticipates benefits to the environment by the sustainable management of California's sport fishing resources.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private business would necessarily incur in reasonable compliance with the proposed action. A private person interested in fishing for sturgeon would be required to purchase an annual sturgeon report card at a cost of \$7.50 yearly.

- (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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Data from returned Sturgeon Fishing Report Cards issued for the years 2007-2010 indicated anglers kept 6,488 white sturgeon, releasing 19,892 white sturgeon, and releasing 956 green sturgeon; anglers also failed to report the species of 165 sturgeon they released. A preliminary investigation suggests that anglers under-reported the release of green sturgeon.

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This proposal recommends amending sections 5.80 and 27.90 to require only one single point, single shank, barbless hook be used on a line when taking sturgeon, prohibit use of snares in handling sturgeon, prohibit removal of fish greater than 68 inches long (FL) from the water, and require use of 'fork length' measurements.

To assure that the harvestable populations of white sturgeon 46-66 inches total length and white sturgeon 40-60 inches fork length are substantially similar, and to preserve the present 20-inch range between the minimum and maximum size limits, the Department considered data on the statistical relationship between white sturgeon total length and white sturgeon fork length ($y = 0.9036x - 1.2162$; $R^2 = 0.987$). When requiring the use of fork length measurements after decades of requiring total length measurements, the states of Oregon and Washington similarly determined that white sturgeon fork length is 90% of total length and revised the state size limits accordingly.

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The proposed regulations are neither inconsistent nor incompatible with existing state regulations. No other state agency has the authority to promulgate sport fishing regulations.

The Commission does not anticipate non-monetary benefits to the protection of public health and safety, worker safety, the prevention of discrimination, the promotion of fairness or social equity and the increase in openness and transparency in business and government.

In Section 701 editorial changes were made to align report card fees followed by duplicate fees, and subsections renumbered accordingly for the sake of clarity.