

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

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 210, 215, 219, 220, 240, 315, 316.5, 713, 1050, 1053 and 7149.8 Fish and Game Code. Reference: Sections 200, 201, 202, 203.1, 205, 206, 215, 220, 316.5, 713, 1050, 1053, 1055 and 7149.8, of said Code, proposes to Amend Sections 1.77, 2.25, 2.30, 4.20, 5.00, 5.05, 5.10, 5.40, 5.60, 5.80, 5.81, 7.00, 7.50, 8.00, 27.85, 27.90, 27.91, 28.90, 28.95, and 701; and Add Sections 1.45 and 5.91, Title 14, California Code of Regulations, relating to Sport Fishing Regulations.

Informative Digest/Policy Statement Overview

General Sport Fishing Regulations – 1.45, 1.77, 2.25, 4.20, 5.10, 5.40, 5.91 and 8.00

This Department proposal is a combination of Department and public requests for Title 14, California Code of Regulations (CCR) changes for the 2012 Sport Fishing Review Cycle. This proposal will revise yellow perch and bow and arrow regulations, eliminate take of listed eulachon, update and revise the low flow regulations, add regulations on filleting of salmonids, and correct other regulatory problems that increase public confusion of the regulation's intent and improve regulatory enforcement.

The Department is proposing the following changes to current regulations as discussed in the following paragraphs:

YELLOW PERCH

Yellow perch are not common throughout California and have large populations with stunted size ranges where found. There are several public requests to remove this species from the sunfish bag limit. The potential increased harvest will not affect existing populations.

Amend Section 1.77, Sunfish.

- This section will be amended to remove yellow perch from the combined sunfish and crappie bag limit.

Add Section 5.91, Yellow Perch.

- This section will be added to clarify that yellow perch have a year-round season with no limit.

BOW AND ARROW FISHING

These changes are proposed to reduce public confusion

Amend Section 2.25, Bow and Arrow Fishing.

- Clarify where the designated salmon spawning areas are defined.
- Clarify Walker River exception.

ELIMINATE TAKE OF LISTED EULACHON

Eulachon were listed as federally threatened under the Federal Endangered Species Act in February 2010 and have extremely low abundance in the past twenty years. This change is necessary to increase protection for a listed species.

Amend Section 5.10, Candlefish or Eulachon.

- This section will be amended to specify that eulachon may not be taken or possessed under the authority of a sport fishing license to align state and federal regulations.

UPDATE THE LOW FLOW REGULATIONS

The Department proposed the following changes to increase salmonid protection and reduce public confusion:

Amend Section 8.00, Low Flow Regulations.

- Increase Smith River minimum flow trigger from 400 cfs to 600 cfs.
- Revise and clarify stream reaches in Van Duzen and Smith rivers.
- removed outdated information in subsection (c)
- make minor changes to align the structure of the regulations.

FILLETING OF SALMONIDS IN INLAND WATERS

Currently shore based anglers can fillet or cut into pieces salmon and steelhead in the field. The current Fish and Game Code sections (5508, 5509) section only covers fish on a vessel until it is brought ashore. Salmon and steelhead once on shore can currently be fillet or cut into pieces. Once this is done the department no longer has the ability to determine the origin (wild or hatchery), species, or size of the fish.

There is currently no regulation that prohibits filleting of fish (for all species) along the shores and banks of inland anadromous waters in California. As a result, a loop hole is created in which an angler could harvest a wild steelhead/rainbow trout illegally by filleting the fish and discarding/disposing of the carcass along the stream. If encountered by enforcement, there is no way to immediately distinguish if the fillets are from a wild or hatchery fish without observing the condition of the adipose fin.

This proposed regulation will give the department the ability to determine the origin (wild or hatchery), the species (Coho, Chinook or steelhead), and the size (jack, adult, or undersized ocean salmon) of salmon and steelhead taken, possessed and transported. The limitation of "where a sport fishing license is required" eliminates this requirement for legally purchased commercial salmon. There maybe serious opposition for the ocean salmon fishery which is almost exclusively a boat fishery. This proposed regulation could easily be written for inland waters where a sport fishing license is required.

Add Section 1.45, Filleting of Salmonids

- This section will be added that all salmon and steelhead taken in inland waters where a sport fishing license is required, must be kept in such a condition that species and size can be determined until placed at the anglers permanent residence, a commercial preservation facility or being prepared for immediate consumption.

OTHER REGULATORY PROBLEMS

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.

Amend Section 4.20, Bait Fish Use in the Valley and South Central Districts.

- remove the reference in subsection (d)(2) to Yuba River down stream of Daguerre Point Dam that allows the use of bait fish when only artificial lures with barbless hooks are allowed under subsection 7.50(b)(212)(A).

Amend Section 5.40, Lamprey.

- remove reference to other species as traps were repealed in 2009 as approved gear.
- remove the reference to traps in subsection (c) which is an illegal gear for the harvest of lamprey.

The benefits of the proposed regulations are sustainable management of sport fishing resources, protection of listed and special status species, and promotion of businesses that rely on California's sport 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.

Spear Fishing for Striped Bass in Inland Waters - Section 2.30.

Spear fishing as defined under Section 2.30, Title 14 is restricted to the Colorado and Valley Districts and a small area of the Kern River with species and exemptions.

The Commission has requested the option to discuss spear fishing regulations for striped bass under the upcoming Sport Fishing Review Cycle. The Department has serious reservations allowing spear fishing for striped bass and can only support offering an option to consider spear fishing in existing areas allowed in Section 2.30 at this time.

The expansion of any spear fishing for striped bass outside of these areas is a very complicated subject and needs a larger coordination effort than can be achieved under the current Sport Fishing Review cycle. There are significant issues related to listed and special status species that will require comprehensive review and coordination with the federal and local agencies and stakeholders.

Proposal Overview

This Department is proposing the following two regulatory options for Commission consideration of allowing the take of striped bass in inland waters with spear fishing as requested by various spear fishing groups.

OPTION 1 – NO HARVEST OF STRIPED BASS

Amend Section 2.30, Spearfishing.

- Open all of Black Butte Lake to spear fishing to eliminate an enforcement issue because half of the lake is located in Tehama County (Sierra District) and the other half in Butte County (Valley District).
- Clarify where the designated salmon spawning areas are defined.

OPTION 2 – ALLOW HARVEST OF STRIPED BASS

Amend Section 2.30, Spearfishing.

- This section will be amended to allow the harvest of striped bass by spear fishing in the Valley district under the authority of a sport fishing license.

- Open all of Black Butte Lake to spear fishing to eliminate an enforcement issue because half of the lake is located in Tehama County (Sierra District) and the other half in Butte County (Valley District).
- Clarify where the designated salmon spawning areas are defined.

The benefits of the proposed regulations are sustainable management of sport fishing resources, protection of listed and special status species, and promotion of businesses that rely on California's sport 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.

Black Bass Sport Fishing – Slot Limit Removal – Section 5.00

The Lake Oroville black bass sport fishery has been managed with a slot limit regulation since 1983. The current slot limit prohibits the take of black bass between 12 – 15 inches total length - anglers are allowed to take black bass less than 12 inches and greater than 15 inches total length. Statewide, black bass sport fisheries are managed with a 12-inch total length minimum regulation.

Slot limit regulations are used to reduce fishing mortality of black bass in a particular size range, and allow harvest of black bass in a smaller or larger than protected sizes.

The slot limit regulation was enacted at Lake Oroville to promote the harvest of redeye bass, which were abundant in the reservoir but seldom reached the statewide minimum length of 12 inches total length. In addition, the slot limit allowed the harvest of the abundant black bass less than 12 inches in total length and provided for an increase in the catch rates of black bass greater than 15 inches total length.

Review of angler survey data from 2002 – 2010 shows that spotted bass is the dominate species in angler catches with no redeye bass reported. Anglers reported releasing 97% of all black bass caught even though 43% of the black bass caught were legal for take. With the extirpation of redeye bass and the high release rate practiced today by sport fish anglers, the current slot limit regulation is no longer warranted.

The slot limits for black bass in McClure and Millerton reservoirs, and Orr and Siskiyou lakes have also not yielded the desired results as originally anticipated. This action would streamline fishing regulations which have been publicly criticized for being too complicated and eliminate the need for tournament fishing exemptions which have, in the past, resulted in conflict with Title 14, Section 1.87.

Title 14, Section 230, allows the Department to issue exemptions to the slot limit regulation for Event type contests. While tournament anglers are allowed to possess fish within the slot limit for purposes of the tournament, in so far as possible all fish weighed-in must be returned to the lake alive and in good condition. If a bass is weighed that is within the slot but is dead, this creates a conflict with Title 14, Section 1.87 as an angler should not be in possession of a slot size bass after the fishing contest is concluded. Dead bass weighed-in during a tournament

that are legal to possess by Section 7.50, are usually given to a receptive angler with a valid sport fishing license. The elimination of tournament exemptions would also reduce department processing time and costs.

It is recommended that all black bass angling regulations where slot limits exist be changed to the statewide standard - 5 bass daily bag limit, 12-inch minimum total length.

The benefits of the proposed regulations are sustainable management of sport fishing resources and promotion of businesses that rely on sport fishing.

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.

Take of Amphibians and Reptiles – 5.05 and 5.60

Existing regulations specify 28 amphibians and 58 reptiles that can lawfully be collected with a sportfishing license in California. The proposed regulatory change removes species designated as Species of Special Concern from authorized take with a sportfishing license, and revises special closure areas to include 11 species or subspecies. The regulation change is intended to increase conservation consideration for animals known to be at risk. The regulation change also updates scientific and common names to those currently in use to help eliminate potential confusion by licensees or Department staff. The regulation change also explicitly lists rattlesnake species allowed for sport take to eliminate existing confusion about how bag and possession limits apply to these snakes. For two amphibian species now known to be introduced to California, the regulation change also revises the bag and possession limit from four to unlimited.

The Department designates Species of Special Concern to focus attention on animals at risk and achieve conservation and recovery before listing them as threatened or endangered becomes necessary. The Department currently has no information about amount or effects of sport take for these animals, so it is therefore prudent to remove species of concern from collection.

Numerous taxonomic revisions have occurred since this regulation was last amended in 2002. The proposed regulatory change updates common and scientific names to current nomenclature, delineates geographic boundaries for Special Closures as necessary to reflect taxonomic changes or other new scientific information.

Proposed Regulations

Consideration and adoption of these proposed regulations will result in the following:

Amend 5.0 and 5.60

Removal of eight amphibians and three reptiles from the list of species currently authorized for take with a sportfishing license. Twenty amphibians and 55 reptiles will remain legal for take with a sportfishing license.

Provide current taxonomic nomenclature for all species on the list.

Updated language regarding Special Closures where new scientific information indicates closures to be appropriate.

Changing the bag and possession limit for two non-native amphibians from four to unlimited.

Explicitly listing rattlesnake species authorized for sport take to eliminate existing confusion about applicable bag and possession limits for these snakes.

The benefits of the proposed regulations are to improve conservation of at-risk animals in California, sustainable management of sport fishing resources, and promotion of businesses that rely on California's sport 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.

Sturgeon Sport Fishing Regulations – 5.80, 5.81, 27.90, 27.91 and 701

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. White sturgeon is a substantial management concern and object of an important fishery. Both sturgeon species are long-lived, first spawn at a relatively old age, spawn infrequently thereafter, and egg-laden females are subject to take year-round and system-wide.

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.

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, fighting 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 sometimes 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. As part of 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, being, paid for by the now-defunct Bay Delta Sport Fishing Enhancement Stamp Fund. No current source of funding 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 by anglers in all circumstances.

Implementing a fee for the issuance of Sturgeon Fishing Report Cards will fund issuance of Sturgeon Fishing Report Cards as well as 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 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.

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.

| Table 1. Estimated Costs for the Sturgeon Fishing Report Card | | | |
|---------------------------------------------------------------------------------|------------|-------------|-------------------|
| 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> | | | \$ 12,410 |
| 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. 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.

District and Special Regulation Changes – 7.00 and 7.50

The Department is proposing broad salmon and steelhead angling regulations for the district and special fishing areas in two general areas.

1. Hatchery trout and steelhead fishing revisions to allow harvest in most areas where only catch and release fishing is currently allowed.

2. Additional revisions are proposed to increase resource protection, correct regulatory issues, reduce public confusion, improve regulatory enforcement, and standardize regulatory structure.

Hatchery Trout and Steelhead

California's steelhead supports a popular sport fishery throughout California's coastal anadromous waters north of Santa Barbara and the Central Valley Basin. Since 1998, the majority of California steelhead have been Federally listed under the Endangered Species Act (ESA), and since 1999 only harvest of hatchery steelhead has been allowed in California, with the exception of the Smith River. The Steelhead Fishing Report-Restoration Card (SH Report Card) data show that hatchery steelhead stray into streams that do not have hatcheries and are caught by steelhead anglers in nearly every anadromous stream in California, with the exception of the Noyo River, where zero hatchery steelhead have been reported caught since 1999).

The Department believes harvesting surplus and stray hatchery steelhead will protect and increase wild steelhead resources. Contrary to management strategies from the last several decades, research and ensuing literature demonstrate that a key to protecting reproductive fitness of wild salmonids is to decrease/remove introgression by decreasing the number of hatchery salmonids spawning with wild salmonids. Although total prevention of introgression between surplus and stray hatchery steelhead and wild steelhead is unrealistic, proper angling regulations and angler education will be a vital factor in attaining resilient and sustainable wild steelhead populations.

With the exception of the Mokelumne River Hatchery, California hatcheries generally meet their annual steelhead production goals and "surplus" hatchery steelhead remain in the river. This "surplus" has been "substantial", which is good for the anglers; however, unharvested hatchery steelhead that compete and spawn with wild steelhead likely harm success of wild steelhead stocks by reducing reproductive fitness of successive generations. Increasing allowable harvest of surplus hatchery steelhead will increase angler opportunity, harvest, and continued fishing, and will greatly benefit wild steelhead populations.

If the regulations proposed here are implemented, the Department believes the fundamental character of California's steelhead fishing will be improved, while important fishery management and wild steelhead population management will be positively affected. In addition, the proposed regulations are intended to simplify statewide steelhead regulations, and simplify and provide for effective enforcement.

Additional Revisions

Many members of the general public have expressed difficulty in understanding which inland waters in California are closed to salmon fishing. In addition, some of the rivers and streams in Klamath/Trinity and Central Valley basins are periodically opened and closed to salmon fishing. The Department is proposing to list all inland state waters as closed to salmon fishing unless otherwise noted in district or special regulations to help reduce public confusion.

The Department proposes to increase protection of redband trout, align management efforts and reduce public confusion in Davis and Pine creeks and the McCloud River tributaries of Edison, McKay, Moosehead and Swamp creeks.

The Department proposes to close the Sisquoc River and the tributaries of Silver King Creek to all fishing to increase protection for steelhead and trout, respectively, and open Wolf Creek to limited fishing due to stable populations of Lahontan cutthroat.

The Department also proposes to offer increased fishing opportunities in Chowchilla River and Eastman Lake, close a portion of the Stanislaus River, close Wolf Creek Lake, and limit fishing to non-salmonids only in San Diego Creek and San Gabriel River due to changes in local fish populations or conditions.

Proposal Overview

The Department is proposing broad salmon and steelhead angling regulations for the district and special fishing areas.

With recent Central Valley salmon closures, many anglers have expressed confusion as to which waters are actually open to salmon fishing. To help clarify this situation, the Department proposes that all district regulations (Section 7.00) specify that salmon fishing is closed in all streams unless otherwise indicated in the list of waters with special fishing regulations (Section 7.50) This will help reduce public confusion and standardize the regulatory approach.

As a continuing effort to improve steelhead management and angling opportunities, the Department proposes to liberalize regulations in most areas where only catch and release fishing is currently allowed with the objective of meeting the following goals: 1) allow and encourage anglers to harvest “surplus” hatchery steelhead (adults in excess of number necessary to meet a hatchery’s production goals) on streams with hatcheries, and 2) allow and encourage anglers to harvest hatchery steelhead that stray into streams without hatchery production. This will help increase fishing opportunities while increasing protection for naturally spawning steelhead stocks.

Additional changes are proposed to increase resource protection, correct regulatory issues, reduce public confusion, improve regulatory enforcement, and standardize regulatory structure.

The benefits of the proposed regulations are sustainable management of sport fishing resources and promotion of businesses that rely on sport fishing.

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.

Spearfishing for Striped Bass in Ocean Waters – 27.85, 28.90 and 28.95

Existing law authorizes the take of striped bass for recreational purposes with a sport fishing license subject to regulations prescribed by the Fish and Game Commission (Commission); commercial take of striped bass is prohibited. Current regulations specify size limit, bag and possession limit, and methods of take in ocean waters [Title 14, California Code of Regulations (CCR), Sections 27.85, 28.90, and 28.95].

In ocean waters, Section 27.85 provides for a bag limit of two, a minimum size limit of 18 inches total length north of Pt. Conception, no minimum size limit south of Pt. Conception, and no

seasonal closures. Furthermore, striped bass may not be taken while using a sinker over four pounds and may be taken only by angling [Title 14, CCR, Section 1.05].

Section 28.90 specifies fishing provisions while diving and prohibits the take of striped bass by spearfishing. Additionally, Section 28.95 authorizes taking of finfish species by spears, harpoons, and bow and arrow fishing tackle, and identifies prohibited finfish species including striped bass.

At its April meeting, the Commission took testimony regarding the upcoming Sport Fishing Review Cycle. Following public comments, the Commission directed the Department to prepare options that would allow the take of striped bass while spearfishing, indicating its intent to consider changes to the existing regulations which prohibit this method of take for this species.

Although the Department has concern with a blanket authorization to use spearfishing gear for striped bass in inland waters, considerations are different for ocean waters. Spearfishing is generally authorized as a method of take for finfish in the ocean, pursuant to Section 28.90. The Department's understanding is that the current prohibition on spearfishing striped bass came about due to a need to specially regulate anadromous species which were the target of sport fisheries, including salmon, sturgeon, and striped bass. Today, the Department believes that any additional harvest of striped bass that may result from spearfishing in the ocean would be sustainable given the present status of the striped bass resource. Also, because spearfishing is a highly selective method of take, the Department does not anticipate that increases in fishing effort on striped bass would have unintended consequences on other species.

For purposes of clarity and consistency, the Department recommends, that if the Commission decides to authorize spearfishing for striped bass, it can also take action to amend Section 28.95. The proposed change would remove striped bass from the list of species that may not be taken with bow and arrow fishing tackle.

Proposal Overview

In response to requests by individuals and various sport fishing groups, the Department has prepared the following proposal for consideration:

ALLOW HARVEST OF STRIPED BASS BY SPEARFISHING AND BOW AND ARROW FISHING TACKLE

Amend Section 27.85, Striped Bass. This Section would be amended to allow the harvest of striped bass by spearfishing and bow and arrow fishing tackle that are otherwise prohibited under existing regulations for ocean waters.

Amend Section 28.90, Diving, Spearfishing. This section would be amended to remove striped bass from the list of finfish species that may not be taken by spearfishing.

Amend Section 28.95, Spears, Harpoons and Bow and Arrow Fishing Tackle. This section would be amended to remove striped bass from the list of species that may not be taken by bow and arrow fishing tackle.

Anticipated Benefits

The benefits of the proposed regulations are increased fishing opportunities for striped bass, continuation of sustainable management of sport fishing resources, protection of listed and special status species, and promotion of businesses that rely on California's sport 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. The Commission anticipates that this regulation will not have any effect on the overall health and welfare of California residents.

The Commission feels it is the policy of the state to encourage the conservation, maintenance, and utilization of the living resources of the inland and ocean waters under the jurisdiction and influence of the state for the benefit of all its citizens and to promote the development of local California fisheries. The objectives of this policy include, but are not limited to, the maintenance of sufficient populations of all species of aquatic organisms to ensure their continued existence and the maintenance of a sufficient resource to support a reasonable sport use, taking into consideration the necessity of regulating individual sport fishery bag limits in the quantity that is sufficient to provide a satisfying sport. Adoption of scientifically-based inland sport fishing seasons, size limits, and bag and possession limits provides for the maintenance of sufficient populations of aquatic species to ensure their continued existence.

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. No other State agency has the authority to promulgate regulations establishing the procedures for inspections of wildlife facilities; however, the Department of Fish and Game, pursuant to Section 2150.2, Fish and Game Code, has the authority to set inspection fees and will proceed under a separate rulemaking.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, on all options relevant to this action at a hearing to be held in the Crowne Plaza Ventura Beach, Santa Rosa Room, 450 Harbor Boulevard, Ventura, California, on Wednesday, August 8, 2012 at 10:00 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, on all options relevant to this action at a hearing to be held in the Radisson Hotel at Los Angeles Airport, Laguna Room, 6225 West Century Boulevard, Los Angeles, California, on Wednesday, November 7, 2012 at 10:00 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before October 24, 2012, at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. **Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on November 6, 2012. All comments must be received no later than November 7, 2012, at the hearing in Los Angeles, CA.** If you would like copies of any modifications to this proposal, please include your name and mailing address.

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, Sonke Mastrup, 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 Sonke Mastrup or Jon Snellstrom at the preceding address or phone number. **Ms. Karen Mitchell, Staff Environmental Scientist, Fisheries Branch, Department of Fish and Game, telephone (916) 445-0826, 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 various impacts that might result from the proposed regulatory action have 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 Businessmen to Compete with Businesses in Other States.

General Sport Fishing Regulations – 1.45, 1.77, 2.25, 4.20, 5.10, 5.40, 5.91 and 8.00.

Spear Fishing for Striped Bass in Inland Waters – 2.30

Black Bass Sport Fishing – 5.00

District and Special Regulation Changes – 7.00 and 7.50

Spearfishing for Striped Bass in Ocean Waters – 27.85, 28.90 and 28.95

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.

Take of Amphibians and Reptiles – 5.05 and 5.60

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.

The actions proposed will improve Department efforts related to conservation of at-risk animals in California.

Sturgeon Sport Fishing Regulations – 5.80, 5.81, 27.90, 27.91 and 701

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) Results of the Economic Impact Analysis.

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:

General Sport Fishing Regulations – 1.45, 1.77, 2.25, 4.20, 5.10, 5.40, 5.91 and 8.00.

Spear Fishing for Striped Bass in Inland Waters – 2.30

Black Bass Sport Fishing – 5.00

Take of Amphibians and Reptiles – 5.05 and 5.60

Sturgeon Sport Fishing Regulations – 5.80, 5.81, 27.90, 27.91 and 701

District and Special Regulation Changes – 7.00 and 7.50

Spearfishing for Striped Bass in Ocean Waters – 27.85, 28.90 and 28.95

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 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 Representative Private Person or Business

General Sport Fishing Regulations – 1.45, 1.77, 2.25, 4.20, 5.10, 5.40, 5.91 and 8.00.
Spear Fishing for Striped Bass in Inland Waters – 2.30
Black Bass Sport Fishing – 5.00
Take of Amphibians and Reptiles – 5.05 and 5.60
Spearfishing for Striped Bass in Ocean Waters – 27.85, 28.90 and 28.95

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.

Sturgeon Sport Fishing Regulations – 5.80, 5.81, 27.90, 27.91 and 701

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.

General Sport Fishing Regulations – 1.45, 1.77, 2.25, 4.20, 5.10, 5.40, 5.91 and 8.00.
Spear Fishing for Striped Bass in Inland Waters – 2.30
Black Bass Sport Fishing – 5.00
Take of Amphibians and Reptiles – 5.05 and 5.60
Sturgeon Sport Fishing Regulations – 5.80, 5.81, 27.90, 27.91 and 701
District and Special Regulation Changes – 7.00 and 7.50
Spearfishing for Striped Bass in Ocean Waters – 27.85, 28.90 and 28.95

None.

(e) Other Nondiscretionary Costs/Savings to Local Agencies.

General Sport Fishing Regulations – 1.45, 1.77, 2.25, 4.20, 5.10, 5.40, 5.91 and 8.00.
Spear Fishing for Striped Bass in Inland Waters – 2.30
Black Bass Sport Fishing – 5.00
Take of Amphibians and Reptiles – 5.05 and 5.60
Sturgeon Sport Fishing Regulations – 5.80, 5.81, 27.90, 27.91 and 701
District and Special Regulation Changes – 7.00 and 7.50
Spearfishing for Striped Bass in Ocean Waters – 27.85, 28.90 and 28.95

None.

(f) Programs Mandated on Local Agencies or School Districts.

General Sport Fishing Regulations – 1.45, 1.77, 2.25, 4.20, 5.10, 5.40, 5.91 and 8.00.
Spear Fishing for Striped Bass in Inland Waters – 2.30
Black Bass Sport Fishing – 5.00
Take of Amphibians and Reptiles – 5.05 and 5.60
Sturgeon Sport Fishing Regulations – 5.80, 5.81, 27.90, 27.91 and 701

District and Special Regulation Changes – 7.00 and 7.50
Spearfishing for Striped Bass in Ocean Waters – 27.85, 28.90 and 28.95

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.
General Sport Fishing Regulations – 1.45, 1.77, 2.25, 4.20, 5.10, 5.40, 5.91 and 8.00.
Spear Fishing for Striped Bass in Inland Waters – 2.30
Black Bass Sport Fishing – 5.00
Take of Amphibians and Reptiles – 5.05 and 5.60
Sturgeon Sport Fishing Regulations – 5.80, 5.81, 27.90, 27.91 and 701
District and Special Regulation Changes – 7.00 and 7.50
Spearfishing for Striped Bass in Ocean Waters – 27.85, 28.90 and 28.95

None.

- (h) Effect on Housing Costs.
General Sport Fishing Regulations – 1.45, 1.77, 2.25, 4.20, 5.10, 5.40, 5.91 and 8.00.
Spear Fishing for Striped Bass in Inland Waters – 2.30
Black Bass Sport Fishing – 5.00
Take of Amphibians and Reptiles – 5.05 and 5.60
Sturgeon Sport Fishing Regulations – 5.80, 5.81, 27.90, 27.91 and 701
District and Special Regulation Changes – 7.00 and 7.50
Spearfishing for Striped Bass in Ocean Waters – 27.85, 28.90 and 28.95

None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

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, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to the affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Sonke Mastrup
Executive Director

Dated: July 17, 2012