

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Add Section 8.01,
Title 14, California Code of Regulations
Re: Special Measures for Fisheries at Risk

- I. Date of Initial Statement of Reasons: August 21, 2016
- II. Date of Final Statement of Reasons: April 19, 2016
- III. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: December 10, 2015
Location: San Diego
 - (b) Discussion Hearing Date: February 11, 2016
Location: Sacramento
 - (c) Adoption Hearing: Date: April 14, 2016
Location: Santa Rosa

IV. Update:

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.

The Commission adopted the proposed regulations set forth in Section 8.01, Title 14, CCR, on April 14, 2016.

V. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations:

Letter signed by Supervisor Jeff Griffiths, Board of Supervisors, County of Inyo, dated January 9, 2016 – The triggers that are being proposed to be made permanent appear to be specific and clearly define when the fisheries are in danger as a result of drought conditions. Inyo County is asking that the Commission ensure that these regulations are strictly enforced to protect fisheries that are actually impacted by severe drought conditions and will not be used for any other reason to limit fishing resources in the State of California.

Response: The Commission has adopted specific triggers that would have to apply before closure of a body of water, and the Department must report on its website, weekly, any such closure. The Commission will rely on staff, department staff and the public to ensure compliance.

VI. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VII. Location of Department Files:

Department of Fish and Wildlife
1416 Ninth Street
Sacramento, California 95814

VIII. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

No alternatives were identified.

(b) No Change Alternative:

The no change alternative would leave existing regulations in place.

(c) Consideration of Alternatives:

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

IX. 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 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 is not anticipated to have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because the expected impact of the proposed regulations on the amount of fishing activity is anticipated to be minimal relative to recreational angling effort statewide.

- (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:

The expected impact of the proposed regulations on the amount of fishing activity is anticipated to be minimal relative to recreational angling effort statewide. Therefore the Commission does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing business or the expansion of businesses in California.

The Commission anticipates benefits to the health and welfare of California residents. Protecting fish populations during poor habitat conditions ensures the maintenance of the fishery and is needed to ensure future opportunity for California anglers. Recreational angling is a healthy outdoor activity that encourages consumption of a nutritious food. The Commission does not anticipate any non-monetary benefits to worker safety because the proposed regulations do not affect working conditions.

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 person or business would necessarily incur in reasonable compliance with the proposed action.

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

None.

(e) Nondiscretionary Costs/Savings to Local Agencies:

None.

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

None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code:

None.

(h) Effect on Housing Costs:

None.

Updated Informative Digest /Policy Statement Overview

California has recently experienced severe drought conditions with record low snow pack in 2015. In early 2014, Governor Edmund G. Brown Jr. proclaimed a State of Emergency to exist in California and ordered the Department to work with the Commission, using the best available science, to determine whether restricting fishing in certain areas will become necessary and prudent as drought conditions persist. On April 1, 2015, the Governor ordered state agencies to impose statewide mandatory water restrictions that will save water, increase enforcement against water waste, streamline the state's drought response, and invest in new drought resilient technologies for California.

The Department of Fish and Wildlife (Department) continues to evaluate and manage the changing impacts of drought on threatened and endangered species and species of special concern, and develop contingency plans for state Wildlife Areas and Ecological Reserves to manage reduced water resources in the public interest.

Statewide water quality and quantity in many systems will likely be inadequate to support fisheries if existing environmental conditions persist, resulting in impeded passage of spawning fish, increased vulnerability to mortality from predation and physiological stress, and increased angling harvest and/or hooking mortality. Furthermore, survival of eggs and juvenile fish in these systems experiencing degraded habitats could be extremely low. The historically low water conditions may concentrate cold water fish populations into shrinking pools of cold water habitat making them easy prey for illegal angling methods such as snagging, increased hooking mortality due to legal catch and release, over-harvest, as well as other human-related disturbances within their freshwater habitat. When coupled with environmental stressors, such as high water temperature, low dissolved oxygen, and severely reduced suitable habitat, these stressors can seriously affect reproductive success and survival rates. Although habitat conditions can recover with the onset of good water quality, reduced population levels caused by drought conditions could still threaten the persistence and resilience of the fishery.

Since 2014, the Department has worked with the Fish and Game Commission (Commission), using the best available science, to determine whether restricting fishing in certain areas will become necessary and prudent as habitat conditions degrade and or fish populations drop below a sustainable level. On June 11, 2015, the Commission adopted emergency regulations which establish a quick response process to temporarily close fisheries experiencing degraded environmental conditions that may affect fish populations or their habitat within waters of the state. These emergency regulations went into effect on July 2, 2015 and will expire on December 31, 2015.

To ensure that fisheries are protected now and in the future, the Department is proposing that the Commission make permanent the emergency regulations set forth in Section 8.01, Title 14, CCR, as amended herein.

Regulatory Proposal

Environmental conditions resulting in degraded habitat quality and or extremely low population size may require temporary restrictions on fishing to protect fish populations and sustain future opportunity. These conditional changes may affect each waterbody and fish population differently based on various abiotic and biotic factors. Increased angling mortality, harvest, angling pressure, and fish population size are the key components used to evaluate potential effects associated with degraded environmental conditions and will need to be evaluated on a water by water basis and over time as conditions change.

To ensure that fisheries are protected under critical conditions, the Department is proposing a set of triggers to guide fishing closure and reopening decisions. The Department's decision to close or open individual waters will be based on the most current information available, collected by professional staff trained in the associated fields. Criteria for evaluating aquatic conditions are based on site-specific monitoring efforts with an emphasis on listed fish species, species of special concern, and gamefish.

The following proposed criteria will be used to determine if a fishing closure or associated reopening is warranted:

Any water of the state not currently listed in Section 8.00 of these regulations may be closed to fishing by the Department when the Director, or his or her designee, determines one or more the following conditions have been met:

- Water temperatures in occupied habitat exceed 70° Fahrenheit for over eight hours a day for three consecutive days.
- Dissolved oxygen levels in occupied habitat drop below 5 mg/L for any period of time over two consecutive days.
- Fish passage is impeded or blocked for fish species that rely on migration as part of a life history trait.
- Water levels for ponds, lakes and reservoirs drop below 10% of their capacity.
- Adult breeding population levels are estimated to be below 50 individuals for a sub-population and 500 individuals for a standard population.

All waters closed pursuant to this section will be reopened by the Department when the Director, or his or her designee, determines the initial closure-based criteria are no

longer met and water temperatures do not exceed 70° Fahrenheit for over eight hours a day for 14 consecutive days and dissolved oxygen remains above 5 mg/L for 14 consecutive days.

Proposed Regulatory Changes from Emergency Regulations:

The Department proposes additional modifications to the originally approved “emergency” text as shown in bold above due to further review of scientific literature as follows:

- A consecutive 48 hour (two days) exposure rate for dissolved oxygen provides a better basis to address natural variability and risk for juvenile and early life stages of fish.
- The Department is proposing to use the 50/500 rule in evaluating angling closures to address the effects on both the localized level for smaller sub-populations and larger meta-population complexes.
- The Department is proposing an extended period of recovery for water temperature and dissolved oxygen closures to account for natural variability and fluctuations once the upper limits for water temperature and dissolved oxygen have been exceeded.

Justification and associated data for closure and reopening decisions will be provided to the Commission for any water that is subject to a fishing closure.

Benefits of the regulations

As set forth in Fish and Game Code section 1700 it is “the policy of the state to encourage the conservation, maintenance, and utilization of the living resources of the ocean and other waters under the jurisdiction and influence of the state for the benefit of all the citizens of the state and to promote the development of local fisheries and distant-water fisheries based in California in harmony with international law respecting fishing and the conservation of the living resources of the oceans and other waters under the jurisdiction and influence of the state.

Adoption of scientifically-based criteria for angling closures due to adverse habitat conditions provides for the protection and maintenance of sport fish populations to ensure their continued existence. The benefits of the proposed regulations are in sustainable management of the State’s sport fish resources, and the businesses that rely on sport fishing in California.

Consistency with State and Federal Regulations

Section 20, Article IV, of the State Constitution specifies that the Legislature may delegate to the Fish and Game Commission such powers relating to the protection and

propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to regulate recreational fishing in waters of the state (Fish & Game Code, §§ 200, 202, 205). The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Commission has searched the California Code of Regulations and finds no other state agency regulations pertaining to angling closures to protect sport fish populations. Further, the Commission has determined that there are no existing comparable federal regulations.

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.

The Fish and Game Commission adopted the proposed regulations, which were noticed on December 15, 2015, without any changes at its April 14, 2016 meeting.