

Item 6A: Agenda
4-1-04

C O V E R
S H E E T



FAX

To: Dennis Murphy
Fax #: 831-440-1078
Subject: Documents re: FGC Adoption of amendments to Section 8.00, Title 14, CCR
Date: March 3, 2004
Pages: 12 (Including cover page)

Mr. Murphy

I am faxing information regarding your request.

Attached are the Commission's records regarding the adoption of amendments to low-flow closures, including a *Summary and Analysis of Public Recommendations* (including the Department's recommendation and analysis), *The Final Statement of Reasons for Regulatory Action*, as well as the text of the regulations, as adopted, in strikeout/underline language.

Should you have any further questions please feel free to contact me directly.

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SUMMARY AND ANALYSIS OF PUBLIC RECOMMENDATIONS REGARDING CHANGES TO INLAND SPORT FISHING REGULATIONS

Received by the Commission

From December 8, 2001 through October 16, 2003

Prepared by Fisheries Programs Branch, October 23, 2003

Section 2.00(b) Low-flow Restrictions, Central Coast Streams: Stream Closures; Special Low Flow Closures (Russian River).

1. **Joe Blum, NOAA Fisheries, August 3, 2003, oral testimony; Craig Heberer, NOAA Fisheries, October 3, 2003, oral testimony.**

Replace the Russian River gauging station with a gauge on the Navarro River to determine low-flow closures for streams in the central coast counties of Mendocino, Sonoma and Marin, and portions of the Napa River and Sonoma Creek, and increase monitoring frequency.

Department Recommendation/Analysis: Do not accept. The existing regulations for low-flow conditions on Central Coast streams have been working well. Department field personnel have not noted substantial problems that would warrant regulation changes. Adequate evidence was not presented to justify that the use of the Navarro River gauge would be superior to the Russian River gauge. The proposal suggests utilizing the Navarro River gauge to initiate closures, but does not analyze the appropriate stream flow levels that would trigger a closure. Intuitively it seems that the Navarro River flows would be more representative of coastal stream flow conditions than the Russian River, but without adequate evidence to support this idea including an analysis to determine appropriate low-flow closure values, this proposal cannot be accepted at this time. After the October meeting, the Department informally agreed to investigate the establishment of stream flow values that impede fish passage on the Navarro River.

Section 2.00 (c): Low-flow Restrictions for South Central Coast Streams

1. **Craig Heberer, NOAA Fisheries, October 3, 2003, oral testimony.**

NOAA Fisheries believes further discussion is warranted regarding the Department's proposed reduction of the low-flow closure on the Carmel River from 135 to 80 cfs.

Department Recommendation/Analysis: The Department is willing to discuss this proposal and the reasons for the proposed reduction with NOAA Fisheries. The proposed low-flow trigger of 80 cfs is based on actual observations in the stream of fish passage conditions.

2. **James Lazaretti, September 2003 letter; John Steele, Santa Cruz Fly Fishermen, no date (October) letter.**

Opposed to the Department's proposal to add additional streams along the Central Coast to be monitored as low-flow closure indicators.

Department Recommendation/Analysis: The purpose of a low-flow closure is to prevent extensive hooking and releasing of steelhead when flows are too low to allow the fish to move to other stream sections. These closures have been exercised primarily during drought conditions. Currently, streams along the entire coast from the Golden Gate south to San Luis Obispo are vulnerable to low-flow closures based on the flows in the Carmel River. The Department is recommending the establishment of additional streams in which to monitor flows that are more representative of rainfall amounts and stream flows for a particular area. The original proposal has been modified by recommending that low-flow values triggering stream closures will be determined during the next two years, and based on standard fish passage criteria that include measurements of water depth and stream channel geometry in critical areas.

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

**Amend Subsection (c) of Section 8.00,
Title 14, California Code of Regulations
Re: Low-flow Restrictions for South Central Coast Streams**

- I. Date of Initial Statement of Reasons: June 30, 2003
- II. Date of Amended Initial Statement of Reasons: October 6, 2003
- III. Date of Final Statement of Reasons: December 17, 2003
- IV. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: August 2, 2003
Location: Long Beach
 - (b) Discussion Hearing: Date: October 3, 2003
Location: Redding
 - (c) Discussion Hearing: Date: December 5, 2003
Location: Sacramento
 - (d) Adoption Hearing: Date: December 16, 2003
Location: Sacramento
- V. Update:

Current regulations require the Department to close the main stem Carmel River to fishing when stream flows are less than 135 cubic-feet-per-second (cfs). Low-flow closures are generally put in place to avoid excessive and repetitive catch-and-release angling pressure on steelhead that may be trapped in individual pools because flows are inadequate to allow them free passage upstream.

To more accurately reflect steelhead passage problems in the Carmel River, the Department is proposing to reduce the low-flow closure trigger from 135 cfs to 80 cfs. In addition, the Department is proposing to place low-flow fishing closure triggers on several other steelhead streams south of the Golden Gate to more accurately reflect steelhead passage problems and provide protection for steelhead that may be exposed to excessive angling pressure during periods of low stream flow.

The Department is proposing to change the existing Carmel River low-flow closure threshold from 135 to 80 cfs (fishing allowed only at flows greater than or equal to 80 cfs during the season), based on bypass flow requirements for the river agreed to by the Department and NOM-Fisheries. It is also proposed to apply the low-flow closure on the Carmel River to four adjacent creeks (San Jose, Gibson, Malpaso, Soberanes) that drain from the adjacent ridge line.

The Department is proposing to use 40 cfs to create a low-flow closure on the Big Sur River, using the USGS gauge on that river, which would apply to all other coastal streams of the Big Sur Coast of Monterey County from Granite Creek south to Salmon Creek. The 40 cfs low-flow closure threshold is based on field observations in 2002 by Department staff of stream flows needed for adequate anadromous fish passage on the Big Sur River.

The Department is proposing to add low-flow closures for all other steelhead streams in coastal San Mateo, Santa Cruz, and Monterey counties, the lower Salinas River, and one Bay Area stream using gauges on index streams to represent adjacent and analogous watersheds. The specific low-flow values that will trigger angling closures are to be developed based on gauging station flows and measurements of water depth and channel geometry that determine fish passage ability. It is expected that these values will be available for the 2005 angling regulation cycle. In the interim, the Department is proposing to close the below streams to angling when the Department determines through various sources of information that low stream flows are impeding fish passage and fish are being exposed to excessive angling pressure without means of escape. Streams proposed to be used for low-flow gauging that could trigger angling closures are:

1. The Pajaro River watershed and all its tributaries based on the lower Pajaro River USGS gauge.
2. The lower main stem Salinas River (below its confluence with the Arroyo Seco) based on the USGS Salinas River gauge near Spreckels; and also the Arroyo Seco River based on both the USGS Arroyo Seco gauge near Greenfield and the Spreckels gauge in Monterey County.
3. Aptos and Soquel creeks based on the USGS Soquel Creek gauge in Santa Cruz County.

4. The San Lorenzo River and adjacent streams as far north as Waddell Creek in Santa Cruz County based on the USGS gauge in Henry Cowell Redwood State Park.
5. Create a low-flow closure for the San Mateo County coastal streams from Elliot Creek to Millagro Creek based on the USGS gauge on Pescadero Creek.
6. Upper Penitencia Creek, a tributary to Coyote Creek in Santa Clara County, and lower Coyote Creek, downstream of its confluence with upper Penitencia Creek, based on the USGS Coyote Creek gauge above Highway 237 in Milpitas.
7. The Arroyo Sew River using the USGS gauging station at Spreckels or the USGS gauging station near Greenfield.

Two gauge readings in combination are needed to set a low-flow closure for the Arroyo Seco River. When there is adequate flow in the Arroyo Seco, the flow in the main stem Salinas River that the Arroyo Seco feeds into, may be zero or so low as to not afford anadromous fish passage to and from the ocean. Thus when there is inadequate passage up the Salinas River to the Arroyo Seco for steelhead, we do not want anglers fishing on landlocked steelhead stocks in the Arroyo Seco River.

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

See the Department's "SUMMARY AND ANALYSIS OF PUBLIC RECOMMENDATIONS REGARDING CHANGES TO INLAND SPORT FISHING REGULATIONS Received by the Commission from December 8, 2001 through December 5, 2003".

VII. Location and Index of Rulemaking File:

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

VIII. Location of Department files:

Department of Fish and Game
1416 Ninth Street

Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change: ~~Low-flow values based on percentage of exceedance during annual mean-flow regimes have been recommended to provide triggers for angling closures.~~ These values would be based on ~~mathematical models~~ and may or may not represent actual fish ~~passage~~ conditions. The ~~proposed~~ regulatory action is based on actual conditions, rather than ~~theoretical~~ or average conditions, and therefore ~~preferred~~ by the Department.
- (b) No Change Alternative: Current regulations identify the Carmel River as the ~~only~~ representative of flow stream flow conditions throughout 325 miles of the central coast from San Francisco to San Luis Obispo. Precipitation and resulting stream flows may be significantly different in ~~watersheds comprising this~~ section of California's coast. The proposed regulation identifies several additional streams that ~~will provide better~~ stream-flow representation for specific watersheds along the central coast south of San Francisco. These changes are ~~necessary to~~ provide additional protection for steelhead listed as threatened pursuant to the federal ESA. The current Cannel River ~~low-flow-closure~~ trigger value ~~does not accurately represent fish passage impedance conditions, and a reduction in the value is justified to more accurately determine when fishing should be discontinued to protect steelhead.~~
- (c) Consideration of Alternatives: In view of information currently possessed, ~~no~~ reasonable alternative considered would be ~~more effective~~ in carrying out the purposes for which the regulation is proposed ~~or would be as effective, and less burdensome to the affected private persons than the proposed regulation.~~

X. Impact of Regulatory Action: The potential for ~~significant~~ statewide adverse economic impacts ~~that might result from the proposed regulatory action~~ has been ~~assessed, and the following initial determinations~~ relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact ~~Directly Affecting Businesses, Including the Ability of California Businesses to Compete~~ with Businesses in Other States: The proposed action will ~~not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states~~

The proposed regulation will provide increased protection for federally listed threatened steelhead trout during low stream flow conditions while allowing angling opportunities to continue during normal stream flows.

- (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 expected.**
- (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: None.**
- (h) Effect on Housing Costs: None.**

Updated Informative Digest/Policy Statement Overview

Current regulations require the Department to close the main stem Carmel River to fishing when stream flows are less than 135 cubic feet per second (cfs). Low-flow closures are generally put in place to avoid excessive and repetitive catch-and-release angling pressure on steelhead that may be trapped in individual pools because stream flows are inadequate to allow them free passage upstream. Low-flow conditions generally occur during years of below normal rainfall.

In order to more accurately reflect steelhead passage problems and avoid excessive angler contact of steelhead during low stream flow conditions in the Carmel River and other anadromous streams of the South Central Sport Fishing District, the Department is proposing the following low-flow fishing closures:

1. Carmel River, reduce the low-flow closure trigger from 135 cfs to 80 cfs. The low-flow closure on the Carmel River will be applied to four adjacent creeks, San Jose, Gibson, Malpaso, Soberanes
2. Big Sur River, a 40 cfs low-flow closure. Low flow closures on the Big Sur River would also apply to all other coastal streams of the Big Sur coast in Monterey County from Granite Creek south to Salmon Creek.

The Department is proposing to add low-flow closures for all other steelhead streams in coastal San Mateo, Santa Cruz, and Monterey counties, the lower Salinas River, and one Bay Area stream using gauges on index streams to represent adjacent and analogous watersheds. The specific low-flow values that will trigger angling closures are to be developed based on gauging station flows and measurements of water depth and channel geometry that determine fish passage ability. It is expected that these values will be available for the 2005 angling regulation cycle. In the interim, the Department is proposing to close the below streams to angling when the Department determines through various sources of information that low stream-flows are impeding fish passage and fish are being exposed to excessive angling pressure without means of escape. Streams proposed to be used for low-flow gauging that could trigger angling closures are:

3. Pajaro River and all its tributaries based on the lower Pajaro River USGS gauge.
4. Salinas River, lower main stem below its confluence with the Arroyo Seco River based on the USGS Salinas River gauge near Spreckels; and also the Arroyo Seco River based on both the USGS Arroyo Seco gauge near Greenfield and the Spreckels gauge in Monterey County.

5. **Arroyo Sew River** based on both ~~the~~ **USGS Arroyo Seco** gauge near **Greenfield** and at the **Spreckels** gauge in Monterey County.
6. **Aptos and Soquel creeks** based on the **USGS Soquel Creek** gauge in **Santa Cruz County**.
7. **San Lorenzo River** and adjacent streams **north to Waddell Creek** in **Santa Cruz County**.
8. **Pescadero Creek** and **San Mateo County coastal streams** from **Elliot Creek** to **Milagro Creek**.
9. **Coyote Creek** downstream of **its confluence** with **Upper Penetencia Creek**, and **Upper Penitencia Creek**.

Minor ~~editorial~~ changes were made to **clarify** and/or **simplify the regulations**.

Subsections (a) of Section 8.00, Title 14, CCR, is amended to read:

§ 8.00 .Low-Flow Restrictions.

(a) Ed River, Mad River, Mattole River, Redwood Creek, Smith River and Van Duzen River. Stream closures: Special Low Flow Conditions. From October 1 through January 31, any of the stream reaches listed in subsection (1) through (7) below shall be closed to all angling on from Tuesday through Thursday and ~~Friday~~ Wednesday when the department determines that the flow the previous Monday morning at any of the designated gauging stations is less than the minimum flows set forth in subsections (1) through (7); any of the stream reaches listed in subsections (1) through (7) below shall be closed to all angling from on Thursday and Friday when the department determines that the flow on the previous Wednesday at any of the designated gauging stations is less than the minimum flows set forth in subsections (1) through (7); any of the stream reaches listed in subsections (1) through (7) below shall be closed to all angling from Saturday through Monday when the department determines that the flow on the previous Friday at any of the designated gauging stations is less than the minimum flows set forth in subsections (1) through (7). Notwithstanding this provision, the department may close or keep a stream reach closed to fishing when the minimum flow is exceeded on the scheduled flow determination day if the department is reasonably assured that the stream flow is likely to decrease below the minimum flow as specified in subsections (a)(1)-(7) of Section 8.00. ~~When the~~ in date. In addition, the department may reopen a stream at any time during a closed period if the minimum flow as specified in subsections (a)(1)-(7) of Section 8.00 is exceeded and the department is reasonably assured that it will remain above the minimum flow until the next scheduled Monday, ~~or Wednesday, or Friday~~ Wednesday, and Friday flow determination. The department shall make information available to the public by a telephone recorded message updated, as necessary, no later than 1:00 p.m. each Monday, ~~and Thursday~~ Wednesday, and Friday as to whether any stream will be open or closed to fishing. It shall be the responsibility of the angler to use the telephone number designated in the sport fishing regulations booklet to obtain information on the status of any stream.

(1) The main stem Ed River from the paved junction of Fulmor Road with the Eel River to the South Fork Eel River.

Minimum Flow: 350 cfs at the gauging station near Scotia.

(2) The South Fork of the Eel River downstream from Rattlesnake Creek and the Middle Fork Eel River downstream from the Black Butte River.

Minimum Flow: 340 cfs at the gauging station at Miranda.

(3) Van Duzen River: The main stem Van Duzen River from its junction with the Eel River to the Highway 36 bridge near Bridgeville.

Minimum Flow: 160 cfs at the gauging station near Grizzly Creek Redwoods State Park

(4) Mad River: The main stem Mad River from the Hammond Trail Railroad Trestle to Road bridge at Maple Cowan Creek.

Minimum Flow: 200 cfs at the gauging station at the Highway 299 bridge.

(5) Mattole River: The main stem of the Mattole River from the mouth to Honeydew Creek.

Minimum Flow: 320 cfs at the gauging station at Petrolia.

(6) Redwood Creek: The main stem of Redwood Creek from the mouth to its confluence with Bond Creek.

Minimum Flow: 300 cfs at the gauging station near the Highway 101 bridge.

(7) Smith River: The main stem Smith River from the mouth of Rowdy Creek, to its confluence with Patrick Creek; the South Fork Smith River from the mouth to its confluence with Jones Creek; and the North Fork Smith River from the mouth to its confluence with Stony Creek.

Minimum Flow: 400 cfs at the Jedediah Smith Redwoods State Park gauging station.

The number to call for information is (707)442-4502.

(b) Central Coast Streams: Stream Closures: Special Low Flow Conditions.

From October 1 through April 1 in Napa River (Napa County) between Trancas Avenue in Napa and Lincoln Bridge in Calistoga, Sonoma Creek (Sonoma County), and all streams tributary to the Pacific Ocean (and its bays) in Mendocino, Sonoma, and Marin counties, except for the

River, shall be closed to all angling for a period of one week, commencing on any Thursday when the Department determines that the flow on the previous Wednesday morning at the gauging station on the main stem Russian River near Guerneville (Sonoma County) is less than 500 cfs. Notwithstanding this provision, the Department may immediately reopen the streams to fishing if it

determines that such flows exceed 500 cfs and no negative impact to the resource would result. The Department shall make information available to the public by telephone recorded message, updated no later than 1:00 p.m. each Wednesday, as to whether any stream will be open or closed to fishing. It shall be the responsibility of the angler to use the telephone number designated in the sport fishing regulations booklet to obtain information on the status of any stream.

THE NUMBER TO CALL FOR INFORMATION IS (707) 844-6633.

(c) The Carmel River main stem shall be closed to all fishing when the department determines that the flow at the U. S. G. S. gauging station near Carmel is less than 135 cfs. The stream flow gauge will be checked on Tuesday and Friday of each week. The decision as to whether the river will be open or closed to fishing will take place only on Tuesday and Friday of each week. In the event that river flow changes above or below 135 cfs later in the week, the fishing status for the river will not change until the day following the next scheduled reading. It shall be the responsibility of the angler to use the telephone number designated in the sport fishing regulations booklet to obtain information on the status of the river. THE NUMBER TO CALL FOR INFORMATION IS (831) 649-2886.

Subsection (d) of Section 8.00, Title 14, CCR, is amended to read:

~~(c) The Carmel River main stem shall be closed to all fishing when the department determines that the flow at the U.S.G.S. gauging station near Carmel is less than 135 cfs.~~

(d) South Central Coast Streams – Special Low Flow Closures: During December 1 through March 7 the following streams (subsections (1) through (7)) will be closed to fishing when the Department determines that stream flows are inadequate to provide fish passage for migrating steelhead trout and salmon. Closed streams will be reopened when the Department determines flows are adequate for fish passage. By December 2005, the Department will develop stream-flow values in cubic-feet-per-second at the below U.S.G.S. gauging stations that indicate when fish passage is impeded and streams are to be closed to fishing

(1) Upper Penitencia Ck. (Santa Clara Co.) and lower Coyote Ck. below its confluence with Upper Penitencia Ck. (U. S. G. S. gauging station on lower Coyote Ck. above St. Highway 297 in Milpitas).

(2) Pescadero Creek and all anadromous reaches of San Mateo Co. coastal streams normally open for fishing, from Elletts Ck. through Milagro Ck., shall be closed to all fishing when the department determines that the Pescadero Ck. flows are impeding fish passage. (U. S. G. S. gauging station is on Pescadero Ck.)

(3) The San Lorenzo River and all its tributaries, as well as all anadromous reaches of coastal streams normally open for fishing in Santa Cruz Co. from the San Lorenzo R. on North through Wadell Ck., shall be closed to all fishing when the department determines that the San Lorenzo flows are impeding fish passage. (U. S. G. S. gauging station in Henry Cowell Redwood State Park).

(4) Aptos and Soquel Creeks (Santa Cruz Co.) shall be closed to all fishing when the department determines that the Soquel Ck. flows are impeding fish passage. (U. S. G. S. gauging station on Soquel Ck.).

(5) The Pajaro River and Uvas, Llagas, and Corralitos Creeks, (Santa Cruz, Monterey, & Santa Clara Co.) shall be closed to all fishing when the department determines that the Pajaro R. flows are impeding fish passage. (U. S. G. S. gauging station on the lower Pajaro River).

(6) The main stem of the Salinas River (Monterey Co.), below its confluence with the Arroyo Seco River shall be closed to all fishing when the department determines that the flows are impeding fish passage (U. S. G. S. Spreckels gauging station on the Salinas R.).

(7) The Arroyo Seco River (Monterey Co.) shall be closed to all fishing when the department determines that the flows are impeding fish passage. (Flows to be evaluated at U. S. G. S. Spreckels gauging station on the Salinas R. and the U. S. G. S. gauging station near Greenfield on the Arroyo Seco R.).

(8) The Carmel River main stem, and the adjacent waters of San Jose, Gibson, Malpaso, Sobornes Creeks that are West of Highway 1 (Monterey Co.), shall be closed to all fishing when the department determines that the flow at the U. S. G. S. gauging station near Carmel is less than 80 cfs.

(9) The Big Sur River main stem west of the Highway 1 bridge, all of Limekiln Ck and its tributaries, and the anadromous portions of all other Big Sur Coast streams West of Highway 1 in

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Monterey Co., from Granite Ck. south to Salmon Ck., shall be closed to all fishing when the department determines that the flow at the U. S. G. S. gauging station on the Big Sur River is less than 40 cfs.

The stream flow gauges referred to above in subsections (8) and (9) will be checked on Tuesday and Friday of each week. The decision as to whether the river ~~these rivers~~ will be open or closed to fishing will take place only on Tuesday and Friday of each week. In the event that river flow ~~differs~~ changes above or below 135 cfs later in the week, the fishing status for the each specific river will not change until the day following the next scheduled reading. It shall be the responsibility of the angler to use the telephone number designated in the sport fishing regulations booklet to obtain information on the status of any of the rivers or creeks list above in

§ (1) & § (9). THE NUMBER TO CALL FOR INFORMATION IS (831) 64

Authority cited: Sections 200, 202, 205, 215 and 220, Fish and Game Code.

Reference: Sections 200, 202, 205, 206 and 220, Fish and Game code.