



CENTRAL DELTA WATER AGENCY

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Via Email

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Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

Re: Proposed Regulations 4/4/13

Dear Ladies and Gentlemen:

These comments are supplementary to our previous comments on your proposed regulations. In the interest of avoiding complete repetition such are incorporated herein by this reference. The section numbers have changed due to your revisions, but the substantive deficiencies remain.

Section 5001(h)(1)(B)

This section is inconsistent with Water Code Section 85031. What is commonly referred to as the "Delta Protection Act" (Water Code Section 12200 et seq) adopted in 1959 (DPA) is not included in the required consistency condition for reduced reliance on water from the Delta. These Water Code sections are not commonly included in the general reference to "State's area of origin statutes." The common reference to the State's area of origin statutes are to the Watershed of Origin Statutes (Water Code Sections 11460 et seq and 11128) and to the County of Origin Statutes (Water Code Section 10505 et seq). The Delta Protection Act (1959) (DPA) is particularly important in that 1) it requires the SWP and CVP to provide salinity control and an adequate water supply for the Delta (Water Code Sections 12201 & 12202); 2) it prohibits the export of water from the Delta to which in-Delta users are entitled through water rights and water which is necessary for salinity control and an adequate supply "to maintain and expand agriculture, industry, urban and recreational development in the Delta." (Water Code Section 12204); and 3) it requires maintenance of a common pool of water in the interior of the Delta and requires the operation and management of releases from storage for export to be integrated to the "maximum extent possible" in order to fulfill the objectives of the Act. The objectives of the DPA are to protect Delta water rights, provide

salinity control and additionally provide an adequate supply to “maintain and expand agriculture, industry, urban, and recreational development in the Delta.”

The DPA was contemporaneously interpreted by the Department of Water Resources in the Preliminary Bulletin 76, December 1960 Report to the Legislature as providing “In 1959 the State Legislature directed that water shall not be diverted from the Delta for use elsewhere unless adequate supplies for the Delta are first provided.”

Your regulations here and in other sections fail to embrace and are in conflict with the statutes which give a clear priority for Delta water uses over exports. A specific reference to the “Delta Protection Act” (1959) must be included along with the reference to “State’s area of origin statutes.” It would be better to include the specific statutory references from Water Code Section 85031.

The first sentence of Section 5001(h)(1)(B) should be changed to read:

“Regions that use water from the Delta watershed will reduce their reliance on this water for reasonable and beneficial uses, and improve regional self-reliance, consistent with the priorities of water rights and statutory rights to water including without limitation Water Code Sections 1215 et seq., 10505 et seq., 11128, 11460 et seq., and 12200 et seq.”

Section 5001(h)(1)(C)

This section is inconsistent with Water Code Section 85031 and the references therein, in that it does not mandate that water exported from the Delta be limited to water supplies legally available for export from the Delta. Exports by the SWP and CVP must be limited to water which is truly surplus to the present and future needs of the Delta and other areas of origin.

The words “will more closely match water supplies available to be exported” must be replaced with “shall be limited to water supplies legally available to be exported.” A better change would be “shall be limited to water supplies which are surplus to the present and future needs of the Delta and other areas of origin.”

Additionally, this section refers to “improving conveyance.” Water Code Section 85020(f) uses the words “Improve the water conveyance system.”

In order for the regulation to be consistent with the statute “improving the water conveyance system” should be substituted for “improving water conveyance.” Less conveyance for export rather than more is likely required and improving conveyance could be interpreted as suggesting increased conveyance. Levee and channel improvements, improved fish screening at the export intakes and improvements of the existing Delta cross-channel could all be conveyance system improvements consistent with law which do not necessarily result in increased conveyance.

The first sentence of Section 5001(h)(1)(C) should be changed to read:

“Water exported from the Delta shall be limited to water supplies which are surplus to the present and future needs of the Delta and other areas of origin.”

The first part of the second sentence should be changed to read:

“This will be done by improving the water conveyance system in the Delta and . . .”

Section 5001(h)(2)

This section is inconsistent with Water Code section 85020(c) in that the objective inherent in the co-equal goals is to “restore the Delta fisheries and wildlife.” While supporting “viable populations of native resident and migratory species” is a step in the right direction and a required goal, it falls far short of the statutory objective. Restoration is far greater than simply “supporting” viable populations. Additionally there are numerous non-native species of major recreational importance in the Delta, including species such as Striped Bass, Black Bass and Pheasants.

The words “capable of supporting viable populations of native resident and migratory species” should be replaced by “that will restore the Delta fisheries and wildlife consistent with the current objectives provided in state and federal law.”

The proposed regulation is also inconsistent with other provisions of law.

Water Code section 85302(c)(5) provides that the Delta Plan shall include measures that promote:

“Conditions conducive to meeting or exceeding the goals in existing species recovery plans and state and federal goals with respect to doubling salmon populations.”

Water Code section 85302(e)(3) provides that the Delta Plan include as a subgoal and strategy for restoring a healthy ecosystem:

“Promote self-sustaining, diverse populations of native and valued species by reducing risk of take and harm from invasive species.”

The CVPIA (3406(b)(1)) requires the Secretary of Interior to develop a program to ensure by the year 2002 natural production of anadromous fish on a long-term basis, at levels not less than twice the average levels attained during the period of 1967-1991. Anadromous fish include: salmon, steelhead, striped bass, sturgeon and American shad.

Section 5001(h)(3)

The regulation is in conflict with Water Code section 85020(b) and 85054.

- 1) It fails to require that agricultural values of the Delta be protected and enhanced and instead substitutes “Maintain Delta agriculture as a primary land use, a food source, a key economic sector and a way of life” in subsection (c).
- 2) It fails to require that the cultural and recreational values be protected and enhanced and instead substitutes “encourage recreation and tourism that allow visitors to appreciate the Delta and that contribute to its economy.
- 3) It fails to require that cultural, recreational and agricultural values of the Delta be protected and enhanced and instead substitutes “sustain a vital Delta economy that includes a mix of agricultural, tourism, recreation, related industries and business, and vital components of state and regional infrastructures.
- 4) It applies the word “unique” as a limitation on protection and enhancement rather than a recognition of the uniqueness of the Delta as requiring protection and enhancement of all its resources.

The regulation’s use of uniqueness is also inconsistent with the following:

- 1) Water Code section 85022(c)(1) which provides:

“The Delta is a distinct and valuable natural resource of vital and enduring interest to all the people and exists in a delicately balanced estuary and wetland ecosystem of hemispheric importance.”
- 2) Water Code section 85031(b)(1) which mandates that the Delta Protection Commission (DPC) develop a proposal which must include a plan “to establish state and federal designation of the Delta as a place of special significance, which may include application for a Federal designation of the Delta as a Natural Heritage Area.
- 3) Water Code section 85301(b)(2) which mandates that the DPC proposal include “a regional economic plan to support increased investment in agriculture, recreation, tourism and offer resilient land uses in the Delta.”
- 4) Water Code section 85301(c)(2) which mandates that “the Department of Food and Agriculture shall prepare a proposal, for submission to the commission, to establish market incentives and infrastructure to protect and enhance the economic and public values of Delta Agriculture.
- 5) Water Code section 12981 which provides:

“§12981. Unique resources with statewide significance; preservation

(a) The Legislature finds and declares that the delta is endowed

with many invaluable and unique resources and that these resources are of major statewide significance.

- (b) The Legislature further finds and declares that the delta's uniqueness is particularly characterized by its hundreds of miles of meandering waterways and the many islands adjacent thereto; that, in order to preserve the delta's invaluable resources, which include highly productive agriculture, recreational assets, fisheries, and wildlife environment, the physical characteristics of the delta should be preserved essentially in their present form; and that the key to preserving the delta's physical characteristics is the system of levees defining the waterways and producing the adjacent islands. However, the Legislature recognizes that it may not be economically justifiable to maintain all delta islands.
- (c) The Legislature further finds and declares that funds necessary to maintain and improve the delta's levees to protect the delta's physical characteristics should be used to fund levee work that would promote agricultural and habitat uses in the delta consistent with the purpose of preserving the delta's invaluable resources. *(Added by Stats. 1973, c. 717, p. 1293, § 1, eff. Sept. 24, 1973. Amended by Stats. 1985, c. 1271, § 3; Stats. 1996, c. 601 (A.B. 360), § 11.)*

The regulation is also inconsistent with Water Code section 12201 which provides:

“§12201. Necessity of maintenance of water supply

The Legislature finds that the maintenance of an adequate water supply in the Delta sufficient to maintain and expand agriculture, industry, urban, and recreational development in the Delta area as set forth in section 12220, Chapter 2, of this part, and to provide a common source of fresh water for export to areas of water deficiency is necessary to the peace, health, safety and welfare of the people of the State, except that delivery of such water shall be subject to the provisions of section 10505 and sections 11460 to 11463, inclusive, of this code. (Added by Stats. 1959, c. 1766, p 4247, §1.)”

Section 5001(h(3) should be changed to read:

- “(3) ‘Achieving the coequal goals in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place’ means that the fundamental characteristics and values that comprise the Delta’s special qualities can be preserved and

enhanced while accommodating natural changes. In this regard, the following are core strategies for protecting and enhancing the unique values that distinguish the Delta and make it a special region:

- (A) Designate the Delta as a special place worthy of national and state attention;
- (B) Plan to preserve the hundreds of miles of meandering waterways and the many islands in essentially their present form;
- (C) Protect and enhance Delta agriculture as a primary land use, a food source, a key economic sector, a way of life and as an essential habitat for terrestrial species including waterfowl of the Pacific Flyway;
- (D) Encourage recreation and tourism that allow visitors to enjoy and appreciate the Delta and that contribute to its economy;
- (E) Protect and enhance a vital Delta economy that includes a mix of agriculture, tourism, recreation, related industries and business, and vital components of state and regional infrastructure; and,
- (F) Reduce flood and other risks to communities, people, property, and other interests in the Delta by improving the system of levees which define the waterways and produce adjacent islands while recognizing that it may not be economically justifiable to maintain all delta islands against all natural risks.
- (G) Assure that the Delta will be provided with salinity control and an adequate water supply sufficient to maintain and expand agriculture, industry, urban and recreational development in the Delta and that provision of the same shall be a pre-condition to the export of water from the Delta by the State Water Project and federal Central Valley Project.”

Section 5001(n) Encroachment

The regulation includes “removal of vegetation” as an encroachment. Such inclusion is inconsistent with Water Code sections 85020 and 85054 in that maintenance and enhancement of levees and floodways is critical to the protection and enhancement of the unique cultural, recreation, natural resource, and agricultural values of the Delta.

Removal of vegetation is part of "Routine maintenance and operation" of levees, flood channels, and drainage canals.

Requirements for removal of vegetation are contained in the operation and maintenance manuals for project levees and in the regulations of the Central Valley Flood Protection Board. By way of example, California Code of Regulations Title 23 section 131(d) provides:

"With the exception of naturally occurring vegetation which the owner of the underlying land has no responsibility to maintain, any vegetation which interferes with the successful execution, functioning, maintenance or operation of the adopted plan of flood control, must be removed by the owner. If the owner does not remove such vegetation upon request, the board reserves the right to have the vegetation removed at the owner's expense."

Title 23 section 131(g)(2) provides:

"Invasive or difficult-to-control vegetation, whether naturally occurring or planted, that impedes or misdirects flood flows is not permitted to remain on a berm or within the floodway or bypass."

Contracts between the State and United States and between local maintaining agencies and the State require removal of vegetation from levees and floodways. Such contracts are written to comply with State and Federal Statutes and regulations. The proposed regulation constitutes an unlawful interference with contracts as well as a serious conflict with statutes and regulations.

The definition should be revised to delete "or removal of vegetation".

Water Code section 85057.5(5) specifically excludes from covered actions "Routine maintenance and operation of any facility located, in whole or in part, in the Delta, that is owned or operated by a local public agency."

Section 5001(v) "Non-native invasive species"

The definition is too broad and can include introduced species many of which have been a part of the ecosystem for over 100 years, and are an important part of the Bay-Delta ecosystem. By way of example, Striped Bass which are native to the Atlantic Coast and cohabit with Atlantic Salmon were introduced into the Bay-Delta Estuary in 1879. The importance of Striped Bass as a sport fish and as an indicator of ecosystem health led to many studies of its life history and population dynamics. (See California Fish and Game 85(1):31-36 1999 Status of Striped Bass in the Sacramento-San Joaquin Estuary)

The Striped Bass index was used as an indicator of health of the estuary until it dropped below the minimum health level, then it was ignored and now Striped Bass are being disfavored to further degrade conditions in the Delta in order to facilitate greater

exports from the Delta. Following are graphs (Graph 1 and Graph 2) showing natural fall-run Salmon production for the Sacramento River, Striped Bass abundance, exports from the Delta, natural production for fall-run San Joaquin system Salmon, Delta Smelt Index and spawning Steelhead numbers upstream of RBDD. There is no apparent correlation between Salmon production declines and Striped Bass abundance and both species existed at relatively healthy population levels until the early 1970s when Striped Bass declined in apparent correlation with increased exports of water from the Delta.

Most native and non-native fish species and many mammals are predators. Many are predators even on their own species. Invasive is a term that has been applied to unintended or even unlawful introduction of non-native species such as those introduced from the discharge of ballast water from ships.

The definition in 5001(v) and Section 5009 together seek to prevent the increase in numbers of Striped Bass and bass. These sections provide a clear conflict with 1) Water Code section 85302(c)(5) which requires that the Delta Plan include measures that promote:

“Conditions conducive to meeting or exceeding the goals in existing species recovery plans and state and federal goals with respect to doubling salmon populations.” (emphasis added) and

2) Water Code section 85302(e)(3) which requires that the Delta Plan include as a subgoal and strategy:

“Promote self-sustaining, diverse populations of native and valued species by reducing the risk of take and harm from invasive species.” (emphasis added)

Striped Bass are clearly a valued species for sport fishing and are also the subject of goals “in existing recovery plans.”

The CVPIA section 3406(b)(2) requires the Secretary of Interior to develop a program to ensure by the year 2002 natural production of anadromous fish on a long-term basis, at levels not less than twice the average levels attained during the period of 1967-1991. Anadromous fish are defined in the Act to include salmon, steelhead, striped bass, sturgeon and American shad.

The subject regulations are also inconsistent with Fish and Game Code section 1741 which provides:

“The Legislature finds and declares that it is the policy of the state to preserve and enhance black bass resources and to manage black bass populations to provide satisfactory recreational opportunities to the public.” and

California Fish and Game Fishery Policies for Striped Bass and Black Bass, copies of which are attached hereto as Attachment A.

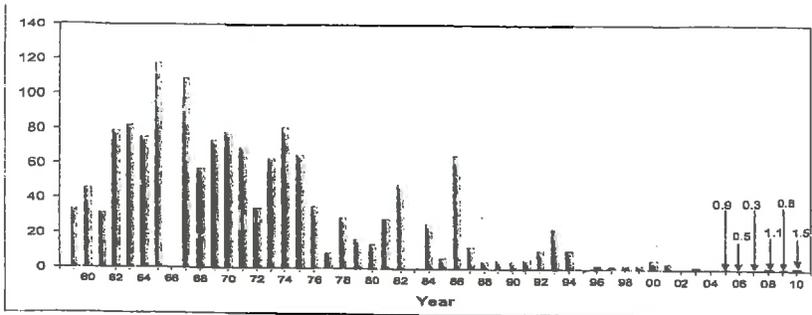


Figure 1. Summer Townet Survey age-0 striped bass abundance indices for 1959 through 2010. No indices were calculated for the years 1966, 1983, 1995 and 2002.

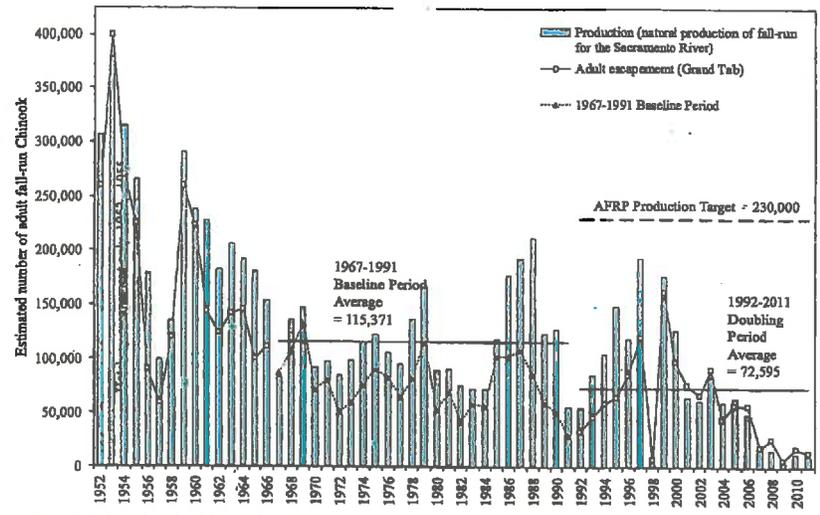
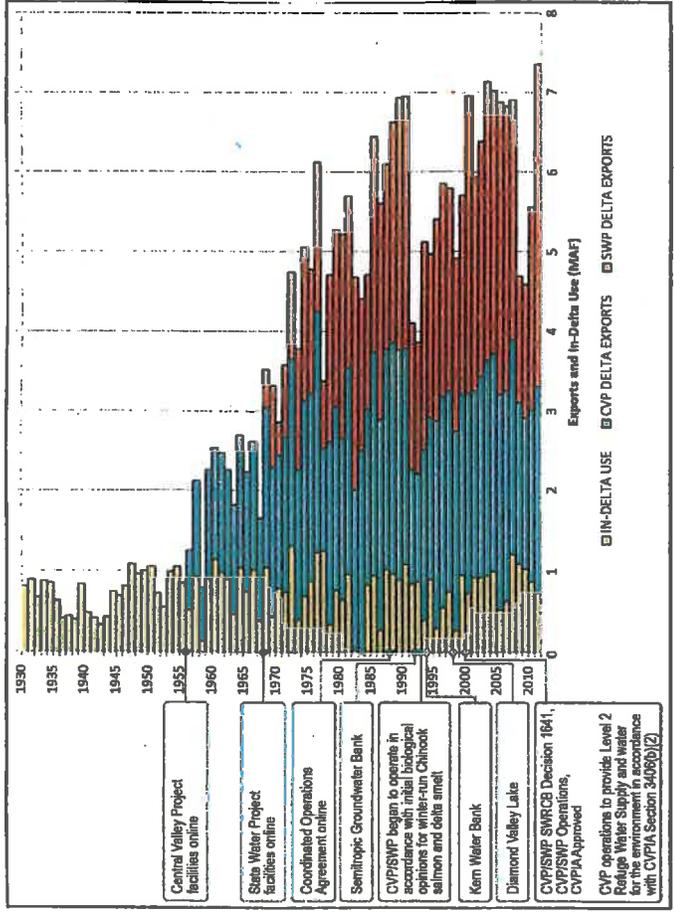


Figure 6. Estimated yearly adult natural production, and in-river adult escapements for the entire mainstem Sacramento River fall-run Chinook salmon. 1952 - 1966 and 1992 - 2011 numbers are from CDFG Grand Tab (Apr 24, 2012). 1967-1991 Baseline Period numbers are from Mills and Fisher (CDFG, 1994).



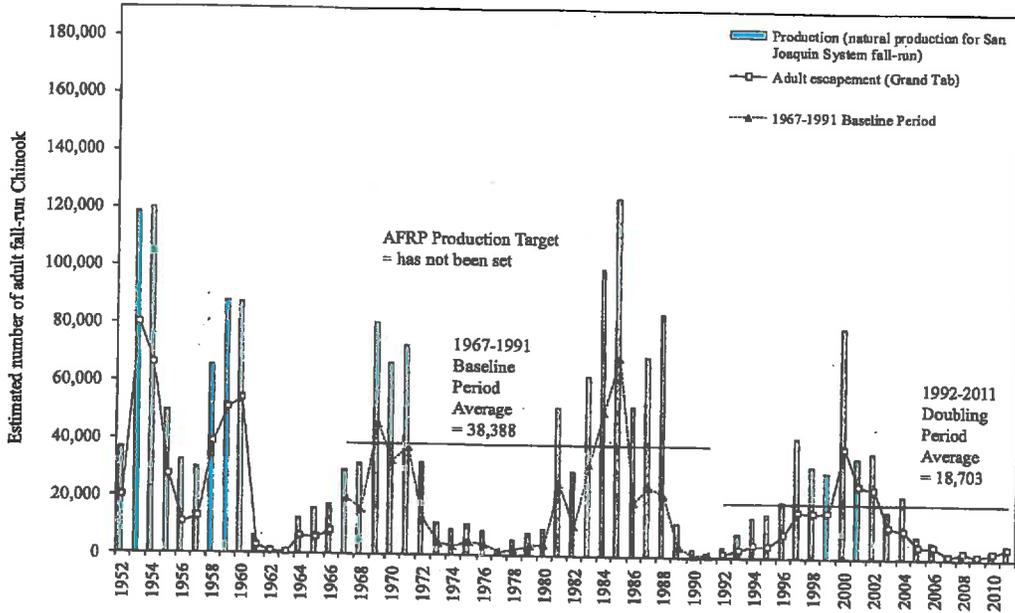


Figure 35. Estimated yearly natural production, and in river escapements of San Joaquin System adult fall-run Chinook salmon. The San Joaquin System is the sum of the Stanislaus, Tuolumne, and Merced Rivers. 1952 - 1966, and 1992 - 2011 numbers are from CDFG Grand Tab (Apr 24, 2012). 1967-1991 Baseline Period numbers are from Mills and Fisher (CDFG, 1994).

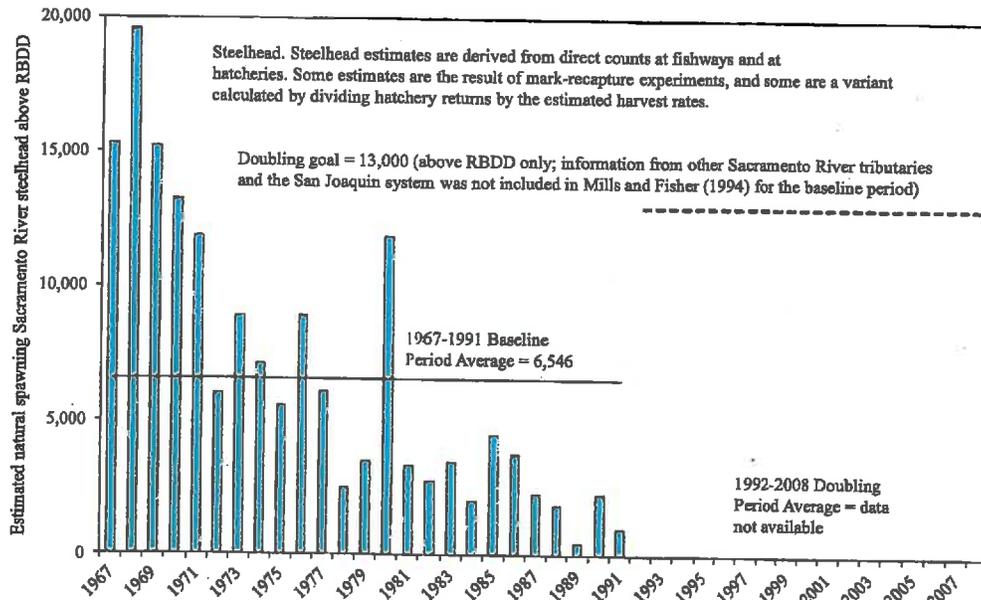
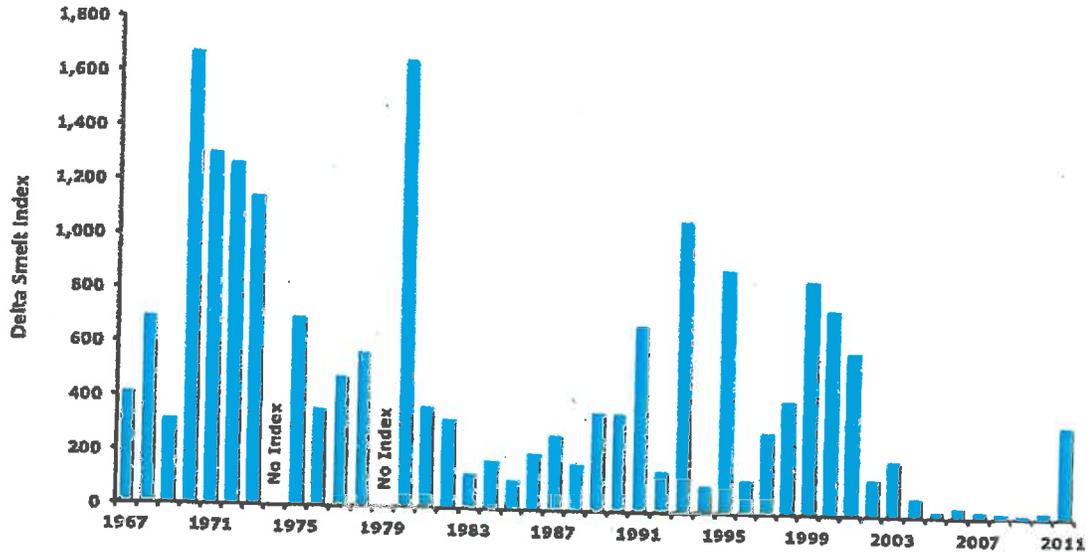


Figure 36. Estimated yearly number of natural spawning of steelhead on the Sacramento River, upstream of the RBDD (Mills and Fisher, 1994). Data for 1992-2008 is from CDFG, Red Bluff. 2008 sampling was curtailed in June due to high water temperatures.

There are numerous native fish, birds and mammals that are predators of salmon at various life stages. Physical conditions which are conducive to predation by non-native fish species are also conducive to predation by native species of fish. Elimination of one fish predator species can be expected to result in replacement by another.

There is no apparent correlation between the decline of desired fish species and wetland habitat in the Delta (as legally defined in Water Code section 12220). The objective should be improvement of habitat to achieve the desired goal within the constraints provided in law. Salmon, Striped Bass and "Bass" co-existed with satisfactory populations when exports from the Delta were substantially lower and outflows higher than the levels desired by the SWP, CVP and their contractors. The required amounts, timing and quality of flow into and out of the Delta and the times when diversions can be allowed have not yet been determined.

The Section 5001(v) definition of "non-native invasive species" should be changed by adding after "species" in the first line "which were unlawfully introduced or historically not recognized as valuable to the public or ecosystem."

The Section 5009 proposed addition of "Striped bass, or bass" should be rejected.

Section 5003. Reduce Reliance on the Delta Through Improved Regional Self-Reliance

The regulation ignores water right and statutory priorities afforded to the Delta and other areas of origin and is therefore inconsistent with Water Code section 85031 which is an overriding limitation on Division 33 of the Water Code.

The regulations and Delta Plan must require that the exports from the Delta by the State Water Project (SWP) and Central Valley Project (CVP) be curtailed first before any reduction in reliance on the Delta is imposed on diverters in the Delta and other areas of origin within the Delta Watershed.

The priorities of senior water right holders and those in the protected areas subject to Water Code section 1215 et seq. must also be recognized and protected.

Water Code §85031(a) provides as follows:

¶85031. Effect on existing water rights; diversion and conveyance of water not to deem area immediately adjacent or capable of being conveniently supplied; applicability of other water Code provisions; effect on existing legal protections

(a) This division does not diminish, impair, or otherwise affect in any manner whatsoever any area of origin, watershed of origin, county of origin, or any other water rights protections, including, but not limited to, rights to water appropriated prior to December 19, 1914, provided under the law. This division does not limit or otherwise affect the application of Article 1.7 (commencing with Section 1215) of

Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462, and 11463, and Sections 12200 to 12220, inclusive." (Emphasis added.)

Water Code §§12200 through 12205 are particularly specific as to the requirements to provide salinity control for the Delta and provide an "adequate water supply in the Delta sufficient to maintain and expand agriculture, industry, urban and recreational development."

For ease of reference, the following Water Code sections are quoted with emphasis added:

“§12200. Legislative findings and declaration

The Legislature hereby finds that the water problems of the Sacramento-San Joaquin Delta are unique within the State; the Sacramento and San Joaquin Rivers join at the Sacramento-San Joaquin Delta to discharge their fresh water flows into Suisun, San Pablo and San Francisco bays and thence into the Pacific Ocean; the merging of fresh water with saline bay waters and drainage waters and the withdrawal of fresh water for beneficial uses creates an acute problem of salinity intrusion into the vast network of channels and sloughs of the Delta; the State Water Resources Development system has as one of its objectives the transfer of waters from water-surplus areas in the Sacramento Valley and the north coastal area to water-deficient areas to the south and west of the Sacramento-San Joaquin Delta via the Delta; water surplus to the needs of the areas in which it originates is gathered in the Delta and thereby provides a common source of fresh water supply for water-deficient areas. It is, therefore, hereby declared that a general law cannot be made applicable to said Delta and that the enactment of this law is necessary for the protection, conservation, development, control and use of the waters in the Delta for the public good. *(Added by Stats. 1959, c. 1766, p. 4247, §1.)*

§12201. Necessity of maintenance of water supply

The Legislature finds that the maintenance of an adequate water supply in the Delta sufficient to maintain and expand agriculture, industry, urban, and recreational development in the Delta area as set forth in Section 12220, Chapter 2, of this part, and to provide a common source of fresh water for export to areas of water deficiency is necessary to the peace, health, safety and welfare of the people of the State, except that delivery of such water shall be subject to the provisions of Section 10505 and Sections 11460 to 11463, inclusive, of this code. *(Added by Stats. 1959, c. 1766, p 4247, §1.)*

§12202. Salinity control and adequate water supply; substitute water supply; delivery

Among the functions to be provided by the State Water Resources Development System, in coordination with the activities of the United States in providing salinity control for the Delta through operation of the Federal Central Valley Project, shall be the provision of salinity control and an adequate water supply for the users of water in the Sacramento-San Joaquin Delta. If it is determined to be in the public interest to provide a substitute water supply to the users in said Delta in lieu of that which would be provided as a result of salinity control no added financial burden shall be placed upon said Delta water users solely by virtue of such substitution. Delivery of said substitute water supply shall be subject to the provisions of Section 10505 and Sections 11460 to 11463, inclusive, of this code. *(Added by Stats. 1959, c. 1766, p 4247, §1.)*

§12203. Diversion of waters from channels of delta

It is hereby declared to be the policy of the State that no person, corporation or public or private agency or the State or the United States should divert water from the channels of the Sacramento-San Joaquin Delta to which the users within said Delta are entitled. *(Added by Stats. 1959, c. 1766, p 4249, §1.)*

§12204. Exportation of water from delta

In determining the availability of water for export from the Sacramento-San Joaquin Delta no water shall be exported which is necessary to meet the requirements of Sections 12202 and 12203 of this chapter. *(Added by Stats. 1959, c. 1766, p 4249, §1.)*

§12205. Storage of water; integration of operation and management of release of water

It is the policy of the State that the operation and management of releases from storage into the Sacramento-San Joaquin Delta of water for use outside the area in which such water originates shall be integrated to the maximum extent possible in order to permit the fulfillment of the objectives of this part. *(Added by Stats. 1959, c. 1766, p 4249, §1.)*

§ 11460 provides:

“§ 11460. Prior right to watershed water

In the construction and operation by the department of any project under the provisions of this part a watershed or area wherein water originates, or an area immediately adjacent thereto which can conveniently be supplied with water therefrom, shall not be deprived by the department directly or

indirectly of the prior right to all of the water reasonably required to adequately supply the beneficial needs of the watershed, area, or any of the inhabitants or property owners therein. (*Added by Stats. 1943, c. 370, p. 1896. Amended by Stats. 1957, c. 1932, p. 3410, § 296.*)

The December 1960 Bulletin 76 (Attachment A to prior comments) which is a contemporaneous interpretation by DWR of Water code Section 12200 through 12205 provides at page 12:

“In 1959 the State Legislature directed that water shall not be diverted from the Delta for use elsewhere unless adequate supplies for the Delta are first provided.” (emphasis added.)

A summary of the promises made on behalf of the United States to those in the areas of origin is contained in the 84th Congress, 2d Session House Document No. 416, Part One Authorizing Documents 1956 at Pages 797-799 as follows:

“My Dear Mr. Engle: In response to your request to Mr. Carr, we have assembled excerpts from various statements by Bureau and Department officials relating to the subject of diversion of water from the Sacramento Valley to the San Joaquin Valley through the operation of the Central Valley Project.

A factual review of available water supplies over a period of more than 40 years of record and the estimates of future water requirements made by State and Federal agencies makes it clear that there is no reason for concern about the problem at this time.

For your convenience, I have summarized policy statements that have been made by Bureau of Reclamation and Department of the Interior officials. These excerpts are in the following paragraphs:

On February 20, 1942, in announcing the capacity for the Delta-Mendota Canal, Commissioner John C. Page said, as a part of his Washington D.C., press release:

“The capacity of 4,600 cubic feet per second was approved, with the understanding that the quantity in excess of basic requirements mainly for replacement at Mendota Pool, will not be used to serve new lands in the San Joaquin Valley if the water is necessary for development in the Sacramento Valley below Shasta Dam and in the counties of origin of such waters.”

On July 18, 1944, Regional Director Charles E. Carey wrote a letter to Mr. Harry Barnes, chairman of a committee of the Irrigation

Districts Association of California. In that letter, speaking on the Bureau's recognition and respect for State laws, he said:

"They [Bureau officials] are proud of the historic fact that the reclamation program includes as one of its basic tenets that the irrigation development in the West by the Federal Government under the Federal reclamation laws is carried forward in conformity with State water laws."

On February 17, 1945, a more direct answer was made to the question of diversion of water in a letter by Acting Regional Director R. C. Calland, of the Bureau, to the Joint Committee on Rivers and Flood Control of the California State Legislature. The committee had asked the question, "What is your policy in connection with the amount of water that can be diverted from one watershed to another in proposed diversions?" In stating the Bureau's policy, Mr. Calland quoted section 11460 of the State water code, which is sometimes referred to as the county of origin act, and then he said:

"As viewed by the Bureau, it is the intent of the statute that no water shall be diverted from any watershed which is or will be needed for beneficial uses within that watershed. The Bureau of Reclamation, in its studies for water resources development in the Central Valley, consistently has given full recognition to the policy expressed in this statute by the legislature and the people. The Bureau has attempted to estimate in these studies, and will continue to do so in future studies, what the present and future needs of each watershed will be. The Bureau will not divert from any watershed any water which is needed to satisfy the existing or potential needs within that watershed. For example, no water will be diverted which will be needed for the full development of all of the irrigable lands within the watershed, nor would there be water needed for municipal and industrial purposes or future maintenance of fish and wildlife resources."

On February 12, 1948, Acting Commissioner Wesley R. Nelson sent a letter to Representative Clarence F. Lea, in which he said:

You asked whether section 10505 of the California Water Code, also sometimes referred to as the county of origin law, would be applicable to the Department of the Interior, Bureau of Reclamation. The answer to this question is: No, except insofar as the Bureau of Reclamation has taken or may take assignments of applications which have been filed for the appropriation of water under the California Statutes of 1927, chapter 286, in

which assignments reservations have been made in favor of the county of origin.

The policy of the Department of the Interior, Bureau of Reclamation, is evidenced in its proposed report on a Comprehensive Plan for Water Resources Development—Central Valley Basin, Calif., wherein the Department of the Interior takes the position that “In addition to respecting all existing water rights, the Bureau has complied with California’s ‘county of origin’ legislation, which requires that water shall be reserved for the presently unirrigated lands of the areas in which the water originates, to the end that only surplus water will be exported elsewhere.”

On March 1, 1948, Regional Director Richard L. Boke wrote to Mr. A. L. Burkholder, secretary of the Live Oak Subordinate Grange No. 494, Live Oak, Calif., on the same subject, and said:

“I can agree fully with the statement in your letter that it would be grossly unjust to ‘take water from the watersheds of one region to supply another region until all present and all possible future needs of the first region have been fully determined and completely and adequately provided for.’ That is established Bureau of Reclamation policy and, I believe, it is consistent with the water laws of the State of California under which we must operate.”

On May 17, 1948, Assistant Secretary of the Interior William E. Warne wrote a letter to Representative Lea on the same subject, in which he said: “The excess water made available by Shasta Reservoir would go first to such Sacramento Valley lands as now have no rights to water.”

Assistant Secretary Warne goes on to say, in the same letter:

“As you know, the Sacramento Valley water rights are protected by: (1) Reclamation law which recognizes State water law and rights thereunder; (2) the State’s counties of origin act, which is recognized by the Bureau in principle; and (3) the fact that Bureau filings on water are subject to State approval. I can assure you that the Bureau will determine the amounts of water required in the Sacramento Valley drainage basin to the best of its ability so that only surplus waters would be exported to the San Joaquin. We are proceeding toward a determination and settlement of Sacramento Valley waters which will fully protect the rights of present users; we are determining the water needs of the Sacramento Valley; and it will be the Bureau’s policy to export from that valley only such waters as are in excess of its needs.”

On October 12, 1948, Secretary of the Interior Krug substantiated former statements of policy in a speech given at Oroville, Calif. Secretary Krug said, with respect to diversion of water:

“Let me state, clearly and finally, the Interior Department is fully and completely committed to the policy that no water which is needed in the Sacramento Valley will be sent out of it.”

He added:

“There is no intent on the part of the Bureau of Reclamation ever to divert from the Sacramento Valley a single acre-foot of water which might be used in the valley now or later.”

Water Code section 1216 provides as follows:

§ 1216. Depriving protected area of adequate supplies of water prohibited

A protected area shall not be deprived directly or indirectly of the prior right to all the water reasonably required to adequately supply the beneficial needs of the protected area, or any of the inhabitants or property owners therein, by a water supplier exporting or intending to export water for use outside a protected area pursuant to applications to appropriate surface water filed, or groundwater appropriations initiated, after January 1, 1985, that are not subject to Section 11460. (*Added by Stats.1984, c. 1655, § 2.*)”

The failure to honor the water right and statutory priorities as required by Water Code section 85031 is simply a taking of the property of those with seniority and a gift to the contractors of the SWP and CVP receiving waters exported at the SWP and CVP pumps near Tracy.

The resulting injustice from the proposed regulation is highlighted by the fact that the SWP was to develop sufficient projects in North Coast watersheds to supplement flows into the Delta of 5 million acre feet per year by the year 2000. These supplemental flows were needed to meet the approximately 4.25 million acre feet of SWP contract entitlement as well as other project responsibilities such as salinity control for the Delta. The North Coast development did not take place yet the SWP continues to export water from the Delta. The failure of the Secretary of Interior to comply with the condition that the San Luis Unit of the CVP not go forward unless a Valley Drain with an outlet to the Bay or Ocean was assured also highlights the injustice resulting from the Delta Stewardship Council effort.

The SWP and CVP have a duty to mitigate damages caused by the projects and to fulfill their affirmative obligations such as the provision of salinity control for the Delta, the preservation of fish and wildlife by the SWP and the obligation of the CVP to meet the restoration of anadromous fish requirements in CVPIA Section 3406(b)(2). The CVPIA requirement is to develop a program to ensure by the year 2002 natural production of anadromous fish on a long term basis, at levels not less than twice the average levels attained during the period of 1967-1991. Anadromous fish are defined in the Act to include salmon, steelhead, striped bass, sturgeon and American shad.

The regulations must be rewritten to require curtailment of SWP and CVP exports from the Delta to areas south of the Delta before imposition of any burden on other water users, and then in accordance with the water right and statutory priorities.

The first two lines of Section 5003(a) should be changed to read:

“(a) Water shall not be exported from or transferred through the Delta for use outside the Delta and other areas of origin if all of the following apply:”

In Section 5003(c)(1) the words “or in the percentage of water used” should be deleted.

If a supplier increases water deliveries from sources other than the Delta the percentage of Delta water in that supplier’s total water deliveries will go down, but the reliance on the Delta will not change in amount to be diverted. The language is at best ambiguous.

Section 5005(b). The reference to subsection (c) should be changed to relettered (a).

Section 5005. Update Delta Flow Objectives

In compliance with the limitations contained in Water Code section 85031, the regulation must be revised to include the requirement that imposition of flow requirements must adhere to the water right and statutory priorities. Flow necessary for mitigation of harm caused by the SWP and CVP, and to meet salinity control in the Delta, and to meet the affirmative obligations of the Projects such as the SWP obligation to preserve fish and wildlife, and the CVP obligation to double the natural production of anadromous fish must be provided by the SWP and CVP.

Section 5006. Restore Habitats at Appropriate Elevations

The regulation as written is in conflict with Water Code section 85020(b) which requires the protection and enhancement of the unique cultural, recreational and agricultural values of the California Delta as an evolving place, and Water Code section 85054 as to protecting, restoring and enhancing the Delta ecosystem of which the levee protected lands are a part, and the requirement to protect and enhance the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. As explained above, interference with the reclamation of the Swamp and Overflowed lands would violate the obligation of the State resulting from the grant of said lands from the United States.

The regulation is also in conflict with Water Code section 12981 in which the Legislature has declared that in order to preserve the Delta’s invaluable resources, the physical characteristics of the Delta should be preserved essentially in their present form and that it is necessary to maintain and improve the Delta’s levees to protect such physical characteristics. The levee systems at the “appropriate elevations” are in areas which are less vulnerable to subsidence related risks. The mandate of such regulation also appears to illegally conflict with local agency efforts and plans to protect agricultural lands.

The regulation should be revised to require that the restoration of habitat be accomplished in a manner consistent with the statutory requirements. Improvement of water quality in the Delta and provision of inflow and outflow would constitute consistent restoration of habitat. Similarly, improvement of in-channel habitat such as on already flooded islands and areas, and on the channel islands or berms would be consistent. Improvement of levees to provide a larger structural section to accommodate waterside planting is also an opportunity for habitat restoration that could be consistent with legal requirements.

The regulation should include:

- “(c) No habitat Restoration shall be allowed if it requires the breaching of or results in compromising the integrity of any existing levee system in the Delta.”

Section 5007. Protect Opportunities to Restore Habitat

This regulation coupled with the regulation pertaining to covered actions constitutes a regulatory taking in contravention of the State and Federal Constitution and related statutes. Identification of such areas for extraordinary regulation and future acquisition will diminish land values without just compensation. Additionally, the areas designated include agricultural lands the conversion of which to habitat would violate Water Code sections 85020(b), 85054, 12981, 11461 and other provisions of law and the obligations to reclaim Swamp and Overflowed lands.

Inhibiting use or development for the purpose of limiting the cost or otherwise facilitating a future acquisition for a public purpose constitutes an unlawful taking.

Section 5009. Avoid Introductions of Habitat Improvements for Invasive Non-Native Species

As set forth above in joint comments on both 5001.(v) and 5009, the regulation is in conflict with Water Code sections 85302(c)(5), 85302(e)(3), CVPIA section 3405(b)(2), Fish and Game Code section 1741 and California Fish and Game Fishing Policies for Striped Bass and Black Bass.

Section 5010. Locate New Urban Development Wisely

The regulation unduly interferes with local land use authority in that its limitations are an absolute limitation and go well beyond a reasonable nexus to the coequal goals. Flood proofing or protecting development to meet all requirements in areas not listed in 5010(a) is possible, and the targeting of areas rather than establishing standards for development, which can be uniformly and equitably applied, is in conflict with the authority provided by law to local and regional land use agencies.

The statement of no alteration of concurrent authority with the Delta Protection Commission (DPC) does not resolve the DSC application of requirements beyond the jurisdiction of the DPC or the prohibition by the DSC of development allowed by the DPC.

(DPC) does not resolve the DSC application of requirements beyond the jurisdiction of the DPC or the prohibition by the DSC of development allowed by the DPC.

Section 5012. Prioritization of State Investments in Delta Levees and Risk Reduction

In Section 5012(a)(2) the provision "Except on islands planned for ecosystem restoration, improvement of non-project Delta levees to the Hazard Mitigation Plan (HMP) may be funded without justification of the benefits." should be modified to delete "Except on islands planned for ecosystem restoration".

As explained above, such targeting harms land values in advance of acquisition for public purposes and is contrary to law.

Section 2013. Require Flood Protection for Residential Development in Rural Areas

The additional requirement for flood proofing to protect against a 55 inch rise in sea level at the Golden Gate should be deleted. The language is ambiguous as to the resulting flood elevation in the Delta and could be interpreted to require more than the 200 year level of protection required for urban areas. The requirement should be the same as that for the unincorporated Delta towns.

Very truly yours,



Dante John Nomellini
Manager and Co-Counsel



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Fisheries Policies

ANADROMOUS RAINBOW TROUT

Return

It is the policy of the Fish and Game Commission that:

- I. Anadromous rainbow trout, commonly called steelhead, shall be managed to protect and maintain the populations and genetic integrity of all identifiable stocks. Naturally spawned anadromous rainbow trout shall provide the foundation of the Department's management program.
- II. Anadromous rainbow trout populations shall be periodically inventoried by the Department, or its agents, as necessary for management and protection of the anadromous rainbow trout stocks and their habitat, as outlined in this policy.
- III. Anadromous rainbow trout streams shall be inventoried for quantity and quality of habitat, including stream flow conditions. Restoration and acquisition plans shall be developed and implemented to safeguard such critical habitats as estuaries, coastal lagoons, and spawning and rearing areas, and to protect or guarantee future in-stream flows. Steelhead Fishing Report - Restoration Card Program and other funding may be directed to implement the plans.
- IV. Existing anadromous rainbow trout habitat shall not be diminished further without offsetting mitigation of equal or greater long-term habitat benefits. All available steps shall be taken to prevent loss of habitat, and the Department shall oppose any development or project that will result in irreplaceable losses. Artificial production shall not be considered appropriate mitigation for loss of wild fish or their habitat.
- V. The Department shall strive to improve habitat conditions, alleviate threats, and renegotiate mitigation requirements at appropriate opportunities to eliminate the need for fish rescue operations. Anadromous rainbow trout rescue will not be considered as mitigation for proposed water development. Only under the following circumstances shall anadromous rainbow trout be rescued:
 - A. When they will be returned to the stream system of origin; and
 - B. When fish can be held until habitat conditions in the place where they were collected improve, or when fish can be immediately released in nearby areas of the same stream and the Department has determined that no adverse impacts would occur to existing salmonid populations; and
 - C. When, in the opinion of the Department, habitat conditions are temporarily inadequate or when conducted pursuant to a permitted in-stream construction or restoration activity.
- VI. Sport fishing for anadromous rainbow trout shall be encouraged where the Department has determined that angling will not harm existing wild populations. Angling of juveniles shall only be permitted where such angling does not impair adequate returns of adults for sport fishing and spawning. Special angling regulations for naturally spawned anadromous rainbow trout may be necessary when a fishery includes both naturally spawned and hatchery stocks. These regulations shall be consistent with restoration and recovery goals.
- VII. Domesticated or non-native fish species will not be planted, or fisheries based on them will not be developed or maintained, in drainages of anadromous rainbow trout waters, where, in the opinion of the Department, they may adversely affect native anadromous rainbow trout populations by competing with, preying upon, or hybridizing with them. Exceptions to this policy may be made for stocking drainages that are not part of an anadromous rainbow trout restoration or recovery program.
- VIII. The Department will continue marking all hatchery anadromous rainbow trout and selective harvest of marked fish will be allowed only where the Department has determined that the harvest will not impair the viability of the population.
- IX. The Department will continue to investigate stocking of sterile rainbow trout in waters within anadromous rainbow trout drainages, where the Department has determined that stocking reproductively viable rainbow trout may have an adverse effect on the genetic integrity of the anadromous rainbow trout populations. Stocking of sterile rainbow trout in anadromous rainbow trout drainages will not be conducted if the Department determines there may be an adverse effect to existing wild anadromous rainbow trout populations.
- X. In streams without Department hatcheries, artificial rearing shall be limited to areas where the Department determines it would be beneficial to supplement natural production to re-establish or enhance the depleted wild population. New programs that propose to propagate state- or federally-listed anadromous rainbow trout shall conform to the Department's guidelines for establishment and operation of recovery hatcheries found in the Recovery Strategy for California Coho Salmon, Appendix H.
- XI. The best available scientific information will be used by the Department to assess the anadromous rainbow trout resource and to develop management strategies and recommendations.

(Amended: 08/18/93; 05/09/09)

COMMERCIAL FISHING AND PACKING INDUSTRIES

(Repealed 2/2/2009)

COMMERCIAL USE OF NATIVE REPTILES

Return

It is the policy of the Fish and Game Commission that:

Proper management of the State's wild reptile resources for commercial use is a challenge due to the relative lack of information about the biology of many California reptiles. Even those species generally thought to be common are often inadequately studied and understood with regard to population abundance, distribution, effects of habitat loss, and basic life history parameters. Given the paucity of data available about the status of some species of reptiles in general, and the impacts of commercial use specifically, requests to add species to Section 43, Title 14, CCR, will be carefully evaluated on an individual basis.

A person who wishes to add or remove a species to the list of reptiles that may be captively bred and sold, must provide information adequate to meet the requirements of Title 14, Article 2.5 (Certified Regulatory Program for Adoption of Regulations), Section 777.8 (b) through (d). The following types of information must accompany the request to the Commission:

- 1) A review of scientific literature documenting the status of the species in California. Status of a species includes range and distribution, demographic data, taxonomy, life history, and existing or potential threats to the species persistence.
- 2) Analysis of the effects of broodstock collection methods on wild populations.
- 3) Analysis of the effects on wild reptile populations of released or escaped reptiles bred under this program.
- 4) Evaluation of the commercial market for the proposed species.

The information will be reviewed by Department of Fish and Game staff and peer-reviewed by independent professional herpetologists. After peer review, the Department will forward all information to the Commission.

Amended: 09/30/05

ATTACHMENT A

COMMISSION DESIGNATED WILD TROUT WATERS

Return

It is the policy of the Fish and Game Commission to:

- I. Designate certain state waters to be managed exclusively for wild trout. Commission designated wild trout waters should provide a quality experience by providing the angler with an opportunity to fish in aesthetically pleasing and environmentally productive waters with trout populations whose numbers or sizes are largely unaffected by the angling process.
 - Waters designated by the Commission for wild trout management shall meet the following criteria:
 - A. Angler Access:
 - 1. Open for public angling with unrestricted access when of sufficient dimensions to accommodate anglers without over crowding.
 - or
 - 2. Open for public angling with controlled access under a plan approved by the Commission setting forth the number of anglers and the method of distribution.
 - B. Able to support, with appropriate angling regulations, wild trout populations of sufficient magnitude to provide satisfactory trout catches in terms of number or size of fish.
 - II Wild trout waters shall be managed in accordance with the following stipulations:
 - A. Domestic strains of catchable-sized trout shall not be planted in designated wild trout waters.
 - B. Hatchery-produced trout of suitable wild and semi-wild strains may be planted in designated waters, but only if necessary to supplement natural trout reproduction.
 - C. Habitat protection is of utmost importance for maintenance of wild trout populations. All necessary actions, consistent with State law, shall be taken to prevent adverse impact by land or water development projects affecting designated wild trout waters.
 - III. The Department shall prepare and periodically update a management plan for each water designated as a wild trout water.
 - IV. Certain designated wild trout waters may be further designated by the Commission as "Heritage Trout Waters", to recognize the beauty, diversity, historical significance, and special values of California's native trout. Heritage Trout Waters shall meet the following additional criteria:
 - A. Only waters supporting populations that best exemplify indigenous strains of native trout within their historic drainages may qualify for designation.
 - B. Heritage Trout Waters shall be able to provide anglers with the opportunity to catch native trout consistent with the conservation of the native trout present.
 - V. Recognize the importance of native trout to California's natural heritage, the Department shall emphasize education and outreach efforts to inform the public about our native trout, their habitats, and the activities for restoration of native trout when implementing the Heritage Trout Program.
 - A. Implement a Heritage Trout Angler Recognition Certificate through which anglers will have the opportunity to have their catches of California native trout recognized by the Commission. The criteria for receiving the formal recognition shall be maintained by the Department's Heritage and Wild Trout Program. To receive a certificate of recognition, anglers shall submit an application with supporting materials to the Department for review.
- The following waters are designated by the Commission as "wild trout waters":
- 1. American River, North Fork, from Pellsade Creek downstream to Iowa Hill Bridge (Placer County).
 - 2. Carson River, East Fork, upstream from confluence with Wolf Creek excluding tributaries (Alpine County).
 - 3. Clavey River, upstream from confluence with Tuolumne River excluding tributaries (Tuolumne County).
 - 4. Fall River, from Pit No. 1 powerhouse intake upstream to origin at Thousand Springs including Spring Creek, but excluding all other tributaries (Shasta County).
 - 5. Feather River, Middle Fork, from Oroville Reservoir upstream to Sloat vehicle bridge, excluding tributaries (Butte and Plumas counties).
 - 6. Hat Creek, from Lake Britton upstream to Hat No. 2 powerhouse (Shasta County).
 - 7. Hot Creek, from Hot Springs upstream to west property line of Hot Creek Ranch (Mono County).
 - 8. Kings River, from Pine Flat Lake upstream to confluence with South and Middle forks excluding tributaries (Fresno County).
 - 9. Kings River, South Fork, from confluence with Middle Fork upstream to western boundary of Kings Canyon National Park excluding tributaries (Fresno County).
 - 10. Merced River, South Fork, from confluence with mainstem Merced River upstream to western boundary of Yosemite National Park excluding tributaries (Mariposa County).
 - 11. Nelson Creek, upstream from confluence with Middle Fork Feather River excluding tributaries (Plumas County).
 - 12. Owens River, from Five Bridges crossing upstream to Pleasant Valley Dam excluding tributaries (Inyo County).
 - 13. Rubicon River, from confluence with Middle Fork American River upstream to Hell Hole Dam excluding tributaries (Placer County).
 - 14. Yellow Creek, from Big Springs downstream to confluence with the North Fork of the Feather River (Plumas County).
 - 15. Cottonwood Creek, upstream from confluence with Little Cottonwood Creek, including tributaries (Inyo County).
 - 16. Klamath River, from Copco Lake to the Oregon border (Siskiyou County).
 - 17. Maria Creek Reservoir (Placer and Nevada counties).
 - 18. McCloud River, from Lake McCloud Dam downstream to the southern boundary of Section 36, T38N, R3W, M.D.B. & M. (Shasta County).
 - 19. Deep Creek, from confluence with Green Valley Creek downstream to confluence with Willow Creek (San Bernardino County).
 - 20. Middle Fork Stanislaus River, from Beardsley Afterbay Dam to Sand Bar Diversion Dam (Tuolumne County).
 - 21. Truckee River, from confluence with Trout Creek downstream (excluding the property owned by the San Francisco Fly Casters Club) to confluence with Gray Creek (Nevada County).
 - 22. Sespe Creek, a 25-mile section between the Lion Campground and the boundary of the U.S. Forest Service, Los Padres National Forest (Ventura County).
 - 23. East Fork Carson River, from Hangman's Bridge near Markleeville downstream to the Nevada state line (Alpine County).
 - 24. Bear Creek, Bear Valley Dam (impounding Big Bear Lake) downstream to the confluence with the Santa Ana River (San Bernardino County).
 - 25. Lavezolla Creek (Sierra County).
 - 26. Laurel Lake #1 and Laurel Lake #2 (Mono County).
 - 27. Middle Fork San Joaquin River - Northern boundary of the Devil Postpile National Monument downstream to the Lower Falls (3.6 miles); and footbridge just above the confluence with Shadow Creek downstream to the footbridge just above upper Soda Springs Campground (4 miles).
 - 28. South Fork Kern River watershed from its headwaters downstream to the southern boundary of the South Sierra Wilderness (Tulare County).
 - 29. Golden Trout Creek drainage, including tributaries, from confluence with the Kern River upstream to the headwaters (Tulare County).
 - 30. Eagle Lake, north of Susanville, (Lassen County).
 - 31. Upper Kern River, from the Forks of the Kern, upstream to Tyndall Creek in Sequoia National Park (Tulare County).
 - 32. Heenan Lake, near Markleeville and Monitor Pass, (Alpine County).
 - 33. Upper Truckee River, including tributaries, upstream from the confluence with Showers Creek (El Dorado and Alpine counties).
 - 34. Sacramento River, including tributaries, from Box Canyon Dam downstream to Scarlett Way in Dunsmuir (Siskiyou County) and from the county bridge at Sweetbriar downstream to Lake Shasta (Shasta County).
 - 35. Long Lake (Plumas County).
 - 36. Pisu Creek, including tributaries, upstream of Pyramid Lake (Ventura and Los Angeles counties).
 - 37. Upper Stony Creek including tributaries, upstream from Mine Camp Campground (Colusa, Glenn, and Lake counties).
 - 38. Lower Honeymoon Lake (Fresno County).
 - 39. Upper East Fork San Gabriel River, including tributaries, upstream from Heaton Flat (Los Angeles County).
 - 40. Royce Lake #2 (Fresno County).
 - 41. Lower Yuba River, from Englebright Dam to the confluence with the Feather River (Yuba and Nevada counties).
 - 42. Parker Lake (Mono County).

- 43. South Fork San Joaquin River and all tributaries from Florence Lake upstream to the boundary of Kings Canyon National Park including the Plute Creek drainage (Fresno County).
 - 44. Sallee Keyes Lakes (Fresno County).
- The following "wild trout waters" are further designated by the Commission as "heritage trout waters".
- 1. Cleary River, upstream from confluence with Tuolumne River, excluding tributaries (Tuolumne County).
 - 2. Golden Trout Creek drainage, including tributaries, from confluence with the Kern River upstream to the headwaters (Tulare County).
 - 3. Eagle Lake, north of Susanville, (Lassen County).
 - 4. Upper Kern River, from the Forks of the Kern, upstream to Tyndell Creek in Sequoia National Park (Tulare County).
 - 5. Heenan Lake, near Martineville and Monitor Pass, (Alpine County).
 - 6. Upper Truckee River, including tributaries, upstream from the confluence with Showers Creek (El Dorado and Alpine counties).
 - 7. Pico Creek, including tributaries, upstream of Pyramid Lake (Ventura and Los Angeles counties).
 - 8. Upper Stony Creek including tributaries, upstream from Mine Camp Campground (Colusa, Glenn, and Lake counties).
 - 9. Upper East Fork San Gabriel River, including tributaries, upstream from Heaton Flat (Los Angeles County).
 - 10. Lower Yuba River, from Englishlight Dam to the confluence with the Feather River (Yuba and Nevada counties).

(Amended: 08/22/95; 05/09/97; 11/08/98; 04/02/99; 12/08/00; 04/03/03; 12/12/08; 11/4/09; 10/21/10; 11/17/11; 11/7/12)

COOPERATIVELY OPERATED REARING PROGRAMS FOR SALMON AND STEELHEAD

Return

It is the policy of the Fish and Game Commission that:

- I. The State's salmon and steelhead resources may be used to support cooperative rearing programs. Rearing programs may be of two types: (1) those that grow fish for use in accelerating the restoration/rehabilitation of depleted wild populations in underseeded habitat and (2) those that are dedicated solely to growing fish for harvest. The following constraints apply to both types:
 - A. Only those fish surplus to the needs of the Department's programs shall be utilized for such programs and allocation shall be based on past performance and the Department's evaluation of the potential of proposed new programs.
 - B. The suitability and acceptance or rejection of proposed programs shall be determined by the Department, after reviewing a written proposal. A written project and management plan providing for evaluation and covering a period of five years must be evaluated and approved by the Department. Prior to reauthorization the Department must determine that the project is in compliance with the approved plan and continuance of the program is in the best interest of the State's fishery resources.
 - C. Routine care and food costs shall be the financial responsibility of the sponsoring entity. The Department shall provide technical advice and special assistance as appropriate.
 - D. Fish raised in these programs shall not be stocked in, or broodstock captured from, waters where the Department has determined that adverse effects to native fish populations or other aquatic species may result.
- II. The bulk of the state's salmon and steelhead resources shall be produced naturally. The State's goals of maintaining and increasing natural production take precedence over the goals of cooperatively operated rearing programs.

(Amended 6/18/93)

EMERGING FISHERIES

Return

It is the policy of the California Fish and Game Commission that:

The following criteria shall be utilized by the Department to determine if a fishery qualifies as an "Emerging Fishery" in accordance with Section 7090, Fish and Game Code:

- 1. The fishery is not a previously established fishery as determined by criteria set forth in Section 7090(b)(2), Fish and Game Code; and
- 2. The Director shall have determined that the fishery has recently exhibited trends which will result in an increase in landings, an increase in the number of participants, or which may jeopardize a stable fishery. In making this determination, the Director shall consider, but not be limited to, an actual increase in landings of the species in question; an increase in the number of applications for experimental gear permits received by the Commission for this fishery; an increase in the amount or efficiency of the gear used in the fishery; or any evidence that the existing regulations are not sufficient to insure a stable, sustainable fishery.

(Adopted 10/20/00)

FORAGE SPECIES

Return

It is the policy of the Fish and Game Commission that:

- I. For purposes of California fisheries management, forage species are defined as species that contribute significantly to the diets of larger organisms during some part of their life history, thereby transferring energy and nutrients to higher trophic levels in the ecosystem.
- II. The Commission recognizes the importance of forage species to the marine ecosystem off California's coast and envisions management of forage species that: optimizes their ecological, economic and social values; accounts for the benefits rendered by forage species to other species, fisheries, wildlife, and the overall ecosystem; and considers recreational and commercial fishing interests and other economic sectors.
- III. The Commission intends to provide adequate protection for forage species through management goals that:
 - Are precautionary and utilize the best available science in management decisions using clear and transparent methods;
 - Identify and progressively incorporate Essential Fishery Information (EFI) needed for ecosystem-based management of forage species, including physical factors, oceanographic conditions, the effects of fishing on forage species' dependent predators, the availability of alternative prey, spatio-temporal foraging hotspots for predators, and habitat management, including marine protected areas;
 - Prevent the development of new or expanded forage fisheries until EFI is available and applied to ensure the sustainability of target forage species and protection of its benefits as prey; and
 - Facilitate consistency in the management of forage species, integrate with existing Fishery Management Plans, and encourage cooperation and collaboration across jurisdictions and international boundaries in managing forage species.

(Adopted: 11/07/12)

GOLDEN TROUT

Return

It is the policy of the Fish and Game Commission that:

The golden trout, designated as the state fish of California, will be perpetuated and maintained as appropriate to support its designation.

- I. Certain waters within the high mountainous areas of Madera, Fresno, Inyo, Mono and Tulare counties may be designated by the Department as "Golden Trout Waters of California". Within that area, they shall include, if possible:

- A. All of the native golden trout streams; and
- B. Any other stream or lake in which non-native but self-perpetuating wild golden trout form the bulk of the population. Within these waters golden trout will be preserved and maintained in as genetically pure a state as possible. Rainbow trout and other species of trout shall not be planted in designated golden trout waters. Barron lakes in this area may be reserved by the Department for future stocking of golden trout.
- ii. A brood stock shall be maintained in lakes set aside for the sole purpose of egg production to provide fingerlings for planting waters.
- iii. Hatchery-reared or wild fingerlings may be used for initial stocking in streams and lakes designated by the Department. In lakes containing other fish populations, the fingerlings will be of such size that a reasonable survival may be expected. Fingerlings may be stocked to maintain populations in lakes. Whenever practicable, the range of golden trout will be extended through wild fish or fingerling plantings in native waters through a recovery plan, or in other waters possessing adequate spawning grounds.
- IV. The Golden Trout Policy prevails over the general Trout Policy if the two are in conflict.

(Amended 5/14/93)

PLANTING FISH IN YOUTH CAMPS

Return

It is the policy of the Fish and Game Commission that:

The Department may plant fish in suitable waters at certain youth camps. Such camps must be operated primarily for underprivileged or disabled children or youth, with most costs of supporting a child at camp not paid by the children or their families. The Department shall report in writing annually to the Commission on the program. If a conflict exists between this policy and the salmon and steelhead or trout policies, the latter policies prevail.

(Amended 8/4/04)

SALMON

Return

It is the policy of the Fish and Game Commission that:

- I. Salmon shall be managed to protect, restore, and maintain the populations and genetic integrity of all identifiable stocks. Naturally spawned salmon shall provide the foundation for the Department's management program.
- II. Salmon populations shall be periodically inventoried by the Department, or its agents, as necessary for management and protection of salmon stocks and their habitat, as outlined in this policy.
- III. Salmon streams shall be inventoried for quantity and quality of habitat, including stream flow conditions. Restoration and acquisition plans shall be developed and implemented to safeguard such critical habitats as estuaries, coastal lagoons, and spawning and rearing areas, and to protect or guarantee future instream flows. Fisheries Restoration grants and other funding may be directed to implement the plans.
- IV. Existing salmon habitat shall not be diminished further without offsetting the impacts of the lost habitat. All available steps shall be taken to prevent loss of habitat, and the Department shall oppose any development or project that will result in irreplaceable loss of fish. Artificial production shall not be considered appropriate mitigation for loss of wild fish or their habitat.
- V. The Department shall strive to improve habitat conditions, alleviate threats, and renegotiate mitigation requirements at appropriate opportunities to eliminate the need for fish rescue operations. Salmon rescue will not be considered as mitigation for proposed water development. Only under the following circumstances shall salmon be rescued:
 - A. When they will be returned to the stream system of origin; and
 - B. When fish can be held until habitat conditions in the place where they were collected improve, or when fish can be immediately released in nearby areas of the same stream and the Department has determined that no adverse impacts would occur to existing salmonid populations; and
 - C. When, in the opinion of the Department, habitat conditions are temporarily inadequate or when conducted pursuant to a permitted in-stream construction or restoration activity.
- VI. Hatchery releases of Chinook salmon in anadromous waters will be externally marked and coded-wire tagged at the current Department standard.
- VII. New programs that propose to propagate state- or federally-listed salmon shall conform to the Department's guidelines for establishment and operation of recovery hatcheries found in the Recovery Strategy for California Coho Salmon, Appendix H. In coastal streams without Department hatcheries, artificial rearing shall be limited to areas where the Department determines it would be beneficial to supplement natural production to re-establish or enhance the depleted wild population. In the Sacramento, American, Feather, San Joaquin, Klamath and Trinity River systems, hatchery production shall be used to meet established mitigation goals. At the discretion of the Department, excess eggs from non-listed salmon from the State, Federal, or cooperative hatcheries may be used to provide additional fish for the commercial and sport fisheries. Because of potential adverse impacts, all salmon reared from excess eggs that are intended to be released into estuaries, bays, or the ocean for fisheries enhancement must be marked so that potential impacts and efficacy of the project can be evaluated. Specifically, the projects must provide to the Department, within five years of the adoption of this policy, a written evaluation of their operations that specifically addresses: 1) potential impacts to nearby stream environments; 2) potential impacts to ESA or CESA listed salmonid populations; and 3) efficacy of the project in meeting project goals and objectives. The Department will assess the evaluations and will provide a recommendation to the Commission on whether this section of the policy should be continued.
- VIII. Domesticated or non-native fish species will not be planted, or fisheries based on them will not be developed or maintained, in drainages of salmon waters, where, in the opinion of the Department, they may adversely affect native salmon populations by competing with, preying upon, or hybridizing with them. Exceptions to this policy may be made for stocking drainages that are not part of a salmon restoration or recovery program.
- IX. The best available scientific information will be used by the Department to assess the salmon resource and to develop management strategies and recommendations.

(Amended: 08/18/93; 08/18/05; 05/09/08)

STOCKING FISH IN WATERS WHERE ANGLERS PAY ACCESS FEES

Return

It is the policy of the Fish and Game Commission to:

Recognize there is a tremendous demand for fishing in reservoirs, lakes and streams. The Department of Fish and Game cannot meet all of the demands for catchable-sized hatchery fish for such waters. Therefore, to the extent possible it should encourage the involvement of the private aquaculture industry.

The Department shall not stock fish in (1) private waters that are closed to the public, and (2) fee-fishing lakes operated by registered aquaculturists privately for profit. As long as they are open to the general public, the Department shall stock two types of waters: (1) those in which most, if not all, fish are reared and stocked by the Department, and (2) those in which the reservoir or recreation operator, under a Cooperative Stocking Program, plants an equal or greater weight of catchable-sized fish than does the Department.

The Department alone cannot plant enough fish nor improve enough habitat to develop the full recreational potential of many waters. Although the Commission recognizes the prerogative of a local entity to rely on a fishing program of this type, it also recognizes the resulting loss in recreation fishing opportunities in areas where the demand is so great. It, therefore, directs the Department to encourage local entities to shift to the more successful Cooperative Stocking Program.

- I. Waters Where Anglers Pay Small Fees to Defray Only Costs of Essential Services:

Department and presented to the Commission at its February meeting. Letters of recognition to successful applicants will be awarded by the Commission following the February meeting.

- B. Release of trophy bass increases the opportunity for other anglers to share in the experience. Thus, the Commission and the Department shall encourage the release of trophy-sized black bass into the water from which they were caught. This will be accomplished by recognizing the catch and release of trophy black bass based on length and girth measurements. Length and girth measurements, provided by the Department, will be acceptable for determining the fishes weight.
 - C. This program is not intended to be a verification procedure for State or world record-sized fish. Additional information and verification may be required for State or world record acceptance.
 - D. The Department shall maintain records of information generated by this program and shall use this information for recommending waters for inclusion in the program.
 - Such records will be compiled into a form that can be made quickly available for review and dissemination to the public and the Commission.
 - V. Consider waters for designation as Trophy Black Bass Waters in its February meeting. Petition for inclusion in the program will be accepted by the Commission at any time. Public recommendations will be forwarded to the Department for its assessment as to whether the proposed waters actually or potentially meet Trophy Black Bass Water criteria. The Department will present recommendations for new waters for designation as Trophy Black Bass Waters at the Commission's December meeting immediately preceding the adoption meeting.
- The following waters are designated by the Commission as "Trophy Black Bass Waters" for the species so indicated:
- A. Castaic Lake (Los Angeles County): Largemouth bass
 - B. Clear Lake (Lake County): Largemouth bass
 - C. Isabella Lake (Kern County): Largemouth bass
 - D. Croville Lake (Butte County): Smallmouth and spotted bass
 - E. Trinity Lake (Trinity County): Smallmouth bass
- VI. Remove from listing, based on unforeseeable conditions, any lake or reservoir that was designated as a Trophy Black Bass Water.

(Added 5/15/92)

TROUT

Return

It is the policy of the Fish and Game Commission that:

- I. Natural reproduction and rearing of trout will be encouraged to the greatest extent possible by protecting and improving habitat and by affording protection from disease, predators and competing fish species.
- II. Populations of wild trout shall be sustained in suitable waters to provide a diversity of angling opportunities. In some waters it may be necessary to restrict angler harvest to the extent that such harvest has virtually no long-term effect on numbers and sizes of fish in the populations.
- III. Artificial propagation and rearing of trout is a major Department program, but will be utilized only when necessary to augment natural production. Stocking fingerling and sub-catchable-sized trout shall take priority over planting catchable-sized trout in the hatchery stocking program when the smaller fish will maintain satisfactory fishing.
- Hatchery trout shall not be stocked in waters where they may compete or hybridize with trout which are threatened, endangered or species of special concern. Exceptions may be made for stocking waters which are not part of a species recovery program.
- IV. Catchable-sized trout shall be stocked only:
 - A. In lakes, reservoirs and streams where natural reproduction and growth are inadequate to maintain populations capable of supporting fishing; and
 - B. When it is reasonable to expect at least 50% by number or weight will be taken by anglers.
 In stocking catchable-sized trout, lakes and larger streams shall have priority over smaller streams. Suitable waters with heavy fishing pressure compared to the size of planting allotments shall have priority. Trophy fish, weighing one pound or more may constitute up to 10% by weight of each load of catchables stocked, if they replace an equivalent poundage of catchables in the allotment for the water stocked.
- V. Subcatchable-sized trout may be stocked in lakes, reservoirs and streams where appropriate to augment trout populations in such waters, and to increase fishing opportunities and success. Fingerlings shall be stocked primarily in waters where reproduction is limiting and satisfactory angling can be supported with fingerling stocking, where the population has been destroyed, and in lakes where they will establish a new fishery or augment the existing fishery.
- VI. Water companies, utility districts and other public or private agencies in control of urban lakes shall be encouraged to finance put-and-take trout fishing in such waters when suitable for such purposes. The Department shall provide technical advice and otherwise assist in the development and maintenance of such programs.

(Amended 1/4/94)

WARMWATER GAME FISH STOCKING

Return

It is the policy of the Fish and Game Commission that:

Maintenance stocking of warmwater game fish is not recommended because satisfactory populations are usually sustained by natural reproduction. Accordingly, such stocking shall be limited to:

- I. Lakes, reservoirs and streams where natural reproduction is inadequate to maintain populations capable of supporting fishing, which demonstrate acceptable growth rates or are capable of producing trophy-sized fish, and where such stocking can be demonstrated to be cost effective.
- II. Waters selected for evaluation of experimental management techniques.
- III. Reintroduction of desirable species that have been eliminated either by natural causes or management actions intended to remove unwanted species.
- IV. Introduction of new species or subspecies consistent with existing policies and under guidelines provided by the Department of Fish and Game. Captured wild fish will normally be used to stock all waters. Artificially-produced fish also may be used if circumstances warrant. Privately owned waters not open to the public will generally not be stocked by the Department. These waters can be stocked by registered aquaculturists under the authority of a private stocking permit issued by the Department.

(Amended 8/26/93)

YOUTH FISHING PROGRAMS

Return

The Department is supportive of youth fishing programs sponsored by city, county or other public entities.

Through its urban fishing program, the Department will combine fisheries resource management with educational services to develop healthy urban fisheries, and provide young people with an opportunity to fish close to home.

Fish planted for such programs may be obtained from State hatcheries.

(Amended 6/14/93)

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