

Notice of Exemption

Appendix E

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044
County Clerk
County of:

From: (Public Agency): California Fish and Game Commission
P.O. Box 944209
Sacramento, CA 94244-2090

Project Title: Emergency amendment to sections 5.79, 5.80, 27.90, and 27.92 related to White Sturgeon

Project Applicant: N/A

Project Location - Specific: The Sacramento-San Joaquin Delta and San Francisco Bay.

Project Location - City: Multiple

Project Location - County: Multiple

Description of Nature, Purpose and Beneficiaries of Project:

During July and August 2022, the San Francisco Bay region experienced a major harmful algal bloom (HAB) that resulted in significant mortality of fishes, including White Sturgeon. Due to the HAB and the data collected from sturgeon report cards indicating less fish are being released, the impact on the White Sturgeon population is estimated to be significant. Immediate steps are necessary to significantly reduce the White Sturgeon exploitation rate to sustainable levels and to minimize harassment in order to protect the surviving population and maintain a recreational fishery in the future. See attachment for full description.

Name of Public Agency Approving Project: California Fish and Game Commission

Name of Person or Agency Carrying Out Project: California Department of Fish and Wildlife.

Exempt Status: **(check one):**

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State type and section number: Class 7 and 8, California Code of Regulations, Title 14, sections 15307 and 15308
- Statutory Exemptions. State code number: Public Resources Code Section 21080(b)(4) and CEQA Guidelines Section 15269(c)

Reasons why project is exempt: See attachment for full description.

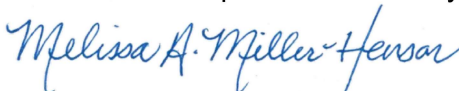
Lead Agency: California Fish and Game Commission, P.O. Box 944209, Sacramento, CA 94244-2090

Contact Person: Melissa Miller-Henson

Area Code/Telephone/Extension: (916) 653-4899

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? Yes No

Signature:  Date: October 27, 2023 Title: Executive Director

Signed by Lead Agency Signed by Applicant. Date Received for filing at OPR:

October 11, 2023

ATTACHMENT TO NOTICE OF EXEMPTION
Emergency Amendment to Sections 5.79, 5.80, 27.90 and 27.92
Related to White Sturgeon

The California Fish and Game Commission (Commission) has taken final action under the California Fish and Game Code and the Administrative Procedure Act with respect to the proposed project on October 11, 2023. The Commission noticed and adopted an emergency amendment of sections 5.79, 5.80, 27.90 and 27.92, Title 14, California Code of Regulations (CCR). In compliance with the California Environmental Quality Act (CEQA; Public Resources Code Section 21000 et seq.), the Commission adopted the regulation relying on the statutory exemption for specific actions necessary to prevent or mitigate an emergency (CEQA Guidelines, Title 14, CCR, subsection 15269(c)) and categorical exemptions to protect natural resources and the environment (CEQA Guidelines, sections 15307 and 15308). Each exemption is discussed in this document.

Statutory Exemption for Specific Actions Necessary to Prevent or Mitigate an Emergency

In compliance with CEQA, the Commission adopted the regulation relying on a statutory exemption contained in Public Resources Code Section 21080 (Actions Necessary to Prevent or Mitigate an Emergency). The exemption applies to agency actions to prevent or mitigate an emergency.

White Sturgeon are an anadromous species of fish that reside primarily in the Sacramento-San Joaquin Delta and San Francisco Bay and migrate as adults into the major rivers of the Central Valley to spawn. White Sturgeon are long lived, potentially in excess of 100 years. Successful recruitment to the adult population is uncommon, occurring approximately every 6-7 years, highly correlated with above normal water years. The abundance of legal-sized White Sturgeon has declined considerably since the 1980s, when abundance was estimated to be approximately 175,000 fish. The most recent California Department of Fish and Wildlife (Department) population estimate was approximately 33,000 fish.

At present, anglers can take one White Sturgeon per day and a total of three per year. Fishing pressure for White Sturgeon has remained stable at an estimated 40,000–45,000 anglers per year since at least 2013. Based on report card returns, the number of fish harvested by anglers has remained relatively stable, but the number of fish released has declined precipitously, indicating that fewer fish overall are being caught. The exploitation rate of White Sturgeon is estimated to be very high, ranging from 8.0 to 29.6% since 2007. It is suggested that the highest exploitation rate that a White Sturgeon population can sustain is approximately 5 to 10%. For comparison, Washington and Oregon target a less than 4% exploitation rate.

During July and August 2022, the San Francisco Bay region experienced a major harmful algal bloom (HAB) that resulted in significant mortality of sturgeon. The California Department of Fish and Wildlife (Department) recorded over 850 sturgeon carcasses, the majority legal-sized or larger (J. Hobbs, CDFW Region 3, unpublished data). Based on carcass studies and fish kills of other species of sturgeon, it is thought that only a small percentage of the fish killed floated long enough to be detected (Fox et al. 2020). Due to the HAB and the data collected from sturgeon report cards, the impact on the White Sturgeon population is estimated to be significant.

To protect the surviving population and maintain a recreational fishery into the future, immediate steps are necessary to stop angler associated harvest of adult White Sturgeon and to minimize harassment and handling on the spawning grounds. All recreational harvest of White Sturgeon within the recreational fishery should cease until new regulations can be developed to better manage exploitation long term; this will allow time for the population to recover from the HAB-induced die-off while the Department readjusts its management measures for the future population. A catch-and-release fishery with seasonal spawning sanctuaries for White Sturgeon can remain open. Evidence from recreational fisheries on the Columbia and Snake rivers indicate that White Sturgeon handle catch and release fishing well (Halvorson et al. 2018; Lamansky et al. 2018).

The emergency regulation amends sections 5.79, 5.80, 27.90 and 27.92, Title 14, CCR, to prevent issuance of White Sturgeon harvest tags in 2024, transition the fishery to entirely catch-and-release fishing, set the daily bag and annual harvest limits to zero, and remove any size limit (as no harvest will be allowed) in both their freshwater and marine habitat. The regulation will also introduce spatial and temporal refuges in the Sacramento and San Joaquin rivers.

Categorical Exemption, Class 7: Actions by Regulatory Agencies for Protection of Natural Resources

Class 7 actions in CEQA Guidelines, Section 15307, Title 14, CCR, consist of actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. Examples include but are not limited to wildlife preservation activities of the Department.

The emergency regulation amends sections 5.79, 5.80, 27.90 and 27.92, Title 14, CCR, to close all harvest of White Sturgeon starting January 1, 2024. A catch-and-release fishery will be allowed, but harvest tags will not be issued for 2024 and the bag limit for fish will be reduced to zero. During July and August 2022, the San Francisco Bay region experienced a major HAB that resulted in significant mortality of fishes, including sturgeon. The Department recorded over 850 sturgeon carcasses, the majority legal-sized or larger (J. Hobbs, CDFW Region 3, unpublished data). Based on carcass studies and fish kills of other species of sturgeon, it is thought that only a small percentage of the fish killed floated long enough to be detected (Fox et al. 2020). The absolute magnitude of this impact on the White Sturgeon population is unknown, but is thought to be significant. Emergency action is necessary to significantly reduce the fishery exploitation rate of White Sturgeon to sustainable levels and to minimize harassment and handling, in order to protect the surviving population and maintain a recreational fishery in the future.

Categorical Exemption, Class 8, Actions by Regulatory Agencies for Protection of the Environment

Class 8 actions in CEQA Guidelines, Section 15308, Title 14, CCR, consist of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment.

The emergency regulation amends sections 5.79, 5.80, 27.90 and 27.92, Title 14, CCR, to close all harvest of White Sturgeon effective immediately. The Commission routinely adopts regulations for recreational inland sport fish management. During July and August 2022, the San Francisco Bay region experienced a major HAB that resulted in significant mortality of fishes, including sturgeon. The Department recorded over 850 sturgeon carcasses, the majority legal-sized or larger (J. Hobbs, CDFW Region 3, unpublished data). Based on carcass studies and fish kills of other species of sturgeon, it is thought that only a small percentage of the fish killed floated long enough to be detected (Fox et al. 2020). The absolute magnitude of this impact on the White Sturgeon population is unknown, but is thought to be significant. White Sturgeon are long lived, potentially in excess of 100 years, with most reaching maturity by approximately 14-15 years. Successful recruitment to the adult population is uncommon, occurring approximately every 6-7 years, and is highly correlated with above normal water years. The abundance of legal-sized White Sturgeon has declined considerably since the 1980s. Emergency action is necessary to significantly reduce the fishery exploitation rate of White Sturgeon to sustainable levels and to minimize harassment and handling in order to protect the surviving population, which is part of the Sacramento-San Joaquin Delta's biodiverse environment.

No Exceptions to Categorical Exemptions Apply

As to the exceptions to categorical exemptions set forth in Section 15300.2, including the prospect of unusual circumstances and related effects, the Commission's review was guided by the California Supreme Court's decision in *Berkeley Hillside Preservation v. City of Berkeley*. The Commission has reviewed all of the available information it possesses relevant to the issue and does not believe adoption of the regulations poses any unusual circumstances that would constitute an exception to the class 7 and 8 categorical exemptions. Compared to the activities that fall within Class 7 and Class 8 generally, there is nothing unusual about the adopted regulation. Therefore, the Commission does not believe that reliance on the class 7 and 8 categorical exemptions is precluded by the exceptions set forth in 15300.2.