

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

Amend Subsection (b)(91.1) of Section 7.50
Title 14, California Code of Regulations
Re: Klamath River Sport Fishing Regulations

- I. Date of Initial Statement of Reasons: December 23, 2008
- II. Date of Pre-adoption Statement of Reasons: April 10, 2009
- III. Date of Final Statement of Reasons: April 30, 2009
- IV. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: February 5, 2009
Location: Sacramento, CA
 - (b) Discussion Hearing Date: March 4, 2009
Location: Woodland, CA
 - (c) Discussion Hearing: Date: April 9, 2009
Location: Lodi, CA
 - (d) Adoption Hearing Date: April 21, 2009
Location: Teleconference
- V. Update:

On April 8, 2009, the Pacific Fishery Management Council (PFMC) adopted Recreational Salmon Management Measures and recommended a harvest allocation of 30,800 Klamath River Fall Chinook (KRFC) for the recreational fishery in the Klamath River System. The Department of Fish and Game (Department) concurs with this allocation and recommended that the Fish and Game Commission (Commission) adopt the PFMC'S KRFC recreational harvest quota allocations to modify the language of the Initial Statement of Reasons (ISOR) to amend Subsection (b)(91.1) of Section 7.50, Title 14, California Code of Regulations.

At the April 9, 2009 Commission meeting, the Department presented its recommendations for the proposed range of revisions in the ISOR. These recommendations are shown below in bold.

The proposed open seasons and range of bag limits for KRFC salmon stocks are as follows:

1. Klamath River - August 15 to December 31
2. Trinity River - September 1 to December 31
3. Bag Limit - **3** Chinook salmon - only **2** fish over 22 inches total length until sub quota is met, then 0 fish over 22 inches total length.

The possession limit is proposed **to be 9** Chinook salmon of which **no more than 6 Chinook salmon** over 22 inches total length may be retained when the take of salmon over 22 inches total length is allowed.

The bag limit for hatchery trout or hatchery steelhead did not change in OAL File #2008-0709-01s; however, the regulatory text was reformatted to list the specific bag limit instead of providing a cross reference to a different subsection of the regulations. The hatchery trout /hatchery steelhead bag limit inadvertently dropped out of the printed regulatory text. We are adding it back in to correct the printing error that occurred last year.

Subsection (b)(91.1)(E)6.j. of the regulatory text inadvertently remained in the 2008 regulations (OAL File #2008-0709-01s). The Subsection has been removed and is reflected in the 2009 regulatory text. The angling season for this section of Hayfork Creek was aligned with South Fork Trinity River regulations to provide clarity and simplify interpretation by the angling public.

During its April 21, 2009 teleconference call, the Commission adopted the above regulations recommended by the PFMC.

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

- (1) Andy Boze, Angler, comments received via e-mail on March 26, 2009:
 - a. Expressed concern that the Department is using incorrect data to generate KRFC harvest quotas.
 - b. He believes that the Yurok Tribal commercial and subsistence fishery is the primary cause of the recent decline in KRFC stocks.
 - c. He notes that the Yurok Tribal commercial and subsistence fishery is inadequately monitored.

Response:

- a. The Department, Tribal, Federal and Non-Governmental Organization entities responsible for generating population estimates of KRFC utilize the best available science to derive the data used to generate ocean abundance forecasts and harvest allocations.
- b. The Yurok Tribe is one of the two recognized tribes in the Klamath basin that has a reserved Federal Treaty Fishing Right. The tribal allocation of KRFC is 50% of the harvestable surplus in the basin as

determined by the Pacific Fishery Management Council (PFMC). The Commission does not regulate Tribal allocation.

- c. The Yurok Tribal KRFC fishery is managed and monitored by the tribe. The Department does not monitor this fishery.

(2) Jack Palmer, Angler, comments received via e-mail on April 5, 2009:

- a. Proposes full restriction on take on KRFC in 2009 to conserve stocks.

Response:

- a. The Department disagrees with this strategy. An escapement conservation objective of 40,700 naturally reproducing KRFC has been factored in previous to allocation of any in-river or ocean KRFC harvest.

(3) E. B. Duggan, Trinity River Guides Association, oral comments at the April 9, 2009 Fish and Game Commission Meeting:

- a. Stated that he supports the proposed daily bag and possession limits of KRFC.
- b. Stated that he does not support the PFMC conservation objective for escapement of 40,700 adult KRFC.

Response:

- a. Support noted.
- b. The PFMC conservation objective for escapement of adult KRFC is based on spawning habitat availability in the Klamath River System and the amount of rearing habitat required by the progeny of that spawning population. The Department supports the PMFC conservation objective of 40,700 adult KRFC.

(4) Dennis O.C. (last name not supplied), Angler, Comments received via e-mail November 13, 2008:

- a. He believes that the Yurok Tribal commercial and subsistence fishery is the primary cause of the recent decline in KRFC stocks.
- b. He notes that the Yurok Tribal commercial and subsistence fishery is inadequately monitored.

Response:

- a. See Response 1b.
- b. See Response 2c.

(5) Chris Barger, Angler, Frank Galusha, North State Outdoor News, Kyle Heising, Angler, Gary Leighty, Angler, Dave Morton, Angler, Jack Palmer, Angler, Shelton Williams, Angler and Roger Whittrock, Angler, All comments received via e-mail, varying dates from April 11, 2009 through April 18, 2009.

- a. All parties support the adoption of the Pacific Fishery Management Council's Option 1 for the in-river recreational Chinook salmon

allocation.

Response:

- a. Support noted.

(5) Gary Mostenbocker, Angler, April 13, 2009, Kevin Mayers, Angler April 15, 2009, Comments received via e-mail.

- a. Stated they support the proposed daily bag and possession limits of KRFC.

Response:

- a. See Response 3a.

(6) Robert Moore, Angler, Comment received via e-mail April 14, 2009.

- a. Stated he believes all take on Chinook salmon should be suspended for 5 years to rebuild stocks.

Response:

- a. See Response 2a.

VII. Location and Index of Rulemaking File:

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

VIII. Location of Department Files:

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

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

The use of more liberal regulations for bag limits, possession limits and fishing methods. For KRFC salmon more liberal regulations would be less desirable than those proposed because they could create risk of an intense fishery reaching or exceeding the quota in a very short time. Reaching the quota in a very short time could be damaging to the local economy. Exceeding allowable harvest could be damaging to KRFC stocks.

(b) No Change Alternative:

The change is necessary to continue appropriate harvest rates and an equitable distribution of the harvestable surplus.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective as and less burdensome to the affected private persons than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulations are projected have an unknown impact on the net revenues to businesses servicing sport fishermen. This is not likely to affect the ability of California businesses to compete with businesses in other states. The preservation of Klamath River salmon stocks is necessary for the success of lower and upper Klamath River Basin businesses which provide goods and services related to fishing. The proposed changes are necessary for the continued preservation of the resource and therefore the prevention of adverse economic impacts.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None.

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

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

to the State:

None.

(e) Nondiscretionary Costs/Savings to Local Agencies:

None.

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

None.

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

None.

(h) Effect on Housing Costs:

None.

Updated Informative Digest Policy Statement Overview

Please refer to the Initial Statement of Reason's Informative Digest for the original discussion.

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The Spit Area (within 100 yards of the channel through the sand spit formed at the Klamath River mouth), is proposed to close to all fishing after 15% of the lower Klamath River quota (downstream of the Highway 96 bridge at Weitchpec) has been taken downstream of the Highway 101 bridge. In previous years the closure was enacted after 15% of the total in-river sport fishing allocation was reached. The Department prefers to use a lower, more conservative harvest threshold closure value for the spit area to prevent excessive take near the mouth where fish are concentrated and this will also help to provide an equitable distribution of KRFC harvest in the upper river. This provision only applies if the Department projects that the total Klamath River System quota will be met.

The Trinity River from 250 feet downstream of Lewiston Dam to the Old Lewiston Bridge is designated as wild trout waters. Only artificial flies with barbless hooks may be used, the bag and possession limit is 0. The 2008 season was April 1 to August 31. The Department proposes to extend the season to close on September 15. The purpose is to allow additional angling opportunity in this section. Angling pressure during this

period will not impact KRFC natural stocks as they have will not have migrated into this area during that period. The Department anticipates that impacts on Trinity River Hatchery KRSC will be minimal due to the nature of the fishery.

Chapter 2, Article 1, Section 2.10 of the California Freshwater Sport Fishing Regulations describes legal hook size, gaps and rigging to be used during angling. This section is applicable to the Klamath basin. Therefore the language in Subsection (b)(91.1)(A)1. was amended to refer anglers to Section 2.10. Subsections (b)(91.1)(A) 2. and 3. have been removed from the Regulatory Language passage as they are redundant.

The numeric adult KRFC quota for each of the 4 sub quota areas in the Klamath basin has been added to the Regulation Table. This action is intended to reduce angler confusion and provide a numeric harvest value for each area.

To provide clarity daily bag and possession limits on exempted KRFC fisheries contained in Subsection (b)(91.1)(E)2.a. and Subsection (b)(91.1)(E)6.b. have been added to the body of the Regulation Table.

Additional semantic changes were made to the regulations to provide clarity and consistency with regard to geographic references and to correct grammatical errors. In particular the language contained in Section 7.50 Subsection (b)(91.1)(D)2.a.(iii) has been modified to read “the Denny Road bridge at Hawkins Bar”. This describes the lower end of that stream section thoroughly and should prevent any confusion or ambiguity by the angling public.

During its April 21, 2009 teleconference call, the Commission adopted the above regulations recommended by the PFMC.

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ADDENDUM TO FINAL STATEMENT OF REASONS
Amend Subsection 7.50(b)(91.1), Title 14, CCR
Additional Response to Public Comments

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

(7) Bob Bouke, Johnson Bait and Tackle, oral comments at Commission meetings on March 4, 2009 and April 9, 2009:

- a. He supports a Central Valley river salmon fishery for 2009.
- b. He wants the Department to stop catch and release fishing for salmon in the Central Valley.
- c. He supports a Central Valley late-fall season from November 16 to December 31 with a 1 fish per day bag limit.
- d. He wants the Department to use all excess fertilized salmon eggs to raise more fish.
- e. He requests higher river flows to help push young into the Delta.

Response:

- a. This comment does not address Klamath River Basin salmon fishery regulations and cannot therefore be addressed in this particular regulatory procedure.
- b. See Response 7a.
- c. See Response 7a.
- d. See Response 7a.
- e. See Response 7a.