

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 215, 220, 240, 315 and 316.5 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 205, 215 and 316.5 of said Code, proposes to amend subsection (b)(91.1) of Section 7.50, Title 14, California Code of Regulations, relating to Klamath-Trinity rivers sport fishing.

Informative Digest/Policy Statement Overview

The Klamath River System, which consists of the Klamath River and Trinity River basins, is managed through a cooperative system of State, Federal, and Tribal management agencies. Salmonid regulations are designed to meet natural and hatchery escapement needs for salmonid stocks, while providing equitable harvest opportunities for ocean sport, ocean commercial, river sport, and Tribal fisheries.

The Pacific Fishery Management Council (PFMC) is responsible for adopting recommendations for the management of sport and commercial ocean salmon fisheries in the Exclusive Economic Zone (3 to 200 miles offshore) off the coasts of Washington, Oregon, and California. When approved by the Secretary of Commerce, these recommendations are implemented as ocean salmon fishing regulations by the National Marine Fisheries Service (NMFS).

The California Fish and Game Commission (Commission) adopts regulations for the ocean salmon sport (inside three miles) and the Klamath River System sport fisheries which are consistent with federal fishery management goals.

Two Tribal entities within the Klamath River System, the Hoopa Valley Tribe and the Yurok Tribe, maintain fishing rights for subsistence fishing and commercial fisheries that are managed consistent with federal fishery management goals. Tribal fishing regulations are promulgated by the Hoopa and Yurok Tribes.

Klamath River Fall-Run Chinook

Klamath River fall-run Chinook (KRFC) salmon harvest allocations and spawning escapement goals are established by the PFMC. The KRFC salmon harvest allocation between Tribal and non-Tribal fisheries is based on court decisions and allocation agreements between the various fishery representatives.

The annual KRFC river sport salmon quota is recommended by the PFMC and the 2009 PFMC allocation is currently unknown. All proposed closures for adult Chinook salmon are designed to maximize and equitably distribute harvest of adult KRFC salmon while operating within the annual quota.

Klamath River Spring-Run Chinook

The Klamath River System also supports Klamath River spring-run Chinook salmon (KRSC). KRSC typically enter the estuary in the spring and migrate to thermal refugia in the headwaters of several major tributaries in the basin. They hold in tributary headwaters sexually maturing over the summer and spawn in September prior to KRFC spawning. Naturally produced KRSC are both temporally and spatially separated from KRFC in most cases. In addition to natural stocks, the Department's Trinity River Hatchery facility produces 1.4 million KRSC annually as mitigation for habitat lost above the Trinity Dam.

Presently, KRSC salmon are managed under the general basin seasons, daily bag limits, and

possession limit regulations and are not under PFMC allocation management.

KRFC Salmon Quota Management

The 2008 quota for the Klamath River System river sport harvest was 22,500 adult KRFC salmon. Preseason stock projections of 2009 adult KRFC abundance will not be available from the PFMC until March 2009. The 2009 basin quota will be recommended by the PFMC in April 2009 and presented to the Commission for adoption at their May 2009 meeting.

For public notice requirements, the Department recommends the Commission consider a range of 0 - 40,000 adult KRFC salmon quota in the Klamath River basin for the river sport fishery. This recommendation range encompasses the historic range of the Klamath River basin quotas and allows the PFMC and Commission to make adjustments during the 2009 regulatory cycle.

The Commission may modify the KRFC river sport salmon quota which is normally 15% of the non-tribal PFMC harvest allocation. Commission modifications need to meet biological and fishery allocation goals specified in law or established in the PFMC Salmon Fishery Management Plan otherwise harvest opportunities may be reduced in the California ocean fisheries.

The annual KRFC salmon quota is split evenly, with 50% of the quota allocated to the lower Klamath River downstream of the Highway 96 bridge at Weitchpec and 50% to the remainder of the upper Klamath River System upstream of the Highway 96 bridge at Weitchpec and the Trinity River Basin. This division ensures equitable harvest of adult KRFC salmon throughout the Klamath River System.

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 System quota (downstream of the Highway 96 bridge at Weitchpec) has been taken downstream of the Highway 101 bridge. This provision only applies if the Department projects that the total Klamath River System quota will be met. This closure is intended to prevent excessive take near the mouth where fish are concentrated and will help provide an equitable distribution of KRFC harvest in the upper river.

The upper Klamath River System is further divided into three sub-quota areas:

1. 17% from 3,500 feet downstream of the Iron Gate Dam to the Highway 96 bridge at Weitchpec,
2. 16.5% for the Trinity River downstream from the Denny Road bridge at Hawkins Bar to the confluence with the Klamath River, and
3. 16.5% for the Trinity River downstream from Old Lewiston Bridge to the Highway 299 west bridge at Cedar Flat.

These sub-quota areas are based upon historical angler effort distribution and ensure equitable harvest of adult KRFC salmon in the upper Klamath River and Trinity River. The quota system requires the Department monitor angler harvest of adult KRFC in each sub-quota area. All sub-quota areas will be monitored on a real-time basis except for the following areas:

Klamath River upstream of Weitchpec and the Trinity River: Due to funding and personnel reductions, the Department will be unable to deploy adequate personnel to conduct harvest monitoring in the Klamath River upstream of Weitchpec and in the Trinity River for the 2009 season. The Department has reviewed salmon harvest and run-timing data for these areas. Based on this review, the Department has developed a Harvest Predictor Model (HPM) which incorporates historic creel data from the Klamath River downstream of Iron Gate Dam to the confluence with the Pacific Ocean and the Trinity River downstream of Lewiston Dam to the confluence with the Klamath River. The HPM is driven by the positive relationship between KRFC

harvested in the Klamath River and Trinity River. The HMP will be used by the Department to implement fishing closures to ensure that anglers do not exceed established quota targets.

Current Sport Fishery Management

The KRFC annual quota is divided into sub areas and the harvest conducted under real-time quota management. KRSC harvest is managed under the general basin seasons without real-time monitoring due to lack of adequate funds.

The Department presently differentiates the two stocks by following dates:

Klamath River

1. January 1 through August 14 - General Season (KRSC).
2. August 15 to December 31 - KRFC quota management.

Trinity River

1. January 1 through August 31 – General Season (KRSC).
2. September 1 through December 31 – KRFC quota management.

The daily bag limits and weekly possession limits apply to both stocks within the same sub-area and time period.

Proposed Changes

The Department is proposing the following changes to current regulations:

KRFC Season, Bag Limit, and Possession Limit

For public notice requirements, a range of KRFC bag and possession limits are proposed until the 2009 basin quota is adopted. As in previous years, no retention of adult KRFC salmon is proposed for the following areas, once the sub quota has been met.

No changes are proposed for the general opening and closing season dates.

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 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 - [0-4] Chinook salmon - only [0-3] fish over 22 inches total length until sub quota is met, then 0 fish over 22 inches total length.

The possession limit is proposed as a range of [0–9] Chinook salmon of which [0–6] over 22 inches total length may be retained when the take of salmon over 22 inches total length is allowed.

KRSC Season, Bag Limit, and Possession Limit

Wild KRSC salmon are primarily limited to two sub-basins of the Klamath River watershed, the Salmon River and the South Fork of the Trinity River (SFTR). Populations of wild spring-run Chinook salmon in these watersheds appear to be at all time lows. This is especially true of

Salmon River stocks. The 2005 dive survey recorded the lowest number of KRSC returning to the Salmon River in the historic data set. This is a significant concern to the Department considering these stocks are genetically the most appropriate candidate to repopulate the upper Klamath River basin, once historical access is restored. SFTR stocks, although somewhat more abundant, appear to be in decline and warrant protection measures.

The Department continues to propose more restrictive measures to protect wild KRSC salmon outside of the KRFC quota period.

Extension of Wild Trout Waters Season

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.

Changes to Regulatory Language and Table

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)(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.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Yolo Fliers Club, Ballroom, 17980 County Road 94B, Woodland, California, on Wednesday, March 4, 2009, at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS FURTHER GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Wine and Roses Country Inn, Garden Ballroom, 2505 West Turner Road, Lodi, California, on Thursday, April 9, 2009 at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Fish and Game Commission Conference Room, 1416 Ninth Street, Room 1320, Sacramento, California, on Tuesday, April 21, 2009, at 9:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that

written comments be submitted on or before April 15, 2009 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. All comments must be received no later than April 21, 2009, at the hearing in Sacramento, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in ~~strikeout~~underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to John Carlson, Jr., or Sherrie Fonbuena at the preceding address or phone number. **Mr. Neil Manji, Chief, Fisheries Branch, Department of Fish and Game, phone (916) 327-8840, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

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

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, 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 Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.
- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: February 17, 2009

John Carlson, Jr.
Executive Director