

**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, 205, 265, 270, 315, 316.5 and 399 of the Fish and Game Code and to implement, interpret or make specific sections 200, 205, 265, 270 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 River Basin sport fishing regulations.

Informative Digest/Policy Statement Overview

The Klamath River Basin, which consists of the Klamath River and Trinity River systems, 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 (three 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 Commission adopts regulations for the ocean salmon sport (inside three miles) and the Klamath River Basin sport fisheries which are consistent with federal fishery management goals.

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

For the purpose of PFMC mixed-stock fishery modeling and salmon stock assessment, salmon greater than 22 inches are defined as adult salmon (ages 3-5) and salmon less than or equal to 22 inches are defined as grilse salmon (age 2).

Klamath River Fall-Run Chinook Salmon

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

All proposed closures for adult KRFC are designed to ensure sufficient spawning escapement in the Klamath River Basin and equitably distribute harvest while operating within annual allocations.

Klamath River Spring-Run Chinook Salmon

The Klamath River Basin also supports Klamath River spring-run Chinook Salmon (KRSC). Naturally produced KRSC are both temporally and spatially separated from KRFC in most cases.

Presently, KRSC stocks are not managed or allocated by the PFMC. The in-river sport fishery is managed by general basin seasons, daily bag limit, and possession limit regulations. KRSC harvest will be monitored on the lower Klamath River in 2018 and ensuing years by creel survey.

KRFC Allocation Management

In 2017, the PFMC approved a historically low 129 adult KRFC quota for in-river sport harvest allocation for 2017. Preseason stock projections of 2018 adult KRFC abundance will not be available from the PFMC until March 2018. The 2018 basin allocation will be recommended by the PFMC in April 2018 and presented to the Commission for adoption prior to its April 2018 meeting.

The Commission may modify the KRFC in-river sport harvest allocation which is normally 15 percent 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 and in-river fisheries.

The annual KRFC in-river harvest allocation is split into four geographic areas with subquotas assigned to each. They are as follows:

1. for the main stem Klamath River from 3,500 feet downstream of the Iron Gate Dam to the Highway 96 bridge at Weitchpec -- 17 percent of the sport fishery allocation;
2. for the main stem Klamath River from downstream of the Highway 96 bridge at Weitchpec to the mouth -- 50 percent of the sport fishery allocation;
3. for the Trinity River downstream of the Old Lewiston Bridge to the Highway 299 West bridge at Cedar Flat -- 16.5 percent of the sport fishery allocation; and
4. for the Trinity River downstream from the Denny Road bridge at Hawkins Bar to the confluence with the Klamath River -- 16.5 percent of the sport fishery allocation.

From 2014-2016, the spit area (within 100 yards of the channel through the sand spit formed at the Klamath River mouth) closed to all fishing after 15 percent of the total Klamath River Basin quota had been taken downstream of the Highway 101 bridge. This regulatory language was removed in 2017 to eliminate catch and release mortality.

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

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 2018 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 survey 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 lower and upper Klamath River and the Trinity River. The HPM will be used by the Department to implement fishing closures to ensure that

anglers do not exceed established subquota targets.

Current Sport Fishery Management

The KRFC in-river sport harvest allocation is divided into geographic areas and harvest is monitored under real time subquota management. KRSC in-river sport harvest is managed by general season, daily bag limit, and possession limit regulations.

The Department presently differentiates the two stocks by the following dates:

Klamath River

1. January 1 through August 14 - General Season KRSC.
For purposes of clarity, daily bag and possession limits apply to that section of the Klamath River downstream of the Highway 96 bridge at Weitchpec to the mouth.
2. August 15 to December 31 - KRFC quota management.

Trinity River

1. January 1 through August 31 – General Season KRSC.
For purposes of clarity, daily bag and possession limits apply to that section of the Trinity River downstream of the Old Lewiston Bridge to the confluence with the South Fork Trinity River.
2. September 1 through December 31 – KRFC quota management.

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

Due to the extremely small quota, take and possession of adult and grilse KRFC was prohibited in 2017.

Proposed Changes

Because PFMC recommendations are not known at this time, a range (shown in brackets in the text below) of bag and possession limits, which encompass historical quotas, is being proposed for the 2018 KRFC fishery in the Klamath and Trinity rivers. The final KRFC bag and possession limits will align with the final federal regulations 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.

If the full closure of the fall salmon fishing season is deemed necessary again for 2018, the no change alternative provides this option.

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

KRFC QUOTA MANAGEMENT: Seasons, Bag and Possession Limits

For public notice requirements, the Department recommends the Commission consider an allocation range of 0 – 67,600 adult KRFC in the Klamath River Basin for the river sport fishery.

This recommended range encompasses the historical range of the Klamath River Basin allocations and allows the PFMC and Commission to make adjustments during the 2018 regulatory cycle.

As in previous years, no retention of adult KRFC is proposed for the following areas, once the

subquota has been met.

The proposed open seasons and range of bag and possession limits for KRFC 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 – of which no more than [0-4] fish over 22 inches total length may be retained until the subquota is met, then 0 fish over 22 inches total length.
4. Possession limit - [0-12] Chinook Salmon of which [0–4] fish over 22 inches total length may be retained when the take of salmon over 22 inches total length is allowed.

The proposed regulatory action will also re-establish the pre-2017 fishery measures and structure for KRFC to maximize fishing opportunities and maintain previous protective measures during the open fishing season.

The word “adult” will be reinserted in subsection (A)2. so that the text will be as it existed prior to 2017: During closures to the take of adult salmon, it shall be unlawful to remove any adult Chinook Salmon from the water by any means.

In subsection (D)1., the proposed regulatory language re-inserts pre-2017 language concerning how the Department will notify the Commission and the public concerning any restrictions triggered by the quotas and language describing the information provided on the Department’s hotline and repeals text that states all fishing is prohibited for KRFC.

Subsection (D)2.b.(i) will be reinserted as it existed prior to 2017: The Spit Area (within 100 yards of the channel through the sand spit formed at the Klamath River mouth) will close when 15% of the total Klamath River Basin quota is taken downstream of the Highway 101 bridge.

Subsection (E)2.a. will be reinserted as it existed prior to 2017: Fall Run Quota Exception: Chinook Salmon over 22 inches total length may be retained from 3,500 feet downstream of Iron Gate Dam to the Interstate 5 bridge when the Department determines that the adult fall-run Chinook Salmon spawning escapement at Iron Gate Hatchery exceeds 8,000 fish. Daily bag and possession limits specified for fall-run Chinook Salmon apply during this exception.

Subsection (E)2.b. will be reinserted as it existed prior to 2017: Fall Run Quota Exception: Spit Area (within 100 yards of the channel through the sand spit formed at the Klamath River mouth). This area will be closed to all fishing after 15% of the Total Klamath River Basin Quota has been taken.

All legally caught Chinook Salmon must be retained. Once the adult (greater than 22 inches) component of the total daily bag limit has been retained anglers must cease fishing in the spit area.

Subsection (E)6.b. will be reinserted as it existed prior to 2017: Fall Run Quota Exception: Chinook Salmon over 22 inches total length may be retained downstream of the Old Lewiston Bridge to the mouth of Indian Creek when the Department determines that the adult fall-run Chinook Salmon spawning escapement at Trinity River Hatchery exceeds

4,800 fish. Daily bag and possession limits specified for fall-run Chinook Salmon apply during this exception.

No changes are proposed for the general (KRSC) opening and closing season dates, and bag, possession and size limits.

Other changes are proposed for clarity and consistency.

Benefits of the Proposed Regulations

It is the policy of this State to encourage the conservation, maintenance, and utilization of the living resources of the ocean and inland waters under the jurisdiction and influence of the State for the benefit of all the citizens of the State. In addition, it is the policy of this State to promote the development of local California fisheries in harmony with federal law respecting fishing and the conservation of the living resources of the ocean and inland waters under the jurisdiction and influence of the State. The objectives of this policy include, but are not limited to, the maintenance of sufficient populations of all species of aquatic organisms to ensure their continued existence and the maintenance of a sufficient resource to support a reasonable sport use. Adoption of scientifically-based Klamath River Basin salmon seasons, size limits, and bag and possession limits provides for the maintenance of sufficient populations of salmon to ensure their continued existence.

The benefits of the proposed regulations are conformance with federal law, sustainable management of Klamath River Basin fish resources, health and welfare of California residents and promotion of businesses that rely on sport salmon fishing in the Klamath River Basin.

Consistency and Compatibility with Existing Regulations

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. The Legislature has delegated authority to the Commission to promulgate sport fishing regulations (Sections 200, 205, 315, and 316.5, Fish and Game Code). The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. Commission staff has searched the California Code of Regulations and has found no other State regulations related to sport fishing in the Klamath River Basin.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Resources Building Auditorium, 1416 Ninth Street, Sacramento, California, on Thursday, February 8, 2018, at 8:00 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 teleconference originating in the Fish and Game Commission conference room, 1416 Ninth Street, Suite 1320, Sacramento, California, on Thursday, April 12, 2018, at 8:30 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 5:00 p.m. on March 29, 2018, at the address given below, or by email to FGC@fgc.ca.gov. Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on April 6, 2018. All comments must be received no later than April 12, 2018, at the teleconference hearing. If you would like copies of any modifications to this proposal, please include your name and mailing address.

Availability of Documents

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout format can be accessed through the Commission's website at www.fgc.ca.gov. The regulations as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Valerie Termini, 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 Valerie Termini or Sherrie Fonbuena at the preceding address or phone number. **Wade Sinnen, Senior Environmental Scientist, Department of Fish and Wildlife, has been designated to respond to questions on the substance of the proposed regulations. Mr. Sinnen can be reached at (707) 822-5119 or by email at Wade.Sinnen@wildlife.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 265 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, 11346.8 and 11347.1 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/Results of the Economic Impact Assessment

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 to result in increases to visitor spending, and correspondingly positive impacts on the net revenues to local 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 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; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The proposed regulations to reopen the KRFC fishery for 2018 range from no fishing of adult KRFC to a 2016 KRFC season structure. The Commission anticipates positive impact on the creation or elimination of jobs in California. The potential positive employment impacts range from 0 to 45 jobs. The Commission anticipates positive impacts on the creation, elimination or expansion of businesses in California from increased revenues to the approximately 30 businesses that serve sport fishing activities. The impacted businesses are generally small businesses employing few individuals and, like all small businesses, are subject to success or failure for a variety of causes. Additionally, the long-term intent of the proposed action is to increase sustainability in fishable salmon stocks and, consequently promoting the long-term viability of these same small businesses.

The Commission anticipates benefits to the health and welfare of California residents. Providing opportunities for a salmon sport fishery encourages a healthy outdoor activity and the consumption of a nutritious food.

The Commission anticipates benefits to the environment by the sustainable management of California's salmonid resources.

The Commission does not anticipate any benefits to worker safety because the proposed action does not affect working conditions.

Other benefits include concurrence with federal regulation and promotion of businesses that rely on salmon sport fishing in the Klamath River Basin.

- (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: If bag and possession limits are increased, the Department may have an increase in salmon card sales revenue estimated up to \$88,550. The Commission does not anticipate any costs or savings in federal funding to the State.
- (e) Nondiscretionary Costs/Savings to Local Agencies: If the KRFC fishery is reopened for 2018, it may result in increased visits and angler spending in the Klamath River Basin area; local governments' sales, motor fuel and transient occupancy taxes may increase by as much as \$138,000, and state and local income taxes may increase by as much as \$431,724.
- (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, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Dated: January 2, 2018

Valerie Termini
Executive Director