

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: 2018 Klamath River Basin Sport Fishing Regulations

I. Date of Initial Statement of Reasons: October 23, 2017

II. Date of Final Statement of Reasons: April 13, 2018

III. Dates and Locations of Scheduled Hearings:

(a) Notice Hearing: Date: December 6, 2017
Location: San Diego

(b) Discussion Hearing: Date: February 8, 2018
Location: Sacramento

(c) Adoption Hearing: Date: April 12, 2018
Location: Teleconference

IV. Update:

At the April 12, 2018 teleconference, the Fish and Game Commission (Commission) adopted the following Klamath River Basin bag and possession limits, adult quota, and conservation measures:

- (1) A daily bag limit of 2 Klamath River fall-run Chinook Salmon (KRFC) of which no more than 1 fish greater than 22 inches in length may be taken when the take of adults is allowed.
- (2) A possession limit of 6 KRFC of which no more than 3 fish greater than 22 inches in length may be retained when the take of adults is allowed.
- (3) A basin quota of 3,490 adult KRFC (greater than 22 inches in length).

Sport fishing seasons for KRFC salmon remain unchanged and are as follows:

- (1) Klamath River - August 15 through December 31
- (2) Trinity River - September 1 through December 31

The Klamath Basin quota of 3,490 adult KRFC aligns with federal regulations which provide guidance on allocations between ocean sport and commercial fisheries, inland sport fisheries, and recognized tribal fisheries.

The Commission adopted non-substantive changes for clarity and consistency.

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

No public comments, written or oral, were received during the public comment period.

VI. 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, CA 95814

VII. Location of Department of Fish and Wildlife files:

Department of Fish and Wildlife
1416 Ninth Street
Sacramento, CA 95814

VIII. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

The use of more liberal regulations for bag limits, possession limits and fishing methods. For KRFC, 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 the allowable harvest could be damaging to the KRFC stocks.

(b) No Change Alternative:

The No Change Alternative would leave the current 2017 KRFC fishing closure in the Klamath and Trinity rivers in place. The 2017 KRFC stock projections developed by the PFMC were the lowest on record. As a result, the KRFC stock is now classified under the PFMC Salmon Fishery Management Plan as “approaching an overfished condition.” If KRFC stock projections do not improve for 2018, the Department may recommend the Commission adopt a no change to keep the closure in place for the KRFC fishery in the Klamath and Trinity rivers.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to

affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

IX. 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 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 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:

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.

Updated 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 California Fish and Game Commission (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 **real-time** 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.

Update

At its April 12, 2018 teleconference, the Commission adopted the following Klamath River Basin bag and possession limits and adult KRFC quota:

- (1) A daily bag limit of 2 KRFC of which no more than 1 fish greater than 22 inches in length may be taken when the take of adults is allowed.**
- (2) A possession limit of 6 KRFC of which no more than 3 fish greater than 22 inches in length may be retained when the take of adults is allowed.**
- (3) A basin quota of 3,490 KRFC (greater than 22 inches in length).**

Sport fishing seasons for KRFC remain unchanged and are as follows:

- (1) Klamath River- August 15 through December 31.**
- (2) Trinity River- September 1 through December 31.**

The Klamath River Basin quota, 3,490 adult KRFC, aligns with federal regulations, which provide guidance on allocations between ocean sport and commercial fisheries, inland sport fisheries, and recognized tribal fisheries.

The Commission adopted non-substantive changes for clarity and consistency.

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.