

## **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**

Unless otherwise specified, all section references in this document are to Title 14 of the California Code of Regulations.

The Klamath River Basin, which consists of the Klamath River and Trinity River systems, is managed for fall-run Chinook Salmon (*Oncorynchus tshawytscha*) 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 (in-river) sport fisheries, which are consistent with federal fishery management goals.

Tribal entities within the Klamath River Basin 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 Tribes.

### **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.

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

### **PFMC Overfishing Review**

KRFC stocks have been designated as “overfished” by the PFMC. This designation is the result of not meeting conservation objectives for this stock. Management objectives and criteria for KRFC are defined in the PFMC Salmon Fishery Management Plan (FMP).

The FMP outlines a process for preparing a “rebuilding plan” that includes assessment of the factors that lead to the decline of the stock, including fishing, environmental factors, model errors, etc. The rebuilding plan includes recommendations to address conservation of KRFC, with the goal of achieving rebuilt status. The plan is currently under development by representatives of NMFS, PFMC, U.S. Fish and Wildlife Service, California Department of Fish and Wildlife (Department), and Tribal entities, with a timeline for completion in spring of 2019. Forthcoming recommendations from the rebuilding plan may alter how KRFC are managed in the future, including changing the in-river allocation number, and/or allocating less than the normal target number.

## **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. This in-river sport fishery is managed by general basin seasons, daily bag limit, and possession limit regulations. KRSC harvest will be monitored on the Klamath River below the Highway 96 bridge at Weitchpec to the mouth of the Klamath River in 2019 and ensuing years by creel survey. The upper Trinity River, upstream of Junction City, will be monitored using tag returns from anglers in 2019 and future years.

## **KRFC Allocation Management**

The PFMC 2018 allocation for Klamath River Basin sport harvest was 3,490 adult KRFC. Preseason stock projections of 2019 adult KRFC abundance will not be available from the PFMC until March 2019. The 2019 basin allocation will be recommended by the PFMC in April 2019 and presented to the Commission for adoption as a quota for the in-river sport harvest at its May 2019 teleconference meeting.

The Commission may modify the KRFC in-river sport harvest quota, which is normally a minimum of 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 FMP, otherwise harvest opportunities may be reduced in the California ocean or in-river fisheries.

The annual KRFC in-river sport harvest quota is specified in subsection 7.50(b)(91.1)(D)1. The quota is split between four geographic areas with a subquota for each area, expressed as a percentage of the total in-river quota, specified in subsection 7.50(b)(91.1)(D)2. For angler convenience, the subquotas, expressed as the number of fish, are listed for the affected river segments in subsection 7.50(b)(91.1)(E). The in-river sport subquota percentages 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 in-river sport quota;
2. for the main stem Klamath River from downstream of the Highway 96 bridge at Weitchpec to the mouth -- 50 percent of the in-river sport quota;
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 in-river sport quota; 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 in-river sport quota.

The spit area (within 100 yards of the channel through the sand spit formed at the Klamath River mouth) closes to all fishing after 15 percent of the total Klamath River Basin quota has been taken downstream of the Highway 101 bridge.

These geographic areas are based upon the historical distribution of angler effort to ensure equitable harvest of adult KRFC in the Klamath River and Trinity River. The subquota system requires the Department to monitor or assess 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: The Department has developed Harvest Predictor Models which it will use to implement fishing closures to ensure that anglers do not exceed established subquota targets. Using this method, the upper Klamath River generally closes between 28-30 days after the lower Klamath River quota is reached. Similarly, the upper Trinity River subquota area generally closes 28-30 days after the lower Trinity River subquota has been met.

## **Sport Fishery Management**

The KRFC in-river sport harvest quota is divided into geographic areas, and harvest is monitored under real time subquota management. On the other hand, 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 in each sub-area:

### 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.

Current regulations in subsections 7.50(b)(91.1)(E)2.a. and b. specify bag limits for KRFC stocks in the Klamath River. Current regulations in subsections 7.50(b)(91.1)(E)6.b., e., and f. specify bag limits for KRFC stocks in the Trinity River. Current regulations in subsection 7.50(b)(91.1)(C)2.b. specify KRFC possession limits.

## **Proposed Changes**

Because PFMC recommendations are not known at this time, ranges (shown in brackets in the text below) of subquotas and bag and possession limits, which encompass historical quotas, are being proposed for the 2019 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 FMP, otherwise harvest opportunities may be reduced in the California ocean fisheries.

### KRFC Sport Fishery (Quota Management)

Quota: For public notice requirements, the Department recommends the Commission consider a quota 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 2019 regulatory cycle.

Subquotas: The proposed subquotas for KRFC stocks are as follows:

- 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 total quota equates to [0-11,492];
- Main stem Klamath River from downstream of the Highway 96 bridge at Weitchpec to the mouth -- 50 percent of the total quota equates to [0-33,800];

- Trinity River downstream of the Old Lewiston Bridge to the Highway 299 West bridge at Cedar Flat -- 16.5 percent of the total quota equates to [0-11,154]; and
- Trinity River downstream from the Denny Road bridge at Hawkins Bar to the confluence with the Klamath River -- 16.5 percent of the total quota equates to [0-11,154].

Seasons: No changes are proposed for the Klamath River and Trinity River KRFC seasons:

- Klamath River - August 15 to December 31
- Trinity River - September 1 to December 31

Bag and Possession Limits: As in previous years, no retention of adult KRFC is proposed for the following areas once the subquota has been met.

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

- 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.
- Possession limit - [0-12] Chinook Salmon of which no more than [0-4] fish over 22 inches total length may be retained when the take of salmon over 22 inches total length is allowed.

#### KRSC Sport Fishery

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

#### Other Changes

No other changes are proposed, except those described above, and to change the year 2018 to 2019 for the upcoming season.

#### **Benefits of the Proposed Regulations**

The Commission anticipates benefits to the environment in the sustainable management of Klamath River Basin salmonid resources.

Other benefits of the proposed regulations are conformance with federal fishery management goals, health and welfare of California residents and promotion of businesses that rely on salmon sport fishing in the Klamath River Basin.

#### **Consistency and Compatibility with Existing Regulations**

Article IV, Section 20 of the State Constitution specifies that the Legislature may delegate to the Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. 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 Natural Resources Building Auditorium, 1416 Ninth Street, First Floor, Sacramento, California, on Wednesday, February 6, 2019, 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 hearing to be held in the City of Santa Monica Civic Auditorium, East Wing, 1855 Main Street, Santa Monica, California, on Wednesday, April 17, 2019, 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 hearing originating in the Commission's conference room, 1416 Ninth Street, Room 1320, Sacramento, California, on Thursday, May 16, 2019, at 8:00 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 May 3, 2019 at the address given below, or by email to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on May 10, 2019. All comments must be received no later than May 16, 2019, at the teleconference hearing. If you would like copies of any modifications to this proposal, please include your name and mailing address. Mailed comments should be addressed to Fish and Game Commission, PO Box 944209, Sacramento, CA 94244-2090.

#### Availability of Documents

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikethrough format can be accessed through the Commission website at [www.fgc.ca.gov](http://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, Melissa Miller-Henson, Acting 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 Melissa Miller-Henson or Craig Castleton at the preceding address or phone number. **Senior Environmental Scientist, Wade Sinnen, Department of Fish and Wildlife, phone (707) 822-5119, or e-mail [Wade.Sinnen@wildlife.ca.gov](mailto:Wade.Sinnen@wildlife.ca.gov), has been designated to respond to questions on the substance of the proposed regulations.**

#### 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 range from minor to no impact on the net revenues to local businesses servicing sport fishermen. If the 2019 KRFC quota is reduced, visitor spending may correspondingly be reduced, and in the absence of the emergence of alternative visitor activities, the drop in spending could induce business contraction. If the quotas remain similar to previous quotas, then local economic impacts are expected to be unchanged. Neither scenario is expected to directly affect the ability of California businesses to compete with businesses in other states.

(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 range from no fishing of KRFC, to normal Klamath River Basin salmon season, size, bag and possession limits.

The Commission anticipates some impact on the creation or elimination of jobs in California. The potential adverse employment impacts range from no impact to the loss of 22 jobs which are not expected to create, eliminate or expand businesses in the State.

An estimated 30-50 businesses that serve sport fishing activities are expected to be directly and/or indirectly affected depending on the final quota. The impacts range from no impact to unknown impacts on the creation of new business or the elimination of existing businesses.

The Commission does not anticipate any impacts on the expansion of businesses in California.

For all projections, the possibility of growth of businesses to serve substitute activities exists. Adverse impacts to jobs and/or businesses would be less if fishing of other species and grilse KRFC is permitted, than under a complete closure to all fishing. The impacted businesses are generally small businesses employing few individuals and, like all small businesses, are subject to 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.

(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, 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 8, 2019

Melissa Miller-Henson  
Acting Executive Director