

## **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, 399, and 2084 of the Fish and Game Code and to implement, interpret or make specific sections 200, 205, 265, 270, 316.5, and 2084 of said Code, proposes to amend subsection (f) of Section 5.87 and 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 (CCR).

The Klamath River Basin, which consists of the Klamath River and Trinity River systems, is managed for fall-run Chinook Salmon (*Oncorhynchus 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 Klamath River Basin in-river sport salmon fishery is managed using adult quotas.

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 implementing PFMC adult allocation and California Department of Fish and Wildlife (Department) salmon fishery harvest assessment, within the Klamath River Basin the Department currently considers 22 inches total length as a provisional cutoff. Salmon greater than 22 inches total length are defined as adult salmon (ages 3-5) and salmon less than or equal to 22 inches total length are defined as grilse salmon (age-two).

## **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 threshold for overfished status of KRFC is a three-year geometric mean less than or equal to 30,525 natural area adult spawners. This threshold was not met for KRFC during the 2015-2017 period. The 30,525 KRFC natural area adult spawners is considered the minimum stock size threshold, per the FMP. The KRFC adult natural area spawning escapement for 2018 was 53,624 natural area adult spawners, which exceeded the one-year conservation threshold of 40,700 natural area adult spawners. The three-year geometric mean is still less than the required 40,700 natural area adult spawners, therefore the KRFC are still considered as an “overfished” stock.

Accordingly, the FMP outlines a process for preparing a “rebuilding plan” that includes assessment of the factors that led 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. Rebuilt status requires meeting a three-year geometric mean of 40,700 adult natural area KRFC spawner escapement. The plan developed by representatives of NMFS, PFMC, U.S. Fish and Wildlife Service, California Department of Fish and Wildlife (Department), and Tribal entities, was submitted to the PFMC in February 2019, adopted by the PFMC in June 2019 and submitted to the NMFS in August 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.

## **KRFC Allocation Management**

The PFMC 2019 allocation for the Klamath River Basin sport harvest was 7,637 adult KRFC. Preseason stock projections of 2020 adult KRFC abundance will not be available from the PFMC until March 2020. The 2020 basin allocation will be recommended by the PFMC in April 2020 and presented to the Commission for adoption as a quota for the in-river sport harvest at its May 2020 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.

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 shown in Figure 1, and 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 fishery quota.

### **Proposed Changes**

Because the PFMC recommendations are not known at this time, ranges are shown in [brackets] in the proposed regulatory text below of bag and possession limits which encompass historical quotas. A range is also shown for the Department's grilse salmon size limit cutoff delineating between adult and grilse salmon. All are proposed for the 2020 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.

### **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 in-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 2020 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 once the subquota has been met.

### ***KRFC Size Limit (Grilse Size Considerations)***

The Department is proposing a grilse salmon size limit cutoff range of less than or equal to 22 inches (55.9 cm) to 23 inches (58.4 cm) total length (TL) for discussion before the Department makes a final recommendation. Considered in this context, the size limit cutoff discussion is a trade-off between restricting take of the available adult salmon and quota management versus increasing harvest of

two-year-old grilse salmon. In preparation for the proposed regulatory changes for the 2020 KRFC in-river recreational fishing season, the Department has completed an evaluation of the potential impacts to KRFC from increasing the size limit cutoff distinguishing age-two fish from age-three fish for in-river recreational harvest (Appendix A to the Initial Statement of Reasons - ISOR). The Department analyzed a range of grilse size limits between 21 and 24 inches total length. A 21 inch TL size limit was considered overly conservative, and would prevent fishing opportunity on grilse KRFC with little benefit to adult stocks. Raising the maximum grilse size to 24 inches TL was considered too liberal. 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 [22-23] inches total length may be retained until the subquota is met, then 0 fish over [22-23] inches total length.
- Possession limit - [0-12] Chinook Salmon of which no more than [0-4] fish over [22-23] inches total length may be retained when the take of salmon over [22-23] inches total length is allowed.

### **KRSC SPORT FISHERY:**

The Klamath River Basin also supports Klamath River spring-run Chinook Salmon (KRSC). Presently, KRSC stocks are not managed or allocated by the PFM. No regulatory changes are proposed for the general KRSC opening and closing season dates, and bag, possession and size limits.

### ***Brown Trout Bag and Possession Limit Increase on the Main Stem Trinity River***

The Department is proposing to increase the daily bag and possession limit for Brown Trout on the main stem of the Trinity River from a five fish daily bag/10 fish possession limit to a 10 fish daily bag/20 fish possession limit. This proposed change will increase fishing opportunity on a non-native trout species. As the focus for the Trinity River is on native fish production, a reduction of brown trout may help enhance habitat availability for native fish, consistent with the goals of the federally-administered Trinity River Restoration Program.

### ***Other Changes for Clarity***

The Department is proposing additional changes for clarity, as follows:

1. Amend subsection 5.87(f) to ensure that the size limit cutoff between a grilse and adult Chinook Salmon in the Klamath River Basin is consistent with the size limit cutoff listed in subsection 7.50(b)(91.1).
2. Add paragraph (3) to subsection 7.50(b)(91.1)(A) to include a reference to Section 1.74, Title 14, CCR for sport fish report card requirements.
3. Amend the heading of subsection 7.50(b)(91.1)(A) to read, "Restrictions and Requirements."
4. Throughout the regulatory text in subsection 7.50(b)(91.1), update the year from 2019 to 2020.

## **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 Fish and Game 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 (Fish and Game Code sections 200, 205, 315, and 316.5). 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 California Natural Resources Building Auditorium, 1416 Ninth Street, Sacramento, California, 95814 on Friday, February 21, 2020 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 California Natural Resources Building Auditorium, 1416 Ninth Street, Sacramento, California, 95814 on Thursday, April 16, 2020 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 teleconference hearing originating in the Commission's conference room, 1416 Ninth Street, Suite 1320, Sacramento, California, 95814, on Thursday, May 14, 2020, 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 Friday, May 1, 2020 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 Monday, May 11, 2020. All comments must be received no later than Thursday, May 14, 2020, 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, 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. **Wade Sinnen, Senior Environmental Scientist, Department of Fish and Wildlife, (707) 822-5119 or [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 2020 KRFC quota is reduced, visitor spending may correspondingly be reduced, and in the absence of alternative visitor activities, the drop in spending could induce some business contraction. If the 2020 KRFC quota remains similar to the KRFC quotas allocated in previous years, 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:

An estimated 30-50 businesses that serve sport fishing activities are expected to be directly and/or indirectly affected depending on the final KRFC quota. The impacts range from no

impact (Projection 1 under the Economic Impact Assessment (EIA), below) to small adverse impacts (Projection 3, EIA, below).

Depending on the final KRFC quota, the Commission anticipates the potential for 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. Under all alternatives, due to the limited time period of this regulation's impact, the Commission anticipates no impact on the creation of new businesses, the elimination of existing businesses, or the expansion of businesses in California.

For all of the proposed scenarios, the possibility of growth of businesses to serve alternative recreational 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 regulatory action is to increase sustainability in fishable salmon stocks and, consequently promote 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: December 31, 2019

Melissa Miller-Henson  
Executive Director