

State of California
Fish and Game Commission
Final Statement of Reasons for Regulatory Action

Amend Subsection (b)(50) of Section 7.40
Title 14, California Code of Regulations
Re: Klamath River Basin Sport Fishing

I. Dates of Statement of Reasons:

- (a) Initial Statement of Reasons Date: December 11, 2020
(b) Final Statement of Reasons Date: May 11, 2021

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing

Date: December 10, 2020 Location: Webinar/Teleconference

(b) Discussion Hearing

Date: April 14, 2021 Location: Webinar/Teleconference

(c) Adoption Hearing

Date: May 11, 2021 Location: Webinar/Teleconference

III. Update

In April 2021, the Pacific Fishery Management Council (PFMC) recommended an allocation for the Klamath River Basin sport harvest of 1,221 adult Klamath River fall-run Chinook Salmon (KRFC) for the 2021 season.

Based on PFMC's 2021 recommendations, at the May 11, 2021 Commission meeting, the Department recommended the following specific quota, season dates, and size, bag and possession limits for KRFC:

- The 2021 Klamath River Basin quota of 1,221 KRFC over 23 inches total length. The Klamath River Basin quota of 1,221 KRFC over 23 inches total length aligns with federal fishery management goals, which provide guidance on allocations between ocean sport and commercial fisheries, inland sport fisheries, and recognized tribal fisheries.
- Maintain the 2020 bag limit of 2 Chinook Salmon of which no more than 1 fish may be over 23 inches total length until the subquota is met, then 0 fish over 23 inches total length.
- Maintain the 2020 possession limit of 6 Chinook Salmon of which no more than 3 fish may be over than 23 inches total length when the take of salmon over 23 inches total length is allowed.
- Maintain the same season dates as 2020 (Klamath River: August 15 – December 31, Trinity River: September 1 – December 31).

OAL file # 2020-1204-02s (Simplification of Statewide Inland Sport Fishing Regulations) was approved March 1, 2021, revising the baseline regulatory text in subsection 7.40, Title 14, California Code of Regulations (CCR), for this Klamath River Basin sport fishing rulemaking. Non-substantive edits to capitalization and punctuation were made to the "new" baseline

regulatory language in several places consistent with the Commission's standard rules for capitalization and punctuation in regulatory text.

- In the first paragraph of subsection 7.40(b)(50), "Iron Gate and Lewiston Dams" is changed to "Iron Gate and Lewiston dams" and in subsection 7.40(b)(50)(B)3., "the Salmon, Shasta and Scott Rivers" is changed to "the Salmon, Shasta and Scott rivers" to comport with standard capitalization rules for proper nouns.
- In subsections 7.40(b)(50)(B)1., 7.40(b)(50)(D)1., 7.40(b)(50)(E)2.a., and 7.40(b)(50)(E)6.b., the word "Department" was changed to "department" for consistency with the Commission's regulations in Title 14.
- In subsection 7.40(b)(50)(C)2.b., a period is added after the abbreviation "Dec" and in subsection 7.40(b)(50)(E)2.a., a period is added after the abbreviation "Aug" consistent with standard punctuation rules.
- In subsection 7.40(b)(50)(D)1., the word "Commission" is changed to "commission" for consistency with the Commission's regulations in Title 14.
- In subsection 7.40(b)(50)(E)1., a period was moved to after the word "steelhead**".
- In addition, the Commission adopted all other Department-recommended changes as described in the ISOR.

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

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

April 14, 2021 – Mark Smith, Northern California Guides and Sportsmen's Association (NCGASA) (oral comment)

Expressed interest in continued flexibility with the Klamath River Basin regulations and is looking forward to seeing what the PFMC puts forward. Stated that in the past the Commission had worked with the professional guides and anglers and considered a more varied season and schedule. A couple of years ago, the Commission had considered a two-fish bag limit with a shorter season, and sportsmen recommended a one-fish bag limit to extend the season out to provide a longer season and therefore more opportunity. NCGASA is interested in exploring any and all options on the table, and encourages the Commission to maintain the jack fishery as an option for future regulations because they create opportunity.

Response: The Department and Commission appreciate the commenter's participation in the rulemaking process.

February 5, 2021 – Richard Fox (written comment) and April 29, 2021 – Richard Fox (written comment)

In both emails dated February 5 and April 29, 2021, Mr. Fox stated that as long as there is gill netting allowed, there will always be low salmon numbers.

Response: This comment is outside the scope of the proposed revisions to the Klamath River Basin sportfishing regulations given that gill netting is only allowed under federal and tribal law for tribal members only; the Commission has no authority over tribal fisheries.

May 11, 2021 – Mark Smith, NCGASA (oral comment)

Supported the Department's recommendation and thanked the Department for working with them last year on the size limit.

Response: Support noted. The Commission adopted the Department's recommendation.

V. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change

KRFC Adult Stocks

The use of more liberal regulations for KRFC bag limits, possession limits, and minimum adult salmon size (Alternative 1 in the STD 399; Economic and Fiscal Impact Statement) 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 and exceeding the allowable harvest could damage the KRFC stocks.

Klamath River spring-run Chinook Salmon (KRSC) Stocks

No changes are proposed for KRSC stocks in this rulemaking; however, should changes be necessary, they would be considered in a separate rulemaking.

Other Changes for Clarity

No alternatives were identified by or brought to the attention of Commission staff concerning amendments for clarity that would have the same desired regulatory effect.

(b) No Change Alternative

KRFC Adult Stocks

The No Change Alternative (Alternative 2 in the STD 399; Economic and Fiscal Impact Statement) would leave the current 2020 daily bag and possession limit regulations in place and would not allow flexibility to develop bag and possession limits based on 2021 PFMC allocations. The proposed regulatory change for 2021 is necessary to continue appropriate harvest rates and an equitable distribution of the harvestable surplus.

Other Changes for Clarity

The No Change Alternative for including amendments for clarity would leave the existing 2020 regulations in place. Additionally, the No Change Alternative would mean that the year for 2020 would not be updated for the 2021 season, which could cause confusion for anglers on the validity of the regulations.

VI. 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 range from minor to no impact on the net revenues to local businesses servicing sport fishermen. If the 2021 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 2021 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), in the Initial Statement of Reasons (ISOR) to small adverse impacts (Projection 3, EIA, ISOR).

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 23 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 the impacts to jobs and/or businesses 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.

Updated 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 California Fish and Game Commission (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 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 23 inches total length as a provisional cutoff. Salmon greater than 23 inches total length are defined as adult salmon (ages 3-5) and salmon less than or equal to 23 inches total length are defined as grilse salmon (age-two).

PFMC Overfishing Review

KRFC stocks have been designated as “overfished” by 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 overfished-threshold was 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 2019 was 20,245 natural area adult spawners, which is below the one-year conservation threshold of 40,700 natural area adult spawners. The most-recent 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, the Department, and tribal entities was submitted to PFMC in February 2019, adopted by PFMC in June 2019 and submitted to 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 2020 allocation for the Klamath River Basin sport harvest was 1,296 adult KRFC. Preseason stock projections of 2021 adult KRFC abundance will not be available from PFMC until March 2021. The 2021 basin allocation will be recommended by PFMC in April 2021 and presented to the Commission for adoption as a quota for the in-river sport harvest at its May 2021 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 7.40(b)(50)(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 7.40(b)(50)(D)2. For angler convenience, the subquotas, expressed as the number of fish, are listed for the affected river segments in subsection 7.40(b)(50)(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 downstream of the Highway 96 bridge at Weitchpec to the mouth -- 50 percent of the in-river sport quota;
3. for the main stem 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 main stem Trinity River downstream of 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. All are proposed for the 2021 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 PFMC and Commission to make adjustments during the 2021 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 downstream of the Highway 96 bridge at Weitchpec to the mouth -- 50 percent of the total quota equates to [0-33,800];
- Main stem 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
- Main stem Trinity River downstream of 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.

- Bag Limit - [0-4] Chinook Salmon – of which no more than [0-4] fish over 23 inches total length may be retained until the subquota is met, then 0 fish over 23 inches total length.
- Possession limit - [0-12] Chinook Salmon of which no more than [0–4] fish over 23 inches total length may be retained when the take of salmon over 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 PFMC. No regulatory changes are proposed for the general KRSC opening and closing season dates, and bag, possession and size limits.

OTHER CHANGES FOR CLARITY

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

1. Throughout the regulatory text in subsection 7.40(b)(50), update the year from 2020 to 2021.
2. In the first paragraph of subsection 7.40(b)(50), delete cross reference to Section 7.00, subsection (a) for consistency with amendments made to Section 7.00 in OAL file 2020-1204-02s (Simplification of Statewide Inland Sport Fishing Regulations).

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.

Update

In April 2021, the PFMC recommended an allocation for the Klamath River Basin sport harvest of 1,221 adult KRFC for the 2021 season.

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