

## STAFF SUMMARY FOR FEBRUARY 8-9, 2023

**19A. WILDLIFE RESOURCES COMMITTEE****Today's Item**Information Action 

Receive summary and consider approving recommendations from the January 11-12, 2023 committee meeting. Discuss referred topics and consider revisions to topics and timing.

**Summary of Previous/Future Actions**

- Previous Wildlife Resources Committee meeting      Jan 11-12, 2023
- **Today consider approving recommendations and agenda topics**      **Feb 8-9, 2023**
- Next Wildlife Resources Committee meeting      May 17, 2023

**Background**

The Wildlife Resources Committee (WRC) works under Commission direction to set and accomplish its work plan.

***Previous Committee Meeting***

WRC met on January 11-12 in Sacramento, with webinar and teleconference options for participation, to discuss:

- A potential future rulemaking to integrate bird and mammal special hunts into the Department's Automated License Data System.
- Department and Commission staff recommendations for hunting preference points and tag refunds.
- A potential future rulemaking to implement safeguards to prevent introduction of chronic wasting disease to California.
- Referred Petition 2021-017 regarding various big game hunting proposals.
- A Commission staff report for bullfrog and non-native turtles based on the stakeholder engagement process and other information.
- A potential future rulemaking for Klamath River sport fishing above Iron Gate Dam pre- and post-dam removal, including considering potential impacts of the Commission's policy on wild trout waters.
- Inland sport fishing boat limits, striped bass, and the periodic inland sport fishing rulemaking.
- A potential future rulemaking to make improvements to the regulatory framework for authorizing wildlife rehabilitation.
- A future rulemaking regarding the public use of Department-managed wildlife areas and ecological reserves.
- Upcoming revisions to the Department's bear management plan.

The WRC meeting is posted to the [Commission YouTube channel](#).

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**Wild Trout Waters Policy**

To restore historic fish passage, four dams on the upper Klamath River will be removed, three of which are located in Siskiyou County, California. As part of the discussion about inland sport fishing regulation changes associated with the dam removals, WRC also discussed the Commission's [wild trout waters policy](#); the policy states that waters designated by the Commission shall be open to public angling, either with unrestricted access or with controlled access. The policy does not contemplate waters that would be closed for an indeterminate time and then reopened.

The Klamath River from Copco Lake to the Oregon border is currently designated a wild trout water; the river segment is likely to be inaccessible for some time due to dam deconstruction activities, unsuitable water conditions, and/or fishing closures to allow fish repopulation. WRC discussed multiple ideas for how to avoid an incongruency between the dam removals and the accessibility requirement of the Commission's policy. See Exhibit 1 for additional details about the options presented and discussed by WRC.

**Committee Recommendations**

WRC developed several recommendations for Commission consideration:

- Support proposed regulation changes for upland game hunting draws, as proposed by the Department.
- Support a future rulemaking to address hunting tag returns and preference point reinstatements, including return dates for post-season tag returns, party tags, a junior second tag, and preference point reinstatement value, as recommended by the Department.
- Support a future rulemaking to address chronic wasting disease as proposed by the Department, with the inclusion of a ban on cervid biofluids.
- Support a future rulemaking to address inland sport fishing regulations for the upper Klamath River, pre- and post-dam removal, as recommended by the Department.
- Amend the Commission-Designated Wild Trout Waters Policy to account for designated waters that are temporarily closed to angling related to dam removals. Temporary closures could be limited to those necessitated solely by restoration or safety considerations, be time-limited, include a re-evaluation stipulation, and be specific to the upper Klamath River or written more broadly to include other, similarly-situated, wild trout waters.
- Do not pursue a rulemaking to implement inland sport fishing boat limits.

An additional recommendation, with respect to Petition 2021-017, will be taken up during Agenda Item 17, Regulation change petitions (wildlife and inland fisheries), for this meeting.

**Committee Work Plan**

Topics that have been referred from the Commission to WRC are displayed within a work plan for scheduling and tracking. In addition to the recommendations identified above that will impact the work plan, WRC recommends adding to its work plan an update on white sturgeon

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management and a potential future rulemaking to amend white sturgeon fishing regulations. The proposed work plan is included as Exhibit 2.

**Significant Public Comments (N/A)****Recommendation**

**Commission staff:** Approve the January 11-12, 2023 recommendations and Wildlife Resources Committee work plan as proposed.

**Committee:** Approve the recommendations from the January 11-12, 2023 WRC meeting and proposed changes to the WRC work plan.

**Exhibits**

1. [Staff summary for January 11-12, 2023 WRC meeting, Agenda Item 7 \(for background purposes only\)](#)
2. [WRC proposed work plan, updated Jan 30, 2023](#)

**Motion**

Moved by \_\_\_\_\_ and seconded by \_\_\_\_\_ that the Commission approves the recommendations from the January 11-12, 2023 Wildlife Resources Committee meeting and updated work plan, as discussed today.

For background information only

COMMITTEE STAFF SUMMARY FOR JANUARY 11-12, 2023 WRC

## 7. KLAMATH RIVER ABOVE IRON GATE DAM, POST-DAM REMOVAL

### Today's Item

Information

Action

Discuss and potentially make recommendations on a potential future rulemaking for sport fishing in the Klamath River after the removal of Iron Gate, Copco No. 1, and Copco No. 2 dams.

### Summary of Previous/Future Actions

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| <ul style="list-style-type: none"> <li>• Initial discussion</li> <li>• Discussion</li> <li>• <b>Today's discussion and potential recommendation</b></li> </ul> | <p>May 19, 2022; WRC, Redding</p> <p>Sep 15, 2022; WRC, Arcadia</p> <p><b>Jan 11-12, 2023; WRC, Sacramento</b></p> |
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### Background

To restore historic fish passage, four dams on the Klamath river — Iron Gate, Copco No. 1, Copco No. 2, and J.C. Boyle — have been proposed for removal. All but the J.C. Boyle Dam are located in California. In late August 2022, the Federal Energy Regulatory Commission (FERC), the federal agency that regulates hydroelectric dams, issued its final environmental impact statement, with its staff recommending that FERC approve the application to remove all four dams from the upper Klamath River; in November 2022, FERC approved the application. Decommissioning could begin as early as 2023 on the smallest dam and in 2024 for the three larger dams.

The Department is proposing new sport fishing regulations for the upper Klamath River areas in California above Iron Gate Dam, with the goal of having regulations in effect once the dams are demolished and volitional fish passage is established (Exhibit 1).

### *Wild Trout Waters*

California Fish and Game Code Section 1727 authorizes the Commission to, annually, designate no less than 25 miles of stream or stream segments and at least one lake as “Wild Trout Waters.” Fish and Game Code Section 7260 further grants the Commission the authority to designate “Heritage Trout Waters” recognizing the beauty, diversity, historical significance, and special value of California’s native trout. Designations are limited to waters that both support populations best exemplifying indigenous strains of native trout within their historic drainages and provide anglers with an opportunity to catch native trout in a manner consistent with their conservation.

The upper Klamath River, from Copco Lake to the Oregon border in Siskiyou County, is currently designated as a wild trout water (Exhibit 2); the river segment is likely to be inaccessible for some time due to deconstruction activities, unsuitable water conditions, and/or fishing closures to allow fish repopulation.

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Consistent with Fish and Game Code Section 1727, the Commission established a *Commission-Designated Wild Trout Waters Policy* that identifies designation and management criteria for state waters that will be managed exclusively for wild trout (Exhibit 2). The policy states that waters designated by the Commission shall be open to public angling, either with unrestricted access or with controlled access. The policy does not consider waters that would be closed for an indeterminate period of time and then reopened. Because the policy does not contemplate wild trout waters being inaccessible to the angling public, one could conclude that the Klamath River, from Copco Lake to the Oregon border, should be removed from the list of designated waters. Fish and Game Code subdivision 1727(c) allows the Commission to remove designated wild trout waters from the wild trout program, but mandates that an equivalent number of miles be added.

To address the wild trout waters situation, there are at least four options available to the Commission: ignore its own policy, remove the waters in question from the wild trout waters program, choose a different interpretation of the policy, or amend its policy to allow temporary closures.

First, the Commission could remove the waters in question and designate an equivalent amount of stream mileage elsewhere; the removed waters could be reconsidered for designation again at a later time. However, recommending new waters for designation involves a substantial workload for the Department both in developing the recommendation and consulting with potentially affected parties, as well as developing a statutorily-mandated management plan for the waters if designated by the Commission. Additionally, when designating an equivalent amount of stream mileage, there is no requirement that the new mileage be in the same area; that is, the new mileage could be in another county or otherwise distant from the currently-designated area, thereby potentially reducing the benefits of wild trout waters in the upper Klamath River.

Second, the Commission could choose to interpret its policy such that the angler access stipulations are intended to apply only upon designation of the waters, rather than being an ongoing requirement. While this option entails the least amount of work for the Commission and Department, the policy as currently written does not appear to support such an interpretation or is, at most, slightly ambiguous on the matter. In addition, interpreting angler access as a one-time requirement would be inconsistent with state policy as identified in statute (Fish and Game Code Section 1726).

A third option is that the Commission could consider an amendment to its wild trout waters policy to account for temporary closures to angling related to the dam removals. Temporary closures could be limited to those necessitated by restoration or safety considerations only and could be time-limited or have a re-evaluation stipulation. Such an amendment could be specific to just the upper Klamath River or more broadly to other wild trout waters for future needs. While not the least amount of additional workload, it could be kept relatively simple to minimize the time commitment.

**For background information only**

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Lastly, the Commission could choose to ignore its own policy, with limited risk for adverse action. However, such a choice would be inconsistent with the organization's core values of integrity and transparency, in which the Commission has committed to actions that reflect honesty, truthfulness, respect and accuracy and to openly share how and why decisions are made. Arguably, if the Commission believes its policy does not apply or there are situations in which the policy does not hold as written, it would make sense to amend the policy.

Today, the Department will present its recommendations for regulatory changes to take effect after the dam removals (Exhibit 2). The Wildlife Resources Committee will discuss, and potentially make recommendations on, potential sport fishing regulations for that section of the Klamath River above Iron Gate Dam. The Wildlife Resources Committee will also discuss, and potentially make recommendations on, a potential amendment to the Commission's *Commission-Designated Wild Trout Waters Policy*.

**Significant Public Comments (N/A)****Recommendation**

**Commission staff:** Based on the Department's recommendations and discussion today, recommend a future rulemaking to address inland sport fishing regulations for the upper Klamath River, post-dam removal. Further, recommend that the Commission amend its *Commission-Designated Wild Trout Waters Policy* to account for designated waters that are temporarily closed.

**Department:** Consider a future rulemaking to address inland sport fishing regulations for the upper Klamath River, post-dam removal, as presented today.

**Exhibits**

1. Department presentation
2. *Commission-Designated Wild Trout Waters Policy*, amended October 13, 2022

**Committee Direction/Recommendation**

The Wildlife Resources Committee recommends the Commission support a future rulemaking to address inland sport fishing regulations for the upper Klamath River, post-dam removal, as recommended by the Department and discussed today. Further, the Wildlife Resources Committee recommends that the Commission amend its *Commission-Designated Wild Trout Waters Policy* to account for designated waters that are temporarily closed.

**California Fish and Game Commission**  
**Wildlife Resources Committee (WRC) Work Plan**  
**Scheduled Topics and Timeline for Items Referred to WRC**  
*Updated January 30, 2023*

TOPICS	CATEGORY	Sep 2022	Jan 2023	May 2023
<b>Periodic Regulations</b>				
Upland (Resident) Game Birds	Regulatory	X/R		X
Mammal Hunting	Regulatory	X/R		X
Waterfowl Hunting	Annual Regulatory	X/R		X
Central Valley Sport Fishing	Annual Regulatory	X/R		X
Klamath River Basin Sport Fishing	Annual Regulatory	X/R		X
Inland Sport Fishing	Regulatory	X/R	X/R	X
<b>Regulations &amp; Legislative Mandates</b>				
Falconry	Referral for Review			
<del>Preference Points and Refunds for Hunting Tags</del>	<del>Regulatory</del>	<del>X/R</del>	<del>X/R</del>	
Restricted Species	Regulatory			
Wildlife Rehabilitation	Regulatory	X	X/R	X/R
<del>Upland Game Hunting Draws</del>	<del>Regulatory</del>	<del>X</del>	<del>X/R</del>	
<del>Chronic Wasting Disease</del>	<del>Regulatory</del>		<del>X/R</del>	
Wildlife Areas/Public Lands	Regulatory		X	X/R
<b>Special Projects</b>				
American Bullfrog and Non-native Turtle Stakeholder Engagement Project	Referral for Review	X	X	X/R
Bear Management Plan Development	Information	X	X	X
White Sturgeon	Information/ Regulatory			X
<b>Regulation Change Petitions</b>				
<del>Petition 2021-017</del>	<del>Referral for Review</del>	<del>X/R</del>	<del>X/R</del>	

KEY: X Discussion scheduled X/R Recommendation developed and moved to FGC