

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

Amend Sections 5.87 and 7.40
Title 14, California Code of Regulations
Re: Klamath River Basin Sport Fishing 2023

I. Dates of Statements of Reasons

- (a) Initial Statement of Reasons Date: February 8, 2023
- (b) Final Statement of Reasons Date: August 8, 2023

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing

Date: February 8, 2023 Location: Sacramento

(b) Discussion Hearing

Date: April 19, 2023 Location: Fresno/Bakersfield

(c) Adoption Hearing

Date: May 17, 2023 Location: Teleconference

III. Update

In March 2023, the Pacific Fishery Management Council (PFMC) acted unanimously to recommend a full closure of California’s commercial and recreational ocean salmon seasons (three to 200 nautical miles offshore). This action follows recent projections showing Chinook Salmon abundance in California’s ocean waters is at historic lows. After reviewing PFMC’s recommendation, the National Marine Fisheries Service took regulatory action to enact the closure, effective in mid-May.

In April 2023, PFMC recommended a recreational fishery allocation of 1,804 adult Klamath River fall-run Chinook Salmon (KRFC) to the Klamath River Basin for the 2023 season. At the April 19, 2023, Fish and Game Commission (Commission) meeting, the Department of Fish and Wildlife (Department) requested that a “no fishing” option be added to the sport fishing regulations proposed in the 2023 Klamath River Basin Sport Fishing Initial Statement of Reasons (ISOR). Concurrently, the Department recommended a complete closure of the KRFC in-river recreational fishery for the 2023 season to allocate the 1,804 adult KRFC sport fishery quota to spawner escapement. A complete closure of the fishery will provide maximum protection of KRFC and make KRFC angling opportunity equitable across ocean and in-river fisheries. At the May 17, 2023, Commission meeting, the Commission adopted the changes as recommended by the Department. Updates have been made to the Economic and Fiscal Impact Analysis (std 399) with regards to the closure.

In addition, the Commission adopted the Department's other proposed changes which are:

- Removal of Quota Exceptions for re-opening sections after hatchery production goals have been met; and
- Non-substantive changes in Section 5.87.

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

Comment:

February 28, 2023, Email from Lonnie Dollarhide

Maybe this season for 2023 we need a full closer both ocean and rivers . With the low numbers we were given things are terrible wrong how salmon is managed in California, and it starts with you not us fisherman. Something to think about the future of salmon.

Response: The Commission adopted the Department's recommendation to close the KRFC in-river recreational fishery for the 2023 season.

Comment:

April 19, 2023, testimony from James Stone of Northern California Guides and Sportsmen's Association (NCGSA)

Wants to have more discussion with the Department when it comes to the grilse cutoff. Supports the sliding scale, but wants more discussion on the findings and comparisons of how the hatchery measures the fish to a fork length and we've been required to a total length. Also, thanks to the Commission for writing a letter to the PFMC and would like the Commission to continue to pursue why we're having these model inaccuracies for escapement and abundances.

Response: The Commission adopted the Department's proposal to close the KRFC in-river recreational fishery for the 2023 season. Also, the Department is open to more discussions with NCGSA regarding grilse/adult cutoff length.

Comment:

April 19, 2023, public testimony from James Stone of Northern California Guides and Sportsmen's Association;

May 17, 2023, public testimony from James Stone of Northern California Guides and Sportsmen's Association;

Support closure of the 2023 KRFC in-river recreational fishery.

Response: The Commission adopted the Department's recommendation to close the KRFC in-river recreational fishery for the 2023 season.

Comment:

May 17, 2023, public testimony from James Stone of the Northern California Guides and Sportsmen's Association

Members of the public are concerned about the allocated tribal take and the number of “springers” being harvested. Asked the Commission and Department to be more engaged and to make sure that we are collectively providing accurate data for PFMC documents.

Response: Thank-you for your concern regarding the take of spring Chinook in the Klamath Basin. Currently the harvest of spring Chinook is not managed through an allocation process similar to how Klamath Basin fall Chinook are managed. Tribal harvest is managed independently by each tribe with federal fishing rights and questions regarding tribal fisheries are best addressed by each respective tribal entity. The Department is working cooperatively with basin partners to provide the PFMC with the most accurate information possible to base annual fishery regulation decisions.

Comment:

May 17, 2023, public testimony from Jerry Lampkin

Stated that closing the Klamath River to protect the Sacramento Valley fall-run fish does not make sense. and urged the Commission to permit some semblance of a recreational season, whether it be a low quota or jacks-only fishery.

Response: While the Klamath River and Sacramento Valley fall-run are co-managed in the ocean you bring up a good point regarding in-river fisheries. Please note that the closing of the Klamath in-river fishery was not intended to benefit Sacramento Valley fall-run fish. The closure in the Klamath River is intended to specifically protect the Klamath stock. With the combined closures of the Chinook Salmon fishing seasons in the ocean, the Sacramento, Klamath, Smith and Eel rivers, salmon fishing in the entire state is effectively closed.

V. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change

KRFC Adult Stocks

The use of more liberal regulations for the KRFC quota, bag limits, and possession limits would be less desirable than a complete closure of the KRFC in-river sport fishery. More liberal regulations for bag and possession limits on this severely depressed stock may have lasting effects on future KRFC fishing opportunities.

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.

(b) No Change Alternative

KRFC Adult Stocks

The no change alternative would leave existing 2022 regulations in place with permitted take of KRFC. The no change alternative would not allow for appropriate harvest rates based on the most current monitoring of salmon abundance. The adopted closure of the KRFC in-river fishery is in line with the recommendation of the PFMC to protect the future of the fishery.

(c) Consideration of Alternatives

In view of information currently possessed regarding historically low abundance of KRFC and the risks of overfishing, no 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.

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 regulation 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~~ **have a regional impact** on the net revenues to local businesses servicing sport fishermen. ~~If the 2023 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 2023 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. The adoption of a 2023 KRFC zero quota is anticipated to correspondingly reduce visitor spending. Some who would normally pursue KRFC salmon, may still visit the area and pursue other species or other outdoor activities. But some may not pursue alternative species or outdoor activities, such that the drop in spending could induce some business contraction. However, even a full closure is not expected to directly affect the ability of California businesses to compete with businesses in other states because the closure is anticipated to be limited in time and the fishery is unique to the state.~~

(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~~ by the zero KRFC **closure** quota. The impacts range from no impact to **small temporary** adverse impacts ~~(Projection 1 under the Economic Impact Assessment (EIA), below) to small adverse impacts (Projection 3, EIA, below).~~

Depending on the final KRFC quota, the **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 **for some businesses for which alternate outdoor activities**

may substitute for KRFC visitor spending to the loss of 13 jobs. ~~Under all alternatives, due~~ Due to the seasonal 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~~ The possibility for growth of businesses to serve alternative recreational activities exists. Adverse impacts to jobs and/or businesses would be projected to be less if because fishing of other species ~~and grilse KRFC~~ is permitted, ~~than~~ under a complete closure to all KRFC 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 sport fishing 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.

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 individual tribal governments.

Klamath River Fall-Run Chinook Salmon

Adult Klamath River fall-run Chinook (KRFC) Salmon harvest allocations and natural spawning escapement goals are established by PFMC. The KRFC harvest allocation between tribal and non-tribal fisheries is based on court decisions and allocation agreements between the various fishery representatives.

The Klamath River Basin in-river sport salmon fishery is managed using adult quotas. For the purpose of implementing the 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 three through five), 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 these stocks. 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 2021 was 30,196 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 of 29,908 is still less than the required 40,700 natural area adult spawners conservation threshold, 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 National Marine Fisheries Service (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 2022 allocation for the Klamath River Basin sport harvest was 2,119 adult KRFC. The PFMC allocation for the Klamath River Basin sport harvest is normally a minimum of 15 percent of the non-tribal PFMC harvest allocation of KRFC. Preseason stock projections of 2023 adult KRFC abundance will not be available from PFMC until March 2023. The 2023 basin allocation will be recommended by PFMC in April 2023. That allocation will inform the quota that the Department proposes to the Commission for adoption as a quota for the in-river sport harvest at the Commission’s May 2023 teleconference meeting.

The annual KRFC in-river sport harvest quota is specified in subsection 7.40(b)(50)(D)1. The quota is split among 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 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 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 2023 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 Adult Stocks (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 2023 regulatory cycle.

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

1. 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];
2. 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];
3. 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
4. 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.

KRSC Sport Fishery

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

Implementing a range of lengths for determination of grilse/adult KRFC

Size Limits: the proposed regulations shall now include a range of size limits shown in [brackets] to determine between grilse and adult Chinook Salmon. This allows for annual variation in size cutoffs, as informed by previous year(s) data to more effectively manage the harvest of the adult KRFC quota.

The Department is proposing 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. 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 [20-24] inches total length may be retained until the subquota is met, then 0 fish over [20-24] inches total length.
- Possession limit - [0-12] Chinook Salmon of which no more than [0–4] fish over [20-24] inches total length may be retained when the take of salmon over [20-24] inches total length is allowed.

Removal of Quota Exceptions for re-opening sections after hatchery production goals have been met. The regulations currently include Fall Run Quota Exceptions that apply to both the Upper Klamath and Upper Trinity River sub-areas. These exemptions allow for the reopening of adult KRFC harvest in sub-areas that had previously been closed due to sub-area quota attainment. Reopening is triggered independently for each river when Iron Gate Hatchery and Trinity River Hatchery reach adult KRFC returns of 8,000 and 4,800 respectively.

The Fall Run Quota Exceptions were originally developed to allow for the recreational harvest of “surplus hatchery-origin fish.” The sections that re-open are immediately downstream of the hatcheries and the fish present have historically been comprised of a large fraction of hatchery-origin KRFC. The specific areas of the Klamath and Trinity rivers affected by the quota exception are: 3,500 feet below Iron Gate Hatchery downstream to the Interstate 5 bridge on the Klamath River, and from 3,500 below Trinity River Hatchery downstream to the mouth of Indian Creek on the Trinity River.

The validity of the quota exceptions has been frequently challenged by basin partners and is no longer meeting the needs of the Department. The Department is committed to equal sharing of KRFC and allowing for over harvest of this stock is not consistent with the goals of the Department. In addition, the quota exception impacts the hatcheries’ ability to meet production goals and is not consistent with current hatchery management of operating the facilities as integrated programs. The removal of Iron Gate Hatchery in 2024 will make the quota exception on the Klamath River obsolete. As a result, the Department proposes the Commission remove these two quota exceptions, described in 7.40(b)50 2a and 7.40(b)50 6b, for the Upper Klamath and Upper Trinity River sectors, respectively.

Removal of Duplicate Size Limit (non-substantive)

Grilse/jack size limits are currently specified in sections 7.40 and 5.87. The size limits that appear in Section 5.87 shall be replaced with cross-reference to the subsection of 7.40 in which size limits are described. This will minimize the potential for conflicting information that would prove confusing to anglers.

Removal of Obsolete Form Number (non-substantive)

The North Coast Salmon Report Card was previously a numbered form (FG 684) that is specified in Section 5.87, but is not incorporated by reference. The North Coast Salmon Report Card is now issued through the Department’s Automated License and Data System (ALDS) and is not associated with a form number. The form number shall be removed from this section.

Correct Capitalization of Fish Names (non-substantive)

Current regulations in Section 5.87 use an outdated rule for the capitalization of fish species names, in which the common names of fish species are not capitalized. Following the adoption of new rules applicable to the names of fish species by the American Fisheries Society in 2013, common names shall be capitalized.

Benefits of the Proposed Regulations

The benefits of the proposed regulations are conformance with federal fishery management goals, sustainable management of Klamath River Basin fish resources, 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 (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.

Efforts to Avoid Duplication or Conflict with Federal Regulations

The final KRFC quota, bag, and possession limits will align with the final ocean fishery federal regulations set by the Pacific Fishery Management Council (PFMC) and adopted by the Department of Commerce to meet biological requirements stipulated by the Pacific Coast Salmon Fishery Management Plan (FMP) and tribal/non-tribal fishery allocation goals specified in law or established in the FMP. Specifically, these KRFC regulations coupled with aforementioned ocean fishery regulations, will in expectation result in achievement of spawner escapement objectives set by the FMP and the PFMC and will result in adherence to tribal/non-tribal ocean and freshwater fishery allocations of the harvestable surplus of this stock according to the FMP, PFMC adopted regulations, and existing law.

Updated Necessity Explanations:

In March 2023, PFMC acted unanimously to recommend a full closure of California's commercial and recreational ocean salmon seasons (three to 200 nautical miles offshore). This action follows recent projections showing Chinook Salmon abundance in California's ocean waters is at historic lows. After reviewing PFMC's recommendation, the National Marine Fisheries Service took regulatory action to enact the closure, effective in mid-May.

In April 2023, PFMC recommended a recreational fishery allocation of 1,804 adult KRFC to the Klamath River Basin for the 2023 season. At the April 19, 2023, Commission meeting, the Department requested that a "no fishing" option be added to the sport fishing regulations proposed in the 2023 Klamath River Basin Sport Fishing Initial Statement of Reasons (ISOR). Concurrently, the Department recommended a complete closure of the KRFC in-river recreational fishery for the 2023 season to allocate the 1,804 adult KRFC quota to spawner escapement. A complete closure of the fishery will provide maximum protection of KRFC and make KRFC angling opportunity equitable across ocean and in-river fisheries. At the May 17, 2023, Commission meeting, the Commission adopted the changes as recommended by the Department.

The Commission also adopted the Department's other proposed changes which are:

- **Removal of Quota Exceptions for re-opening sections after hatchery production goals have been met; and**
- **Non-substantive changes in Section 5.87.**

In addition, *Ohlberger et. al* (2018) is included in the rulemaking record as a document supporting the regulation change because it was relied upon in the ISOR to demonstrate long-term trends of decreasing size of adult Chinook ranging from Alaska to California.