

## **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 713, 1050, and 1054 of said Code, proposes to amend Section 7.40 and 7.50 of Title 14, California Code of Regulations related to Klamath River Dam Removal Sport Fishing Updates.

### **Informative Digest/Policy Statement Overview**

The Lower Klamath Project (“Project,” FERC Project No. 14083) consists of the decommissioning and removal of four dams on the main stem of the Klamath River (J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate), as well as their associated facilities, by the Klamath River Renewal Corporation (KRRC). The Project implements portions of the Klamath Hydroelectric Settlement Agreement (KHSA) between: PacifiCorp; several state, federal, and local government agencies; Native American tribes; nongovernmental organizations; irrigators; and individual stakeholders. The KHSA seeks to return the Klamath River to free-flowing conditions and provide volitional fish passage in the portion of the Klamath River currently occupied by the Project’s dams and associated facilities.

One of the major goals of the Lower Klamath Project is to restore anadromous fish to the Klamath River Basin upstream of the current Iron Gate Dam and allow volitional access to over 400 river miles of habitat upstream in California and Oregon. In California, anadromous fish have been prevented from accessing their historical habitats upstream of Iron Gate and Copco dams for over 60 and 100 years, respectively. Dam deconstruction activities could start as soon as March 2023 with volitional fish passage likely in late 2024. During deconstruction, much of the area between Iron Gate Dam and the California-Oregon state line will be an active construction site presenting multiple hazards to the public. After deconstruction is completed, the river and surrounding habitat will be changing rapidly with ongoing natural processes and active restoration activities, which will likely also present significant hazards or initially impede the recovery of fish populations.

As a result of the Lower Klamath Project and the restoration of anadromy to the upper Klamath River Basin, the California Department of Fish and Wildlife (Department) will be updating its existing inland sport fishing regulations for the 2024 season. The Department supports actively managing the fishing opportunities in the main stem Klamath River and all anadromous portions of tributaries upstream of the existing Iron Gate Dam location to the California-Oregon state line as these processes take place. At a minimum, the Department anticipates reevaluating angling opportunities on an annual basis and implementing a phased reopening pending post dam removal monitoring

results. It is the Department's goal to provide fishing opportunities as soon as appropriate, which could lead to interim changes between annual regulatory cycles.

Current regulations in the Lower Klamath River (downstream of Iron Gate Dam) allow for an annual KRFC, KRSC, and steelhead trout fishery. As described above, harvest of KRFC and KRSC is allowed following time and area openings and KRFC are additionally subject to quota management. The existing catch and release steelhead trout sport fishery is open year-round downstream of Iron Gate Dam.

Current regulations also allow for a steelhead trout fishery in all waters of Bogus Creek from the fourth Saturday in May through August 31 with a daily bag limit of two hatchery trout or hatchery steelhead. Bogus Creek does not have any clearly defined barriers that would prevent anadromous fish from migrating to the headwaters of Bogus Creek. Bogus Creek is the only anadromous small tributary in the Klamath River Basin that allows sportfishing. All other small anadromous tributaries of the Klamath River Basin are closed to sport fishing. The proposed changes are as follows:

This proposal contains proposed regulation changes for five Klamath River main stem fishing sections and five anadromous tributary fishing sections. Regulation changes for each fishing section contain up to four separate options, ranging from most restrictive (option one) to least restrictive (option four) with regard to fishing opportunities. In between, options two and three represent increasing season length and/or less restrictive fishing gear type allowed. These options should be evaluated independently of each other, and decisions should be made independently for each section; the options are not linked across separate fishing sections.

*Amend Subsection 7.40(b)(50) and 7.50(b)(73)*

#### *Klamath River Fishing Boundary Revision*

Changes are necessary to the definition of anadromous waters of the Klamath River Basin as a result of the removal of Iron Gate Dam. Anadromous waters of the Klamath River Basin post dam removal will include waters that are currently upstream of Iron Gate Dam and will be from the mouth of the river upstream to the California-Oregon state line, and as a result the area description needs to be updated. These regulations propose to increase the number of regulatory units in the mainstem Klamath River.

For mainstem areas downstream of the existing Iron Gate Dam location, the mainstem regulatory unit will be updated from "Klamath River from 3,500 feet downstream of the Iron Gate Dam downstream to the Highway 96 bridge at Weitchpec" to "Lakeview Road Bridge to the I-5 Bridge" and "I-5 Bridge downstream to the Highway 96 bridge at Weitchpec."

For mainstem areas upstream of the existing Iron Gate Dam location, there will be two mainstem regulatory units: "Lakeview Road Bridge to Copco Road Bridge at Copco" and "Copco Road Bridge at Copco to California-Oregon state line." These two sub-

areas will allow for independent management of the existing mainstem river habitat and the newly created river habitat that is currently under Iron Gate and Copco reservoirs.

### *Tributary Anadromous Fishing Boundaries*

Anadromous waters need to be defined for tributaries including Fall, Jenny, Scotch, and Shovel creeks. The extent of access for anadromous salmon and trout into each of these tributaries has been identified as follows:

- Bogus Creek (all waters of Bogus Creek are anadromous)
- Fall Creek (river mile 1.0 miles upstream of Copco Road)
- Jenny Creek (river mile 2.0 miles upstream of Copco Road)
- Scotch Creek (river mile 0.75 miles upstream of Copco Road)
- Shovel Creek (river mile 2.75 miles upstream of Ager Beswick Road)

The subquota definition for the area of the Klamath River from “3,500 feet downstream of the Iron Gate Dam” needs a landmark reference change to “Lakeview Road Bridge near Iron Gate.”

As noted previously, options are presented for each of the affected five fishing sections surrounding the Klamath River.

#### Bogus Creek and Tributaries:

- Option 1: close to all fishing in the anadromous portions of the creek.
- Option 2: allow fishing from the fourth Saturday in May through August 31. During this period only artificial lures with barbless hooks would be permitted with a daily bag limit of two hatchery trout or hatchery steelhead.

#### Klamath River from Copco Road Bridge at Copco to the California-Oregon state line:

- Option 1: close to all fishing.
- Option 2: allow fishing from November 1 through February 28 with artificial lures, barbless hooks, and a daily bag limit of zero.
- Option 3: allow fishing from the fourth Saturday in May through August 31 with artificial lures, barbless hooks, and a daily bag limit of zero.
- Option 4: allow fishing from November 1 through February 28 and from the fourth Saturday in May through August 31 with artificial lures, barbless hooks, and a daily bag limit of zero.

#### Shovel Creek:

- Option 1: close to all fishing in the anadromous portions of the creek.
- Option 2: allow fishing from the fourth Saturday in May through August 31 with artificial lures, barbless hooks, and a daily bag limit of zero.

Klamath River from Lakeview Road Bridge near Iron Gate to Copco Road Bridge at Copco:

- Option 1: close to all fishing.
- Option 2: allow fishing from November 1 through February 28 with artificial lures, barbless hooks, and a daily bag limit of zero.
- Option 3: allow fishing from the fourth Saturday in May through August 31 with artificial lures, barbless hooks, and a daily bag limit of zero.
- Option 4: allow fishing from November 1 through February 28 and from the fourth Saturday in May through August 31 with artificial lures, barbless hooks, and a daily bag limit of zero.

Fall Creek:

- Close to all fishing in the anadromous portions of the creek.

Jenny Creek:

- Option 1: close to all fishing in the anadromous portions of the creek.
- Option 2: allow fishing from the fourth Saturday in May through August 31 with artificial lures, barbless hooks, and a daily bag limit of zero.

Scotch Creek:

- Option 1: close to all fishing in the anadromous portions of the creek.
- Option 2: allow fishing from the fourth Saturday in May through August 31 with artificial lures, barbless hooks, and a daily bag limit of zero.

Klamath River from I-5 bridge to Lakeview Road bridge near Iron Gate:

- Option 1: close to all fishing.
- Option 2: allow fishing from August 15 through February 28 with artificial lures, barbless hooks, and a daily bag limit of zero.
- Option 3: allow fishing all year with a daily bag limit of two hatchery trout or steelhead and harvest of Chinook Salmon grilse from August 15 through December 31.
- Option 4: allow fishing all year with a daily bag limit of two hatchery trout or steelhead and harvest of Chinook Salmon from August 15 through December 31.

#### **OTHER CHANGES FOR CLARITY**

Non-substantive editing and renumbering have been made in subsection 7.40(b) to improve the clarity and consistency of the regulatory.

## **Benefit 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**

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. Section 20, Article IV, 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 to the Commission the unique power to adopt regulations governing inland sport fishing (Fish and Game Code sections 200 and 205); no other state agency has the authority to adopt regulations governing inland sport fishing. The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Commission has searched the CCR for any regulations regarding the adoption of Inland Sport Fishing regulations; therefore, the Commission has concluded that the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

## **Public Participation**

**NOTICE IS GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the **Handlery Hotel San Diego, 950 Hotel Circle North, San Diego, California 92108** which will commence at **8:30 a.m.** on **Wednesday, December 13, 2022**, and may continue at **8:30 a.m.** on **Thursday, December 14, 2023**. This meeting will also include the opportunity to participate via webinar/teleconference. Instructions for participation in the webinar/teleconference hearing will be posted at [www.fgc.ca.gov](http://www.fgc.ca.gov) in advance of the meeting or may be obtained by calling 916-653-4899. Please refer to Commission meeting agenda, which will be available at least 10 days prior to the meeting, for the most current information.

**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 at the **California Natural Resources Agency Headquarters 1<sup>st</sup> Floor Auditorium, 715 P Street, Sacramento, California, 95814** commencing at **8:30 a.m.** on **Wednesday, February 14, 2024**, and may continue at **8:30 a.m.** on **Thursday, February 15, 2024**. This meeting will also include the opportunity to participate via webinar/teleconference. Instructions for participation in the webinar/teleconference hearing will be posted at [www.fgc.ca.gov](http://www.fgc.ca.gov) in advance of the meeting or may be obtained by calling 916-653-4899. Please refer to Commission meeting agenda, which will be available at least 10 days prior to the meeting, for the most current information.

It is requested, but not required, that written comments be submitted by 5:00 p.m. on January 25, 2023 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 February 9, 2023.** All comments must be received no later than February 15, 2023, during the Commission meeting. 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, 715 P Street, 16<sup>th</sup> Floor, Sacramento, CA 95814.

### **Availability of Documents**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout 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, 715 P Street, 16<sup>th</sup> Floor, Sacramento, California 95814, phone (916) 653-4899. Please direct requests for the above-mentioned documents and inquiries concerning the regulatory process to Melissa Miller-Henson or David Haug at [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov) or at the preceding address or phone number.

**Senior Environmental Scientist Karen Mitchell, Department of Fish and Wildlife, ([Fisheries@wildlife.ca.gov](mailto:Fisheries@wildlife.ca.gov) or (916)205-0250), 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 Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States**

The proposed regulation is not anticipated to have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. However, limited adverse economic impacts are anticipated for the immediate Klamath River Basin area. The total adverse economic impact of the proposed regulations is projected to range from declines of \$7,656 to \$83,213 in direct sport fishing expenditures. Any adverse impacts to net revenues of local businesses servicing sport fishers would be phased over the year. Direct expenditures circulate within the regional economy through business-to-business spending and induced spending from labor income that expands the total economic impact to \$13,628 to \$148,119. The total seasonal impacts will vary depending on the combination of regulatory options chosen for the sub-areas within the Klamath basin during and after dam removal. Any reduction in anadromous fishing opportunity will be reflected in reductions in visitor spending. If fishing in other nearby areas or alternative visitor activities are not pursued, the drop in visitor spending could induce some business contraction. No combination of options are expected to directly affect the ability of California businesses to compete with businesses in other states because the goods and services are consumed locally and not traded across state lines.

(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.**

Depending on the final combination of options adopted, 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 two full-time equivalent (FTE) 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 potential combination of options, the possibility of growth of businesses to serve alternative recreational activities exists. 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. Preserving future 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. However, an estimated 15 to 25 businesses that serve sport fishing activities are expected to be directly and/or indirectly affected by reduced visitor spending that may result in temporary reductions in net revenue.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State

The Commission estimates that the Department will not experience any reductions in North Coast Salmon Report Card (and steelhead card) revenue in the current and subsequent two fiscal years because the cards are purchased to fish in several other areas of the state. No costs/savings to federal funding to the State are anticipated. The proposed regulations for managing anadromous waters of the Klamath river basin during and after the removal of four dams will not impose new costs or savings for the Department fisheries or law enforcement branches. Public outreach and communications efforts are coordinated with the dam de-construction management.

(e) Nondiscretionary Costs/Savings to Local Agencies

No nondiscretionary costs or savings are anticipated for local agencies. Any fishery closures are enforced by the Department. Local governments may experience a decline in sales and transient occupancy taxes (see STD. 399 and Addendum) from periodic declines in salmon angler visits to the areas in proximity of the closures. However, the shifts in regional expenditures are principally caused by the dam deconstruction project that in turn prompts intervals of salmon fishery closures.

(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: November 6, 2023

Melissa Miller-Henson  
Executive Director