

State of California  
Fish and Game Commission  
**Amended** Initial Statement of Reasons for Regulatory Action

Amend Sections 7.40(b) and 7.50(b)  
Title 14, California Code of Regulations  
Re: Klamath River Dam Removal Sport Fishing Updates

I. Date of Amended Initial Statement of Reasons: November 15, 2023

II. Date of Initial Statement of Reasons: August 1, 2023

III. Dates and Locations of Scheduled Hearings

(a) Notice Hearing

Date: August 22, 2023

Location: Fortuna, CA

(b) Discussion Hearing

Date: December 13, 2023

Location: San Diego Area

(c) Adoption Hearing

Date: February 15, 2024

Location: Sacramento, CA

IV. Description of Regulatory Action

(a) Statement of Specific Purpose of Regulatory Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary

Unless otherwise specified, all section references in this document are to Title 14 of the California Code of Regulations (CCR). Changes from the Initial Statement of Reasons are designated by double underline and double strikeout.

*Background*

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 began in 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 impede the recovery of fish populations, at least initially.

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) is proposing updates to existing inland sport fishing regulations. 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 opportunity as soon as appropriate, which could lead to interim changes between annual regulatory cycles.

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 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.

The proposed regulations aim to account for several considerations related to deconstruction activities, restoration processes, public health and safety, sustainable fishery needs, ecological conditions, and impacts to fishery resources during recovery and repopulation. The Department objective is for populations of anadromous and non-anadromous fish to reach levels that will allow long term sustainable fisheries as quickly as possible. The proposed regulations present options for public and Commission consideration relative to sport fishing opportunities in the upper Klamath River Basin during the Lower Klamath Project activities.

### **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 Pacific Fishery Management Council (PFMC). The KRFC harvest allocation between tribal and non-tribal fisheries is based on legal decisions and allocation agreements between the various fishery representatives.

### **Klamath River Spring-Run Chinook Salmon**

The Klamath River Basin also supports Klamath River spring-run Chinook Salmon (KRSC). Naturally produced KRSC are both temporally and spatially separated from KRFC in most cases. Presently, KRSC stocks are not directly managed or allocated by PFMC. This in-river

sport fishery is managed by general basin seasons, daily bag limit, and possession limit regulations. KRSC harvest is monitored on the Klamath River below the Highway 96 Bridge at Weitchpec to the mouth of the Klamath River by angler creel survey. The upper Trinity River, upstream of Junction City, is monitored using tag returns from anglers.

### **PFMC Overfishing Review**

In recent years, 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 Pacific Coast 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 2022 was 22,050 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 26,061 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 or exceeding 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.

As the Lower Klamath Project nears the reservoir draw down and dam removal phase, the Department notes the need to begin planning for active management of KRFC in terms that may go beyond those prescribed in the FMP and the KRFC Harvest Control Rule (HCR). At present time, the escapement objective for KRFC of 40,700 is based upon a stock-recruitment analysis that is inherently a function of habitat availability via the total number of successful spawners. With the expansion of habitat anticipated post dam removal, a new stock-recruitment analysis will be needed. The greater the spatial capacity of quality habitat to support spawners, the greater number of successful spawners that are possible. While there are other factors to consider, increasing the amount of habitat will necessitate a new analysis in the years to come. It is expected that at least 8 to 10 years of data will be necessary before a new, long term, escapement objective can be derived (based on previous examples). However, there may be a need to begin considering interim management objectives that are in excess of FMP and HCR prescribed targets to promote and enhance repopulation of the new habitat. Coupled with the potential loss of productivity due to dam removal activities themselves in the near term (i.e., sedimentation of gravel downstream), a more conservative approach may be warranted. While annual fluctuations in stock abundance and limiting factors

related to weak stock management in ocean fisheries will clearly play a role in determining annual escapement projections, explicit treatment of KRFC escapement targets is warranted. This content is provided for informational purposes only. Any new management objectives for KRFC that may be developed will likely result from PFMC processes and are not linked to, or contingent upon this regulation package.

### **Annual KRFC Regulations**

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 2024 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)**

The Klamath River Basin in-river sport salmon fishery is managed using adult quotas. As noted in the 2023 Final Statement of Reasons for Klamath Sport Fishing, 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). Subquotas: The proposed subquotas for KRFC stocks, as they appear in the [2023 Final Statement of Reasons for Klamath Sport Fishing](#) are as follows:

1. Main stem Klamath River from the California-Oregon state line to the mouth of the Pacific Ocean: 67 percent of the total quota equates to 0 and is closed to all salmon fishing;
2. 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 and is closed to all salmon fishing; and
3. 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 and is closed to all salmon fishing.

Seasons: Klamath River and Trinity River KRFC seasons have no proposed changes:

- 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.

Additional information on the management implications and methods for determining the annual regulatory length determination between grilse and adult KRFC can be found in the [2023 Final Statement of Reasons for Klamath Sport Fishing](#).

## *Current Regulations*

Changes will be required to multiple sections of California Code of Regulations Title 14 including 7.40(b)(20),(50)(A-E); 7.50(b)(73).

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 doesn't 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 sport fishing. All other small anadromous tributaries of the Klamath River Basin are closed to sport fishing.

Recreational anglers have fished in Iron Gate and Copco reservoirs for warm water species such as largemouth bass, black and white crappie, green sunfish, catfish, and others. It is anticipated that after dam removal, these warmwater species would persist in low abundance given restoration of the watershed to colder temperatures, and would no longer support an active sport fishery.

The Klamath River main stem and tributaries upstream of Iron Gate Dam to the California-Oregon state line are covered under subsection 7.50(b)(73) and allow for year-round split season trout fishery from the Saturday preceding Memorial Day through September 30 with a daily bag limit of five trout and from October 1 through the Friday preceding Memorial Day with a daily bag limit of zero trout.

### **Sport Fishery Management**

The KRFC in-river sport harvest quota is divided into geographic areas, and harvest is monitored under real time subquota management. The KRSC in-river sport harvest is managed by general season, daily bag limit, and possession limit regulations. The existing Lower Klamath River sport fishing regulations cover Klamath River areas from the mouth upstream to Iron Gate Dam. For this project, the Department is proposing to change the fishing boundary on the lower Klamath River from Iron Gate Dam to Lakeview Road Bridge near Iron Gate. It should be noted that the 2023 Lower Klamath River regulations will cover areas downstream of Lakeview Road Bridge near Iron Gate (OAL notice ID #Z2023-0307-04). In the 2024 regulatory cycle, the Department will address the sport fishing regulations for the Lower Klamath and the Upper Klamath areas separately. In 2024, the Lower Klamath will be defined as the Klamath River from the mouth upstream to I-5 crossing (upstream side of the I-5 north bridge crossing) and the Upper Klamath will be defined as the Klamath River from I-5 crossing to the California-Oregon state line.

## *Proposed Regulatory Changes*

### **Key to Proposed Regulatory Changes**

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.

There will be two potential effective dates for this rulemaking pending the commencement of the Lower Klamath Project drawdown occurring in January of 2024. If drawdown starts in January of 2024 indicating that the Lower Klamath Project is not delayed, then the effective date of this rulemaking will be as soon is practical after the regulation is adopted by the Commission, and be made effective upon filing, currently targeted for Spring 2024. If drawdown doesn't start in January of 2024, indicating a delay of the project, then the effective date of this rulemaking is planned to be January 1, 2025.

#### *Amend Subsection 7.40(b)(50)(C)(2)(b)*

##### **Proposed Changes:**

The change is needed to correct an omitted clarification regarding the take and possession of Chinook Salmon on the mainstem Klamath and Trinity Rivers. Previous iterations of this regulation text provided information on season closures. This action proposes to correct this omission.

#### *Amend Subsection 7.40(b)(50)(E)(2)*

##### **Proposed Changes:**

##### *Klamath River Fishing Boundary Revision*

On the Klamath River between Interstate I-5 and the California-Oregon state line (i.e., subsections 7.40(b)(20), 7.40(b)(50), and 7.50(b)(73)), the Department is proposing to divide this boundary into three geographic fishing boundaries (Figure 1) by amending subsections 7.40(b)(50)(A)-(D), 7.40(b)(50)(E)(1)-(2), 7.40(b)(50)(E)(2)(d)-(e), 7.50(b)(73) and adding subsections 7.40(b)(50)(E)(2)(a)-(c). The proposed boundaries are as follows:

1. Interstate 5 (upstream side of the I-5 north bridge crossing; river mile 181.9) to Lakeview Road Bridge (river mile 192.5).
2. Lakeview Road Bridge (river mile 192.5) to Copco Road Bridge (river mile 205.6) at Copco.
3. Copco Road Bridge (river mile 205.6) at Copco to California-Oregon state line (river mile 211.9). Currently the Klamath River main stem from the high-water mark of Copco Reservoir to the California-Oregon state line is designated as "Wild Trout Water." The Commission has the authority to temporarily close sportfishing in "Wild Trout Waters" when necessary.

##### *Tributary Anadromous Fishing Boundaries*

Anadromous waters need to be defined for tributaries including Bogus, 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)
- There is a known barrier (waterfall) in Fall Creek roughly 1.0 mile upstream of Copco Road and this location is the proposed separation between anadromous and non-anadromous waters.
- There is a known barrier (waterfall) in Jenny Creek roughly 2.0 miles upstream of Copco Road and this location is the proposed separation between anadromous and non-anadromous waters.
- There is a known barrier (waterfall) in Scotch Creek roughly 0.75 miles upstream of Copco Road and this location is the proposed separation between anadromous and non-anadromous waters.
- There is a known barrier (cascade) in Shovel Creek roughly 2.75 miles upstream of Ager Beswick Road and this location is the proposed separation between anadromous and non-anadromous waters.

The separation of anadromous and non-anadromous waters in the tributaries, similar to the Klamath River fishing boundary revision, will define different parameters as the Department evaluates recreational angling opportunities.



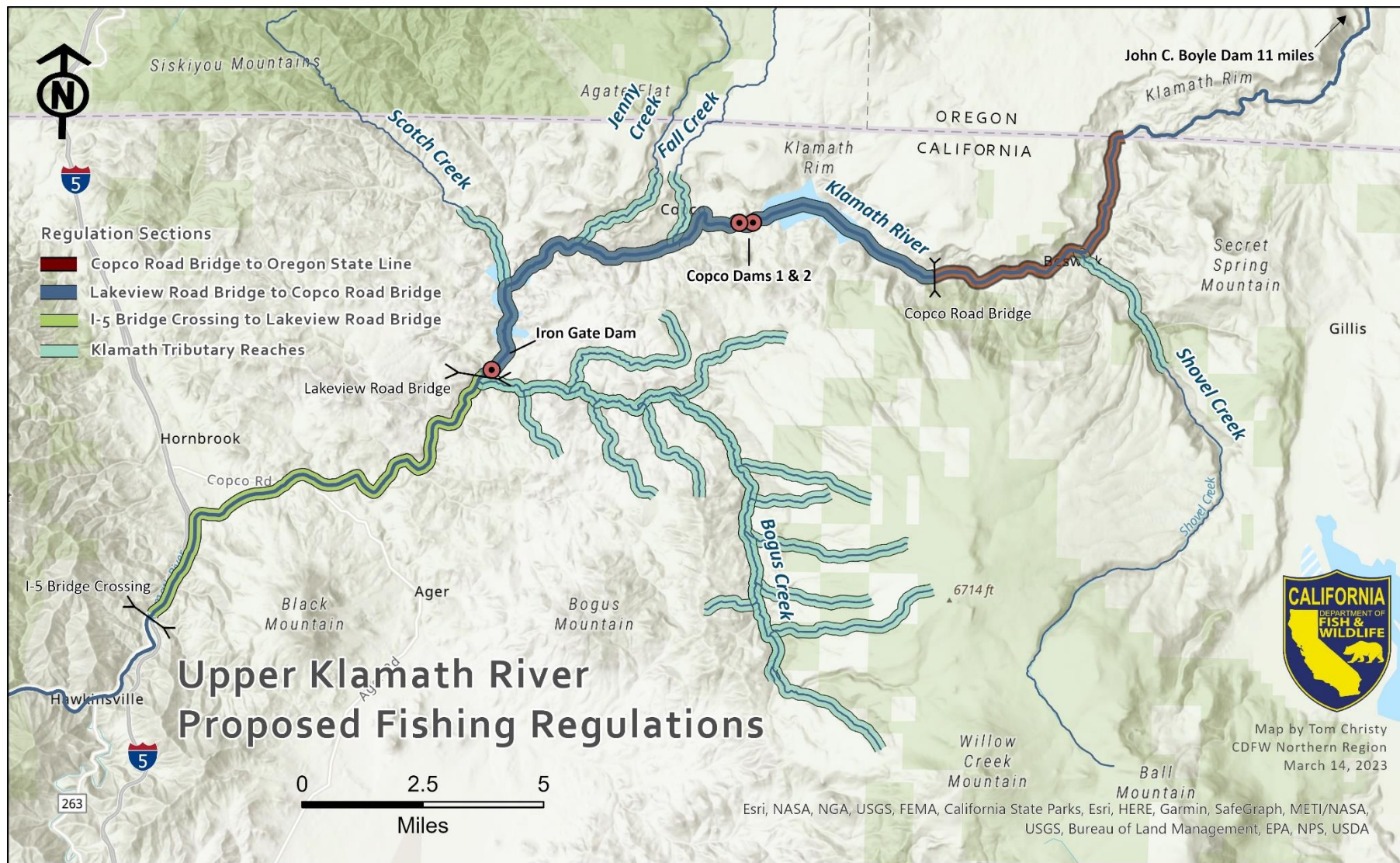


Figure 1. Upper Klamath River proposed fishing regulations map showing alternative sections from the I-5 bridge crossing to the California-Oregon state line.



## **Necessity and Rationale**

The anticipated footprint is from Bogus Creek to the Oregon border. The footprint currently includes three reservoirs and wild trout waters. Dividing the fishing boundaries is necessary to facilitate adaptive management to allow for reevaluating angling opportunities and implementing a phased reopening pending post dam removal monitoring results. It is the Department's goal to reopen the main stem Klamath River for recreational angling as soon as appropriate.

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; as a result, the area description needs to be updated.

### **Proposed Changes: Klamath River Fishing Open Seasons and Bag Limits**

#### Amend Subsection 7.40(b)(50)(C)(2)(b)

Previous iterations of this regulation text included seasonal closure fishing from August 15 to December 15 on the Klamath River and from September 1 to December 31 on the Trinity River, which was erroneously omitted. This proposal corrects this language to read:

Klamath River from August 15 to December 31 and Trinity River from September 1 to December 31: Closed to the take and possession of Chinook Salmon.

As noted on pages 5-6, options are presented for each of the affected five reaches surrounding the Klamath River.

No fishing is allowed within 500 feet of the mouths of multiple Klamath River tributaries to protect migrating KRFC from September 15 through December 31. Bogus, Fall and Shovel creeks need to be added to this list to protect migrating KRFC.

Amend Sections 7.40(b)(50)(A)-(D), 7.40(b)(50)(E)(1)-(2), 7.40(b)(50)(E)(2)(d)-(e), 7.50(b)(73)

Add Sections 7.40(b)(50)(E)(2)(a)-(c)

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."

#### 7.40(b)(50)(E)(1) Bogus Creek and Tributaries:

- Option 1: close to all fishing all year in the anadromous portions of the creek.
- Option 2 (listed as Option 4 in the STD 399 and addendum): 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.

7.40(b)(50)(E)(2)(a) Klamath River from the Copco Road Bridge at Copco to the California-Oregon state line:

- Option 1: close to all fishing all year.
- Option 2: allow fishing from November 1 through February 28 with artificial lures, barbless hooks, and a daily bag limit of zero hatchery trout or hatchery steelhead. Closed to the take and possession of Chinook Salmon.
- 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 hatchery trout or hatchery steelhead. Closed to the take and possession of Chinook Salmon.
- 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 hatchery trout or hatchery steelhead. Closed to the take and possession of Chinook Salmon.

7.40(b)(50)(E)(2)(a)(1) Shovel Creek:

- Option 1: close to all fishing all year in the anadromous portions of the creek.
- Option 2 (listed as Option 4 in the STD 399 and addendum): allow fishing from the fourth Saturday in May through August 31 with artificial lures, barbless hooks, and a daily bag limit of zero hatchery trout or hatchery steelhead. Closed to the take and possession of Chinook Salmon.

7.40(b)(50)(E)(2)(b) Klamath River from Lakeview Road Bridge near Iron Gate to Copco Road Bridge at Copco:

- Option 1: close to all fishing all year.
- Option 2: allow fishing from November 1 through February 28 with artificial lures, barbless hooks, and a daily bag limit of zero hatchery trout or hatchery steelhead. Closed to the take and possession of Chinook Salmon.
- 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 hatchery trout or hatchery steelhead. Closed to the take and possession of Chinook Salmon.
- 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 hatchery trout or hatchery steelhead. Closed to the take and possession of Chinook Salmon.

7.40(b)(50)(E)(2)(b)(1) Fall Creek:

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

7.40(b)(50)(E)(2)(b)(2) Jenny Creek:

- Option 1: close to all fishing all year in the anadromous portions of the creek.
- Option 2 (listed as Option 4 in the STD 399 and addendum): allow fishing from the fourth Saturday in May through August 31 with artificial lures, barbless hooks, and a daily bag limit of zero hatchery trout or hatchery steelhead. Closed to the take and possession of Chinook Salmon.

7.40(b)(50)(E)(2)(b)(3) Scotch Creek:

- Option 1: close to all fishing all year in the anadromous portions of the creek.
- Option 2 (listed as Option 4 in the STD 399 and addendum): allow fishing from the fourth Saturday in May through August 31 with artificial lures, barbless hooks, and a daily bag limit of zero hatchery trout or hatchery steelhead. Closed to the take and possession of Chinook Salmon.

7.40(b)(50)(E)(2)(c) Klamath River from I-5 bridge to Lakeview Road bridge near Iron Gate:

- Option 1: close to all fishing all year.
- 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 hatchery steelhead and ~~harvest of Chinook Salmon-grilse~~ catch and release fishing of Chinook Salmon from August 15 through December 31.
- Option 4: allow fishing all year with a daily bag limit of two hatchery trout or hatchery steelhead and harvest of Chinook Salmon from August 15 through December 31.

**Necessity and Rationale**

The current regulations for non-anadromous waters upstream of Iron Gate Dam allow for trout fishing from the Saturday preceding Memorial Day through September 30 with a daily bag limit of five trout. From October 1 through the Friday preceding Memorial Day, only artificial lures with barbless hooks may be used with a daily bag limit of zero trout. With the removal of Iron Gate, Copco 1, and Copco 2 dams, most of this existing area will become anadromous waters, and will be subject to regulations defined in 7.40(b) for salmon. This section should remain in 7.50(b)(73) with a reference to 7.40(b)(50).

No fishing is allowed within 500 feet of the mouths of multiple Klamath River tributaries to protect migrating KRFC from September 15 through December 31. Bogus, Fall and Shovel creeks need to be added to this list to protect migrating KRFC.

Changes listed above for the Options 1-4 for the different river reaches in the referenced subsections of 7.40(b)(50) aim to increase protection of returning adult Chinook Salmon.

Option 3 in the sub area “Klamath River from I-5 bridge to Lakeview Road Bridge near Iron Gate” changes the option from harvest of grilse Chinook Salmon to allowing catch and release fishing of Chinook Salmon from August 15 through December 31.

Additionally, for Options 2, 3, and 4 above Lakeview Road Bridge near Iron Gate, the proposed regulatory language is changed from “0 Chinook Salmon” to “closed to the take and possession of Chinook Salmon.” A “0 Chinook Salmon” daily bag limit implies catch and release fishing which was not the intent of the original proposed regulations. The original intent was, and remains, to prohibit fishing for Chinook Salmon in the newly accessible habitat.

Lastly, for Option 2 in the sub area “Klamath River from Lakeview Road Bridge near Iron Gate to I-5 Bridge,” the proposed regulatory language is changed from the existing gear restriction to include artificial lures, which was inadvertently left out of the original proposed regulatory text.

## Nonsubstantive Changes

Several non-substantive changes are proposed to provide consistency among Title 14 sections.

- Consistently use a hyphen between place names, such as state and county lines
- Correct spelling errors
- Correct punctuation errors
- Consistently use full names of days and months

### (b) Goals and Benefits of the Regulation

It is the policy of this state to encourage the conservation, maintenance, and utilization of the living resources of the ocean and other waters under the jurisdiction and influence of the state for the benefit of all the citizens of the state and to promote the development of local fisheries and distant water fisheries based in California in harmony with international law, respecting fishing and the conservation of the living resources of the ocean and other waters under the jurisdiction and influence of the state. The objectives of this policy include, but are not limited to, the maintenance of sufficient populations of all species of aquatic organisms to ensure their continued existence, and the maintenance of a sufficient resource to support a reasonable sport use. Adoption of scientifically-based Klamath River Basin salmon seasons, size limits, and bag and possession limits provide for the maintenance of sufficient populations of salmon to ensure their continued existence.

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.

### (c) Authority and Reference Sections from Fish and Game Code for Regulation

Authority: Sections 200, 205, 265, 270, 315, 316.5, 399, and 2084, Fish and Game Code

Reference: Sections 200, 205, 265, 270, 316.5, and 2084, Fish and Game Code

### (d) Specific Technology or Equipment Required by Regulatory Change: None

### (e) Identification of Reports or Documents Supporting Regulation Change

*In-River Sport Fishing Economics Technical Report*, National Oceanographic and Atmospheric Administration, National Marine Fisheries Service, September 2011. Available from:

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=164441&inline>

[Salmon Fishery Management Plan, Pacific Fishery Management Council, December 2022.](#)

Available from: <https://www.pcouncil.org/documents/2022/12/pacific-coast-salmon-fmp.pdf/>

### (f) Public Discussions of Proposed Regulations Prior to Notice Publication

The Department discussed the proposed amendments to the Klamath River Basin regulations at the Commission's Wildlife Resources Committee meeting on January 12, 2023.

## V. Description of Reasonable Alternatives to Regulatory Action

### (a) Alternatives to Regulation Change

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

The No Change Alternative would leave the existing regulations in place. This could result in potentially hazardous conditions for these anglers immediately after the proposed post dam removal, and negative impacts to the recovery of the anadromous fish reestablishing their range within the greater Klamath River watershed.

## VI. Mitigation Measures Required by Regulatory Action

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

## VII. 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 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 15-25 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 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 deconstruction 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 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

### VIII. Economic Impact Assessment

Department Fisheries creel surveys (1999–2002) and a 2005 Hoopa creel survey along with Heritage and Wild Trout Program Angler Survey Box (ASB) data (2012-2022) provide a baseline for angler days in the upper Klamath. All of the affected areas experienced an average of 2,506 angler days per year. The baseline positive economic impact of angler expenditures is shown in Table 1. For the reaches above the Iron Gate Lake, ASB data indicates that approximately 286 anglers fish for inland trout in the upper Klamath river annually in the survey period between 2012-2022. These upper Klamath angler days figures are informed by intermittent surveys spanning from 1999 to 2022. Angler home zip codes to distinguish local anglers from out-of-area visitors are not collected, as is done for the lower Klamath creels. In the interest of transparency, the same lower Klamath ratio of (78%) nonresident to (22%) resident anglers is used for the upper Klamath analysis. However, many report that fishing in the upper Klamath reaches above the Iron Gate Dam does not draw as many visitors from outside the area, such that these baseline figures may overestimate the historically typical economic contribution of fishing in the upper Klamath Basin.

Table 1. Baseline Upper Klamath River Basin Salmon and Trout Positive Economic Impact

<b>Nonresident Contribution</b>	<b>Salmon &amp; Steelhead</b>	<b>Inland Trout</b>	<b>Total Impact</b>
Expenditures	\$217,333	\$27,999	\$245,332
Labor Income	\$121,612	\$15,667	\$137,280
<b>Total Economic Impact</b>	\$386,853	\$49,838	\$436,691
<b>Total Jobs Impact</b>	4	1	5

Sources: Base year used for the upper Klamath river angler days is the five-year average derived from Department Fisheries Branch Northern Region Creel 2018-2002 surveys; Heritage and Wild Trout Program Angler Survey Box (ASB) data, 2012-2022; Hoopa survey 2005; expenditures and multipliers from: *In-River Sport Fishing Economics Technical Report*, National Oceanographic and Atmospheric Administration, National Marine Fisheries Service, September 2011; U.S. Fish and Wildlife Service, 2016 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation; expenditure figures are (2023\$), adjusted for inflation with Implicit Price Deflator for Personal Consumption Expenditures, Bureau of Economic Analysis. Note: Sums may be affected by rounding to the nearest whole dollar.

The anticipated range of adverse economic impacts of the proposed options are estimated from the expected reduction in total angler days and expenditures with multipliers specific to the Klamath basin area. Evaluating Options 1 through 4 (see pgs. 9-10 above), separately yields estimated reductions in total angler days that range from: -663 to -61 days across all anadromous and inland trout areas. A summary of the projected angler days, jobs, and total economic impact by option is provided in Table 2. Additional details on the potential adverse economic impacts by option is provided in the Addendum to the STD 399.

Table 2. Estimated Angling Days, Jobs, and Total Economic Impact by Closure Option

Closure Impacts by Proposed Option	Salmon & Steelhead Days	Inland Trout Days	Total Angler Days	Jobs Impact	Total Economic Impact
Option 1	-377	-286	-663	-2	-\$148,119
Option 2	-222	-100	-322	-1	-\$71,937
Option 3	-178 <u>200</u>	-100	-278 <u>300</u>	-1	-\$62,107 <b>\$67,022</b>
Option 4	0	-61	-61	-0.16	-\$13,628
<b>Average</b>	-194 <u>200</u>	-137	-331 <u>337</u>	-1	-\$73,948 <b>\$75,177</b>

Sources: Department upper Klamath creel surveys 1999–2002, ASB surveys 2012-2022, Hoopa survey 2005; NOAA 2011 report for impact multipliers. More impact details on Options 1–4 is provided in the STD Addendum.

(a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State

The projected job loss ranges from 0 to -2, with an average of one (-1) job lost due to the median expected reductions in KRFC salmon harvest and inland trout opportunity in the affected Klamath basin areas. Sportfishing for other species and fishing in several tributaries may still be allowed, thus mitigating the potential job losses.

(b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State

The Commission anticipates a decline in regional angler spending and thus reduced revenues to the approximately 15 to 25 businesses that directly and indirectly serve sport fishing activities with no anticipated impacts on the creation of new business or the elimination of existing businesses. However, any adverse impacts may be mitigated by the continued opportunity to harvest other sportfish and the continued fishing allowed for other species in basin area tributaries.

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.

(c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State

The Commission does not anticipate any expansion of businesses in California. Decreases in expenditures by anglers associated with reduced fishing opportunities may be partially offset by increased expenditures on other locally purchased goods and services as anglers pursue other sportfish or substitute salmon fishing with other recreational activities, such as boating, kayaking, hiking, wildlife watching and/or photography.

(d) Benefits of the Regulation to the Health and Welfare of California Residents

The Commission anticipates the protection of the public from dam removal safety hazards and, in the long-run, indirect benefits to the health and welfare of California residents. Maintaining opportunities for a Klamath River Basin salmon sport fishery and other sport fisheries encourages a healthy outdoor activity and the consumption of a nutritious food. Sport fishing also contributes to increased mental health of its practitioners, as fishing is a hobby and form

of relaxation for many. Sport fishing also provides opportunities for multi-generational family activities and promotes respect for California's environment by the future stewards of California's natural resources.

(e) Benefits of the Regulation to Worker Safety

The Commission does not anticipate benefits to worker safety because the proposed regulations will not impact working conditions.

(f) Benefits of the Regulation to the State's Environment

The Commission anticipates benefits to the environment in the sustainable management of Klamath River Basin anadromous fish populations. It is the policy of this State to encourage the conservation, maintenance, and utilization of the living resources of the ocean and other waters under the jurisdiction and influence of the State for the benefit of all the citizens of the State and to promote the development of local fisheries and distant water fisheries based in California in harmony with international law, respecting fishing and the conservation of the living resources of the ocean and other waters under the jurisdiction and influence of the State. The objectives of this policy include, but are not limited to, the maintenance of sufficient populations of all species of aquatic organisms to ensure their continued existence, and the maintenance of a sufficient resource to support a reasonable sport use. Adoption of scientifically-based Klamath River Basin salmon seasons, size limits, and bag and possession limits provide for the maintenance of sufficient populations of salmon to ensure their continued existence.

(g) Other Benefits of the Regulation

Other benefits of the regulation include coordination with dam removal activities, consistency with federal fishery management goals, and support for businesses that rely on Klamath River Basin sport fishing.

## 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 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~~ began 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 impede the recovery of fish populations, at least initially.

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~~ is proposing changes to 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 opportunity 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 doesn’t 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.

7.40(b)(50)(E)(1) Bogus Creek and Tributaries:

- Option 1: close to all fishing all year in the anadromous portions of the creek.
- Option 2 (listed as Option 4 in the STD 399 and addendum): 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.

7.40(b)(50)(E)(2)(a) Klamath River from the Copco Road Bridge at Copco to the California-Oregon state line

- Option 1: close to all fishing all year.
- Option 2: allow fishing from November 1 through February 28 with artificial lures, barbless hooks, and a daily bag limit of zero hatchery trout or hatchery steelhead. Closed to the take and possession of Chinook Salmon.
- 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 hatchery trout or hatchery steelhead. Closed to the take and possession of Chinook Salmon.
- 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 hatchery trout or hatchery steelhead. Closed to the take and possession of Chinook Salmon.

7.40(b)(50)(E)(2)(a)(1) Shovel Creek:

- Option 1: close to all fishing all year in the anadromous portions of the creek.
- Option 2 (listed as Option 4 in the STD 399 and addendum): allow fishing from the fourth Saturday in May through August 31 with artificial lures, barbless hooks, and a daily bag limit of zero hatchery trout or hatchery steelhead. Closed to the take and possession of Chinook Salmon.

7.40(b)(50)(E)(2)(b) Klamath River from Lakeview Road Bridge near Iron Gate to Copco Road Bridge at Copco:

- Option 1: close to all fishing all year.
- Option 2: allow fishing from November 1 through February 28 with artificial lures, barbless hooks, and a daily bag limit of zero hatchery trout or hatchery steelhead. Closed to the take and possession of Chinook Salmon.
- 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 hatchery trout or hatchery steelhead. Closed to the take and possession of Chinook Salmon.



- 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 hatchery trout or hatchery steelhead. Closed to the take and possession of Chinook Salmon.

7.40(b)(50)(E)(2)(b)(1) Fall Creek:

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

7.40(b)(50)(E)(2)(b)(2) Jenny Creek:

- Option 1: close to all fishing all year in the anadromous portions of the creek.
- Option 2 (listed as Option 4 in the STD 399 and addendum): allow fishing from the fourth Saturday in May through August 31 with artificial lures, barbless hooks, and a daily bag limit of zero hatchery trout or hatchery steelhead. Closed to the take and possession of Chinook Salmon.

7.40(b)(50)(E)(2)(b)(3) Scotch Creek:

- Option 1: close to all fishing all year in the anadromous portions of the creek.
- Option 2 (listed as Option 4 in the STD 399 and addendum): allow fishing from the fourth Saturday in May through August 31 with artificial lures, barbless hooks, and a daily bag limit of zero hatchery trout or hatchery steelhead. Closed to the take and possession of Chinook Salmon.

7.40(b)(50)(E)(2)(c) Klamath River from I-5 bridge to Lakeview Road bridge near Iron Gate:

- Option 1: close to all fishing all year.
- 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 hatchery steelhead and ~~harvest of Chinook Salmon~~ grilse catch and release fishing of Chinook Salmon from August 15 through December 31.
- Option 4: allow fishing all year with a daily bag limit of two hatchery trout or hatchery steelhead and harvest of Chinook Salmon from August 15 through December 31.

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

Benefit of the 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.