

State of California  
Fish and Game Commission  
Final 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. Dates of Statements of Reasons

- |                                  |                         |
|----------------------------------|-------------------------|
| (a) Initial Statement of Reasons | Date: August 1, 2023    |
| (b) Final Statement of Reasons   | Date: February 16, 2024 |

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing

Date: August 22, 2023	Location: Fortuna
-----------------------	-------------------

(b) Discussion Hearing

Date: December 13, 2023	Location: San Diego
-------------------------	---------------------

(c) Adoption Hearing

Date: February 15, 2024	Location: Sacramento
-------------------------	----------------------

III. Update

At the December 13, 2024, Fish and Game Commission (Commission) meeting, the Commission authorized staff to publish notice of sufficiently related changes to the proposed regulatory language options to increase protection of returning Chinook salmon. At the same meeting, the Department of Fish and Wildlife (Department) presented its preferred options for amendments to the sport fishing regulations on the Klamath River main stem and anadromous tributaries for the KRFC 2024 sport fishing season. The Department recommended the following options:

Klamath River Main Stem Sections

1. I-5 Bridge to Lakeview Road Bridge

- Option 3: January 1 to August 14, 2 hatchery trout or hatchery steelhead. August 15 to December 31, 2 hatchery trout or hatchery steelhead. Catch and release salmon fishing allowed

2. Lakeview Road Bridge to Copco Road Bridge

- Option 1: Closed to fishing all year

3. Copco Road Bridge to Oregon/California Border

- Option 4: 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

Klamath River Tributary Sections

#### 4. Bogus Creek

- Option 1: Closed to fishing all year

#### 5. Anadromous portions of Fall, Jenny, Shovel, and Scotch creeks

- Option 1: Closed to fishing all year

At the February 15, 2024, Commission meeting, the Commission adopted the options as recommended by the Department. There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Amended ISOR. Non-substantive changes were made for capitalization and abbreviations to the months and days of the week to be consistent with remainder of section 7.40 and 7.50.

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

#### Comment:

August 22, 2023, Commission meeting. Oral comment by Larry Phillips, American Sport Fishing Association.

Mr. Phillips recommends to try to maintain status quo. Outcomes for this work is highly uncertain. Strongly recommend to invest in variety of tools such as high definition sonar to help with decision making. Concerned about reduction in hatchery production. Strongly supports restoration work in the Klamath.

#### Response:

Thank you for your interest in the Klamath River sportfishing regulations and providing a comment on the Klamath River Basin Dam Removal regulation package. The Department's recommendation attempts to strike a balance between maintaining existing sportfishing opportunities while providing protection to sportfish during the Klamath Dam removal project. The Department is committed to reevaluating the sportfishing regulations in the Dam Removal reach annually and you can anticipate future modifications as the habitat stabilizes and recovery advances. We agree that high-definition Sound Navigation and Ranging (SONAR) is a valuable monitoring tool and currently there is a Cal-Trout SONAR monitoring proposal that has been submitted to NOAA for funding. The Department has secured funding and is planning to conduct both juvenile and adult monitoring in multiple tributaries between the Lakeview Road bridge (near Iron Gate) and the CA/OR border. The results of these surveys along with mainstem adult surveys conducted by the Karuk tribe will provide critical fishery management information in California upstream of Lakeview Road bridge. The newly retrofitted Fall Creek Hatchery will produce fewer fish than Iron Gate Hatchery, but early results indicate that returns of fish that were partially reared at Fall Creek Hatchery outperformed fish reared at Iron Gate Hatchery.

#### Comment:

February 15, 2024, Commission meeting. Oral comment by Sam Davidson, Trout Unlimited.

Mr. Davidson stated that the Department's amendments aligned with their recommendations. They refer to the expertise of tribal partners and Department scientists in terms of how best to bring salmon and steelhead black. He flagged two items. The first is a commitment by the

Commission and the Department to revisit the full closure to angling to ensure the closure does not become permanent. The second is to extend the wild trout designation through Iron Gate.

Response:

Thank you for your interest in the Klamath River sportfishing regulations and providing a comment on the Klamath River Basin Dam Removal regulation package. The Department's recommendation attempts to strike a balance between maintaining existing sportfishing opportunities while providing protection to sportfish during the Klamath Dam removal project. The Department is committed to reevaluating the sportfishing regulations in the Dam Removal reach annually and you can anticipate future modifications as the habitat stabilizes and recovery advances. Klamath River Fall Chinook are managed under an annual quota system and as a result the Klamath River sportfishing regulations are reevaluated annually. Extending the wild trout designation from the Copco Road Bridge downstream through Lakeview Road Bridge could be evaluated and included in an annual regulation package when the habitat stabilizes, and the fishery has recovered.

Comment:

February 15, 2024, Commission meeting. Oral comment by Dennis Fox.

Mr. Fox supports the Department's recommendation and notes that the removal of the dams will provide ecological benefits.

Response:

Thank you for your interest in the Klamath River sportfishing regulations and providing a comment in support of the Departments recommendation on the Klamath River Basin Dam Removal regulation package.

Comment:

February 15, 2024, Commission meeting. Oral comment by James Stone, Nor-Cal Guides & Sportsmen's Association.

Mr. Stone requested the Department to continually and annually evaluate the decision on the basin and to open any opportunity for a catch and release fishery as soon as possible.

Response:

Thank you for your interest in the Klamath River sportfishing regulations and providing a comment on the Klamath River Basin Dam Removal regulation package. The Department's recommendation attempts to strike a balance between maintaining existing sportfishing opportunities while providing protection to sportfish during the Klamath Dam removal project. The Department is committed to reevaluating the sportfishing regulations in the Dam Removal reach annually and you can anticipate future modifications as the habitat stabilizes and recovery advances. Klamath River Fall Chinook are managed under an annual quota system and as a result the Klamath River sportfishing regulations are reevaluated annually.

Comment:

August 22, 2023 Commission meeting. Oral comment by Cath Buchanan of North Coast Native Protectors.

Ms. Buchanan commented to make sure that the key parameters to protect the fish are not only the depth of the waters but also the temperature of the water. She stressed that the temperature of the water is key to ensuring that the fish are healthy so that needs to be written into the regulation. Also, she is concerned about what the previous gentleman had to say regarding the tools that are going to determine stock type and a push to use genetic determination on what type of fish are allowed to come up certain streams. She believes that is overreaching.

Response:

Thank you for your interest in the Klamath River sportfishing regulations and providing a comment on the Klamath River Basin Dam Removal regulation package. The Department's recommendation attempts to strike a balance between maintaining existing sportfishing opportunities while providing protection to sportfish during the Klamath Dam removal project. The current regulation package doesn't include real time temperature triggers that influence regulations. However, the regulation does provide time and area closures that are intended to protect fish during periods of the year when temperature is a concern. The newly retrofitted Fall Creek Hatchery will spawn adult salmonids of both hatchery and natural origin. This will allow both natural origin and hatchery origin genetics to be incorporated in returning populations. Similar to other areas in close proximity to hatcheries, the Department anticipates that both natural and hatchery produced fish will spawn in natural areas within the project reach.

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 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.

(c) Consideration of Alternatives

In view of information currently possessed, 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 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

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. 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.

The possibility for the 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 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.

## Updated Informative Digest/Policy Statement Overview

Unless otherwise specified, all section references in this document are to Title 14 of the California Code of Regulations (CCR).

The 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 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 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 Subsections 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 all year 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 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. Closed to all salmon fishing.
- 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. Closed to all salmon fishing.
- 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. Closed to all salmon fishing.

Shovel Creek:

- Option 1: close to all fishing all year 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 hatchery trout or hatchery steelhead. Closed to the take and possession of Chinook Salmon. Closed to all salmon fishing.

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. Closed to all salmon fishing.
- 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. Closed to all salmon fishing.
- 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. Closed to all salmon fishing.

Fall Creek:

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

Jenny Creek:

- Option 1: close to all fishing all year 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 hatchery trout or hatchery steelhead. Closed to the take and possession of Chinook Salmon.

#### Scotch Creek:

- Option 1: close to all fishing all year 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 hatchery trout or hatchery steelhead. Closed to the take and possession of Chinook Salmon.

#### 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)]. Non-substantive changes were made for capitalization and abbreviations to the months and days of the week to be consistent with remainder of sections 7.40 and 7.50. Finally, as a non-substantive change, Section 7.40(b)(50)(D) was amended to correct the cross-reference to the “*Open Season and Special Restrictions*” column.

#### 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.

## Update

At the December 13, 2024, Fish and Game Commission (Commission) meeting, the Commission authorized staff to publish notice of sufficiently related changes to the proposed regulatory language options to increase protection of returning Chinook salmon. At the same meeting, the Department presented its preferred options for amendments to the sport fishing regulations on the Klamath River main stem and anadromous tributaries for the KRFC 2024 sport fishing season. The Department recommended the following options:

### Klamath Mainstem Sections

#### 1. I-5 Bridge to Lakeview Road Bridge

- Option 3: January 1 to August 14, 2 hatchery trout or hatchery steelhead. August 15 to December 31, 2 hatchery trout or hatchery steelhead. Catch-and-release salmon fishing allowed

#### 2. Lakeview Road Bridge to Copco Road Bridge

- Option 1: Closed to fishing all year

#### 3. Copco Road Bridge to Oregon/California Border

- Option 4: 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

### Tributary Sections

#### 4. Bogus Creek

- Option 1: Closed to fishing all year

#### 5. Anadromous portions of Fall, Jenny, Shovel, and Scotch Creeks

- Option 1: Closed to fishing all year

At the February 15, 2024 Commission meeting, the Commission adopted the options as recommended by the Department. There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Amended ISOR.