

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission, pursuant to the authority vested by sections 200, 202, 205, 215, 220, 240, 315 and 316.5 of the Fish and Game Code and to implement, interpret or make specific sections 200, 205, 206 and 215 of said Code, proposes to amend subsection (b)(91.1) of Section 7.50, Title 14, California Code of Regulations, re: Klamath River Sport Fishing regulations.

Informative Digest/Policy Statement Overview

Hook Size Change for Anadromous Waters of the Klamath River System: Current regulations in subsection (b)(91.1)(A)2. define hook size requirements for the Klamath River system above the Highway 101 bridge. These requirements allow the use of any single hook having a gap between the point and shank that is between $\frac{1}{2}$ and 1 inch; or, any multiple hook having a gap between the point and shank that is between $\frac{1}{4}$ and $\frac{1}{2}$ inch. This requirement was designed to reduce the incidental catch and mortality of juvenile steelhead trout and juvenile coho salmon. Also, area closures currently exist that are designed to protect these fish during the peak juvenile downstream migrations (April/May). For clarification and in the interest of consistency, the Department is proposing a maximum single hook size with a gap no greater than $\frac{5}{8}$ inch and a maximum multiple hook size with a gap no greater than $\frac{1}{2}$ inch. In addition, the Department is recommending pertinent language from Section 2.10, Fishing Methods Restrictions be added to subsection (b)(91.1)(A)2. This recommendation will help clarify and condense fishing gear restrictions for all anadromous waters of the Klamath River System.

General Area Closures Within 750 feet of Any Department of Fish and Game Fish-Counting Weir: Current regulations in section 2.35(b) prohibit any fishing within 250 feet of any dam or any weir or rack which has a fishway or an egg-taking station. The Department is recommending that the closures be extended to within 750 feet of any Department fish-counting weir within the Klamath River Basin. This closure will provide additional refugia for migrating adult salmon and steelhead. The Department operates 4 fish-counting weirs in the Klamath River system. Data gathered at each weir is used to estimate the number of salmon and steelhead returning to each specific river or stream. The numbers are combined and a total Klamath River Basin estimate is developed and published in Department reports. Fish-counting weirs are designed to guide adult salmon and steelhead into a counting facility as they migrate upstream, consequently, weirs can congregate adult fish in small areas directly downstream. As fish density downstream of weirs increase, fish have the potential to become more vulnerable to harvest. The Department recommends expanding the closed area near fish-counting weirs to reduce fish harvest associated with fish congregating below the weirs.

Quota Adjustment: Under current regulations in subsection (b)(91.1)(C), the allowable Chinook salmon harvest in the Klamath River system is based on spawning run size predictions and spawning escapement goals. The harvest and the distribution of the catch are regulated by seasons, daily and weekly bag and possession limits, and area quotas and allocations. Salmonids from the Klamath River basin are managed through a cooperative system of state, federal, and tribal management agencies. Regulations developed through this system are designed to meet natural and hatchery escapement needs for these stocks, while providing equitable harvest opportunities to ocean (sport and commercial) and river (sport and tribal) users. The Pacific Fishery Management Council (PFMC) is responsible for adopting recommendations for the management of sport and commercial ocean fisheries in the fishery management zone (three to 200 miles offshore) off the coasts of Washington, Oregon, and California. When approved by the Secretary of Commerce, these recommendations are implemented as ocean fishing regulations by the National Marine Fisheries Service. The Department and the Commission adopt regulations for state waters (inside three miles) that are consistent with federal regulations.

The Klamath River system supports a significant Native American subsistence fishery in addition to the other fisheries. The Klamath River fall-run Chinook salmon harvest allocation between tribal and non-tribal fisheries is based on court decisions and agreement of river fisheries representatives (tribal and non-tribal) under the auspices of the Klamath Fishery Management Council. Tribal fishing regulations are promulgated by the Hoopa and Yurok tribes. Sport fishing regulations are adopted by the Commission. Overall harvest and spawning escapement levels are established and published in the "Amendments to the Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coast of Washington, Oregon, and California Commencing in 1978 (FMP)," adopted by the PFMC for the U.S. Department of Commerce.

Annual adjustment of the quota is necessary to meet natural and hatchery escapement needs for Klamath River fall-run Chinook salmon stocks, while providing equitable harvest opportunities for ocean (sport and commercial) and river (sport and tribal) users. The total river system recreational harvest of fall-run Chinook salmon is currently regulated by a quota. In 2002, the share, or impact quota, for the Klamath River basin allowable sport catch was 20,500 adult fish (39 percent of the total allowable harvest by non-tribal fisheries, including ocean-commercial, ocean-recreational and recreational-river fisheries).

Projections of the abundance of adult Klamath River fall-run Chinook salmon in the 2003 season are not yet available from the PFMC. However, preliminary examination of data available to Department staff suggests that the predicted 2003 adult fall-run Chinook salmon run will be less than the 2002 run. Consequently, the Department is suggesting that the Commission consider a 2003 quota for the river-recreational fishery lower than that of last year, and for notice requirements, within a range lower than the

2002 quota (1,200-20,500 adult Chinook salmon). The Commission also will consider modifying the share of the allowable catch allocated to the river recreational fishery (which was 39 percent in 2002). Adjustment of this share is included in the recommended 1,200-20,500 range of the quota. As in prior years, the river recreational fishing quota would be split evenly between fisheries above and below Coon Creek Falls.

Department Status Report: Current regulations require the Department to provide daily status reports on the progress towards sub-basin quotas. The reports are updated daily and are available by calling a 1-800 number. Due to reduced funding and staffing levels expected in 2003, the Department is recommending that updates of status reports occur weekly, rather than daily. No adverse impacts to anglers or the environment are anticipated if quota status reports are updated weekly instead of daily.

Closures to Modify Allocations: The Department believes that the regulations should, if possible, allow fishing opportunities for adult fall-run Chinook salmon throughout the entire Klamath River basin. Currently, the annual recreational impact quota is split evenly, with 50% of the quota allocated to the Klamath below Coon Creek Falls and 50% to the remainder of the Klamath Basin above Coon Creek Falls, including the Trinity River. Current regulations define three sub-quota areas above Coon Creek Falls. The three quotas ensure equitable harvest distribution of adult Chinook in the upper Klamath and Trinity rivers. The current quota system requires the Department to monitor angler harvest of adult Chinook in each sub-quota area on a real-time basis. Due to likely funding and personnel reductions, the Department will be unable to deploy adequate personnel to conduct harvest monitoring and data analysis for the 2003 season. Instead, the following recommendations are based on data analysis and management experiences from previous years (1993 – 1999) that limited harvest in the upper reaches of the Klamath Basin relative to known harvest in the lower Klamath River below Coon Creek Falls.

1. Klamath River Main Stem - Allowable Fishing Season from Coon Creek Falls to 3,500 feet below Iron Gate Dam: The Department has reviewed all available Klamath Chinook harvest and run timing data for the Klamath River from several previous years. Based on this review, the Department is recommending that fishing for adult Chinook salmon continue for an additional 28 days beginning when 50% of the basin impact quota has been taken below the falls at Coon Creek. After the 28-day period harvest of adult Chinook salmon is prohibited. The 28-day period has been employed in several previous years but it cannot be guaranteed that anglers will harvest a specific number of adult Chinook salmon in a specific season. However, this model appears to provide a reasonable and tested approach to achieve or remain below quota targets.

2. Trinity River Main Stem - Allowable Fishing Season from Old Lewiston Bridge to the Highway 299 West Bridge at Cedar Flat: The Department is reviewing all available Trinity River Chinook harvest and run-timing data for this area. Based on this review,

the Department is recommending seasonal closures based on quota allocation. The 2003 quota to be recommended by the PFMC is not currently known; however, it is expected to be much lower than that established for the 2002 season. All seasonal closures for adult Chinook salmon will be designed to maximize and distribute the harvest of adult fall-run Chinook salmon while managing the fishery within the impact quota. The length of the closed season will be based on the 2003 in-river quota and range from 0-20 days between the dates of August 1 through November 30, 2003.

3. Trinity River Main Stem - Allowable Fishing Season from Hawkins Bar Bridge (Road to Denny) Downstream to the Mouth of the Trinity: The Department is reviewing all available Trinity River Chinook harvest and run-timing data for this area. Based on this review, the Department is recommending seasonal closures based on quota allocation. The 2003 quota to be recommended by the PFMC is not currently known; however, it is expected to be much lower than that established for the 2002 season. All seasonal closures for adult Chinook salmon will be designed to maximize and distribute the harvest of adult fall-run Chinook salmon while managing the fishery within the impact quota. The length of the closed season will be based on the 2003 in-river quota and range from 0-20 days between the dates of August 1 through November 30, 2003.

Restrictions to Fishing When Iron Gate Hatchery and Trinity River Hatchery Meet Spawning Escapement Goals: Current regulations in subsection (b)(91.1)(C)1.c.iii. and subsection (b)(91.1)(C)1.d.iii allow anglers to harvest adult Chinook salmon after quota attainment from 3,500 feet below Iron Gate Dam to the Interstate 5 bridge when the Department determines that the adult fall Chinook salmon spawning escapement at Iron Gate Hatchery exceeds 8,000 adult fish. Trinity River anglers are allowed to harvest adult Chinook salmon after the quota is met from Old Lewiston Bridge to the mouth of Indian Creek when the Department determines that spawning escapement at Trinity River Hatchery exceeds 4,800 adult fish. The current language does not clearly state that anglers can harvest adult Chinook salmon prior to the quota being attained. Therefore, the Department is recommending new language which indicates that prior to quota attainment anglers can catch and keep adult Chinook salmon in the above mentioned river sections.

Allowing the Harvest of One Brown Trout. In all anadromous waters of the Klamath River system where the take of salmon and steelhead is allowed, anglers can catch and keep two Chinook salmon of which only one can be over 22 inches total length and one hatchery trout or one hatchery steelhead. The Department is recommending eliminating hatchery trout from the bag limit and replacing it with one brown trout. Anglers would have the opportunity to catch and keep one hatchery steelhead or one brown trout in addition to their Chinook salmon limit. Non-native brown trout have become well established in the Klamath River System, particularly in the Trinity River Basin. Brown trout are highly predatory and prey upon juvenile Chinook and coho salmon and steelhead trout. Allowing the take of brown trout will reduce predation on juvenile salmon and steelhead while diversifying angler harvest.

Reduction in Daily Bag Limit, Weekly Bag Limit and Possession Limit: The 2003 quota to be recommended by the PFMC is not currently known; however, it is expected to be much lower than that established for the 2002 season. Consequently, the Department is recommending a reduction in daily bag, weekly bag, and possession limits for the 2003 Klamath River sport fishery.

The Department is recommending that the Commission consider the following Klamath River recreational fishery changes to reflect a reduction in the Klamath River basin impact quota:

1. Reduction in Daily Bag Limit: The daily bag limit, as specified in the current regulation, is three king salmon (Chinook salmon), but no more than two adult king salmon over 22 inches total length, and one hatchery trout or hatchery steelhead. The Department is proposing that the Commission modify the king salmon daily bag limit to a total of three king salmon, but no more than one king salmon over 22 inches total length and one hatchery trout, or one hatchery steelhead or one brown trout.

2. Reduction in Weekly Bag Limit: The current regulation specifies that no more than six king salmon over 22 inches total length may be retained in any seven consecutive days. The Department is proposing that the Commission consider amending this provision to reduce the weekly bag limit to four king salmon over 22 inches total length in a seven-day period.

3. Possession Limit: The current regulation specifies that no more than 12 king salmon may be possessed, of which no more than six may be over 22 inches total length. The Department is proposing that the Commission consider decreasing the possession limit to no more than 8 king salmon, of which no more than four may be over 22 inches total length.

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 Board of Supervisors Chambers, Administration Building, 2800 W. Burrel, Visalia, CA, on Friday, April 4, 2003, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before March 31, 2003, at the address given below, or by fax at (916) 653-5040, or by an e-mail to fgc@dfg.ca.gov, but must be received no later than April 4, 2003, at the hearing in Visalia, CA. E-mail comments must include the true name and mailing address of the commentor.

The regulations as proposed in ~~strikeout~~underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John M. Duffy, Assistant Executive Director, Fish and

Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to John M. Duffy or Sherrie Koell at the preceding address or phone number. Neil Manji, Fisheries Programs Branch, Department of Fish and Game, phone (530) 225-2306, has been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at http://www.dfg.ca.gov/fg_comm.

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 202 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 and 11346.8 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 agency program staff.

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 Businessmen to Compete with Businesses in Other States: The proposed action will not have a significant statewide adverse economic impact affecting businesses, including the ability of California businesses to compete with businesses in other states. The preservation of Klamath River salmon stocks is necessary for the success of lower and upper Klamath river businesses which provide goods and services related to fishing. The proposed changes are necessary for the continued preservation of the resource and therefore the prevention of adverse economic impacts.

- (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: None.
- (c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: 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.

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 or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

John M. Duffy
Assistant Executive Director

Dated: February 4, 2003