

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

**(Continuation of California Notice Register 2007, No. 9-Z,
and Meetings of February 2, 2007 and March 2, 2007.)**

NOTE: The Fish and Game Commission is exercising its powers under Section 202 of the Fish and Game Code as the following changes to the proposed regulations may not be available to the public for the full public comment period prior to adoption.

(NOTE: See Updated Informative Digest changes shown in **bold face** type.)

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (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, 215 and 316.5 of said Code, proposes to amend subsection (b)(91.1) of Section 7.50, Title 14, California Code of Regulations, relating to Klamath River sportfishing regulations.

Updated Informative Digest/Policy Statement Overview

The Klamath River System, which consists of the Klamath and Trinity river basins, is managed through a cooperative system of State, Federal, and tribal management agencies. Salmonid regulations developed through this system are designed to meet natural and hatchery escapement needs for salmonid stocks, while providing equitable harvest opportunities for ocean sport and commercial, river sport, and tribal fisheries.

The Klamath River Fall Chinook (KRFC) salmon harvest and spawning escapement levels are established by the *Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coast of Washington, Oregon, and California Commencing in 1978* adopted by the Pacific Fishery Management Council (PFMC) for the U.S. Department of Commerce. The KRFC salmon harvest allocation between tribal and non-tribal fisheries is based on court decisions and allocation agreements between the various fishery representatives.

The PFMC is responsible for adopting recommendations for the management of sport and commercial ocean salmon fisheries in the Exclusive Economic Zone (three to 200 miles offshore) off the coasts of Washington, Oregon, and California. When approved by the Secretary of Commerce, these recommendations are implemented as ocean salmon fishing regulations by the National Marine Fisheries Service (NMFS).

The Fish and Game Commission (Commission) adopts regulations for the ocean salmon sport (inside three miles) and the Klamath River System sport fisheries which are consistent with federal fishery management goals. The Department of Fish and Game Director is authorized by Fish and Game Code to conform commercial salmon fishing regulations in State waters to federal fishery management goals.

The Klamath River System also supports Native American subsistence and occasional tribal commercial fisheries which are managed consistent with federal fishery management goals. Tribal fishing regulations are promulgated by the Hoopa and Yurok tribes.

River Sport Fishery Management:

Currently subsection (b)(91.1) of Section 7.50, Title 14, California Code of Regulations, regulates the allowable Chinook salmon sport harvest in the Klamath River System by an annual basin quota divided into sub areas and the distribution of the catch by seasons, and daily and weekly bag and possession limits.

The 2006 basin quota for the Klamath River System allowable sport harvest was zero adult KRFC salmon. A 300 adult KRFC salmon catch and release allowance was instituted to enable a sub-adult KRFC salmon, steelhead and trout fishery. The projections of the 2007 abundance of adult KRFC salmon will not be available from the PFMC until late February 2007 and the 2007 basin quota will be recommended by the PFMC and adopted by the Commission at their respective April 2007 meetings.

For public notice requirements, the Department recommends the Commission consider a range of 0 – 15,000 adult KRFC salmon quota in the Klamath River basin for the river sport fishery. This recommended range encompasses the historical range of the Klamath River basin quotas to allow for PFMC or Commission adjustments during the 2007 regulatory cycle. Annual adjustment of the Klamath River basin quota by the PFMC is necessary to meet natural and hatchery escapement needs for KRFC salmon stocks, while providing equitable harvest opportunities for ocean sport and commercial, river sport, and tribal fisheries.

The Commission may modify the Klamath River basin quota which is normally 15% of the non-tribal PFMC harvest allocation. Commission modifications need to meet biological and fishery allocation goals specified in law or established in the PFMC Salmon Fishery Management Plan otherwise harvest opportunities may be reduced in the California ocean fisheries by the NMFS.

Present regulations have no adult Chinook salmon retention in specific areas after August 15 in the Lower Klamath River and after April 1 in the Upper Klamath and Trinity rivers. The trout daily bag limit is 1 hatchery trout or 1 hatchery steelhead, and 1 brown trout. The salmon daily bag limit is 3 Chinook salmon, of which no more than 1 may be over 22 inches total length when the take of salmon over 22 inches total length is allowed. The possession limits are:

1. No more than 2 Chinook salmon over 22 inches total length may be retained in any 7 consecutive days when the take of salmon over 22 inches total length is allowed and
2. No more than 12 Chinook salmon may be possessed, of which no more than 2 may be over 22 inches total length when the take of salmon over 22 inches total length is allowed.

The Department is proposing the following changes to current regulations:

Basin Quota Management:

The annual Klamath River basin quota will be split evenly, with 50% of the quota allocated to the Klamath River downstream of the Highway 96 Bridge at Weitchpec and 50% to the remainder of the Klamath River System upstream of the Highway 96 Bridge at Weitchpec, including the Trinity River Basin. This division ensures equitable harvest of adult KRFC salmon in the upper and lower Klamath River System.

The Spit Area (within 100 yards of the channel through the sand spit formed at the Klamath River mouth), is proposed to close to all fishing after 15% of the Klamath River basin quota has been taken downstream of the Highway 101 bridge. This provision only applies if the Department projects that the total Klamath River basin quota will be met. This closure is

designed to prevent excessive take near the mouth when fish are concentrated in this small area and provide equitable distribution of KRFC salmon with upper river anglers.

The area upstream of the Highway 96 Bridge at Weitchpec is further divided into three sub quotas:

1. 17% from 3,500 feet downstream of the Iron Gate Dam to the Highway 96 bridge at Weitchpec,
2. 16.5% for the Trinity River from Hawkins Bar to the confluence with the Klamath River, and
3. 16.5% for the Trinity River from Old Lewiston Bridge to Cedar Flat.

These sub area divisions are based upon historical angler effort distributions and ensure equitable harvest of adult KRFC salmon in the upper Klamath and Trinity rivers.

During its March 5-9, 2007 meeting in Sacramento, California, the PFMC proposed three KRFC harvest allocation options for public review. The options provide a range of 8,000 to 12,800 adult KRFC for the 2007 in-river sport fishing quota. These options fall within the range originally sent out for public notice. The final PFMC KRFC harvest allocation recommendation will be determined on April 6, 2007 in Seattle, Washington.

The quota system requires the Department to monitor angler harvest of adult KRFC salmon in each sub-quota area. All sub-quota areas will be monitored on a real-time basis except for the following area:

Trinity River above Willow Creek: Due to funding and personnel reductions, the Department will be unable to deploy adequate personnel to conduct harvest monitoring in the Trinity River above Willow Creek for the 2007 season. The Department has reviewed all available Trinity River Chinook salmon harvest and run-timing data for this area. Based on this review, the Department developed a Harvest Predictor Model (HPM) which incorporates creel data from the Klamath River from Iron Gate Dam downstream to the confluence with the Pacific Ocean and the Trinity River from Lewiston Dam downstream to the confluence with the Klamath River. The HPM is driven by the positive relationship between the KRFC salmon harvested in the lower Klamath and Trinity rivers and KRFC salmon harvested in the upper Trinity River in past years. The HPM will be used by the Department to implement fishing closures to ensure that anglers do not exceed established quota targets.

There are two proposed exceptions to the harvest quota in the basin. Both apply to terminal fisheries in the vicinities of Iron Gate Hatchery and Trinity River Hatchery. Chinook salmon over 22 inches total length may be retained from 3,500 feet downstream of Iron Gate Dam to the Interstate 5 bridge when the Department determines that the adult fall-run Chinook salmon spawning escapement at Iron Gate Hatchery exceeds 8,000 fish. Chinook salmon over 22 inches total length may be retained downstream of the Old Lewiston Bridge to the mouth of Indian Creek when the Department determines that the adult fall-run Chinook salmon spawning escapement at Trinity River Hatchery exceeds 4,800 fish.

These exceptions are intended to provide angling opportunity after hatchery mitigation egg-take goals have been met. Both reaches are located in areas where natural spawning is limited and harvest will be composed primarily of excess hatchery stock.

Daily Bag Limit and Possession Limit:

No retention of adult Chinook salmon is proposed for the following areas, once the sub quota has been met:

1. Klamath River from Iron Gate Dam to Weitchpec from September 1 through November 30,
2. Klamath River from Weitchpec to the mouth of the Klamath River from August 15 through November 30,
3. Trinity River from Old Lewiston Bridge to Cedar Flat from September 15 through November 30,
4. Trinity River from Hawkins Bar to the mouth of the South Fork Trinity River from September 1 through November 30, and
5. Trinity River from the South Fork Trinity River mouth to the confluence with the Klamath River from September 1 through November 30.

These staggered openings and closures are designed to meet natural and hatchery escapement needs for KRFC salmon stocks, while providing equitable harvest opportunities under a quota system for all river areas.

The following measures are proposed regardless of the quota level:

No adult Chinook salmon may be retained in the following areas:

1. Klamath River from Iron Gate Dam to Weitchpec from April 1 through August 31, and
2. Trinity River from the South Fork Trinity River mouth to the confluence with the Klamath River from April 1 through August 31.

These closures would provide protection for naturally produced Spring Chinook salmon while providing sport harvest opportunity on the hatchery component of the Spring Chinook salmon in the lower Klamath River.

No fish may be retained on the Trinity River from Cedar Flat to Hawkins Bar from September 1 through November 30. This complete closure is designed to protect migrating salmon. An impediment in this area to salmon migration, Gray's Falls, causes salmon to accumulate in this area at some flow levels, where they are excessively vulnerable to take by illegal methods.

In response to the PFMC recommended options and public requests, the Department recommends the Commission consider a daily bag limit of 3 Chinook salmon, of which no more than 0-2 may be over 22 inches total length when the take of salmon over 22 inches is allowed. *The Department's preferred daily bag limit is 3 Chinook salmon, of which no more than 2 may be over 22 inches total length when the take of salmon over 22 inches is allowed.*

The Department recommends the Commission consider the following possession limits:

1. **No more than 0-4 Chinook salmon over 22 inches total length may be retained in any 7 consecutive days when the take of salmon over 22 inches total length is allowed. *The Department's preferred option is no more than 4 Chinook salmon over 22 inches total length may be retained in any 7 consecutive days when the take of salmon over 22 inches total length is allowed.***
2. **No more than 12 Chinook salmon may be possessed, of which no more than 0-4 may be over 22 inches total length when the take of salmon over 22 inches total length is allowed. *The Department's preferred option is no***

more than 12 Chinook salmon may be possessed, of which no more than 4 may be over 22 inches total length when the take of salmon over 22 inches total length is allowed.

Non-native brown trout have become well established in the Klamath River System, particularly in the Trinity River Basin. Brown trout are highly piscivorous and prey upon juvenile Chinook salmon, coho salmon and steelhead trout. The Department is proposing increasing the brown trout bag limit up to five fish per day with 10 fish in possession. This proposed change will reduce predation on juvenile salmon and steelhead and align these regulations with statewide regulations.

The name Trinity River South Fork is proposed to be changed to South Fork Trinity River to reflect the name used on U.S. Geologic Survey maps. Other minor changes are proposed to improve the clarity and consistency of the regulations.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in UC Davis, Bodega Marine Laboratory Lecture Hall, 2099 Westside Road, Bodega Bay, California, on April 13, 2007, at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the **Hubbs-Sea World Research Institute, Shedd Auditorium, 2595 Ingraham Street, San Diego**, California, on **May 4, 2007**, 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 **April 27, 2007**, at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on **April 30, 2007**. All comments must be received no later than **May 4, 2007**, at the hearing in **San Diego, CA**. If you would like copies of any modifications to this proposal, please include your name and mailing address.

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 Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to John Carlson, Jr., or Sherrie Koell at the preceding address or phone number. **Neil Manji, Fisheries Branch Chief, Department of Fish and Game, phone (916) 327-8840, 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.fgc.ca.gov>.

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 Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed regulations are projected to have an unknown impact on the net revenues to businesses servicing sport fishermen. This is not likely to affect 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 Basin 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 Carlson, Jr.
Executive Director

Date: March 20, 2007