

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

Amend Subsection (b)(91.1) of Section 7.50
Title 14, California Code of Regulations
Re: Klamath River Sport Fishing Regulations

I. Date of Initial Statement of Reasons: December 31, 2013

II. Dates and Locations of Scheduled Hearings:

(a) Notice Hearing: Date: December 11, 2013
Location: San Diego

(b) Discussion Hearing: Date: February 5, 2014
Location: Sacramento

(c) Adoption Hearing: Date: April 16, 2014
Location: Ventura

III. Description of Regulatory Action:

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

The Klamath River System, which consists of the Klamath River and Trinity River basins, is managed 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 recreational, ocean commercial, river recreational and tribal fisheries.

The Pacific Fishery Management Council (PFMC) is responsible for adopting recommendations for the management of recreational 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 California Fish and Game Commission (Commission) adopts regulations for the ocean salmon recreational (inside three miles) and the Klamath River System recreational fisheries which are consistent with federal fishery management goals.

Two tribal entities within the Klamath River System, the Hoopa Valley Tribe and the Yurok Tribe, maintain fishing rights for ceremonial,

subsistence and commercial fisheries that are managed consistent with federal fishery management goals. Tribal fishing regulations are promulgated by the Hoopa and Yurok tribes.

For the purpose of PFMC mixed-stock fishery modeling and salmon stock assessment, salmon greater than 22 inches are defined as adult salmon (ages 3-5) and salmon less than or equal to 22 inches are defined as grilse salmon (age 2).

Klamath River Fall-Run Chinook

Klamath River fall-run Chinook salmon (KRFC) harvest allocations and natural spawning escapement goals are established by the PFMC. The KRFC harvest allocation between tribal and non-tribal fisheries is based on court decisions and allocation agreements between the various fishery representatives.

The 2014 KRFC in-river recreational fishery allocation recommended by the PFMC is currently unknown. All proposed closures for adult KRFC are designed to ensure sufficient spawning escapement in the Klamath Basin and equitably distribute harvest while operating within annual allocations.

Klamath River Spring-Run Chinook

The Klamath River System 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 managed or allocated by the PFMC. The in-river recreational fishery is managed by general basin seasons, daily bag limit, and possession limit regulations. KRSC harvest will be monitored on the Lower Klamath River in 2014 and ensuing years by creel survey.

KRFC Allocation Management

The PFMC 2013 allocation for the Klamath River System recreational harvest was 40,006 adult KRFC. Preseason stock projections of 2014 adult KRFC abundance will not be available from the PFMC until March 2014. The 2014 basin allocation will be recommended by the PFMC in April 2014 and presented to the Commission for adoption prior to its April 2014 meeting.

For public notice requirements, the Department recommends the Commission consider an allocation range of 0 – 67,600 adult KRFC in the Klamath River Basin for the river recreational fishery. This recommended range encompasses the historical range of the Klamath River Basin allocations and allows the PFMC and Commission to make adjustments during the 2014 regulatory cycle.

The Commission may modify the KRFC in-river recreational salmon harvest allocation which is normally 15 percent 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.

The annual KRFC in-river harvest allocation is split into 4 geographic areas with subquotas assigned to each. They are as follows:

1. for the main stem Klamath River from 3,500 feet downstream of the Iron Gate Dam to the Highway 96 bridge at Weitchpec -- 17 percent of the recreational fishery allocation;
2. for the main stem Klamath River from downstream of the Highway 96 bridge at Weitchpec to the mouth -- 50 percent of the recreational fishery allocation;
3. for the Trinity River downstream of the Old Lewiston Bridge to the Highway 299 West bridge at Cedar Flat -- 16.5 percent of the recreational fishery allocation; and
4. for the Trinity River downstream from the Denny Road bridge at Hawkins Bar to the confluence with the Klamath River -- 16.5 percent of the recreational fishery allocation.

The spit area (within 100 yards of the channel through the sand spit formed at the Klamath River mouth) closes to all fishing after 15 percent of the Lower Klamath River subquota (area number 2 above) has been taken downstream of the Highway 101 bridge. This provision only applies if the Department projects that the total Klamath River System recreational fishery allocation will be met. This closure is intended to prevent excessive take near the mouth where fish are concentrated and helps to provide an equitable distribution of KRFC harvest in the upper river.

These geographic areas are based upon the historical distribution of angler effort and ensure equitable harvest of adult KRFC in the upper Klamath River and Trinity River. The subquota system requires the Department to monitor angler harvest of adult KRFC in each geographic area. All areas will be monitored on a real time basis except for the following:

Klamath River upstream of Weitchpec and the Trinity River: Due to funding and personnel reductions, the Department will be unable to deploy adequate personnel to conduct harvest monitoring in the Klamath River upstream of Weitchpec and in the Trinity River for the 2014 season. The Department has reviewed salmon harvest and run-timing data for these areas. Based on this review, the Department has developed a Harvest Predictor Model (HPM) which incorporates historic creel survey data from the Klamath River downstream of Iron Gate Dam to the confluence with the Pacific Ocean and the Trinity River downstream of Lewiston Dam to the confluence with the Klamath River. The HPM is driven by the positive

relationship between KRFC harvested in the Klamath River and Trinity River. The HPM will be used by the Department to implement fishing closures to ensure that anglers do not exceed established subquota targets.

Current Recreational Fishery Management

The KRFC in-river recreational harvest allocation is divided into geographic areas and harvest is monitored under real time subquota management. KRSC in-river recreational harvest is managed by general season, daily bag limit, and possession limit regulations.

The Department presently differentiates the two stocks by the following dates:

Klamath River

1. January 1 through August 14 - General Season KRSC.
For purposes of clarity, daily bag and possession limits apply to that section of the Klamath River downstream the Highway 96 bridge at Weitchpec to the mouth.
2. August 15 to December 31 - KRFC quota management.

Trinity River

1. January 1 through August 31 – General Season KRSC.
For purposes of clarity, daily bag and possession limits apply to that section of the Trinity River downstream of the Old Lewiston Bridge to the confluence with the South Fork Trinity River.
2. September 1 through December 31 – KRFC quota management.

The daily bag and possession limits apply to both stocks within the same sub-area and time period.

Proposed Changes

No changes are proposed for the general (KRSC) opening and closing season dates, and bag, possession and size limits.

The following changes to current regulations are proposed:

KRFC QUOTA MANAGEMENT: Seasons, Bag and Possession Limits

For public notice requirements, a range of KRFC bag and possession limits are proposed until the 2014 Klamath River Basin quota is adopted. As in previous years, no retention of adult KRFC salmon is proposed for the following areas, once the subquota has been met.

The proposed open seasons and range of bag and possession limits for KRFC salmon stocks are as follows:

1. Klamath River - August 15 to December 31

2. Trinity River - September 1 to December 31
3. Bag Limit - [0-4] Chinook salmon – of which no more than [0-4] fish over 22 inches total length until subquota is met, then 0 fish over 22 inches total length.
4. Possession limit - [0-12] Chinook salmon of which [0–12] over 22 inches total length may be retained when the take of salmon over 22 inches total length is allowed.

SPIT AREA MANAGEMENT

Current regulations specify that the spit area (within 100 yards of the channel through the sand spit formed at the Klamath River mouth) closes to all fishing after 15 percent of the Lower Klamath River subquota has been taken downstream of the Highway 101 bridge. This provision only applies if the Department projects that the total Klamath River System recreational fishery allocation will be met.

In 2013, the Klamath River breached the sand spit at the south end of the river estuary, resulting in a long channel with large concentrations of shore anglers and numerous reports of fish being taken by snagging and other unethical behavior. In response, an expanded enforcement effort was mounted. The high angler and expanded enforcement activities continued until the river mouth finally changed position due to high water flows which also moved the fish upstream.

The 2013 preliminary boat and shore angler harvest estimate for the Lower Klamath River area is 11,300 adult KRFC and 450 grilse KRFC salmon.

The shore anglers within the spit area accounted for 11,000 adult KRFC salmon or 28 percent of the total Klamath River System recreational KRFC quota (40,006 KRFC salmon).

To facilitate public discussion of the public and Department concerns with the 2013 spit fishery, the Commission requested three options for possible approaches to the spit fishery management for further consideration.

Option 1 – Spit Area will close after 15 percent of the total Klamath River Basin Quota is taken downstream of the Highway 101 Bridge.

This option will close the spit area to all fishing after 15 percent of the total Klamath River Basin quota has been taken (instead of after 15 percent of the Lower Klamath River subquota has been taken) downstream of the Highway 101 bridge. This option also removes the language that states the spit area will close only if the Department projects that the total Klamath River System recreational fishery allocation will be met.

The option will keep open fishing access while achieving a balance between maintaining historical fishing opportunities for shore based

anglers and increasing protection of salmon migrating out of the open ocean into the Klamath River estuary.

This option allows for the angler harvest outside of the spit area in the Lower Klamath River area. If this option had been in place for 2013, 6,000 adult KRFC salmon would have been taken by shore anglers in the spit area. The spit area would have closed the week of September 2 for a 46 percent reduction in shore angler harvest within the spit area in the Lower Klamath River area.

Option 2 – Spit Area will close after 15 percent of the Lower Klamath River subquota is taken downstream of the Highway 101 Bridge

This option will retain the language specifying that the spit area will close after 15 percent of the Lower Klamath River subquota has been taken downstream of the Highway 101 bridge, but will remove the language that states the spit area will close only if the Department projects that the total Klamath River System recreational fishery allocation will be met.

The option is similar to current regulations but will reduce current fishing opportunities for shore based anglers while increasing protection of salmon migrating out of the open ocean into the Klamath River estuary.

This option allows for the angler harvest outside of the spit area in the Lower Klamath River area. If this option had been in place for 2013, 3,000 adult KRFC salmon would have been taken by shore anglers in the spit area. The spit area would have closed the week of August 26 for a 73 percent reduction in shore angler harvest within the spit area in the Lower Klamath River area.

Option 3 – Spit Area will remain closed to all fishing all year.

This option will close the spit area to all fishing year round to provide protection of KRSC, KRFC, and Coho salmon migrating out of the open ocean into the Klamath River estuary; however, it eliminates a historical fishing opportunity for shore based anglers.

This option allows for the angler harvest outside of the spit area in the Lower Klamath River area, but eliminates all shore angler fishing opportunities in the spit area for salmonids and other fish species.

If this option had been in place for 2013, the spit area would have remained closed and shore angler harvest would be reduced by 97 percent or a projected lost harvest of 11,000 adult KRFC and 400 grilse KRFC salmon. Boat anglers would still harvested 300 adult KRFC salmon and 50 grilse KRFC salmon in the Lower Klamath River area outside of the spit area.

Benefits of the Proposed Regulations

It is the policy of this State to encourage the conservation, maintenance, and utilization of the living resources of the ocean and inland waters under the jurisdiction and influence of the State for the benefit of all the citizens of the State. In addition, it is the policy of this State to promote the development of local California fisheries in harmony with federal law respecting fishing and the conservation of the living resources of the ocean and inland 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 provides for the maintenance of sufficient populations of salmon to ensure their continued existence.

The benefits of the proposed regulations are in conformance with federal law, sustainable management of Klamath River Basin salmon resources, and promotion of businesses that rely on recreational salmon fishing in the Klamath River Basin.

- (b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 200, 202, 205, 215, 220, 240, 315 and 316.5, Fish and Game Code.

Reference: Sections 200, 202, 205, 206, 215 and 316.5, Fish and Game Code.

- (c) Specific Technology or Equipment Required by Regulatory Change:

None.

- (d) Identification of Reports or Documents Supporting Regulation Change:

[Economic Impact Assessment.](#)

[In-River Sport Fishing Economics Technical Report](#), National Oceanographic and Atmospheric Administration, National Marine Fisheries Service (NMFS), September 2011.

- (e) Public Discussions of Proposed Regulations Prior to Notice Publication:

December 11, 2013 Fish and Game Commission meeting in San Diego, CA.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

The use of more liberal regulations for bag limits, possession limits and fishing methods. For KRFC salmon, more liberal regulations would be less desirable than those proposed because they could create risk of an intense fishery reaching or exceeding the quota in a very short time. Reaching the quota in a very short time could be damaging to the local economy. Exceeding the allowable harvest could be damaging to the KRFC salmon stocks.

(b) No Change Alternative:

The No Change Alternative would leave the current 2013 regulations in place and would not conform to the PFMC Klamath River Basin quota for 2014. Nor would it address the enforcement issues that arise at the spit area when the river breaches the spit at the south end of the bar. The change is necessary to continue appropriate harvest rates and an equitable distribution of the harvestable surplus.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable 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 proposed regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

V. Mitigation Measures Required by Regulatory Action:

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

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 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 action will not have 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 some impact on the net

revenues to local businesses servicing sport fishermen. Visitor spending may be reduced and in the absence of the emergence of alternative visitor activities, the drop in spending could induce business contraction. However, this will not likely 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; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission anticipates some impact on the creation or elimination of jobs in California. The Commission does not anticipate any impacts on the creation, elimination or expansion of businesses in California. The proposed regulations range from the closure of the spit area to fishing of all sizes for the entire year; to no fishing of adult KRFC salmon in 2014; to a normal Klamath River Basin salmon season. The potential employment impacts range from 0 to 28 jobs which are not expected to create, eliminate or expand businesses in California. Adverse impacts to jobs and/or businesses would be less for the option that permits fishing of grilse KRFC salmon than under the complete closure to all fishing in the spit area. 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 action is to increase sustainability in fishable salmon stocks and, subsequently, the promotion and long-term viability of these same small businesses.

The Commission anticipates benefits to the health and welfare of California residents. Providing opportunities for a salmon sport fishery encourages consumption of a nutritious food.

The Commission anticipates benefits to the environment by the sustainable management of California's salmon resources.

The Commission does not anticipate any benefits to worker safety.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action regarding KRFC quota management (seasons, bag and possession limits. However options under consideration to close the

spit area to fishing are anticipated to reduce visitor spending and revenue to area businesses. Spit Area Option 1 could reduce direct spending by \$132,000; Spit Area Option 2 could reduce direct spending by \$210,000; and Spit Area Option 3 could reduce spending by \$279,000 compared to an average year from 1999 to 2013. Revenue losses are expected to be shared by an estimated 30 businesses that support angler activities.

- (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, Government Code:

None.

- (h) Effect on Housing Costs:

None.

Informative Digest/Policy Statement Overview

The Klamath River System, which consists of the Klamath River and Trinity River basins, is managed 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 recreational, ocean commercial, river recreational and tribal fisheries.

The Pacific Fishery Management Council (PFMC) is responsible for adopting recommendations for the management of recreational 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).

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The 2014 KRFC in-river recreational fishery allocation recommended by the PFMC is currently unknown. All proposed closures for adult KRFC are designed to ensure sufficient spawning escapement in the Klamath Basin and equitably distribute harvest while operating within annual allocations.

Klamath River Spring-Run Chinook

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Presently, KRSC stocks are not managed or allocated by the PFMC. The in-river recreational fishery is managed by general basin seasons, daily bag limit, and possession limit regulations.

KRFC Allocation Management

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will be recommended by the PFMC in April 2014 and presented to the Commission for adoption prior to its April 2014 meeting.

For public notice requirements, the Department of Fish and Wildlife (Department) recommends the Commission consider an allocation range of 0 – 67,600 adult KRFC in the Klamath River Basin for the river recreational fishery.

Current Recreational Fishery Management

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The daily bag and possession limits apply to both stocks within the same sub-area and time period.

Proposed Changes

No changes are proposed for the general (KRSC) opening and closing season dates, and bag, possession and size limits.

The following changes to current regulations are proposed:

KRFC QUOTA MANAGEMENT: Seasons, Bag and Possession Limits

For public notice requirements, a range of KRFC bag and possession limits are proposed until the 2014 Klamath Basin quota is adopted. As in previous years, no retention of adult KRFC salmon is proposed for the following areas, once the subquota has been met.

The proposed open seasons and range of bag and possession limits for KRFC salmon stocks are as follows:

1. Klamath River - August 15 to December 31
2. Trinity River - September 1 to December 31
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The following three options are provided for Commission consideration.

Option 1 will close the spit area to all fishing after 15 percent of the total Klamath River Basin quota has been taken (instead of after 15 percent of the Lower

Klamath River subquota has been taken) downstream of the Highway 101 bridge. This option also removes the provision that the spit area will close only if the Department projects that the total Klamath River System recreational fishery allocation will be met.

Option 2 will retain the language specifying that the spit area will close after 15 percent of the Lower Klamath River subquota has been taken downstream of the Highway 101 bridge, but will remove the provision that the spit area will close only if the Department projects that the total Klamath River System recreational fishery allocation will be met.

Option 3 will close the spit area to all fishing all year.

Benefits of the Proposed Regulations

The benefits of the proposed regulations are in conformance with Federal law, sustainable management of Klamath River Basin salmon resources, and promotion of businesses that rely on recreational salmon fishing in the Klamath River Basin.

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. The Legislature has delegated authority to the Commission to promulgate sport fishing regulations (sections 200, 202, 205, 315, and 316.5, Fish and Game Code). Commission staff has searched the California Code of Regulations and has found no other State regulations related to the recreational take of Chinook salmon in the Lower Klamath River Basin.