

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

**(Continuation of California Notice Register 2006, No. 7-Z,
and Meetings of February 3, March 3, April 7 and May 4, 2006.)**

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) Section 7.50, Title 14, California Code of Regulations, regarding Klamath and Trinity rivers sport fishing.

Updated Informative Digest/Policy Statement Overview

Quota Adjustment: Under current regulations in subsection (b)(91.1)(C) of Section 7.50, Title 14, California Code of Regulations (CCR), 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.

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 2005, the share, or impact quota, for the Klamath River basin allowable sport catch was 1,262 adult fish (15 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 2006 season are not yet available from the Pacific Fishery Management Council (PFMC). Consequently, the Department of Fish and Game (Department) is suggesting that the Fish and Game Commission (Commission) consider a range of 0 -15,000 adult Chinook salmon quota for the river-recreational fishery for notice requirements. The Commission also will consider modifying the share of the allowable catch allocated to the river recreational fishery (which was 15 percent in 2005). Adjustment of this share is included in the recommended 0 - 15,000 range of the quota. As in prior years, the river recreational fishing quota would be split evenly between the fisheries within each sub-quota area above and below the Highway 96 bridge at Weitchpec.

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 River below the Highway 96 bridge at Weitchpec and 50% to the remainder of the Klamath River Basin above the Highway 96 bridge at Weitchpec, including the Trinity River. Current regulations define three sub-quota areas above the

Highway 96 bridge at Weitchpec. The three quotas ensure equitable harvest of adult fall-run Chinook in the upper Klamath and Trinity rivers. In 2004, the boundary between the lower and upper sub-quota areas for the Klamath River Basin changed from Coon Creek Falls to the Highway 96 bridge at Weitchpec. Subsection (C)1.f.(ii) is being amended to be consistent with this boundary.

Anglers may retain adult Chinook salmon five days a week. The retention of adult Chinook salmon is prohibited on Tuesdays and Wednesdays from Weitchpec to the mouth of the Klamath from August 26 through November 30; Weitchpec to Iron Gate Dam, from September 1 through November 30; Trinity River from the confluence with the Klamath to Hawkins Bar from September 1 through November 30; Cedar Flat to the Old Lewiston Bridge from September 15 through November 30.

In order to maintain the harvest of adult Chinook salmon in the Klamath River through Labor Day (September 4, 2006) weekend, the Department reviewed the run-timing of both fall-run and spring-run Chinook salmon in the lower Klamath River. Based on this analysis, the Department recommends that the reduction in the number of days per week anglers would be allowed to retain a Chinook salmon over 22 inches total length be changed to the following: August 15 through November 30 in the Klamath River Below the Highway 96 bridge at Weitchpec. The recommended change would decrease fall-run Chinook salmon harvest opportunities by 11 days.

The 2006 quota to be recommended by the PFMC is not currently known; however, it is expected to be similar to what was established for the 2005 season. All 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 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 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 2006 season. Instead, the following recommendation is based on data analysis and management experiences from previous years that estimate harvest in the upper reaches of the Trinity River relative to known harvest in the lower Trinity and Klamath rivers. All other quota areas will be monitored on a real-time basis.

1. Upper Trinity River Main Stem - Allowable Fishing Season from Old Lewiston Bridge to the Highway 299 West Bridge at Cedar Flat: The Department has reviewed all available Trinity River Chinook harvest and run-timing data for this area. Based on this review, the Department has 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 number of fall-run Chinook salmon harvested in the lower Klamath and Trinity rivers and the number of fish harvested in the upper Trinity River. The HPM will allow the Department to implement fishing closures to ensure that anglers do not exceed established quota targets.

Maintain Daily Bag Limit, Weekly Bag Limit and Possession Limit: Anglers may retain adult Chinook salmon five days a week (refer to closures to modify allocations) with a daily limit of three Chinook salmon, but no more than one Chinook salmon over 22 inches total length, and

one hatchery trout or one brown trout or one hatchery steelhead. No more than two Chinook salmon over 22 inches total length may be retained in any seven consecutive days. No more than 12 Chinook salmon may be possessed, of which no more than two may be over 22 inches total length. During the modified closures anglers could continue to catch and release adult Chinook salmon, harvest two Chinook salmon less than 22 inches total length per day, and retain one hatchery steelhead or one hatchery trout or one brown trout. No more than 12 Chinook salmon may be possessed, of which no more than two may be over 22 inches total length.

In 2005, the regulations that were designed to maintain the harvest of adult Chinook salmon in the Klamath River through Labor Day (September 5, 2005) weekend were successful. The regulations were based on the in-river quota of 1,262 fish with input received from the angling community. The 2006 quota to be recommended by the PFMC is not currently known; however, it is expected to be similar to what was established for the 2005 season. Consequently, the Department is not recommending any changes in the general daily bag, weekly bag, and possession limits for the 2006 Klamath River sport fishery.

The Department is proposing to add one brown trout to the bag limit for the Trinity River South Fork downstream from the mouth of Grouse Creek and for Trinity River South Fork from the mouth of Grouse Creek to the South Fork Trinity River bridge at Hyampom [(subsections (b)(91.1)(F)6.g. and (b)(91.1)(F)6.h.)]

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.

A minor editorial change from the use of “king” to “Chinook” salmon is being made so terminology is consistent throughout the regulatory language. Additional minor changes are proposed to improve the clarity of the regulations.

Since the development of the Initial Statement of Reasons, the Pacific Fishery Management Council (PFMC) released their *Preseason Report I: Stock Abundance Analysis of 2006 Ocean Salmon Fisheries* which indicates the Klamath fall Chinook stock is at extremely low ocean abundance in 2006. This projection coupled with above average Klamath fall Chinook impacts in the 2005 fall commercial and recreational fisheries indicates the stock will not meet the PFMC natural spawner escapement goal. This goal objective is a minimum of 35,000 adults spawning in natural areas each year. Even with no further fishing of this stock in the ocean and river fisheries in 2006, the expected number of natural spawners would be 29,200.

In response during their meeting on March 5-10, 2006 in Seattle, Washington, the PFMC proposed three season options that ranged from a near status-quo season to a complete closure for the 2006 Klamath River regulations for public consideration. The PFMC has determined that conditions this year allowed the PFMC Salmon Fishery Management Plan natural spawner escapement goal to be temporarily set at 21,000 without compromising the long-term productivity of the stock.

On April 7, 2006, the PFMC provided a recommendation for a limited 2006 ocean salmon season to the National Marine Fisheries Service (NMFS) and recommended closure of the

Klamath River Basin for the retention of adult fall Chinook salmon to achieve the limited ocean salmon fishery. On April 28, 2006, the NMFS accepted the PFMC recommendation and approved an emergency rule that went into effect on May 1, 2006.

The Commission approved the final 2006 Klamath River recreational regulations on May 4, 2006 to align the state and federal regulations governing recreational salmon fishing in California waters and ensure the long-term productivity of the Klamath River fall Chinook stock.

Two additional measures had been requested by the fishery stakeholders prior to the May approval meeting. These were the trout bag limit be expanded to include one brown trout in addition to the one hatchery trout or one hatchery steelhead and the Trinity River main stem between 250 feet below Lewiston Dam to the Old Lewiston Bridge will open on April 1 instead of the last Saturday in April. Since these two revisions were not specifically discussed by the Commission, this Pre-adoption statement was developed to provide adequate public notice of these two measures.

The proposed regulatory action amends the regulations of subsection (b)(91.1) of Section 7.50, Title 14, CCR, which describe Klamath River sport recreational fishing. The changes are listed in the following paragraphs:

The section describing the Salmon Impact Quotas is revised to remove the term “Impact” which refers to hook and release mortality. This impact due to harvest is calculated in the PFMC Klamath Ocean Harvest Model but not reported as part of the non-tribal harvest. This change was to reduce public confusion.

The reference to the Trinity River South Fork downstream to the confluence with the Klamath River is placed into a separate subsection to reduce overlap with the Hawkins Bar Bridge to the mouth of the Trinity River subsection and it is located downstream outside the Highway 299 Bridge at Cedar Flats to the Hawkins Bar Bridge subsection. This change was to reduce public confusion.

The salmon bag limit will remain at three Chinook salmon with no more than one fish over 22 inches total length when the take of salmon of over 22 inches total length is allowed. The trout bag limit was expanded to include one brown trout in addition to the one hatchery trout or one hatchery steelhead. These changes were to increase angling opportunities.

No Klamath River fall Chinook over 22 inches total length are allowed to be retained in the following Salmon Quota Areas:

- 1. The Klamath River below the Highway 96 Bridge in Weitchpec from August 15 through November 30.**
- 2. The Klamath River from Iron Gate Dam to the Highway 96 Bridge in Weitchpec from April 1 through November 30.**
- 3. The Trinity River main stem from Old Lewiston Bridge to the Highway 299 West Bridge at Cedar Flat from September 15 through November 30.**

4. **The Trinity River main stem from the Highway 299 West Bridge at Cedar Flat to the Hawkins Bar Bridge from September 1 to November 30.**
5. **The Trinity River main stem from the Hawkins Bar Bridge downstream to the mouth of the Trinity River South Fork from September 1 to November 30.**
6. **The Trinity River main stem from the mouth of the Trinity River South Fork to the confluence with the Klamath River from April 1 to November 30.**

The Trinity River main stem between 250 feet below Lewiston Dam to the Old Lewiston Bridge will open on April 1 to provide for increased angler opportunities.

Minor changes were made to improve the clarity of the regulations.

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 at the Mammoth Inn, 1 Minaret Road, Mammoth Lakes, California, on Friday, June 23, 2006, 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 June 16, 2006 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 June 20, 2006. All comments must be received no later than June 23, 2006, at the hearing in Mammoth Lakes, CA. All written 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, Jon K. Fischer, Assistant Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to Jon K. Fischer or Sherrie Koell at the preceding address or phone number. **Neil Manji, Branch Chief, 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.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 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. **Based on past economic studies on salmon and steelhead in the Klamath-Trinity system (Meyer Resources 1988), the proposed regulations are projected to have less than \$40,000 impact on 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

Date: June 9, 2006

Jon K. Fischer
Assistant Executive Director