

## **FISH AND GAME CODE - FGC**

### *DIVISION 13.5. State-Tribal Agreements Governing Indian Fishing On The Klamath River [16500 - 16541]*

*( Division 13.5 added by Stats. 1986, Ch. 1186, Sec. 1. )*

### **CHAPTER 1. Legislative Findings [16500- 16500.]**

*( Chapter 1 added by Stats. 1986, Ch. 1186, Sec. 1. )*

#### 16500.

The Legislature finds:

(a) Jurisdiction over the protection and development of natural resources, especially the fish resource, is of great importance to both the State of California and California Indian tribes.

(b) To California Indian tribes, control over their minerals, lands, water, wildlife, and other resources within Indian country is crucial to their economic self-sufficiency and the preservation of their heritage. On the other hand, the State of California is concerned about protecting and developing its resources; protecting, restoring, and developing its commercial and recreational salmon fisheries; ensuring public access to its waterways; and protecting the environment within its borders.

(c) More than any other issue confronting the State of California and California Indian tribes, the regulation of natural resources, especially fish, transcends political boundaries.

(d) In many cases, the State of California and California Indian tribes have differed in their respective views of the nature and extent of state versus tribal jurisdiction in areas where Indians have historically fished. Despite these frequent and often bitter disputes, both the state and the tribes seek, as their mutual goal, the protection and preservation of the fish resource. This division is an attempt to provide a legal mechanism, other than protracted and expensive litigation over unresolved legal issues, for achieving that mutual goal on the Klamath River.

(e) The department has exercised jurisdiction over the Klamath River from the mouth of the river through the Yurok Reservation and the Hoopa Valley Reservation, but the Bureau of Indian Affairs and the Indian tribes thereon have also asserted jurisdiction over that river. The river itself lies within a disputed area and proper management of the resource presents, therefore, unique and difficult problems in the exercise of fishing practices by all user groups.

(f) Although commercial fishing may not be a traditional practice of the tribes existing along the Klamath River within the boundaries of the land of the Yurok Reservation and the Hoopa Valley Reservation, nevertheless, the department has historically supported the concept of tribal fishing, including a tribal commercial fishing industry where the industry is consistent with the need to preserve the species, sound management, and where that usage would not adversely effect other user groups, including sportfishing and the ocean commercial fishery.

(g) A commercial fishery existed on the Klamath River in the late 19th century and early 20th century, in which the Indian tribes existing along the river participated, but commercial fishing was abolished in 1933 with the passage of the predecessor to Section 8434, and, further, that salmon resources have declined historically due to past water developmental policies and timber harvesting practices. With a reduced number of fish available, special laws are needed to protect those resources and allocate them fairly among the various user groups.

(h) This division is not only enacted to provide the legal mechanism described above, but is also intended to encourage cooperative agreements to allow protection of the resource among all of the user groups. In so doing, the Legislature recognizes the unique status of the Klamath River and the fishing therein.

*(Amended by Stats. 2015, Ch. 154, Sec. 117. Effective January 1, 2016.)*

## **CHAPTER 2. General Provisions and Definitions [16510 - 16520]**

*( Chapter 2 added by Stats. 1986, Ch. 1186, Sec. 1. )*

### **16510.**

The definition in this chapter shall govern the construction of this division.

*(Added by Stats. 1986, Ch. 1186, Sec. 1.)*

### **16511.**

“Klamath River Indian Tribes” means those tribes existing within the boundaries of the Yurok Reservation and the Hoopa Valley Reservation, located in Humboldt and Del Norte Counties in California, which tribes are recognized as Indian tribes by the Secretary of the Interior.

*(Amended by Stats. 1990, Ch. 1633, Sec. 8.)*

### **16512.**

“Take” means pursue, catch, capture, or kill, or attempt to pursue, catch, capture, or kill.

*(Added by Stats. 1986, Ch. 1186, Sec. 1.)*

**16513.**

“Traditional Indian fishing practice” means a mode, method, or way of taking fish that is recognized in the customs and traditions of the Klamath River Indian Tribes.

*(Added by Stats. 1986, Ch. 1186, Sec. 1.)*

**16514.**

“Yurok Reservation” means the land extending one mile in width on each side of the Klamath River from the mouth of the Klamath River to the confluence of the Trinity and Klamath Rivers. “Hoopa Valley Reservations” means those lands lying within the Hoopa Square.

*(Amended by Stats. 1990, Ch. 1633, Sec. 9.)*

**16515.**

“Disputed area” means that part of the Klamath River or Trinity River where jurisdiction to regulate Indian fishing is asserted by both the State of California and by one or more of the Indian tribes in the Klamath River Indian Tribes or by the United States government acting as trustee therefor.

*(Added by Stats. 1986, Ch. 1186, Sec. 1.)*

**16516.**

“Subsistence purposes” means fish or game taken by qualified Indian tribal members of the Klamath River Indian Tribes for personal consumption by the tribal members or their immediate families.

*(Added by Stats. 1986, Ch. 1186, Sec. 1.)*

**16517.**

“Ceremonial or religious purposes” means fish taken by qualified Indian tribal members of the Klamath River Indian Tribes for recognized religious or ceremonial activities, which activities are consistent with the customs and traditions of the particular tribe in the Klamath River Indian Tribes.

*(Added by Stats. 1986, Ch. 1186, Sec. 1.)*

**16518.**

“Commercial fishing” means the taking of fish by qualified Indian tribal members of the Klamath River Indian Tribes, for sale or to be offered for sale within California.

*(Added by Stats. 1986, Ch. 1186, Sec. 1.)*

#### **16520.**

“Klamath Fishery Management Council” means that council created pursuant to Section 460ss-2 of Title 16 of the United States Code that is composed of one representative each from the department, the Pacific Fishery Management Council, National Marine Fisheries Service, Department of the Interior, Oregon Department of Fish and Wildlife, the Hoopa Valley Business Council, non-Hoopa Indians, the California commercial salmon fishing industry, the Oregon commercial salmon fishing industry, the Klamath River in-river sportfishing community, and the California offshore recreational fishing industry.

*(Amended by Stats. 2015, Ch. 154, Sec. 118. Effective January 1, 2016.)*

### **CHAPTER 3. Negotiation and Approval of Agreement [16530 - 16532]**

*( Chapter 3 added by Stats. 1986, Ch. 1186, Sec. 1. )*

#### **16530.**

The director may enter into a mutual agreement or compact with the Hoopa Valley Business Council regarding the taking of fish from the Trinity River within the exterior boundaries of the Hoopa Valley Reservation or with the Yurok Tribe, or the Bureau of Indian Affairs acting as trustee for the Yurok Indians, regarding the taking of fish from the Klamath River within the exterior boundaries of the Yurok Reservation.

*(Amended by Stats. 1990, Ch. 1633, Sec. 10.)*

#### **16531.**

Negotiations shall take place following the completion each year of the salmon allocation agreement recommended by the Klamath Fishery Management Council, and subsequently adopted by the Pacific Fishery Management Council and the United States Department of Commerce. Any agreement or compact under this division shall reflect those allocations.

*(Amended by Stats. 1987, Ch. 1422, Sec. 9.)*

#### **16532.**

Notwithstanding Sections 8434, 8685.5, 8685.6, and 8685.7, the compact or agreement may include provisions for commercial sales of salmon allocated to qualified Indian members of the Klamath River Indian Tribes and that the salmon may be taken by traditional Indian methods, including, but not limited to, use of gill nets, if the agreement or compact includes provisions for all of the following:

- (a) Separating the salmon taken for commercial purposes from the salmon taken for subsistence use, which may include tagging or marking of the salmon to be sold.
- (b) Limiting the number of the salmon to be sold.
- (c) A portion of the sales to benefit the members or programs of the Klamath River Indian Tribes in accordance with the wishes of the tribes or the Bureau of Indian Affairs acting on behalf of the tribes as trustee.

*(Amended by Stats. 1987, Ch. 1422, Sec. 10.)*

#### **CHAPTER 4. Enforceability of an Agreement or Compact [16540 - 16541]**

*( Chapter 4 added by Stats. 1986, Ch. 1186, Sec. 1. )*

##### **16540.**

Any agreement or compact entered into pursuant to this division shall be enforceable by the parties only to the extent and in the form or forms provided for under the terms of the agreement or compact.

*(Added by Stats. 1986, Ch. 1186, Sec. 1.)*

##### **16541.**

The department may adopt regulations consistent with the provisions of any agreement or compact entered into pursuant to Section 16530 or 16531. The application and enforcement of those regulations shall be in accordance with the express provisions of the agreement or compact.

*(Added by Stats. 1986, Ch. 1186, Sec. 1.)*