

DEERING'S CALIFORNIA CODES ANNOTATED
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 THE 2009-2010 REG. SESS., CH. 12 OF THE 2009-2010 2d EX. SESS.,
 CH. 26 OF THE 2009-10 3d EX. SESS., CH. 24 OF THE 2009-10 4th EX. SESS.,
 THE GOVERNOR'S REORG. PLAN #1 OF 2009, EFF. MAY 10, 2009 & PROP 1F APPROVED
 EFF. MAY 20, 2009

FISH AND GAME CODE
 Division 6. **Fish**
 Part 2. SPORT FISHING
 Chapter 1. Generally
 Article 3. Sport Fishing Licenses

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal **Fish** & G Code § 7155 (2009)

§ 7155. Right of members of **Yurok** Indian tribe to take **fish** from Klamath River; Conditions

Notwithstanding any other provision of this code, California Indians who are bona fide registered members of the **Yurok** Indian Tribe may take **fish**, for subsistence purposes only, from the Klamath River between the mouth of that river and the junction of Tectah Creek with it, exclusive of tributaries, without regard to seasons, under the following conditions:

(a) Upon application therefor, the department shall issue to any **Yurok** Indian who is listed on the register of the **Yurok** Tribal Organization, as furnished to the department, a renewable, nontransferable permit to take **fish** pursuant to this section for a period of one calendar year. Any Indian of the **Yurok** tribe while taking **fish** pursuant to this section shall have upon his person such valid permit, and shall display it upon the request of any duly authorized officer.

(b) Hand dip nets, and hook and line only may be used for taking **fish** pursuant to this section.

(c) Pursuant to this section not more than three trout or salmon or combination thereof, or more than one sturgeon, may be taken in any one day. There is no bag limit on any other **fish**.

(d) No **Yurok** Indian while fishing pursuant to this section may be accompanied by any person who does not possess a valid permit as prescribed by this section. It is unlawful for any person who does not hold such permit to accompany any **Yurok** Indian who is taking **fish** pursuant to this section.

(e) The sale of any **fish** taken under the provisions of this section shall constitute cause for permanent revocation by the commission of the permit held by the person making the sale.

HISTORY:

Enacted 1957.

NOTES:

Historical Derivation:

Former F & G C § 429.8, as added by Stats 1951 ch 1486 § 1 p 3467.

Cross References:

Application of code to California Indians: F & G C § 12300.

"Indians": Gov C § 186.

Collateral References:

State jurisdiction over offenses committed by or against Indians in the Indian country: 18 USCS § 1162.

Indians of California: 25 USCS §§ 651 et seq.

Law Review Articles:

Judicial enforcement of the federal trust responsibility to Indians. 27 Stan LR 1213.

Hierarchy Notes:

Fish & G Code Note

Div. 6 Note

Div. 6, Pt. 2 Note

Div. 6, Pt. 2, Ch. 1, Art. 3 Note

NOTES OF DECISIONS

1. Generally 2. Constitutionality 3. Applicability 4. Police Power

1. Generally

F & G C § 7155 merely grants members of the **Yurok** or Lower Klamath Tribes certain limited special fishing privileges in an area that was part of their ancestral lands, but which area has not been regarded as part of the reservation since 1892. *Elser v. Gill Net Number One* (1966, Cal App 1st Dist) 246 Cal App 2d 30, 54 Cal Rptr 568, 1966 Cal App LEXIS 1843.

Historically, the **Yurok** or Lower Klamath Tribe of Indians traditionally used very large nets made of two-ply cordage in fishing on the Klamath River. *Elser v. Gill Net Number One* (1966, Cal App 1st Dist) 246 Cal App 2d 30, 54 Cal Rptr 568, 1966 Cal App LEXIS 1843.

2. Constitutionality

F & G C § 7155, granting limited fishing privileges in an area beyond the reservation to bona fide registered members of the **Yurok** or Lower Klamath Tribes, is not an unconstitutional discrimination in favor of the **Yuroks** nor does it in any way limit the general privileges granted by F & G C § 12300, on the reservation. *Elser v. Gill Net Number One* (1966, Cal App 1st Dist) 246 Cal App 2d 30, 54 Cal Rptr 568, 1966 Cal App LEXIS 1843.

3. Applicability

Prior to the effective date of U. S. Public Law 280 [18 USCS § 1162; 28 USCS §§ 1360, 1362], The California **Fish** and Game Code did not apply to **Yurok** Indians living within the Hoopla Indian Reservation in that area known as the Hoopla Extension. *Elser v. Gill Net Number One* (1966, Cal App 1st Dist) 246 Cal App 2d 30, 54 Cal Rptr 568, 1966 Cal App

LEXIS 1843.

4. Police Power

In an action by the director of the Department of **Fish** and Game seeking authority to sell or destroy gill nets seized from a Klamath River Indian, the trial court properly found that the state could not regulate fishing by Indians on the Klamath River Reservation, and the attempt to regulate fishing by passage of F & G C § 7155 was invalid. The Indians on the reservation have fishing rights derived from Congress through the initial creation of the reservation by the President for Indian purposes under authority granted him by the Congress, which rights were later renewed in federal legislation transferring jurisdiction over Indian reservations to California, and no showing was made that would justify interference with such rights under the police power in the interest of conservation. *Arnett v. Five Gill Nets* (1975, Cal App 1st Dist) 48 Cal App 3d 454, 121 Cal Rptr 906, 1975 Cal App LEXIS 1127, cert den (1976) 425 US 907, 47 L Ed 2d 757, 96 S Ct 1500, 1976 US LEXIS 832.