

CALIFORNIA FISH AND GAME COMMISSION  
FINDING OF EMERGENCY AND  
STATEMENT OF PROPOSED EMERGENCY REGULATORY ACTION

Emergency Action to  
Amend subsections (b)(91.1)(C) and (E) of Section 7.50,  
Title 14, California Code of Regulations  
Re: Klamath River Basin Spring Chinook Salmon Sport Fishing

Date of Statement: February 8, 2019

**I. Statement of Facts Constituting the Need for Emergency Regulatory Action**

On July 23, 2018, the Fish and Game Commission (Commission) received a petition to list Upper Klamath-Trinity Spring Chinook Salmon (UKTSCS) as endangered under the California Endangered Species Act (CESA). The petitioners, the Karuk Tribe and the Salmon River Restoration Council, submitted information indicating that declining population trends are evidence of extremely low abundance compared to its historical status and the current low numbers make the UKTSCS vulnerable to extinction.

The Commission referred the petition to the Department of Fish and Wildlife (Department) for an evaluation of the merits of the petition. In November 2018, the Department submitted a report indicating that the petition contained sufficient scientific information to indicate that the petitioned action may be warranted, and recommended that the Commission accept and consider the petition.

On February 6, 2019, the Commission found that there is sufficient information to indicate that the petitioned action may be warranted and accepted the petition for consideration. Acceptance of the petition initiates a one-year review by the Department for determining the species status, which will include a recommendation to the Commission that the petitioned action is not warranted or a recommendation that the species be listed as threatened or as endangered. During the status review period the species is considered a “candidate” species.

The proposed emergency regulation will make Klamath River Basin spring Chinook Salmon sport fishing regulations consistent with CESA protections. Under CESA, candidate species receive full take protection, therefore the Department recommends that the Commission adopt emergency regulations to protect the candidate species from take, and to avoid confusion by sport anglers who may be unaware of spring Chinook Salmon candidacy protections.

Currently, Klamath River Basin regulations allow for fishing and take (either catch and release or harvest constitute take) of spring Chinook Salmon in most main stem areas of the Klamath and Trinity rivers. These areas include the lower Klamath River downstream of the Highway 96 Bridge at Weitchpec, the upper Klamath River above Weitchpec to Iron Gate Dam, the lower Trinity River from its confluence with the Klamath River upstream to Highway 299 West bridge at

Cedar Flat and the upper Trinity River above Cedar Flat to Old Lewiston Bridge. The emergency regulations are necessary to protect spring Chinook Salmon in these areas during their migratory and spawning phases.

The emergency regulations have been crafted to allow fall Chinook Salmon fishing in these areas once spring Chinook Salmon have completed migration and spawning. Upper Trinity River fall Chinook Salmon regulations are proposed to be modified under the emergency regulations. Normally, fall Chinook Salmon regulations allow fishing in the upper Trinity River commencing September 1, however, the upper Trinity River is known to contain spawning populations of spring Chinook Salmon. Therefore, the Department recommends closure of this area to salmon fishing until October 15, 2019, when spring Chinook Salmon have completed spawning.

The Commission considered the following factors in determining whether an emergency exists: the magnitude of potential harm; the existence of a crisis situation; the immediacy of the need; and whether the anticipation of harm has a basis firmer than simple speculation.

The proposed emergency regulations are necessary to better ensure reduced take of both migrating and spawning populations of UKTSCS in the Klamath River Basin for which recreational harvest is authorized under the current regulatory framework. The emergency regulations are intended to protect spring Chinook Salmon from sportfishing take during the candidacy period, ensuring that the candidate species is not diminished by harvest during the candidacy review period of one year.

Additionally, revising Klamath River Basin regulations for spring Chinook Salmon will help inform sport anglers that the species is in protected status. If the current Klamath River Basin regulations are not amended to reflect the change in CESA status of spring Chinook Salmon, anglers who consult the sport fishing regulations may falsely assume that angling for spring Chinook Salmon in the Klamath River Basin is allowed.

## **Regulatory Proposal**

The emergency regulations will amend Klamath River Basin sport fishing Chinook Salmon bag limit language to read "Closed to salmon fishing. No take of Chinook Salmon" in subsections (b)(91.1)(E)2.a., 2.b., 6.b., 6.c., 6.e., and 6.f. of Section 7.50 of Title 14, CCR, superseding existing regulations for spring Chinook Salmon fishing from the effective date of the regulation until August 14 on the Klamath River, from the effective date of the regulation until October 15 on the Trinity River between the Old Lewiston Bridge and the Highway 299 West bridge at Cedar Flat, and from the effective date of the regulation until August 31 on the Trinity River downstream of the Highway 299 West bridge at Cedar Flat.

The emergency regulations in subsection (b)(91.1)(E)6.b. will also impact Klamath River fall Chinook Salmon regulations by prohibiting the take of any Chinook Salmon in the Trinity River downstream of the Old Lewiston Bridge to

the Highway 299 West bridge at Cedar Flat until October 15. (Normally, fall Chinook Salmon regulations allow fishing in this segment of the Trinity River September 1 through December 31.)

Additionally, Klamath River Basin Chinook Salmon possession limits (subsections (C)2.a. and (C)2.b.) will be amended from “2 Chinook Salmon” to “Closed to salmon fishing. No take or possession of Chinook Salmon” for the river segments and dates listed above. Reorganization of these subsections is proposed in order to improve clarity.

This proposed regulation to achieve protection for UKTSCS during candidacy includes a number of protective measures.

- Klamath River Basin in-river Chinook Salmon harvest prohibitions during spring Chinook Salmon migratory periods (non-spawning areas). This will include time and area fishing closures throughout the basin designed to protect migratory spring Chinook Salmon as they move into holding and spawning areas.
- Klamath River Basin in-river Chinook Salmon time and area fishing closures to protect spring Chinook Salmon spawning populations. Currently, three areas are known to support spring Chinook Salmon spawning: Upper Salmon River, Upper South Fork Trinity River and mainstem Trinity River between Cedar Flat and Lewiston Dam. The upper mainstem Trinity River is the only one of the three areas that currently has allowable harvest of Chinook Salmon. Under the emergency regulations, this area will be closed to salmon fishing until October 15, 2019, when spring Chinook Salmon have completed spawning.

## **II. Impact of Regulatory Action**

The potential for significant statewide adverse fiscal impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

- (a) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None. The proposed emergency regulation will make Klamath River Basin spring Chinook Salmon sport fishing regulations consistent with the take prohibitions of CESA with no new program costs or savings.
- (b) Nondiscretionary Costs/Savings to Local Agencies: None. The proposed emergency regulation will make Klamath River Basin spring Chinook Salmon sport fishing regulations consistent with the take prohibitions of CESA with minimal impact on visitor expenditures.
- (c) Programs Mandated on Local Agencies or School Districts: None.

- (d) 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.

**III. Authority and Reference**

The Commission proposes this emergency action pursuant to the authority vested by sections 200, 205, 265, 270, 315, 316.5 and 399 of the Fish and Game Code and to implement, interpret, or make more specific sections 200, 205, 265, 270 and 316.5 of said code.

**IV. Section 399 Finding**

Pursuant to Section 399 of the Fish and Game Code, the Commission finds that the adoption of this regulation is necessary for the immediate conservation, preservation, or protection of birds, mammals, fish, amphibians or reptiles, including, but not limited to, their nests or eggs.

**V. Studies, Reports, or Documents Supporting Factual Emergency**

- (1) Klamath River Basin Spring Chinook Salmon Spawner Escapement, River Harvest and Run-size Estimates, 1980 – 2017. Data compiled by CDFW.

Klamath River Basin spring Chinook Salmon Escapement surveys are performed by the Department and its partners. These surveys inform the range, distribution and timing of spring Chinook Salmon in the Klamath River Basin, including migration and spawning times and locations. This information was used to delineate the locations for fishing closures of spring Chinook Salmon in the Klamath River Basin.

## Informative Digest (Plain English Overview)

Current regulations allow for fishing and take (either catch and release or harvest constitute take) of spring Chinook Salmon in most main stem areas of the Klamath and Trinity rivers. These areas include the lower Klamath River downstream of Highway 96 Bridge at Weitchpec, the upper Klamath River above Weitchpec to Iron Gate Dam, the lower Trinity River from its confluence with the Klamath River upstream to Highway 299 West bridge at Cedar Flat and the upper Trinity River above Cedar Flat to the Old Lewiston Bridge.

On February 6, 2019, the Commission found that there is sufficient information to indicate that listing Upper Klamath-Trinity Spring Chinook Salmon (UKTSCS) under the California Endangered Species Act (CESA) may be warranted, initiating a one-year status review of UKTSCS. During the status review period the species is considered a “candidate” species.

The proposed emergency regulation will make Klamath River Basin spring Chinook Salmon sport fishing regulations consistent with CESA protections. Under CESA, candidate species receive full protection from take, therefore the Department of Fish and Wildlife recommends that the Commission adopt emergency regulations that will protect the candidate species from take and will help avoid confusion by sport anglers who may be unaware of spring Chinook Salmon candidacy protections.

The emergency regulations will amend Klamath River Basin sport fishing Chinook Salmon bag limit language to read “Closed to salmon fishing. No take of Chinook Salmon” in subsections (b)(91.1)(E)2.a., 2.b., 6.b., 6.c., 6.e., and 6.f. of Section 7.50 of Title 14, CCR, superseding existing regulations for spring Chinook Salmon fishing from the effective date of the regulation until August 14 on the Klamath River, from the effective date of the regulation until October 15 on the Trinity River between the Old Lewiston Bridge and the Highway 299 West bridge at Cedar Flat, and from the effective date of the regulation until August 31 on the Trinity River downstream of the Highway 299 West bridge at Cedar Flat.

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Additionally, Klamath River Basin Chinook Salmon possession limits (subsections (C)2.a. and (C)2.b.) will be amended from “2 Chinook Salmon” to “Closed to salmon fishing. No take or possession of Chinook Salmon” for the river segments and dates listed above. Reorganization of these subsections is proposed in order to improve clarity.

### Benefits:

The emergency regulations are intended to protect spring Chinook Salmon from sportfishing take during the candidacy period ensuring that the candidate species is not diminished by harvest during the candidacy review period of one year.

Additionally, revising Klamath River Basin regulations for spring Chinook Salmon will help inform sport anglers that the species is in protected status. If the current Klamath River Basin regulations are not amended to reflect the change in CESA status of spring Chinook Salmon, anglers who consult the sport fishing regulations may falsely assume that angling for spring Chinook Salmon in the Klamath River Basin is allowed.

### Consistency and Compatibility with Existing State Regulations:

Article IV, Section 20 of the State Constitution specifies that the Legislature may delegate to the Fish and Game Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated authority to the Commission to promulgate sport fishing regulations (sections 200, 205, 315, and 316.5, Fish and Game Code). The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. Commission staff has searched the California Code of Regulations and has found no other State regulations related to sport fishing in the Klamath River Basin.