

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

Emergency Action to
Add subsection (b)(91.2) to Section 7.50,
Title 14, California Code of Regulations
Re: Special Order Regarding Take of Chinook Salmon in Anadromous Waters of the
Klamath River Basin Downstream of Iron Gate and Lewiston Dams

Date of Statement: May 30, 2019

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

Background

Regulations concerning the take of spring Chinook Salmon (where catch and release, or harvest, constitute take) in the Klamath River Basin are codified in subsection (b)(91.1) of Section 7.50, Title 14, California Code of Regulations (CCR).

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 UKTSCS abundance compared to historical status, and the current low numbers make 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 its evaluation report and recommended that the Commission accept and consider the petition.

On February 6, 2019, the Commission considered the Department's evaluation report and public comments received and found that there is sufficient information to indicate that the petitioned action may be warranted, after which the Commission then 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 either 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, which automatically confers CESA take prohibition measures (Fish and Game Code Section 2085).

At the February 6, 2019 meeting, the Department also recommended that the Commission adopt emergency regulations to help protect UKTSCS from take by minimizing confusion by sport anglers who may not have been aware of the

UKTSCS candidacy protections. The Commission adopted the emergency regulation on February 6, 2019 (effective February 28 through August 27, 2019) to close salmon fishing in specific reaches of the Trinity and Klamath rivers and make Klamath River Basin spring Chinook Salmon sport fishing regulations consistent with CESA protections. The emergency regulations were necessary to protect UKTSCS in these areas during its migratory and spawning phases.

Proposed Emergency Regulations

At its February 6, 2019 meeting, the Commission received testimony and letters from several members of the public, including the Del Norte County Board of Supervisors, and the Siskiyou County Board of Supervisors requesting that the Commission consider shortening the closed periods, or otherwise allow some take of UKTSCS during the spring Chinook Salmon fishing season. The concern expressed was that the complete closure by the February 2019 emergency regulations to spring Chinook Salmon fishing with UKTSCS designation as a candidate species under CESA would create economic harm to businesses (i.e., local tourism, fishing guides, motels, restaurants, and other infrastructure) associated with spring Chinook Salmon fishing. Such factors may be considered in authorizing some form of take under Section 2084 of the Fish and Game Code, which allows the Commission to authorize the taking of any fish by hook and line for sport that is listed as an endangered, threatened, or candidate species. The economic factors, coupled with the temporary and sudden nature of the Fish and Game Code Section 2085 protections for candidate species, constitutes an emergency that authorizes the Commission to address the matter through regulation.

The Commission directed the Department to explore potential changes to the February 2019 take prohibition for UKTSCS, and to conduct stakeholder outreach for the purpose of identifying potential fishing regulations that would mitigate economic impacts, while still providing protective UKTSCS regulatory measures.

The Department conducted three public meetings (Crescent City, March 7, 2019; Sacramento, March 18, 2019; Redding, March 26, 2019) to solicit public input on potential revisions to the February 2019 emergency UKTSCS regulations. The outcome of these meetings were majority consensus recommendations that included:

- July 1 opening dates for the lower Klamath River and the upper Trinity River that were otherwise closed by the February 2019 emergency rulemaking, and
- Daily bag limit of one Chinook Salmon; possession limit of two Chinook Salmon.

The Department took into consideration the following goals when formulating its recommendation to the Commission for re-opening parts of the Klamath and Trinity rivers and tributaries to a shortened salmon season, pursuant to Section 2084 of Fish and Game Code:

1. Focus on protecting wild spawning UKTSCS populations in Upper Salmon River, Upper South Fork Trinity River and mainstem Trinity River between Cedar Flat and Lewiston Dam;
2. Reduce, but not eliminate, harvest levels of UKTSCS during the candidacy period;
3. Direct the timing and location of any allowable take to areas with abundant hatchery stock available to fish; and
4. Provide some level of economic and fiscal benefits to the affected communities.

The Department's support of the consensus recommendations from the March 2019 outreach meetings aligns with the above goals, as follows:

1. The proposed July 1 opening date in the lower Klamath River protects the majority of wild-origin UKTSCS which enter and migrate through the lower Klamath River by reducing the spring Chinook Salmon fishing season by six months (opening July 1 instead of January 1). These wild salmon are destined for spawning in the Upper Salmon River and Upper South Fork Trinity River. Similarly, the July 1 opening date on the upper Trinity River protects wild UKTSCS by reducing the fishing season by six months.
2. Lowering the bag limit from historic levels still reduces harvest, which provides protection for the wild UKTSCS population.
3. The objectives for hatchery production of spring Chinook Salmon at Trinity River Hatchery are to mitigate for the loss of spring Chinook Salmon habitat and spawning above Lewiston and Trinity dams, and to provide for foregone sport and tribal harvest opportunities associated with this loss. The proposed regulatory action is consistent with the mitigation fishery objective. The July 1 opening date on the upper Trinity River protects UKTSCS, since the majority of the fish in this area between July and August are produced and stocked by the Trinity River Hatchery.
4. Integration of the feedback received during the February 6, 2019 Commission meeting and March 2019 Department outreach meetings into the proposed emergency regulations will help minimize economic hardship or loss associated with the February 2019 spring Chinook Salmon fishing closures. In particular, allowing fishing during the economically important Independence Day (July 4) weekend at the specified locations should provide significant economic benefits while minimizing effects to wild UKTSCS.

Regulatory Proposal

The proposed emergency regulation will amend the Klamath River Basin spring Chinook Salmon fishing regulations from the February 2019 emergency action to allow limited fishing opportunity on UKTSCS in the Klamath River downstream of the confluence of the Highway 96 bridge at Weitchpec, the Trinity River upstream of the mouth of the South Fork Trinity River, and the New River main stem downstream of the confluence of the East Fork to the confluence with the Trinity

River. Under the proposed emergency regulation, these areas will open July 1, 2019, and remain open until their regularly scheduled spring season close (Table 1, Figure 1), after which fall season regulations will apply (not shown). The New River reach is proposed to be opened to provide additional angling opportunity, but is not expected to have adverse impacts to UKTSCS since angler effort and access is very limited.

Table 1. Summary of regulatory changes in response to Commission acceptance of the UKTSCS petition.

Reach*	2018-2019 Regulations	February Emergency Regulations	Proposed Emergency Regulations
Klamath (Iron Gate Dam to Weitchpec) 7.50(b)(91.1)(E)2.a.	0 salmon bag and possession limit from Jan. 1-Aug. 14	Closed to salmon fishing through Aug. 14	No change
Klamath (Weitchpec to Klamath River mouth) 7.50(b)(91.1)(E)2.b.	2 salmon bag and possession limit from Jan. 1-Aug. 14	Closed to salmon fishing through Aug. 14	1 salmon bag limit; 2 salmon possession limit Jul. 1 – Aug 14.
Trinity (Old Lewiston Bridge to Hwy 299 bridge at Cedar Flat) 7.50(b)(91.1)(E)6.b.	2 salmon bag and possession limit from Jan. 1-Aug. 31	Closed to salmon fishing through Oct. 15	1 salmon bag limit; 2 salmon possession limit Jul. 1 – Aug 31.
Trinity (Hwy 299 bridge at Cedar Flat to Denny Road bridge at Hawkins Bar) 7.50(b)(91.1)(E)6.c.	2 salmon bag and possession limit from Jan. 1-Aug. 31	Closed to salmon fishing through Aug. 31	1 salmon bag limit; 2 salmon possession limit Jul. 1 – Aug 31.
New River (confluence of the East Fork to confluence w/ Trinity) 7.50(b)(91.1)(E)6.d.	Closed to salmon fishing	No change	1 salmon bag limit; 2 salmon possession limit Jul. 1 – Aug 31.
Trinity (Denny Road bridge at Hawkins Bar to mouth of the South Fork Trinity) 7.50(b)(91.1)(E)6.e.	2 salmon bag and possession limit from Jan. 1-Aug. 31	Closed to salmon fishing through Aug. 31	1 salmon bag limit; 2 salmon possession limit Jul. 1 – Aug 31.
Trinity (from the mouth of the South. Fork Trinity to confluence w/ Klamath River) 7.50(b)(91.1)(E)6.f.	0 salmon bag and possession limit from Jan. 1-Aug. 31	Closed to salmon fishing through Aug. 31	No change
*description of reach is abbreviated; refer to subsection 7.50(b)(91.1)(E), Title 14, CCR, for specific names of the bodies of water.			

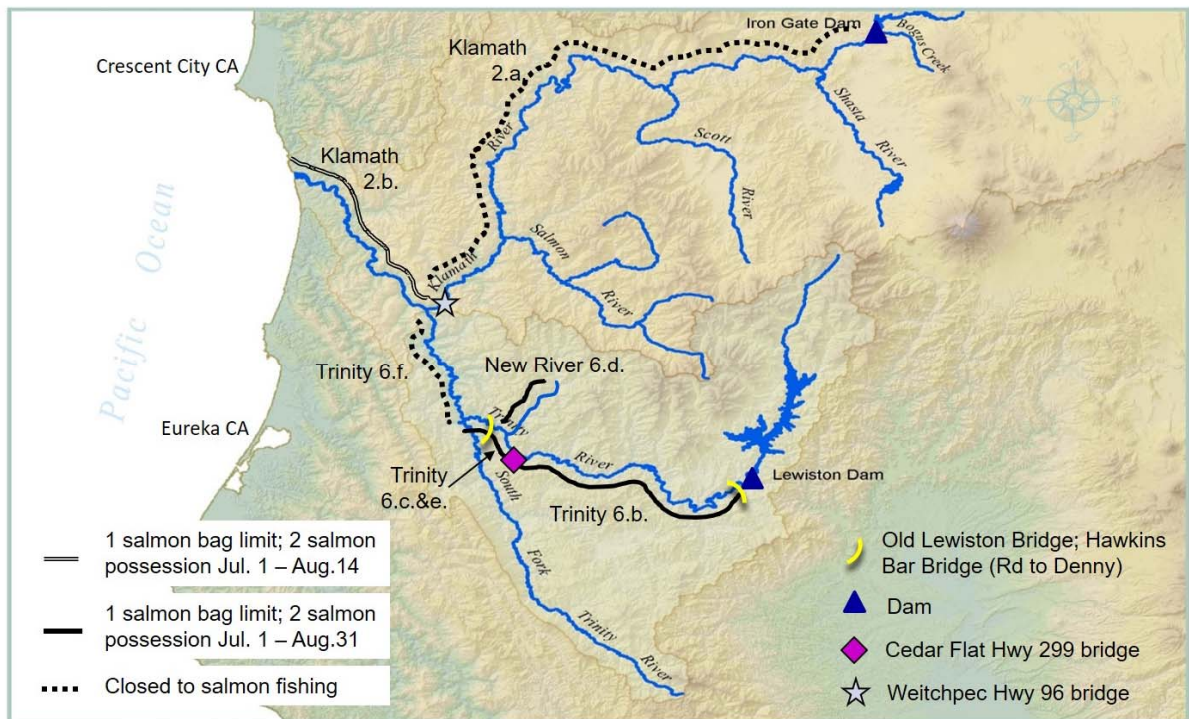


Figure 1. Map of proposed emergency regulations approved by the Commission, April 17, 2019

The proposed emergency regulation adds subsection (b)(91.2) to Section 7.50, Title 14, CCR, detailing the river reaches to be opened for fishing beginning July 1, 2019. The regulations in (b)(91.2) will supersede the February 2019 emergency regulations for the listed river reaches, and the spring Chinook Salmon regulations which would be in effect August 28, 2019 after the expiration of the February 2019 emergency regulations.

Emergency Finding

The proposed emergency regulations are necessary to alleviate the anticipated economic hardship of the February 2019 spring Chinook Salmon closure to local communities, while still providing protections to wild origin UKTSCS. Before the February 6, 2019 Commission meeting, the counties of Del Norte and Siskiyou expressed opposition to the listing of UKTSCS. As a resource-based economy, both Siskiyou and Del Norte counties articulated their reliance on fishing, tourism, and other recreational opportunity as vital components of their economies. This proposed emergency regulation aligns with the recommendation by the Del Norte County Board of Supervisors (letter dated March 26, 2019) to provide a level of protection of UKTSCS that balances the local economic pulse that the summer months of salmon fishing bring to the region. The latter months (May, June, July) are the most commonly fished months for salmon, and the July 1 opening date was selected to include fishing during the Independence Day (July 4) weekend for local and out-of- area anglers to have that angling opportunity. Some fishermen stay in the area following the spring salmon season to also participate in the Klamath River Fall Run Chinook Salmon season. Fishing pressure will be

shifted in time and place to protect the UKTSCS areas of greatest concern and allow for harvest of hatchery produced fish on the Trinity River.

Further, by July 1 most of the wild spawning UKTSCS have passed through the lower reaches of the Klamath and Trinity rivers to spawning grounds in higher reaches, thereby reducing the potential for take by anglers.

Spring Chinook Salmon fishing in the Klamath Basin has a long tradition in which generations of families have participated. Maintaining this opportunity, to some degree, will ensure that these opportunities persist into the future. Additionally, spring Chinook Salmon fishing provides recreational opportunities and salmon is a desired, natural food source which contributes to a healthy diet.

The Commission considered the following factors in determining whether an emergency exists:

- the magnitude of potential harm, or the existence of a crisis situation. If the complete closure of all spring Chinook Salmon fishing were to remain unchanged from the move to CESA candidacy status and the February 2019 emergency rulemaking, it would lead to economic harm for local businesses and communities, as shared with the Commission by Del Norte and Siskiyou counties. The anticipation of harm communicated to the Commission has a basis firmer than simple speculation.
- the immediacy of the need. Since all spring Chinook Salmon fishing reaches are closed to UKTSCS fishing by the move to CESA candidacy status and the February 2019 emergency rulemaking, this proposed rulemaking to open select reaches of the Trinity, Klamath, and New rivers requires expediency in effective date of the emergency regulations on or before July 1, 2019.

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 would result in a return closer to the pre-February 2019 baseline for spring Chinook Salmon fishing than the February 2019 emergency regulations. The proposed emergency regulation will re-open certain reaches of the Klamath and Trinity rivers for a limited duration of July 1-August 14 (Klamath) and July 1-August 31 (Trinity) with no new program costs or savings.
- (b) **Nondiscretionary Costs/Savings to Local Agencies:** The proposed emergency regulation is expected to result in a return to increased spring Chinook Salmon angler spending over the February 2019 emergency regulations. The open periods are proposed over historically high angler

visitation periods that should optimize the potential for increased visitor expenditures, sales tax and transient occupancy tax revenue to the affected areas [see the Addendum to the Economic and Fiscal Impact Statement (STD 399) for more detail].

- (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, 399 and 2084 of the Fish and Game Code, and to implement, interpret, or make more specific sections 200, 205, 265, 270, 316.5 and 2084 of the Fish and Game 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 preservation of the public peace, health and safety, or general welfare.

V. Studies, Reports, or Documents Supporting Factual Emergency

- (1) Letter from Del Norte County Board of Supervisors, December 11, 2018
- (2) Letter from Siskiyou County Board of Supervisors, January 22, 2019
- (3) Letter from Del Norte County Board of Supervisors, March 26, 2019
- (4) 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 the February 2019 UKTSCS emergency listing, as well as to identify the local fiscal impacts in terms of angler trips (see the Addendum to the STD 399 for more detail).

Informative Digest (Plain English Overview)

Proposed Regulatory Action

On February 6, 2019, the Fish and Game Commission (Commission) adopted emergency regulations to close spring Chinook Salmon fishing in specific reaches of the Trinity and Klamath rivers (effective February 28 through August 27, 2019). The purpose of this emergency regulation was to make Klamath River Basin spring Chinook Salmon sport fishing regulations consistent with protections for candidacy of Upper Klamath Trinity Spring Chinook Salmon (UKTSCS) under the California Endangered Species Act (CESA; Fish and Game Code Section 2085).

However, after conducting outreach and receiving testimony and letters from the public, as well as the Del Norte County Board of Supervisors and the Siskiyou County Board of Supervisors, the Commission adopted a second emergency action on April 17, 2019 to mitigate potential adverse economic and fiscal impacts of the complete prohibition of take, while still providing protective UKTSCS regulatory measures. Impacted parties include fishing guides, campgrounds, hotels, restaurants, gas stations and other businesses associated with Klamath Basin Spring Chinook Salmon sport fishing.

The proposed emergency regulatory action will allow limited sportfishing take of spring Chinook Salmon under Fish and Game Code Section 2084 to authorize the taking of any fish by hook and line for sport that is listed as an endangered, threatened, or candidate species. The economic factors, coupled with the temporary and sudden nature of the Fish and Game Code Section 2085 protections for candidate species, constitutes an emergency that authorizes the Commission to address the matter through regulation.

The proposed emergency regulation will amend the Klamath River Basin spring Chinook Salmon fishing regulations from the February 2019 emergency action to allow limited fishing opportunity on UKTSCS in the Klamath River downstream of the confluence of the Highway 96 bridge at Weitchpec, the Trinity River upstream of the mouth of the South Fork Trinity River, and the New River main stem downstream of the confluence of the East Fork to the confluence with the Trinity River. Under the proposed emergency regulation, these areas will open July 1, 2019, and remain open until their regularly scheduled spring season close, after which fall season regulations will apply.

The proposed emergency regulatory action will allow for harvest of spring Chinook Salmon in areas where the majority of fish encountered will be of Trinity River Hatchery origin, including the later July 1 season opening in the lower Klamath River and the upper Trinity River (above the confluence of the South Fork Trinity River).

Benefits:

The major benefit under the proposed emergency action is to ameliorate the economic losses associated with a total closure of the spring Chinook Salmon sport fishery from the February 2019 emergency regulation. Under this proposed emergency action, a portion of the spring Chinook Salmon season would be open to sport fishing, while the proposed July 1 opening date for spring Chinook Salmon sport fishing in the lower

Klamath River protects the majority of migrating wild UKTSCS. The proposed regulatory action also reduces the daily bag limit to one fish, a reduction from historical two fish daily bag limits for spring Chinook Salmon, providing additional protective measures. The July 1 proposed opening date will allow for partial economic activity in the region associated with the fishery which will enable businesses to maintain infrastructure critical to the sport fishing public.

The pursuit, catch and harvest of spring Chinook Salmon in the Klamath River Basin has a long tradition in which generations of families have participated. Maintaining this opportunity, to some degree, will ensure that these opportunities persist into the future. Additionally, spring Chinook Salmon fishing provides recreational opportunities and salmon is a desired, natural food source which contributes to a healthy diet.

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 authorize the taking of any fish by hook and line for sport that is listed as an endangered, threatened, or candidate species (Section 2084, 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.