

STAFF SUMMARY FOR DECEMBER 11-12, 2019

**21. UPPER-KLAMATH TRINITY SPRING CHINOOK SALMON SPORT FISHING
(CERTIFICATE OF COMPLIANCE)****Today's Item**Information Action

Consider authorizing publication of notice of intent to implement a certificate of compliance for the emergency regulations concerning upper Klamath-Trinity spring Chinook salmon sport fishing.

Summary of Previous/Future Actions

- | | |
|---|------------------------------------|
| • Adopted emergency regulations authorizing take under Section 2084 | Apr 17, 2019; Santa Monica |
| • Re-adoption of emergency regulations | Dec 11-12, 2019; Sacramento |
| • Today's notice hearing for certificate of compliance regulations | Dec 11-12, 2019; Sacramento |
| • Second re-adoption of emergency regulations | Feb 5-6, 2020; Sacramento |
| • Discussion of certificate of compliance regulations | Feb 5-6, 2020; Sacramento |
| • Adoption of certificate of compliance regulations authorizing take under Section 2084 | Apr 15-16, 2020; Sacramento |

Background

As of Feb 2019, upper Klamath-Trinity river spring Chinook salmon (UKTRS) is a candidate species under California Endangered Species Act (CESA), which confers CESA protections during candidacy. CESA also provides that FGC may adopt regulations to authorize take of certain threatened or endangered species and candidate species under California Fish and Game Code Section 2084. At its Apr 17, 2019 meeting, FGC adopted emergency regulations allowing limited take of UKTSCS at the end of the traditional spring season, while also providing substantial protection to UKTSCS, consistent with Fish and Game Code Section 2084 (see exhibits 4 and 5 for additional background). The Apr emergency regulations, codified in subsection 7.50(b)(91.2), went into effect Jun 26, 2019 and will expire Dec 24, 2019 unless readopted.

At today's meeting, DFW is requesting that FGC publish notice of its intent to adopt a certification of compliance of the emergency regulations (Exhibit 1). This proposed rulemaking will make permanent the Jun 2019 emergency regulations allowing limited sport fish take of UKTSCS in most of the same reaches. The proposed regulation would allow continued limited sport fishing take of UKTSCS on the Klamath River downstream of the Highway 96 bridge at Weitchpec between Jul 1 and Aug 14, and the Trinity River from the Old Lewiston Bridge to the mouth of the South Fork Trinity River between Jul 1 and Aug 31, after which fall season regulations under subsection 7.50(b)(91.1) will apply. The proposed regulations will supersede the Jan 1 opening dates prescribed in subsection 7.50(b)(91.1). DFW recommends that FGC not make permanent the Jul 1 through Aug 31 season on the New River reach due to the remoteness of the area and low observed interest in fishing the area.

STAFF SUMMARY FOR DECEMBER 11-12, 2019

After FGC makes its final decision on the UKTSCS petition under CESA, FGC may wish to take action to amend or repeal the permanent regulations depending on the outcome of that decision.

Significant Public Comments (N/A)**Recommendation**

FGC staff: Authorize publication of notice as requested by DFW.

DFW: Authorize publication of notice of intent to adopt the regulations as described in the Initial Statement of Reasons (ISOR, Exhibit 2).

Exhibits

1. [DFW memo, received Nov 25, 2019](#)
2. [ISOR, received Nov 25, 2019](#)
3. [Economic and Fiscal Impact Statement \(std. 399\)](#)
4. [Staff summary from Feb 2019 FGC meeting](#) (for background purposes only)
5. [Staff summary from Apr 2019 FGC meeting](#) (for background purposes only)
6. [DFW presentation](#)

Motion/Direction

Moved by _____ and seconded by _____ that the Commission authorizes publication of a notice of its intent to add subsection 7.50(b)(91.2) related to special order regarding take of Chinook salmon in anadromous waters of the Klamath River Basin downstream of Iron Gate and Lewiston dams.

State of California
Department of Fish and Wildlife

Memorandum

Date: November 25, 2019

Original received Nov 25, 2019 at 2:30 PM

To: Melissa Miller-Henson
Executive Director
Fish and Game Commission

From: Charlton H. Bonham
Director

Subject: Add Subsection (b)(91.2) of Section 7.50, Title 14, CCR, RE: Upper-Klamath Trinity Spring Chinook Salmon Sport Fishing, Certificate of Compliance Initial Statement of Reasons (ISOR)

Please find attached the Initial Statement of Reasons (ISOR) package for Upper Klamath-Trinity Spring Chinook Salmon (UKTSCS) sport fishing regulations. The proposed certificate of compliance rulemaking will make permanent the June 2019 emergency addition of subsection (b)(91.2) to Section 7.50 allowing limited fishing opportunity of UKTSCS in most of the same reaches of the Klamath River Basin. This proposed certificate of compliance rulemaking would allow continued limited sport fishing take of UKTSCS on the Klamath River downstream of the Highway 96 bridge at Weitchpec between July 1 and August 14, and the Trinity River between the Old Lewiston Bridge and the mouth of the South Fork Trinity River between July 1 and August 31, after which fall season regulations under subsection (b)(91.1) of Section 7.50 will apply. The Department is proposing to remove the language for the New River reach (main stem downstream of the confluence of the East Fork to the confluence with the Trinity River between July 1 and August 31) due to the remoteness of the area, and low observed interest and fishing in this area.

If you have any questions or need additional information, please contact Kevin Shaffer, Chief, Fisheries Branch, by telephone at (916) 327-8841 or by e-mail at Kevin.Shaffer@wildlife.ca.gov. The public notice should identify Senior Environmental Scientist, Wade Sinnen, as the Department's point of contact for this rulemaking. Mr. Sinnen can be reached at (707) 822-5119, or by email at Wade.Sinnen@wildlife.ca.gov.

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DRAFT

State of California
Fish and Game Commission
Initial Statement of Reasons for Regulatory Action
Add subsection (b)(91.2) to Section 7.50,
Title 14, California Code of Regulations
(Certificate of Compliance)
Re: Upper-Klamath Trinity spring Chinook salmon sport fishing

I. Date of Initial Statement of Reasons: November 25, 2019

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing

Date: December 11, 2019

Location: Sacramento, CA

(b) Discussion Hearing

Date: February 6, 2020

Location: Sacramento, CA

(c) Adoption Hearing

Date: April 16, 2019

Location: Sacramento, CA

III. Description of Regulatory Action

(a) Statement of Specific Purpose of Regulatory Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary

Unless otherwise specified, all section references in this document are to Title 14 of the California Code of Regulations.

Klamath River Basin Salmon

The Klamath River Basin, which consists of the Klamath River and Trinity River systems, is managed for fall-run Chinook Salmon (*Oncorhynchus tshawytscha*) through a cooperative system of state, federal, and tribal management agencies. For fall-run Chinook Salmon, the Fish and Game Commission (Commission) annually adopts regulations to match federal fishery management goals.

The Klamath River Basin also supports spring-run Chinook Salmon, also referred to as upper Klamath-Trinity spring Chinook Salmon (UKTSCS). For purpose of this and other regulatory documents drafted for Commission consideration, the same run of salmon in this river basin may be referred to as Klamath River Spring Chinook (KRSC), "Klamath Spring Chinook," "Trinity Spring Chinook," or simply "spring-run Chinook." Naturally produced spring-run Chinook Salmon in this basin are both temporally and spatially separated from fall-run Chinook Salmon. The spring-run in-river sport fishery is not subject to federal fishery management considerations, but is instead managed by the Commission via general basin seasons, daily bag limit, and possession limit regulations. Regular creel surveys and tag returns from anglers provide information on the status of spring-run Chinook Salmon in the Klamath River Basin.

River entry, harvest and spawn timing of spring-run and fall-run Chinook Salmon is estimated in two principal ways: via recovery of coded-wire tags, and presumptively based on basin location and date of observation. Two Klamath basin hatcheries produce Chinook Salmon. Iron Gate Hatchery produces fall-run Chinook Salmon, and Trinity River Hatchery produces both fall-run and spring-run Chinook Salmon. Twenty-five percent of all Chinook Salmon produced at the two basin hatcheries are marked with an adipose fin-clip and injected with a coded-wire tag (CWT). The CWT identifies the race (spring-run or fall-run), hatchery origin, release type (fingerling or yearling) and date of release. Recovery of CWTs allows for estimation of the number of hatchery fish by race observed in harvest and spawning surveys and at hatcheries. In areas where recoveries of hatchery fish are limited or non-existent, Chinook Salmon observations are classified by the location and date of the observation. Chinook Salmon entering the Klamath River mouth between April and July are presumed to be spring-run Chinook Salmon based on their earlier entry timing compared to fall-run. The same is true for tributaries such as the Salmon River and South Fork Trinity River. Fish encountered in these areas prior to August 15 are considered spring-run Chinook Salmon. Additionally, naturally spawning populations of spring-run Chinook Salmon typically utilize higher elevation spawning areas higher up in watersheds. In all areas of the basin, there can be some overlap between the two races of Chinook Salmon, particularly the upper Trinity River mainstem population, where spring-run Chinook Salmon are no longer able to migrate to their historical upper basin holding and spawning habitat due to Trinity and Lewiston dams.

Harvest estimation of the two Chinook Salmon races is accomplished using the time and area attributes discussed above, i.e. cutoff dates, through CWT analyses, or in the case of the Trinity River, using tags of known Chinook race. These tags are applied at Department of Fish and Wildlife (Department) weirs and returned by anglers. The proportion of each Chinook Salmon race (spring-run or fall-run) that is comprised of hatchery produced fish varies annually; however due to the reduced size of the spring-run Chinook Salmon population, hatchery produced fish represent a higher proportion of the overall run when compared to fall-run Chinook Salmon.

Spring-run Chinook Salmon Listing Background

On July 23, 2018, the Commission received a petition to list 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 following actions were then taken by the Commission, in tandem with the Department:

- **August 2, 2018** - The Commission referred the petition to the Department for an evaluation of the merits of the petition.
- **November 27, 2018** - the Department submitted its evaluation report and recommended that the Commission accept and consider the petition.
- **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 California Endangered Species Act (CESA) take prohibition measures (Fish and Game Code Section 2085).
- The Department also recommended that the Commission adopt emergency regulations to help protect UKTSCS from take during its migratory and spawning phases by minimizing confusion by sport anglers who may not have been aware of the CESA protections on UKTSCS as a candidate species.
- The Commission adopted the emergency regulation on February 6, 2019 (effective February 28 through August 27, 2019) to close all salmon fishing in anadromous waters of the Trinity and Klamath rivers to make spring Chinook Salmon sport fishing regulations consistent with CESA protections (February 2019 emergency regulations).
- At the same meeting, the Commission received testimony and letters from several members of the public, including the Del Norte County and Siskiyou County boards of supervisors requesting that the Commission consider shortening the closed periods, or otherwise allow some sport fish take during the spring-run Chinook Salmon fishing season. The concern expressed was that the complete closure to spring-run Chinook Salmon fishing would create economic harm to businesses (i.e., local tourism, fishing guides, motels, restaurants, and other infrastructure).
 - 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. Based on the economic factors, coupled with the temporary and sudden nature of the Fish and Game Code Section 2085 protections for candidate species, the Commission requested the Department prepare a recommendation in consideration of Fish and Game Code Section 2084 to address the economic concerns.
- **March 2019** – The Department held stakeholder meetings March 7, 2019 in Crescent City, March 18, 2019 in Sacramento, and March 26, 2019 in Redding to discuss various options with stakeholders and the public to inform regulatory options for some level of recreational (sport fishing) take of spring-run Chinook Salmon during candidacy.
- **April 17, 2019** – the Department presented to the Commission the Department’s guiding principles for considering options pursuant to Fish and Game Code Section 2084, as well as a summary of stakeholder recommendations to balance economic concerns for the locally affected communities.

The guiding principles were:

- 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;
- Reduce, but not eliminate, harvest levels of UKTSCS during the candidacy period;
- Direct the timing and location of any allowable take to areas with abundant hatchery stock available to fish; and
- Provide some level of economic and fiscal benefits to the affected communities.

At its April 17, 2019 meeting, the Commission adopted emergency regulations that provide substantial protection to UKTSCS, but allow limited take at the end of the traditional spring season, consistent with Fish and Game Code Section 2084.

- **June 7, 2019** – the Commission provided notice of proposed adoption of an emergency regulation to add subsection (b)(91.2) to Section 7.50 detailing the river reaches to be opened for fishing beginning July 1, 2019, superseding the February 2019 emergency regulations for the listed river reaches. These emergency regulations allowed limited fishing opportunity of UKTSCS on the Klamath River downstream of the Highway 96 bridge at Weitchpec between July 1 and August 14, and the Trinity River from the Old Lewiston Bridge to 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 between July 1 and August 31 (June 2019 emergency regulation). The proposal aligned with the Department’s guiding principles, in line with Fish and Game Code Section 2084, as follows:
 - 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-run 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.
 - Lowering the bag limit from historic levels still reduces harvest, which provides protection for the wild UKTSCS population.
 - The objectives for hatchery production of spring-run Chinook Salmon at Trinity River Hatchery are to mitigate for the loss of spring-run 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 objectives. The July 1 opening date on the upper Trinity River protects wild-origin UKTSCS, since the majority of the fish in this area between July and August are produced and stocked by the Trinity River Hatchery.
 - Integration of the feedback received during the February 6, 2019 Commission meeting and March 2019 Department outreach meetings into the proposed emergency regulations helped minimize economic hardship or loss associated with the February 2019 spring-run Chinook Salmon fishing closures. In particular, allowing fishing during the economically important Independence Day

(July 4) weekend at the specified locations was intended to provide economic benefits, while minimizing effects to wild-origin UKTSCS.

- **June 26, 2019** – the June 2019 emergency regulations became effective, overriding and superseding the February 2019 emergency regulations. The June 2019 emergency regulations are set to expire December 24, 2019.
- **December 11, 2019** – the Commission is presenting within this document a certificate of compliance rulemaking to make permanent the June 2019 emergency regulation, pursuant to Fish and Game Code Section 2084, with some adjustments.

Regulatory Proposal

The proposed rulemaking will make permanent the June 2019 emergency addition of subsection (b)(91.2) to Section 7.50 allowing limited fishing opportunity of UKTSCS in most of the same reaches. The proposed regulations would allow continued limited take of UKTSCS on the Klamath River downstream of the Highway 96 bridge at Weitchpec between July 1 and August 14, and the Trinity River from the Old Lewiston Bridge to the mouth of the South Fork Trinity River between July 1 and August 31 (Figure 1, Table 1), after which fall season Chinook Salmon regulations under subsection (b)(91.1) of Section 7.50 will apply (not shown). The Department is recommending that the Commission not include the language for the New River reach (main stem downstream of the confluence of the East Fork to the confluence with the Trinity River between July 1 and August 31) due to the remoteness of the area, and low observed interest and fishing in this area.

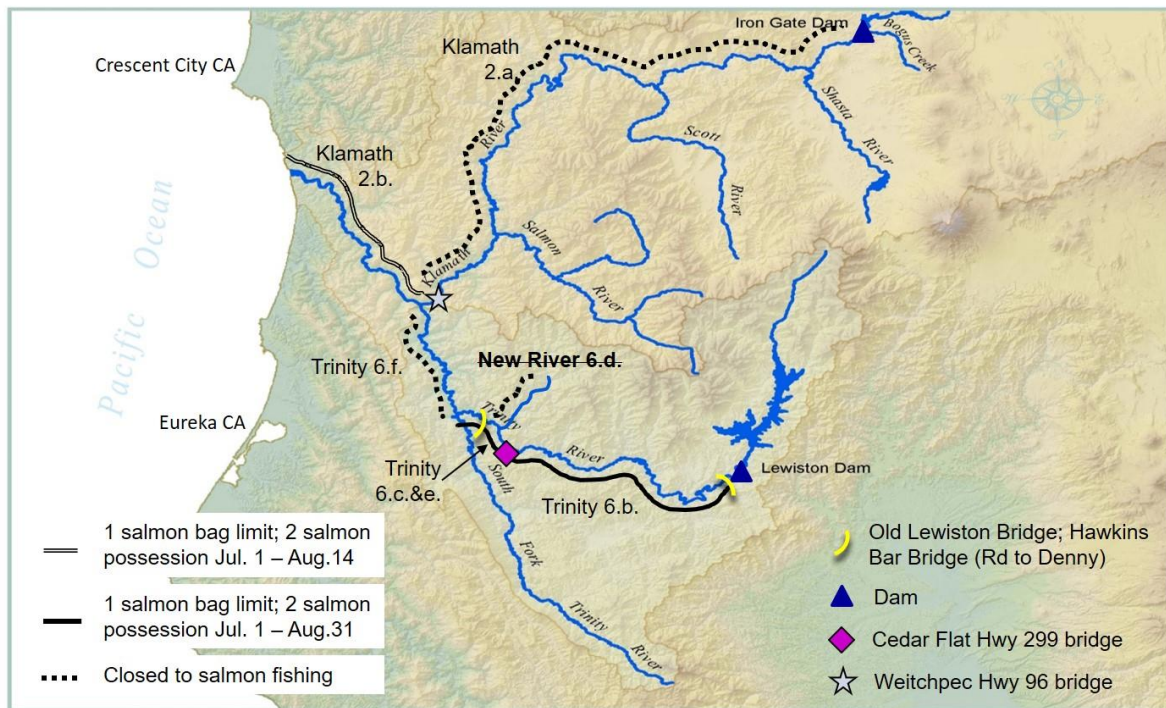


Figure 1. Map of proposed regulations allowing continued sport fish take of spring-run Chinook Salmon in the Klamath River Basin during CESA candidacy.

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

Reach*	Subsection 7.50(b)(91.1) regulation to be superseded	February 2019 Emergency Regulations	June 2019 Emergency Regulations	Proposed Cert. of Compliance 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	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.	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.	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.	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	Closed to salmon fishing
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.	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	No change

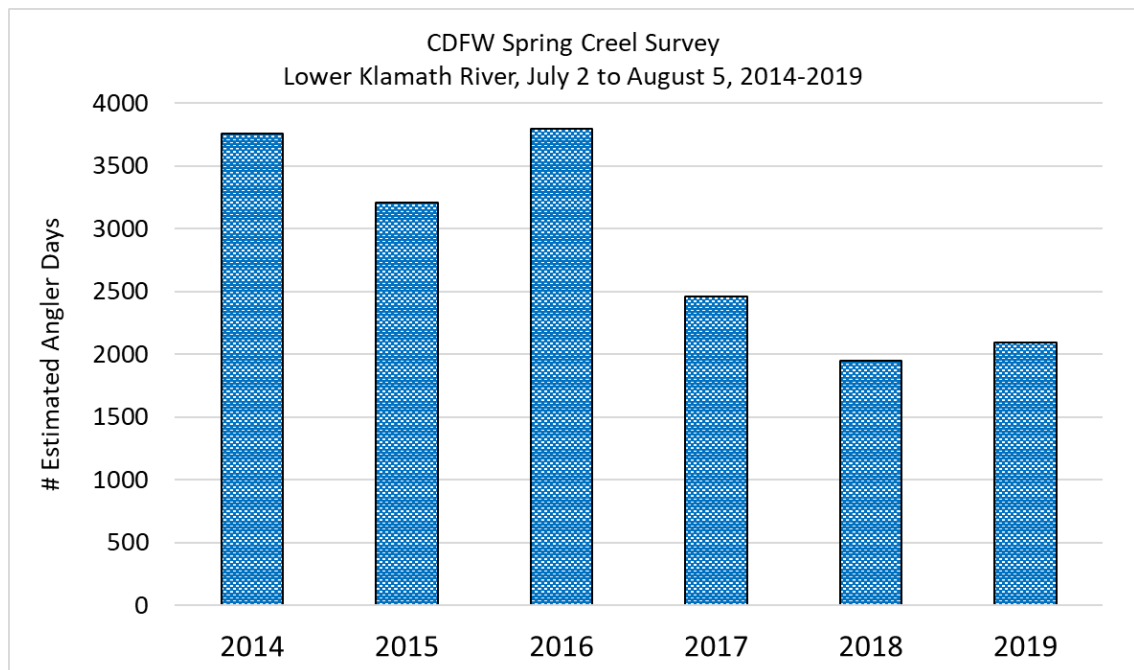
*description of reach is abbreviated; refer to subsection 7.50(b)(91.1)(E), for specific names of the bodies of water.

Making permanent this six to eight-week window reduces potential economic impacts and helps mitigate the risk of hardship to local businesses and communities from a full closure to fishing under CESA candidacy, while protecting UKTSCS during its migratory and spawning phases. Allowing limited take at the end of the traditional spring season for sport fishing by

hook and line of UKTSCS during its candidacy is consistent with Fish and Game Code Section 2084.

Klamath River Basin spring creel surveys are performed annually by the Department and its partners. These surveys inform the Department of angler fishing effort in the number of angler days (synonymous with the number of trips), and hours spent. The preliminary creel data gathered during the late period of the 2019 spring season (which begins May 5) suggest that the maintenance of fishing on the lower Klamath River and the upper Trinity River during the month of July (where the creel survey ended August 5) appears to have been successful at maintaining angler days for the river reaches, and thus appears to have a minor economic benefit relative to 2018 (see Figure 1, and the Addendum to the STD 399 for more detail). The 2019 survey shows a minor uptick in the number of estimated angler days from 2018 (147 days – Figure 2).

Figure 2. Angler Days in the Lower Klamath River by Department angler creel survey July 2 to August 5, 2014 – 2019.



(b) Goals and Benefits of the Regulation

Compared to the full closure under CESA, the proposed regulations provide increased recreational take of Chinook Salmon during the peak of the season, starting July 1 and through August 14 (Klamath River – six weeks) or August 31 (Trinity River – eight weeks). The 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-run Chinook Salmon fishing season by six months (opening July 1 instead of January 1). Similarly, the July 1 opening date on the upper Trinity River protects wild UKTSCS by reducing the fishing season by six months.

Making permanent this six to eight-week window reduces potential economic impacts and helps mitigate the risk of hardship to local businesses and communities from a full closure to fishing under the CESA candidacy, while protecting UKTSCS during its migratory and spawning phases.

(c) Authority and Reference Sections from Fish and Game Code for Regulation

Authority cited: Sections 200, 205, 265, 270, 315, 316.5, 399 and 2084, Fish and Game Code.

Reference: Sections 200, 205, 265, 270, 316.5 and 2084, Fish and Game Code.

(d) Specific Technology or Equipment Required by Regulatory Change

None.

(e) Identification of Reports or Documents Supporting Regulation Change

None.

(f) Public Discussions of Proposed Regulations Prior to Notice Publication

The Department held stakeholder meetings March 7, 2019 in Crescent City, March 18, 2019 in Sacramento and March 26, 2019 in Redding to discuss various options with stakeholders and the public.

At its April 17, 2019 meeting, the Commission discussed allowing limited sport fish take during the candidacy period of UKTSCS, which precipitated the adoption of the June 2019 emergency regulation.

IV. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change

No alternatives were identified by or brought to the attention of Commission staff that would have the same desired regulatory effect.

(b) No Change Alternative

Without this certificate of compliance rulemaking, the current addition of subsection (b)(91.2) of Section 7.50 will expire in 2020. The sport fishing season on the reaches of rivers in the Klamath River Basin would revert to the pre-emergency regulations, whereby the sport fish take of UKTSCS would be prohibited under CESA.

V. Mitigation Measures Required by Regulatory Action

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. 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 Businesses, 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. Making permanent the June 2019 emergency regulations via the certificate of compliance process for would both create permanent incentives for more tourists to travel to coastal northern California, and help stimulate the local economies in Del Norte, Siskiyou, Trinity and neighboring counties.

(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; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The Commission does not anticipate any significant impact on the creation or elimination of jobs, and on the creation of new business, on elimination of existing businesses, or the expansion of businesses in California. This is due to the re-opening of limited sport fishing take during the peak of the season, starting July 1, and through August 14 (Klamath River) or August 31 (Trinity River). Compared to the full closure under CESA, the proposed regulation provides increased recreational fishing opportunity for the six to eight-week window between July and August in the Klamath River Basin.

The Commission anticipates benefits to the health and welfare of California residents through the activity of fishing for salmon. The Commission does not anticipate any benefits to worker safety because the proposed regulation will not affect existing working conditions. The Commission anticipates a neutral impact to the state's environment, as the majority of fish present in the river reaches during the limited six- or eight-week windows are believed to be of hatchery origin.

(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, Government Code

None.

(h) Effect on Housing Costs

None.

VII. Economic Impact Assessment

(a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State

The Commission does not anticipate any significant impact on the creation or elimination of jobs within the state due to the re-opening of limited sport fishing take during the peak of the season, starting July 1, and through August 14 (Klamath River) or August 31 (Trinity River). Compared to the full closure under CESA, the proposed increase in recreational fishing opportunity and angler spending in the affected areas for a six to eight-week period is not likely to be sufficient to induce the creation or elimination of jobs.

(b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State

The Commission does not anticipate any significant impact on the creation of new businesses or the elimination of existing businesses within the state due to the re-opening of limited sport fishing take during the peak of the season, starting July 1, and through August 14 (Klamath River) or August 31 (Trinity River). Compared to the full closure under CESA, the proposed increase in recreational fishing opportunity and angler spending in the affected areas for a six to eight-week period is not likely to be sufficient to induce the creation of new businesses or elimination of existing businesses.

(c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State

The Commission does not anticipate any significant impact on the expansion of businesses currently doing business within the state due to the re-opening of limited sport fishing take during the peak of the season, starting July 1, and through August 14 (Klamath River) or August 31 (Trinity River). Compared to the full closure due to CESA, the proposed increase in recreational fishing opportunity and angler spending in the affected areas for a six to eight week period is not likely to be sufficient to induce the expansion of businesses as the number of visitors is expected to be within historical ranges.

(d) Benefits of the Regulation to the Health and Welfare of California Residents

The Commission anticipates benefits to the health and welfare of California residents through the activity of fishing for salmon.

(e) Benefits of the Regulation to Worker Safety

The Commission does not anticipate any benefits to worker safety because the proposed regulation will not affect existing working conditions.

(f) Benefits of the Regulation to the State's Environment

The Commission anticipates a neutral impact to the state's environment, as the majority of fish present in the river reaches during the limited six- or eight-week windows are believed to be of hatchery origin.

(g) Other Benefits of the Regulation

None.

Informative Digest/Policy Statement Overview

Unless otherwise specified, all section references in this document are to Title 14 of the California Code of Regulations.

Background

The Klamath River Basin, which consists of the Klamath River and Trinity River systems, is managed for fall-run Chinook Salmon (*Oncorhynchus tshawytscha*) through a cooperative system of state, federal, and tribal management agencies.

The spring-run Chinook Salmon in-river sport fishery is not subject to federal fishery management considerations, but is instead managed by the Fish and Game Commission (Commission) via general basin seasons, daily bag limit, and possession limit regulations. Regular creel surveys and tag returns from anglers provide information on the status of spring-run Chinook Salmon in the Klamath River Basin. (Spring Chinook salmon may also be referred to as upper Klamath-Trinity spring Chinook Salmon - UKTSCS, Klamath River Spring Chinook -KRSC, "Klamath Spring Chinook," "Trinity Spring Chinook," or simply "spring-run Chinook".)

In February 2019, the Commission accepted a petition to list UKTSCS, which confers candidacy status. Under the California Endangered Species Act (CESA), take prohibition measures apply (Fish and Game Code Section 2085). The Commission adopted emergency regulations in February 2019 for certain portions of the Klamath and Trinity Rivers to prohibit take and help protect UKTSCS by minimizing confusion by sport anglers who may not have been aware of the CESA candidacy protections. The Commission also received testimony and letters from the public, as well as the Del Norte County and Siskiyou County boards of supervisors that a complete prohibition on take of spring-run Chinook Salmon would create economic harm to businesses. The public requested that the Commission consider shortening the closed periods, or otherwise allow some sport fish take during the spring-run Chinook Salmon fishing season.

The California Department of Fish and Wildlife (Department) assessed the ability under Section 2084 of the Fish and Game Code to allow for some level of sport fishing take by hook and line, while still providing protective spring-run Chinook Salmon regulatory measures. On April 17, 2019, the Commission adopted emergency regulations to mitigate the potential adverse economic and fiscal impacts of a complete prohibition of take. The emergency regulations, which went into effect June 26, 2019, allow limited sport fishing take of spring-run Chinook Salmon on the Klamath River downstream of the Highway 96 bridge at Weitchpec between July 1 and August 14, and the Trinity River from the Old Lewiston Bridge to 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 between July 1 and August 31.

Regulatory Proposal

This proposed rulemaking will make permanent the June 2019 emergency regulations allowing limited sport fish take of UKTSCS in most of the same reaches. The proposed regulation would allow continued limited sport fishing take of UKTSCS on the Klamath River downstream of the Highway 96 bridge at Weitchpec between July 1 and August 14, and the Trinity River from the Old Lewiston Bridge to the mouth of the South Fork Trinity River between July 1 and August 31, after which fall season regulations under subsection (b)(91.1) of Section 7.50 will apply. This proposed rulemaking

does not make permanent the language for the New River reach (main stem downstream of the confluence of the East Fork to the confluence with the Trinity River between July 1 and August 31).

Benefits of the Proposed Regulations

Compared to the full closure under CESA, the proposed regulations provide increased recreational fishing opportunity for a July 1 start during the peak of the season, and through August 14 (Klamath River – six weeks) or August 31 (Trinity River – eight weeks). The 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.

Making permanent this six to eight-week window reduces potential economic impacts and helps mitigate the risk of hardship to local businesses and communities from a full closure to fishing under the CESA candidacy, while protecting UKTSCS during its migratory and spawning phases. Allowing limited take at the end of the traditional spring season for sport fish by hook and line of UKTSCS during its candidacy is consistent with Fish and Game Code Section 2084.

Consistency and Compatibility with Existing 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 spring Chinook Salmon sport fishing in the Klamath River Basin.

Proposed Regulatory Language

Subsection (b)(91.2) is added to Section 7.50, Title 14, CCR, as follows:

§ 7.50. Alphabetical List of Waters with Special Fishing Regulations.

. . . [No changes to subsections (a) through (b)(91.1)]

(91.2) Special Order Regarding Take of Chinook Salmon in Anadromous Waters of the Klamath River Basin Downstream of Iron Gate and Lewiston dams.

Notwithstanding subsection (b)(91.1) of Section 7.50, between January 1 and August 14 on the Klamath River and between January 1 and August 31 on the Trinity River, and South Fork Trinity River, Chinook Salmon may not be taken or possessed except as authorized on the identified segments of rivers as listed in the following table. All other restrictions apply.

<u>Body of Water</u>	<u>Open Season and Special Regulations</u>	<u>Daily Bag and Possession Limit</u>
<u>(A) Klamath River segment identified in subsection 7.50(b)(91.1)(E)2.b.</u>	<u>July 1 through August 14</u>	<u>1 Chinook Salmon 2 Chinook Salmon in possession</u>
<u>(B) Trinity River segment identified in subsection 7.50(b)(91.1)(E)6.b.</u>	<u>July 1 through August 31</u>	<u>1 Chinook Salmon 2 Chinook Salmon in possession</u>
<u>(C) Trinity River segment identified in subsection 7.50(b)(91.1)(E)6.c.</u>	<u>July 1 through August 31</u>	<u>1 Chinook Salmon 2 Chinook Salmon in possession</u>
<u>(D) Trinity River segment identified in subsection 7.50(b)(91.1)(E)6.e.</u>	<u>July 1 through August 31</u>	<u>1 Chinook Salmon 2 Chinook Salmon in possession</u>

. . . [No changes subsections 7.50(b)(92) through (b)(212)]

* Wild Chinook Salmon are those not showing a healed adipose fin clip and not showing a healed left ventral fin clip.

**Hatchery trout or steelhead in anadromous waters are those showing a healed adipose fin clip (adipose fin is absent). Unless otherwise provided, all other trout and steelhead must be immediately released. Wild trout or steelhead are those not showing a healed adipose fin clip (adipose fin is present).

Note: Authority cited: Sections 200, 205, 265, 270, 315, 316.5, 399 and 2084, Fish and Game Code.
Reference: Sections 200, 205, 265, 270, 316.5 and 2084, Fish and Game Code.

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**SAM Section 6601-6616

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT

DEPARTMENT NAME Fish and Game Commission	CONTACT PERSON Margaret.Duncan@	EMAIL ADDRESS wildlife.ca.gov	TELEPHONE NUMBER 916 653-4674
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Add Subsect. (b)(91.2), Sec. 7.50, Title 14, CCR, Re: Klamath River Basin Spring Chinook Salmon Sport Fishing			NOTICE FILE NUMBER Z

A. ESTIMATED PRIVATE SECTOR COST IMPACTS *Include calculations and assumptions in the rulemaking record.*

1. Check the appropriate box(es) below to indicate whether this regulation:

- a. Impacts business and/or employees e. Imposes reporting requirements
 b. Impacts small businesses f. Imposes prescriptive instead of performance
 c. Impacts jobs or occupations g. Impacts individuals
 d. Impacts California competitiveness h. None of the above (Explain below):

Positive business revenue and fiscal impacts are anticipated.

If any box in Items 1 a through g is checked, complete this Economic Impact Statement.***If box in Item 1.h. is checked, complete the Fiscal Impact Statement as appropriate.***2. The Fish and Game Commission estimates that the economic impact of this regulation (which includes the fiscal impact) is:
(Agency/Department)

- Below \$10 million
 Between \$10 and \$25 million
 Between \$25 and \$50 million
 Over \$50 million *[If the economic impact is over \$50 million, agencies are required to submit a Standardized Regulatory Impact Assessment as specified in Government Code Section 11346.3(c)]*

3. Enter the total number of businesses impacted: 30-50Describe the types of businesses (Include nonprofits): Fishing boat owners, tackle stores, guides, food, fuel, lodging, camping vendorsEnter the number or percentage of total businesses impacted that are small businesses: 80%4. Enter the number of businesses that will be created: 0 eliminated: 0Explain: Anticipated changes in fishing activity are not expected to be large enough to induce business loss/creation.5. Indicate the geographic extent of impacts: Statewide
 Local or regional (List areas): Trinity, Siskiyou, Del Norte, and Humboldt Counties6. Enter the number of jobs created: 0 and eliminated: 0Describe the types of jobs or occupations impacted: Fishing guides, retail sales clerks in sport fish-serving businesses such as:
tackle stores, food, fuel, lodging, and camping vendors.7. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here? YES NO

If YES, explain briefly: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)**B. ESTIMATED COSTS** *Include calculations and assumptions in the rulemaking record.*

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ 0
- a. Initial costs for a small business: \$ 0 Annual ongoing costs: \$ 0 Years: 1
- b. Initial costs for a typical business: \$ 0 Annual ongoing costs: \$ 0 Years: 1
- c. Initial costs for an individual: \$ 0 Annual ongoing costs: \$ 0 Years: 1
- d. Describe other economic costs that may occur: No new costs.
2. If multiple industries are impacted, enter the share of total costs for each industry: N/A
3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. *Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.* \$ N/A
4. Will this regulation directly impact housing costs? YES NO
If YES, enter the annual dollar cost per housing unit: \$ _____
Number of units: _____
5. Are there comparable Federal regulations? YES NO
Explain the need for State regulation given the existence or absence of Federal regulations: Fish and Game Code (FGC) sections 200 and 205
Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ N/A

C. ESTIMATED BENEFITS *Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. Briefly summarize the benefits of the regulation, which may include among others, the This action will enable limited sport fishing take Klamath River Basin health and welfare of California residents, worker safety and the State's environment: spring Chinook Salmon (UKTSCS)
that should benefit sport anglers and the area businesses that support sport fishing activities. No impacts on worker safety are anticipated. Neutral impacts to the state's environment are anticipated as the majority of UKTSCS in the river reaches during the reg. period are believed to be hatchery fish.
2. Are the benefits the result of: specific statutory requirements, or goals developed by the agency based on broad statutory authority?
Explain: Statute provides the Fish & Game Commission authority to establish sport fishing regulations (FGC sections 200 and 205)
3. What are the total statewide benefits from this regulation over its lifetime? \$ 372,130 - 400,226
4. Briefly describe any expansion of businesses currently doing business within the State of California that would result from this regulation: Any changes
in fishing activity levels are not expected to be sufficient enough to induce the expansion of businesses currently doing business within the State.

D. ALTERNATIVES TO THE REGULATION *Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: No Alternatives were identified that would
have the same desired regulatory effect as the proposed regulation. The No change alternative would eliminate subsection (b)(91.2) of section 7.50 in 2020,
whereby the sport fish take of UKTSCS would be prohibited under the California Endangered Species Act

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation: Benefit: \$ 372K - 400K Cost: \$ 0

Alternative 1: Benefit: \$ N/A Cost: \$ N/A

Alternative 2: Benefit: \$ N/A Cost: \$ N/A

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: Benefits = estimated (Jul - Aug UKTSCS salmon angler days) x angler spending/day) x (the multiplier: 1.662) = total economic impact.

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? YES NO

Explain: Fisheries management regulations traditionally involve setting harvest quotas, seasons, bag and possession limits.

E. MAJOR REGULATIONS *Include calculations and assumptions in the rulemaking record.*

California Environmental Protection Agency (Cal/EPA) boards, offices and departments are required to submit the following (per Health and Safety Code section 57005). Otherwise, skip to E4.

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million? YES NO

***If YES, complete E2. and E3
If NO, skip to E4***

2. Briefly describe each alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

(Attach additional pages for other alternatives)

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 1: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 2: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

4. Will the regulation subject to OAL review have an estimated economic impact to business enterprises and individuals located in or doing business in California exceeding \$50 million in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through 12 months after the major regulation is estimated to be fully implemented?

YES NO

If YES, agencies are required to submit a Standardized Regulatory Impact Assessment (SRIA) as specified in Government Code Section 11346.3(c) and to include the SRIA in the Initial Statement of Reasons.

5. Briefly describe the following:

The increase or decrease of investment in the State: _____

The incentive for innovation in products, materials or processes: _____

The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT *Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

1. Additional expenditures in the current State Fiscal Year which are reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

a. Funding provided in _____

Budget Act of _____ or Chapter _____, Statutes of _____

b. Funding will be requested in the Governor's Budget Act of _____

Fiscal Year: _____

2. Additional expenditures in the current State Fiscal Year which are NOT reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

Check reason(s) this regulation is not reimbursable and provide the appropriate information:

a. Implements the Federal mandate contained in _____

b. Implements the court mandate set forth by the _____ Court.

Case of: _____ vs. _____

c. Implements a mandate of the people of this State expressed in their approval of Proposition No. _____

Date of Election: _____

d. Issued only in response to a specific request from affected local entity(s).

Local entity(s) affected: _____

e. Will be fully financed from the fees, revenue, etc. from: _____

Authorized by Section: _____ of the _____ Code;

f. Provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each;

g. Creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

3. Annual Savings. (approximate)

\$ _____

4. No additional costs or savings. This regulation makes only technical, non-substantive or clarifying changes to current law regulations.

5. No fiscal impact exists. This regulation does not affect any local entity or program.

6. Other. Explain The proposed regulation to permit limited sport fishing take of UKTSCS at high visitation periods is expected to increase local sales and transient occupancy tax revenues to local governments in the impacted areas (see Addendum).

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

FISCAL IMPACT STATEMENT (CONTINUED)

B. FISCAL EFFECT ON STATE GOVERNMENT *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

It is anticipated that State agencies will:

a. Absorb these additional costs within their existing budgets and resources.

b. Increase the currently authorized budget level for the _____ Fiscal Year

2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

3. No fiscal impact exists. This regulation does not affect any State agency or program.

4. Other. Explain The proposed regulation to allow limited sport fishing take of UKTSCS in portions of the Klamath River Basin may result in small gains in California state sales tax and may increase salmon report card sales revenue to the CA Department of Fish and Wildlife (see Addendum).

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

3. No fiscal impact exists. This regulation does not affect any federally funded State agency or program.

4. Other. Explain _____

FISCAL OFFICER SIGNATURE

DATE



The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.

AGENCY SECRETARY

DATE



Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399.

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER

DATE



STAFF SUMMARY FOR FEBRUARY 6, 2019

20B.UPPER KLAMATH-TRINITY RIVER SPRING CHINOOK SALMON**Today's Item**Information Action

If FGC finds that listing Upper Klamath-Trinity River (UKTR) spring Chinook salmon (also referred to as Upper Klamath-Trinity Spring Chinook Salmon (UKTSCS)) may be warranted, consider adopting emergency regulations regarding Klamath River Basin sport fishing.

Summary of Previous/Future Actions

- **Today consider adopting emergency regulations Feb 6, 2019, Sacramento**

Background

Acceptance of a petition under CESA initiates a one-year review by DFW for determining the species' status. During the status review period, the species is considered a "candidate" species, which confers CESA take prohibition measures to protect the species.

If FGC accepts the petition to list UKTSCS under agenda item 20A, DFW requests FGC adopt emergency regulations to protect UKTSCS during the status evaluation period. 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.

As specified in the DFW memo (Exhibit 1), the emergency regulations would amend Section 7.50 relating to Klamath River Basin sport fishing. The recommended actions will supersede existing regulations for spring Chinook salmon (subsections (b)(91.1)(E)2.a., 2.b., 6.b., 6.c., 6.e., and 6.f. of Section 7.50). The recommended actions concerning subsection (b)(91.1)(E)6.b. will also impact Klamath River fall Chinook salmon (KRFC) regulations by prohibiting the take of any Chinook salmon in a segment of the Trinity River until October 15. (KRFC quota management applies September 1 through December 31 on the Trinity River.)

Additionally, Klamath River Basin Chinook salmon possession limits (subsections (C)2.a. and (C)2.b.) are proposed to be changed from 2 to "Closed to salmon fishing. No take or possession of Chinook salmon" for the river segments and dates listed in the DFW memo.

Significant Public Comments (N/A)**Recommendation**

FGC staff: If FGC accepts the UKTSCS petition for further evaluation during Agenda Item 20A, adopt emergency regulations as recommended by DFW.

DFW: If FGC accepts the UKTSCS petition for further evaluation during Agenda Item 20A, adopt emergency regulations specified in the DFW memo.

Exhibits

1. DFW memo, received Jan 30, 2019

Motion/Direction

- Moved by _____ and seconded by _____ that the Commission finds, pursuant to Section 399 of the Fish and Game Code, that adopting the proposed emergency regulation is necessary for the immediate conservation of Upper Klamath-Trinity River spring Chinook salmon.
- The Commission further determines, based on the record, that this approval is exempt from the California Environmental Quality Act as an action necessary to prevent or mitigate an emergency as specified in Section 15269(c), Title 14 and Public Resources Code Section 21080(b)(4), as well as to protect a natural resource pursuant to the guidelines in Title 14, Section 15307.
- The Commission further determines, pursuant to Section 11346.1 of the Government Code, that an emergency situation exists and finds the proposed regulation is necessary to address the emergency.
- Therefore, the Commission adopts the emergency regulation to amend Section 7.50, Title 14, California Code of Regulations, as recommended by the California Department of Fish and Wildlife.

STAFF SUMMARY FOR APRIL 17, 2019**19. UPPER KLAMATH-TRINITY RIVER SPRING CHINOOK SALMON****Today's Item**Information Action

Discuss and consider authorizing take of upper Klamath-Trinity River spring Chinook salmon (also referred to as upper Klamath-Trinity spring Chinook salmon, or UKTSCS) under Section 2084 of the Fish and Game Code.

Summary of Previous/Future Actions

- | | |
|--|-----------------------------------|
| • Determined that listing under CESA may be warranted | Feb 6, 2019; Sacramento |
| • Adopted emergency regulations to reconcile recreational take regulations with the CESA prohibition | Feb 6, 2019; Sacramento |
| • Today's consideration of authorizing take under Section 2084 | Apr 17, 2019; Santa Monica |

Background

In Jul 2018, a petition to list UKTSCS as an endangered species under the California Endangered Species Act (CESA) was submitted (see Exhibit 1 for background). Acceptance of a petition under CESA, based on a finding by FGC that action may be warranted, initiates a one-year review by DFW for determining the species' status. During the status review period, the species is considered a "candidate" species, which automatically confers CESA take prohibition measures to protect the candidate species (Fish and Game Code Section 2085).

CESA also provides that FGC may, by adopting regulations, authorize take of certain threatened or endangered species and take of candidate species (Fish and Game Code Section 2084 [Exhibit 2]). Section 2084 allows FGC to authorize take based on the best available scientific information when the take is otherwise consistent with CESA.

At its Feb 6, 2019 meeting, FGC found that the petition to list UKTSCS may be warranted and adopted emergency regulations (exhibits 1 and 3) to revise regulations governing recreational take of UKTSCS in the Klamath River Basin to reconcile them with the CESA protection for the candidate species found in Section 2085. The emergency regulations authorized in Feb went into effect Feb 28, 2019 and will expire Aug 28, 2019 unless FGC takes further action.

Under the adopted emergency regulations, the Klamath River, from 3,500 feet downstream of Iron Gate Dam to the mouth, is closed to salmon fishing through Aug 14, 2019; the Trinity River downstream of the Old Lewiston Bridge to the Highway 299 West bridge at Cedar Flat is closed to salmon fishing through Oct 15, 2019; and the Trinity River downstream of the Highway 299 West bridge at Cedar Flat is closed to salmon fishing until Aug 31, 2019. Additionally, Klamath River Basin Chinook salmon possession limits for the affected river segments and time periods were changed from 2 to "Closed to salmon fishing. No take or possession of Chinook salmon." (Note that rivers and river segments of the Klamath River Basin not listed above - such as the portion of the Klamath River from Iron Gate Dam to 3,500 feet downstream of the dam, and the

Salmon River - were already closed to the take of spring Chinook Salmon prior to the emergency action.)

At its Feb 6, 2019 meeting, FGC received testimony and letters from several members of the public, the Del Norte County Board of Supervisors, and the Siskiyou County Board of Supervisors, requesting that FGC consider shortening the closed periods or otherwise allow some take of Chinook salmon during the spring season (exhibits 7 and 8). Letters addressed the substantial economic impact this fishery and its associated recreation-based tourism has on the local economy; while these factors cannot be considered in the listing decision, they may be considered as a factor in authorizing some form of take if the restrictions in 2084 can be accommodated. The economic factors, coupled with the temporary nature of 2085 protections for candidate species, may constitute an emergency that authorizes FGC to address the matter through regulation.

In response to the multiple requests, FGC requested DFW provide a recommendation at today's meeting concerning 2084 regulations. DFW held stakeholder meetings Mar 7, 2019 in Crescent City, Mar 18, 2019 in Sacramento, and Mar 26, 2019 in Redding to discuss various options with stakeholders and the public, which has informed the 2084 regulatory options DFW will present today for FGC consideration.

Based on DFW explanation of the stakeholder efforts, DFW's opinion of the potential impacts to the fishery, and public comment, FGC may have an opportunity to adopt a new emergency regulation that provides substantial protection to the UKTSCS, but allows limited take at the end of the traditional spring season. Such an action would render the Feb amendments to Section 7.50 unnecessary, and could be allowed to expire in Aug 2019.

Significant Public Comments

1. Del Norte County Board of Supervisors (Exhibit 4) and its stakeholders request that the season open Jul 1 on the Klamath River from the mouth to the confluence of the Trinity River, with a one fish bag limit and a two fish possession limit.
2. Petitioners (Exhibit 5) request: a Jul 16 opener on the Klamath River between the mouth and the confluence with the Trinity River; extending the closure on the remainder of the Klamath an additional two weeks until Aug 31; the Salmon River remaining closed year-round to salmon fishing; the Trinity River between the New River and the mouth remaining closed until Aug 31; and the Trinity upstream of the New River reverting to the pre-emergency regulations.
3. Comments received on the emergency regulations adopted in Feb 2019, expressed concern over hardship resulting from the emergency closures (example in Exhibit 6).

Recommendation

FGC staff: If FGC wants to authorize some level of take:

1. Determine whether FGC considers the financial impacts to the local economy, coupled with the sudden and temporary nature of the candidate species protections, severe enough to constitute an emergency necessary for the immediate preservation of the public peace, health and safety, or general welfare.
2. If FGC determines there is an emergency, adopt emergency regulations in accordance with the limitations of Fish and Game Code Section 2084. The regulations would provide protection for UKTSCS during the majority of the time that the prior,

non-emergency regulations had authorized take, but allow limited take at the end of the spring; this would render unnecessary the Feb 2019 amendments authorized through emergency action.

3. Add a regular rulemaking to FGC's rulemaking timetable, with the notice, discussion and adoption meetings listed as "TBD".
4. Authorize staff to add re-adoption of today's emergency regulation to FGC's rulemaking timetable, if needed to maintain provisions until a regular rulemaking is adopted and in effect.

Exhibits

1. Staff summary from Feb 2019 FGC meeting (for background purposes only)
2. Fish and Game Code Section 2084
3. Emergency regulations language adopted by FGC on Feb 6, 2019
4. Letter from Del Norte County Board of Supervisors, received Mar 29, 2019
5. Letter from the Salmon River Restoration Council and Karuk Tribe to DFW, dated Apr 3, 2019
6. Email from Patrick McCalmont, received Feb 20, 2019 (example comment on emergency regulations)
7. Letter from Del Norte County Board of Supervisors, received Dec 17, 2018
8. Letter from Siskiyou County Board of Supervisors, received Jan 22, 2019
9. DFW presentation

Motion/Direction

- Moved by _____ and seconded by _____ that the Commission finds, pursuant to Section 399 of the Fish and Game Code, that adopting the proposed emergency regulation is necessary for the immediate preservation of the public peace, health and safety, or general welfare.
- The Commission further determines, based on the record, that this approval is exempt from the California Environmental Quality Act as an action necessary to prevent or mitigate an emergency as specified in Section 15269(c), Title 14 and Public Resources Code Section 21080(b)(4), as well as to protect a natural resource pursuant to the guidelines in Title 14, Section 15307, and relying on Title 14, Section 15061(b)(3).
- The Commission further determines, pursuant to Section 11346.1 of the Government Code, that an emergency situation exists and finds the proposed regulation is necessary to address the emergency.
- Therefore, the Commission adopts the emergency regulation to amend Section 7.50, Title 14, California Code of Regulations, as follows _____, with an effective date of _____.
- Further, the Commission directs staff to update the rulemaking timetable as outlined in the staff recommendations.



Klamath River Basin 2084 (Certification of Compliance)

Klamath River Basin Spring Chinook Salmon Sport Fishing Regulations



Kevin Shaffer
Fisheries Branch

California Fish and Game Commission Meeting
December 11, 2019

Presentation Overview

- Emergency Regulation History
- Certification of Compliance and Emergency Regulation Timeline
- Proposed Regulations for Certification of Compliance

Klamath River Basin Spring Chinook Salmon Emergency Regulation History

February 2019

- FGC approves emergency regulations to close Spring Chinook fishing in Title 14, Sec. 7.50(b)(91.1), consistent with CESA
 - Emergency regulations effective Feb. 28 – Aug. 27, 2019
- FGC requested CDFW meet with constituents to discuss potential regulatory options to allow some level of take during candidacy in light of local economic impact

June 2019

- New emergency regulations under 7.50(b)(91.2) valid from June 26 to Dec. 23, 2019
 - CDFW begins developing certificate of compliance rulemaking to make June 2019 emergency regulations permanent, with some adjustments

Why Certificate of Compliance?

- Certificate of Compliance rulemaking makes emergency regulations permanent
- Spring creel survey showed a minor increase in angler days
- Making the regulations permanent reduces potential economic impacts to local businesses and communities from a full closure to fishing under CESA candidacy, while protecting spring Chinook salmon during migratory and spawning phases

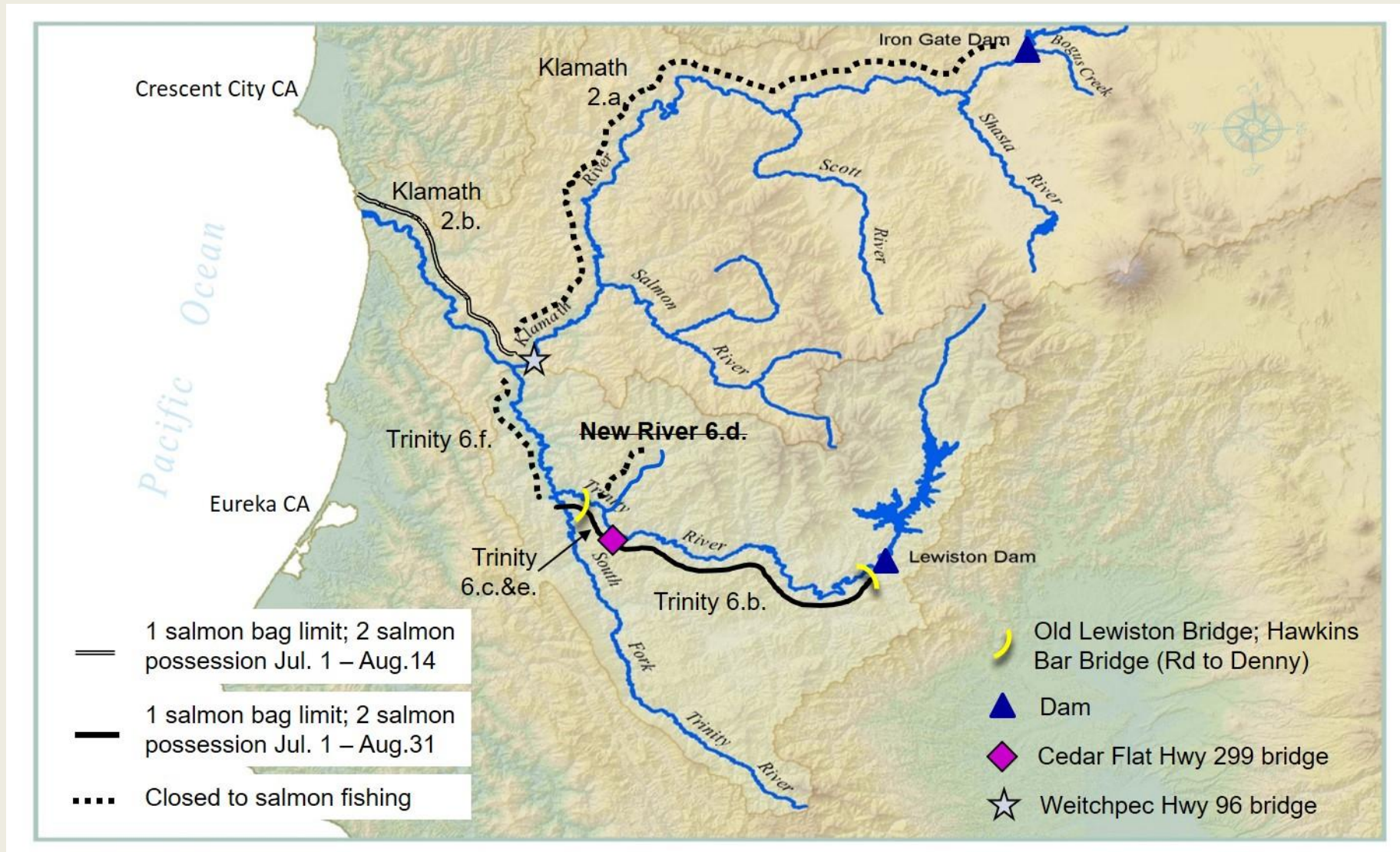
Proposed Timeline for Certificate of Compliance Rulemaking

- December 2019
- Notice certification of compliance rulemaking to make June 2019 emergency regulations permanent, with some adjustments
 - CDFW to request FGC for 90-day extension of June 2019 emergency fishing regulations which will otherwise expire December 24, 2019
 - Provide coverage through March 22, 2020
- February 2019
- FGC holds discussion on certification of compliance rulemaking
 - CDFW to request FGC for second 90-day extension of June 2019 emergency fishing regulations
 - Provide Coverage through June 20, 2020
- April 2020
- Potential adoption of certification of compliance rulemaking making the emergency regulations permanent June 21, 2020

Proposed Regulations for Certification of Compliance (Effective June 21, 2020)

Current Emergency Regulations (91.2) (valid June 26 to Dec. 23, 2019)	Changes for Certificate of Compliance
2.a. Upper Klamath – closed through Aug 14	No change
2.b. Lower Klamath (downstream of Weitchpec) – open Jul 1 to Aug 14	No change
6.b.c.e. Trinity upstream of confluence with S. Fork Trinity to Old Lewiston Bridge – open Jul 1 to Aug 31	No change
6.d. New River to confluence with Trinity – open Jul 1 to Aug 31	Closed to salmon fishing
6.f. Trinity from mouth S. Fork to confluence with Klamath – closed through Aug 31	No change

Proposed Regulations for Certification of Compliance (Effective June 21, 2020)



Thank You / Questions

