

STAFF SUMMARY FOR FEBRUARY 21, 2020

10. UPPER KLAMATH-TRINITY SPRING CHINOOK SALMON EMERGENCY REGULATIONS (SECOND 90-DAY EXTENSION; CONSENT)**Today's Item**Information ☐Action ☒

Consider adopting a second 90-day extension of the upper Klamath-Trinity spring Chinook salmon sport fishing emergency regulations.

Summary of Previous/Future Actions

- | | |
|---|---------------------------------|
| • Adopted emergency regulations authorizing take under Section 2084 | Apr 17, 2019; Santa Monica |
| • Re-adopted emergency regulations | Dec 11-12, 2019; Sacramento |
| • Today's second re-adoption of emergency regulations | Feb 21, 2020; Sacramento |
| • Potentially adopt 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 (UKTSCS) is a candidate species under CESA, which confers CESA protections during candidacy. CESA also provides that FGC may adopt regulations to authorize take of certain threatened or endangered species or candidate species under California Fish and Game Code Section 2084. At its Apr 17, 2019 meeting, FGC adopted emergency regulations to allow limited take of UKTSCS at the end of the traditional spring season, while ensuring that substantial protection to UKTSCS is provided, consistent with Section 2084. The emergency regulations, codified in subsection 7.50(b)(91.2), went into effect Jun 26, 2019 and would have expired Dec 24, 2019 if not re-adopted. FGC re-adopted the emergency regulations at its Dec 2019 meeting. The regulations will now expire Mar 24, 2020 unless re-adopted.

At today's meeting, FGC staff recommends that FGC re-adopt the regulations for an additional 90-day period to prevent a lapse in regulatory coverage. The re-adopted emergency regulations supersede the Jan 1 opening dates for Klamath River Basin Chinook salmon prescribed in subsection 7.50(b)(91.1) and provide regulatory consistency to reduce potential confusion amongst anglers.

The emergency regulations will open spring Chinook salmon sport fishing, with a one-fish bag limit and a two-fish possession limit, on the lower Klamath River between Jul 1 and Aug 14, and on the upper Trinity River and New River between Jul 1 and Aug 31, in order to reduce adverse impacts to local economies resulting from the CESA protections for UKTSCS.

A certificate of compliance rulemaking is underway to make the emergency regulations permanent (see Agenda Item 29, this meeting); however, the conditions documented at the Apr 2019 meeting necessitating the initial adoption have not changed and today's extension is necessary to keep the emergency regulations in place until the permanent regulations are effective.

STAFF SUMMARY FOR FEBRUARY 21, 2020

See staff summaries from the Feb and Apr 2019 meetings for additional background information (exhibits 4 and 5).

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

FGC staff: Under a motion to adopt the consent calendar, find, (1) 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; (2) determine, based on the record, that this approval is exempt from CEQA 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 California Code of Regulations, Title 14, Section 15307, and relying on Title 14, Section 15061(b)(3); (3) determine, pursuant to Section 11346.1 of the Government Code, that an emergency situation continues to exist and find the proposed regulation is necessary to address the emergency; and, therefore, (4) adopt the emergency regulation in subsection 7.50(b)(91.2), Title 14, California Code of Regulations, for an additional 90 days.

Exhibits

1. [Draft finding of emergency and statement of proposed emergency regulatory action for re-adoption of emergency regulations](#)
2. [Draft Economic and Fiscal Impact Statement \(std. 399\)](#)
3. [Draft notice of exemption](#)
4. [Staff summary from Feb 2019 FGC meeting \(for background purposes only\)](#)
5. [Staff summary from Apr 2019 FGC meeting \(for background purposes only\)](#)

Motion/Direction

Moved by _____ and seconded by _____ that the Commission adopts the staff recommendations for items 5-11 on the consent calendar.

DRAFT

CALIFORNIA FISH AND GAME COMMISSION FINDING OF EMERGENCY AND STATEMENT OF PROPOSED EMERGENCY REGULATORY ACTION FOR RE-ADOPTION OF EMERGENCY REGULATIONS

Emergency Action to
Re-adopt subsection (b)(91.2) of Section 7.50,
Title 14, California Code of Regulations
Re: Upper Klamath-Trinity spring Chinook Salmon sport fishing emergency regulations

Date of Statement: February 24, 2020

I. Emergency Regulation in Effect to Date

The California Fish and Game Commission (Commission) approved an emergency rulemaking adding subsection (b)(91.2) of Section 7.50, Title 14, California Code of Regulations (CCR) that became effective June 26, 2019. The emergency regulation opened the lower Klamath River between July 1 and August 14 and the upper Trinity River and New River between July 1 and August 31 for spring Chinook Salmon fishing to reduce adverse impacts to local economies resulting from California Endangered Species Act (CESA) protections for upper Klamath-Trinity spring Chinook Salmon (UKTSCS).

On December 11, 2019, the Commission re-adopted the emergency regulations for an additional 90-day period, extending the effective period to March 23, 2020. That rulemaking was approved by the Office of Administrative Law on December 23, 2019.

II. Request for Approval of Re-adoption of Emergency Regulations

On February 21, 2020, the Commission re-adopted the emergency regulations for a second time. The Commission has initiated a certificate of compliance rulemaking to permanently adopt the limited fishing opportunity in most of the above described reaches. Upon the completion of the certificate of compliance rulemaking (anticipated June 2020), the permanent (non-emergency) regulations would be effective in time for the season to open July 1, 2020.

The emergency circumstances remain unchanged since the initial adoption of the emergency regulations that became effective June 26, 2019.

III. 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, CCR.

On July 23, 2018, the Commission received a petition to list UKTSCS as endangered under CESA. The petition cited declining population trends evident of extremely low UKTSCS abundance compared to historical status and how 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 includes 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 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 the Trinity and Klamath rivers to make Klamath River Basin spring Chinook Salmon sport fishing regulations consistent with CESA protections.

In response to the closure, the Commission received testimony and letters from the Del Norte County and Siskiyou County boards of supervisors and other members of the public requesting that the Commission consider shortening the closed periods, or otherwise allow some sport fishing take during the spring Chinook Salmon fishing season. The concern expressed was that a complete closure would create economic harm to businesses (i.e., local tourism, fishing guides, motels, restaurants, and other infrastructure).

The Department held public meetings in March 2019 with affected stakeholders to help inform regulatory options for some level of limited take of spring Chinook Salmon during its candidacy period. The Department reported back to the Commission options to mitigate economic hardship. At its April 17, 2019 meeting, the Commission adopted emergency regulations that allow limited take at the end of the traditional spring season, while also providing substantial protection to UKTSCS, consistent with Fish and Game Code Section 2084. These are the regulations in subsection (b)(91.2) of Section 7.50, Title 14, CCR, effective June 26, 2019 – March 23, 2020 that are proposed for re-adoption.

Emergency Regulation Re-adoption

The proposed action is to re-adopt for another 90 days the emergency regulation subsection (b)(91.2) of Section 7.50, Title 14, CCR, with no change from the previous emergency rulemaking (Table 1, Figure 1). The regulations in subsection (b)(91.2)

supersede the spring Chinook Salmon fishing regulations in subsection (b)(91.1) of Section 7.50, Title 14, CCR.

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

Reach	Subsection 7.50(b)(91.1) Regulations to be Superseded	June 2019 Emergency Regulations Subsection 7.50(b)(91.2)	Re-adoption of Emergency Regulations Subsection 7.50(b)(91.2)
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	1 salmon bag limit; 2 salmon possession limit Jul. 1 – Aug 14	No change
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	1 salmon bag limit; 2 salmon possession limit Jul. 1 – Aug 31	No change
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	1 salmon bag limit; 2 salmon possession limit Jul. 1 – Aug 31	No change
New River (confluence of the East Fork to confluence w/ Trinity) 7.50(b)(91.1)(E)6.d.	Closed to salmon fishing	1 salmon bag limit; 2 salmon possession limit Jul. 1 – Aug 31	No change
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	1 salmon bag limit; 2 salmon possession limit Jul. 1 – Aug 31	No change
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

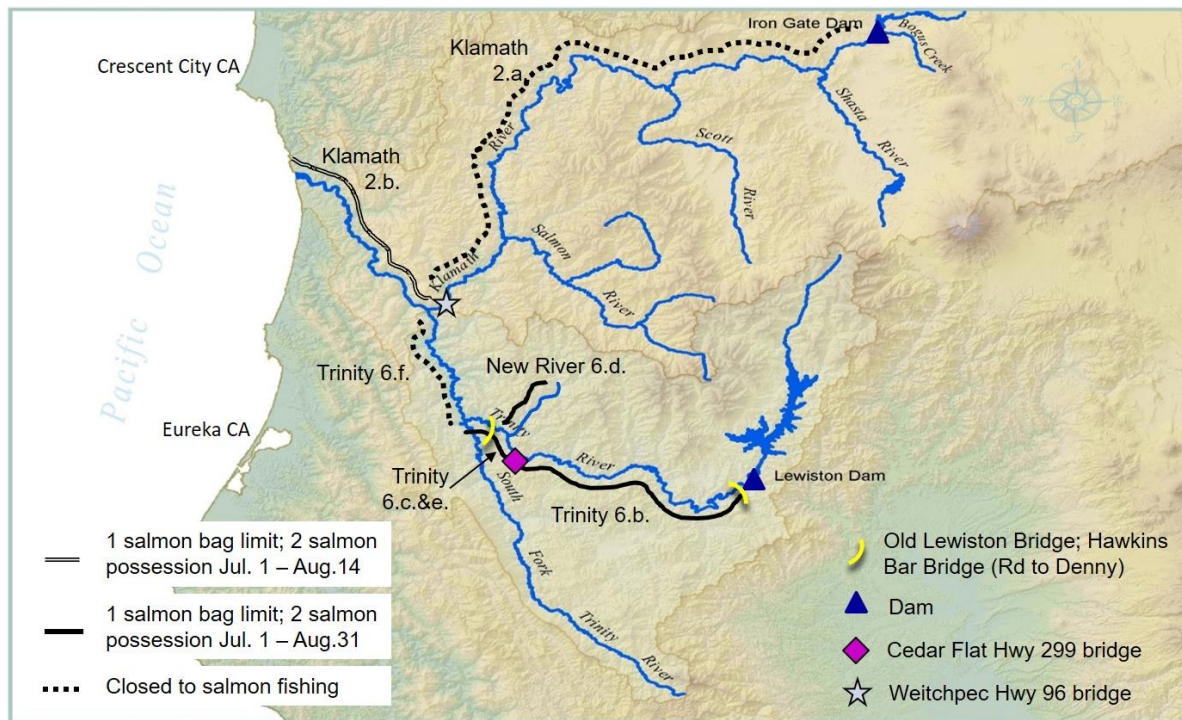


Figure 1. Map of proposed re-adoption of emergency regulations

Emergency Finding

The proposed re-adoption of the emergency regulations is necessary to continue the alleviation of the anticipated economic hardship of the February 2019 spring Chinook Salmon closure to local communities, while still providing protections to wild origin 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 emergency regulation continues to align with the recommendation by the Del Norte County Board of Supervisors 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. As evidenced from creel surveys, 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 anglers stay in the area following the spring salmon season to also participate in the Klamath River fall-run Chinook Salmon season.

IV. 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. The re-adoption of the emergency regulation will maintain fishing on certain reaches of the Klamath, Trinity

and New rivers for a limited duration of July 1-August 14 (Klamath River) and July 1-August 31 (Trinity River and New River). Protections under CESA would be maintained from the period of January 1 to June 30 (a closure of six months), with no new program costs or savings compared to the emergency regulations expiring March 24, 2020.

(b) Nondiscretionary Costs/Savings to Local Agencies:

The proposed re-adoption of the emergency regulation is expected to continue a return to increased spring Chinook Salmon angler spending. 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.

V. 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.

VI. 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.

VII. Studies, Reports, or Documents Supporting Factual Emergency

Klamath River Basin spring creel surveys are performed by the Department and its partners. These surveys inform the Department of angler fishing effort in the number of trips, and hours spent. The creel data (preliminary) 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 trips for the river reaches, and thus appears to have a minor economic benefit relative to 2018 (see Figure 2 below, and the Addendum to the STD 399 for more detail).

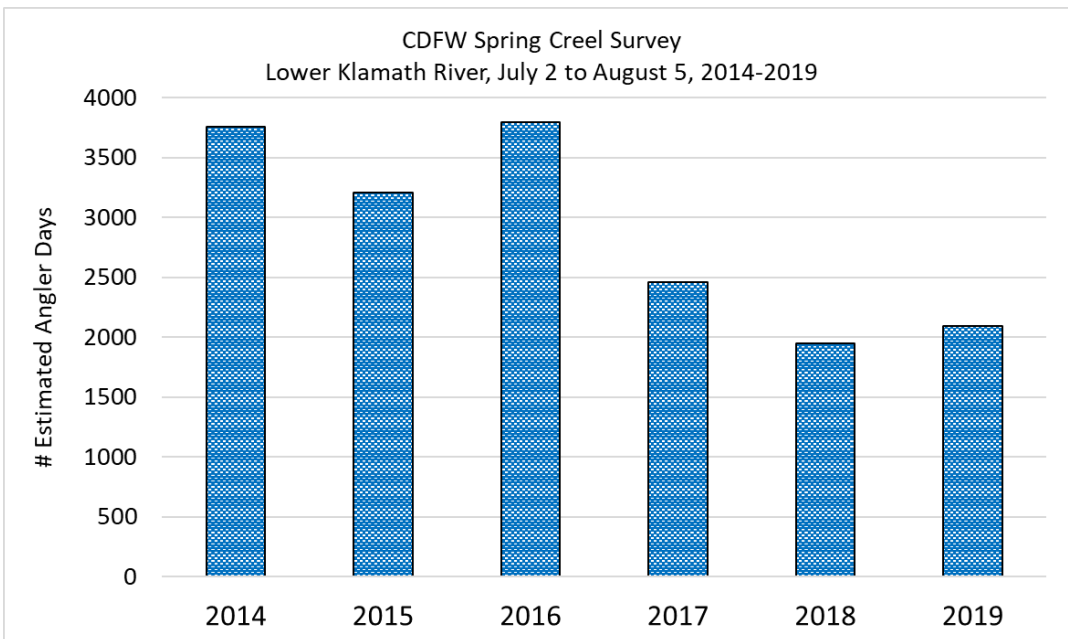


Figure 2. CDFW spring creel survey, Lower Klamath River, July 2 to August 5, 2014-2019.

VI. Re-adoption Criteria

(a) Same or Substantially Equivalent

Pursuant to subdivision (h) of Section 11346.1 of the Government Code, a re-adoption may be approved only if the text is “the same as or substantially equivalent to an emergency regulation previously adopted by that agency.” The language proposed for this re-adoption rulemaking is the same as the language of the original emergency regulation.

(b) Substantial Progress

Subdivision (h) of Section 11346.1 of the Government Code, specifies “Readoption shall be permitted only if the agency has made substantial progress and proceeded with diligence to comply with” standard rulemaking provisions.

- (1) The Commission has complied with this requirement by proceeding with due diligence to determine whether or not listing UKTSCS as a threatened or endangered species is warranted.

Laws Related to the Emergency Regulations - Listing under CESA

A. Petition and Acceptance

Fish and Game Code Section 2070 requires the Commission to establish a list of endangered species and a list of threatened species. Any interested person may petition the Commission to add a species to the endangered or threatened list by following the requirements in Fish and Game Code sections 2072 and 2072.3. If

a petition is not factually incomplete and is on the appropriate form, it is forwarded to the Department for evaluation.

Fish and Game Code Section 2073.5 sets out the process for accepting or rejecting a petition to list a species, and if the petition is accepted, a process for actually determining whether listing of the species as threatened or endangered is ultimately warranted. The first step toward petition acceptance involves a 90-day review of the petition by the Department to determine whether the petition contains sufficient information to indicate that the petitioned action may be warranted. The Department prepares a report to the Commission that recommends rejection or acceptance of the petition based on its evaluation.

Fish and Game Code Section 2074.2 provides that, if the Commission finds that the petition provides sufficient information to indicate that the petitioned action may be warranted, the petition is accepted for consideration and the species that is the subject of the petition becomes a "candidate species" under CESA. CESA prohibits unauthorized take of a candidate species, just as it prohibits such take of threatened and endangered species, from the time the Commission notifies interested parties and the public generally of its acceptance of the petition. Fish and Game Code Section 88, defines "Take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill."

Once a petition is accepted by the Commission, all activities, whether new or ongoing, that cause take of the candidate species are in violation of the prohibition on unauthorized take of listed or candidate species found in Fish and Game Code Section 2080, unless:

- the take is authorized in regulations adopted by the Commission pursuant to Fish and Game Code Section 2084;
- the Department authorizes the take through memorandums of understanding for scientific, education or management purposes, or via incidental take permits issued on a project-by-project basis pursuant to Fish and Game Code Section 2081; or
- the take is allowed under Fish and Game Code Section 2080.1.

B. Status Review Final Action on the Petition

The Commission's acceptance of a petition initiates a 12-month review of the species' status by the Department, pursuant to Fish and Game Code Section 2074.6, to determine whether the species should be listed as threatened or endangered. Unlike the Department's initial evaluation, which focuses largely on the sufficiency of information submitted in the petition, the 12-month status review involves a broader inquiry into, and evaluation of, available information from other sources. The Commission is required to solicit data and comments on the proposed listing soon after the petition is accepted, and the Department's written status report must be based upon the best scientific information available.

Pursuant to Fish and Game Code Section 2074.6, within 12 months of the petition's acceptance, the Department must provide the Commission a written

status report that indicates whether the petitioned action is warranted. The Commission may grant an extension of up to six months if the Director determines an extension is necessary to complete independent peer review of the report, and to provide a minimum of 30 days for public review of the peer reviewed report prior to the public hearing specified in Fish and Game Code Section 2075. The Commission must schedule the petition for final consideration at its next available meeting after receiving the Department's status report (Fish and Game Code Section 2075). In its final action on the petition, the Commission is required to decide whether listing the species as threatened or endangered "is warranted" or "is not warranted." If listing is not warranted in the Commission's judgment, take of the former candidate species is no longer prohibited under CESA (Fish and Game Code Section 2075.5).

If the Commission decides that listing the species "is warranted," the former candidate species then becomes a listed species.

- (2) The Commission has complied with this requirement by proceeding with due diligence to complete the certificate of compliance rulemaking.

Department staff began preparing the rulemaking documents for the certificate of compliance rulemaking in June 2019, however, there was not sufficient time to complete the documents, hold three hearings pursuant to Section 255 of the Fish and Game Code, and prepare a final statement of reasons prior to the expiration of the 180-day period. The notice for the certificate of compliance rulemaking was published January 10, 2020. Discussion and adoption hearings are scheduled for February and April 2020.

As part of the rulemaking, the Department is evaluating creel survey results to help determine the effect of the emergency regulations on both the species and the local economic impacts the regulations are designed to address. 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 trips for the river reaches, and thus appear to have a minor economic benefit relative to 2018.

The re-adoption of the emergency regulation is needed to allow the Commission adequate time to comply with Administrative Procedure Act and Fish and Game Code provisions.

Informative Digest (Plain English Overview)

Proposed Regulatory Action

The California Fish and Game Commission (Commission) approved an emergency rulemaking adding subsection (b)(91.2) of Section 7.50, Title 14, California Code of Regulations (CCR) that became effective June 26, 2019. The emergency regulation opened the lower Klamath River between July 1 and August 14 and the upper Trinity River and New River between July 1 and August 31 for spring Chinook Salmon fishing to reduce adverse impacts to local economies resulting from California Endangered Species Act (CESA) protections for upper Klamath-Trinity spring Chinook Salmon (UKTSCS).

On December 11, 2019, the Commission re-adopted the emergency regulation for an additional 90-day period. The re-adopted regulation will expire March 24, 2020.

The Commission re-adopted the emergency regulations for a second time on February 21, 2020. If approved by the Office of Administrative Law, this final emergency regulation will be effective approximately March 24 through June 21, 2020.

The Commission has initiated a certificate of compliance rulemaking to permanently adopt the limited fishing opportunity in most of the above described reaches. Upon the completion of the certificate of compliance rulemaking (anticipated June 2020), the permanent (non-emergency) regulations would be effective in time for the season to open July 1, 2020.

The emergency circumstances remain unchanged since the initial adoption of the emergency regulations that became effective June 26, 2019.

The proposed emergency regulatory action will allow limited sportfishing take of spring Chinook Salmon consistent with Fish and Game Code Section 2084, 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 proposed emergency regulation will allow limited fishing opportunity on UKTSCS in the Klamath River downstream of the Highway 96 bridge at Weitchpec, 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. Under the proposed emergency regulation, these areas will open July 1 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 primary benefit under the proposed emergency action is to ameliorate the economic losses associated with a total closure of the spring Chinook Salmon sport fishery due to the designation of UKTSCS as a candidate species under CESA. 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 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.

Proposed Emergency Regulatory Language for Re-Adoption

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, South Fork Trinity River and New 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</u> <u>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</u> <u>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</u> <u>2 Chinook Salmon in possession</u>
<u>(D) New River segment identified in subsection 7.50(b)(91.1)(E)6.d.</u>	<u>July 1 through August 31</u>	<u>1 Chinook Salmon</u> <u>2 Chinook Salmon in possession</u>
<u>(E) 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</u> <u>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.

DRAFT

ECONOMIC IMPACT STATEMENT

DEPARTMENT NAME Fish and Game Commission	CONTACT PERSON Margaret Duncan margaret.duncan@	EMAIL ADDRESS wildlife.ca.gov	TELEPHONE NUMBER 916-653-4674
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 2nd Re-adopt Section 7.50, subsection (b)(91.2), Title 14, CCR Re: Emergency Klamath Spring Chinook Salmon			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
- ☐ b. Impacts small businesses
- ☐ c. Impacts jobs or occupations
- ☐ d. Impacts California competitiveness
- ☐ e. Imposes reporting requirements
- ☐ f. Imposes prescriptive instead of performance
- ☐ g. Impacts individuals
- ☒ h. None of the above (Explain below):

[Emergency action only requires fiscal impact statement \(see below\).](#)

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 _____ 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: _____

Describe the types of businesses (Include nonprofits): _____

Enter the number or percentage of total businesses impacted that are small businesses: _____

4. Enter the number of businesses that will be created: _____ eliminated: _____

Explain: _____

5. Indicate the geographic extent of impacts: ☐ Statewide

☐ Local or regional (List areas): _____

6. Enter the number of jobs created: _____ and eliminated: _____

Describe the types of jobs or occupations impacted: _____

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? \$ _____
 - a. Initial costs for a small business: \$ _____ Annual ongoing costs: \$ _____ Years: _____
 - b. Initial costs for a typical business: \$ _____ Annual ongoing costs: \$ _____ Years: _____
 - c. Initial costs for an individual: \$ _____ Annual ongoing costs: \$ _____ Years: _____
 - d. Describe other economic costs that may occur: _____
2. If multiple industries are impacted, enter the share of total costs for each industry: _____
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.* \$ _____
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: _____
 Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ _____

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 health and welfare of California residents, worker safety and the State's environment: _____
2. Are the benefits the result of: ☐ specific statutory requirements, or ☐ goals developed by the agency based on broad statutory authority?
 Explain: _____
3. What are the total statewide benefits from this regulation over its lifetime? \$ _____
4. Briefly describe any expansion of businesses currently doing business within the State of California that would result from this regulation: _____

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: _____

**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: \$ _____ Cost: \$ _____

Alternative 1: Benefit: \$ _____ Cost: \$ _____

Alternative 2: Benefit: \$ _____ Cost: \$ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: _____

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: _____

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 emergency action to permit limited take of spring Chinook Salmon 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 re-opening of portions of the Klamath River Basin to spring Chinook Salmon fishing may result in small gains in California state sales tax and may increase salmon 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



STD399 CALCULATIONS WORKSHEET ADDENDUM

Emergency Action to Re-adopt subsection (b)(91.2) of Section 7.50,
Title 14, California Code of Regulations
Re: Upper Klamath-Trinity spring Chinook Salmon sport fishing emergency regulations

Economic Impact Statement

Emergency regulations do not require Economic Impact Assessment; only Fiscal impacts must be evaluated (California Government Code Section 11346.1).

Fiscal Impact Statement

In February 2019, the Fish and Game Commission (Commission) accepted a petition to list upper Klamath-Trinity spring Chinook Salmon (UKTSCS), which confers candidacy status on UKTSCS. During the candidacy period, California Endangered Species Act (CESA) take prohibition measures apply (Fish and Game Code Section 2085). The Commission adopted emergency regulations in February 2019 prohibiting take on certain portions of the Klamath and Trinity rivers to help protect UKTSCS by minimizing confusion by sport anglers who may not have been aware of the CESA candidacy protections. The Commission received testimony and letters from the public, as well as the Del Norte County and Siskiyou County boards of supervisors that a complete prohibition of spring Chinook Salmon take would create economic harm to businesses (i.e., local tourism sector, fishing guides, motels, restaurants, and other retail), and requesting that the Commission consider shortening the closed periods, or otherwise allow some sport fish take during the spring Chinook Salmon fishing season. The California Department of Fish and Wildlife (Department or CDFW) assessed the ability under Section 2084 of the Fish and Game Code to allow for some level of sport fish take by hook and line, while still providing protective spring Chinook Salmon regulatory measures. The Commission adopted a special order emergency action April 17, 2019 to mitigate potential adverse economic and fiscal impacts of a complete prohibition of take. The emergency regulations were effective June 26 through December 23, 2019. The Administrative Procedure Act provides that the Office of Administrative Law may approve not more than two re-adoptions, each for a period not to exceed 90 days, of an emergency regulation that is the same as or substantially equivalent to an emergency regulation previously adopted by that agency if the agency has made substantial progress and proceeded with due diligence to complete a standard rulemaking. The Commission re-adopted the June 2019 emergency regulations on December 11, 2019 which extended the effective date through March 23, 2020. The Commission re-adopted the emergency regulations for a second time on February 21, 2020. If approved by the Office of Administrative Law, this final emergency regulation will be effective approximately March 24 through June 21, 2020. The Commission is scheduled to adopt the standard rulemaking at its April 17, 2020 meeting.

The emergency regulations maintain limited sport fishing take of spring 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.

This final re-adoption of the emergency regulations maintains limited angling opportunity on certain areas of the lower Klamath River and the upper Trinity River during historically high visitation periods, as shown in Figure 1, Angler Days by Early, Middle, and Late Portions of CDFW Spring Creel Survey data. Since 2014, the period from July 2 to August 5 reflects a much higher share of angler activity. The 2019 emergency action that opened portions of the rivers to angling resulted in increased angler days (+147 days) over the previous year as shown in Figure 2.

Figure 1. Angler Days by Early, Middle, and Late Portions of CDFW Spring Creel Survey data, 2010 – 2018.

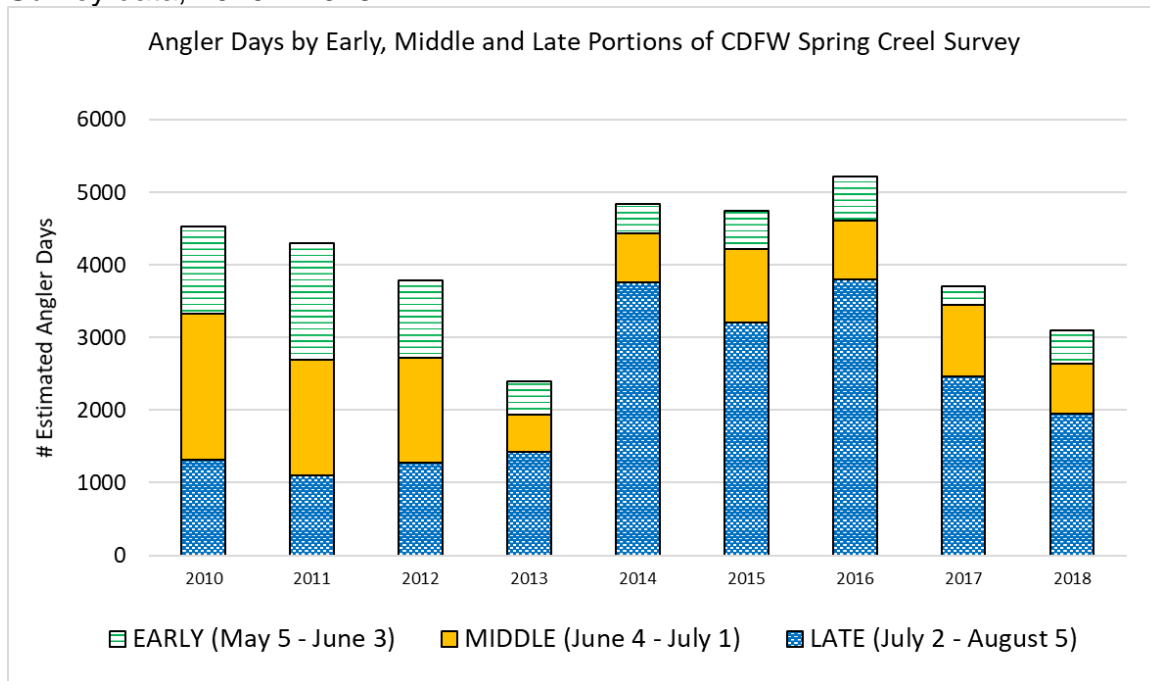
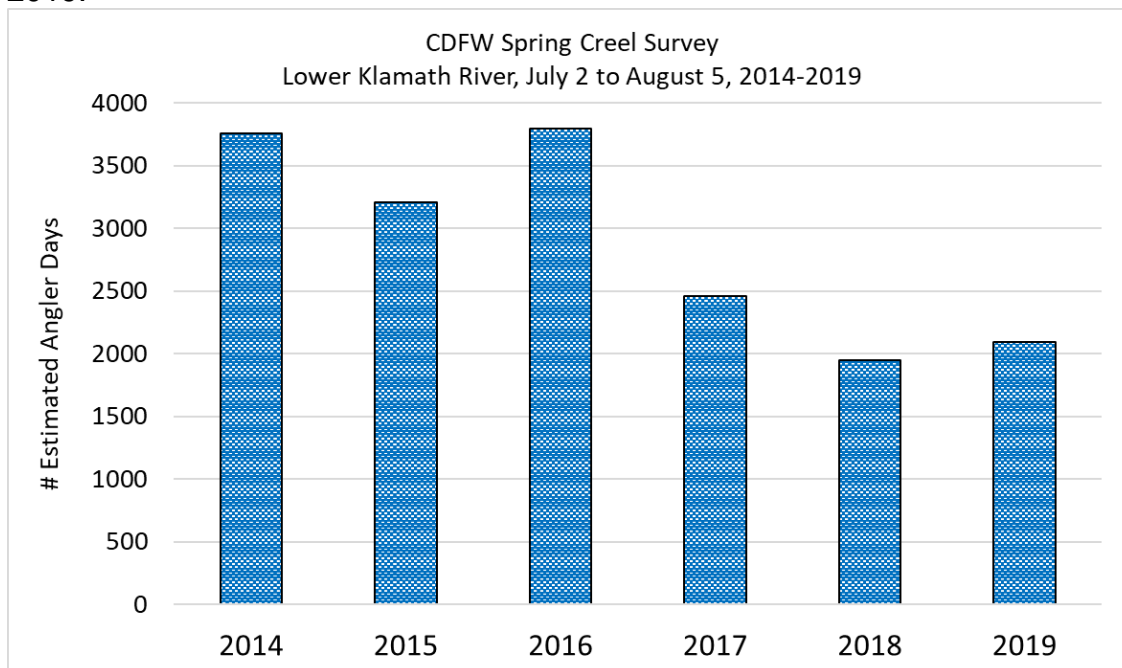


Figure 2. CDFW Spring Creel Survey Lower Klamath River, July 2 to August 5, 2014 – 2019.



The period on the lower Klamath River between July 1 and August 14, and the upper Trinity River and New River between July 1 and August 31, coincides with generally higher work and school vacations and should optimize the potential for increased visitor expenditures, sales tax, and transient occupancy tax revenues to the affected areas, particularly: Crescent City and Klamath (Del Norte County), Eureka, Arcata, and Willow Creek (Humboldt County), Yreka (Siskiyou County), and Weaverville (Trinity County). Angler spending is anticipated to be received by an array of small businesses that serve sport fishing activities.

A. Fiscal Impact on Local Government

1. Tax Revenue Impact Projections Methods

The proposed re-opening was evaluated as to what extent it would impact travel times, visits to each fishery area, and length of stay to each area. The activities involve participant expenditures in the retail, food and accommodations, automotive service and fuel, sporting equipment sales/rent/lease, and recreational services sectors. Direct expenditures generate local sales and transient occupancy tax for the Klamath River Basin area local governments.

a. Local Sales Tax

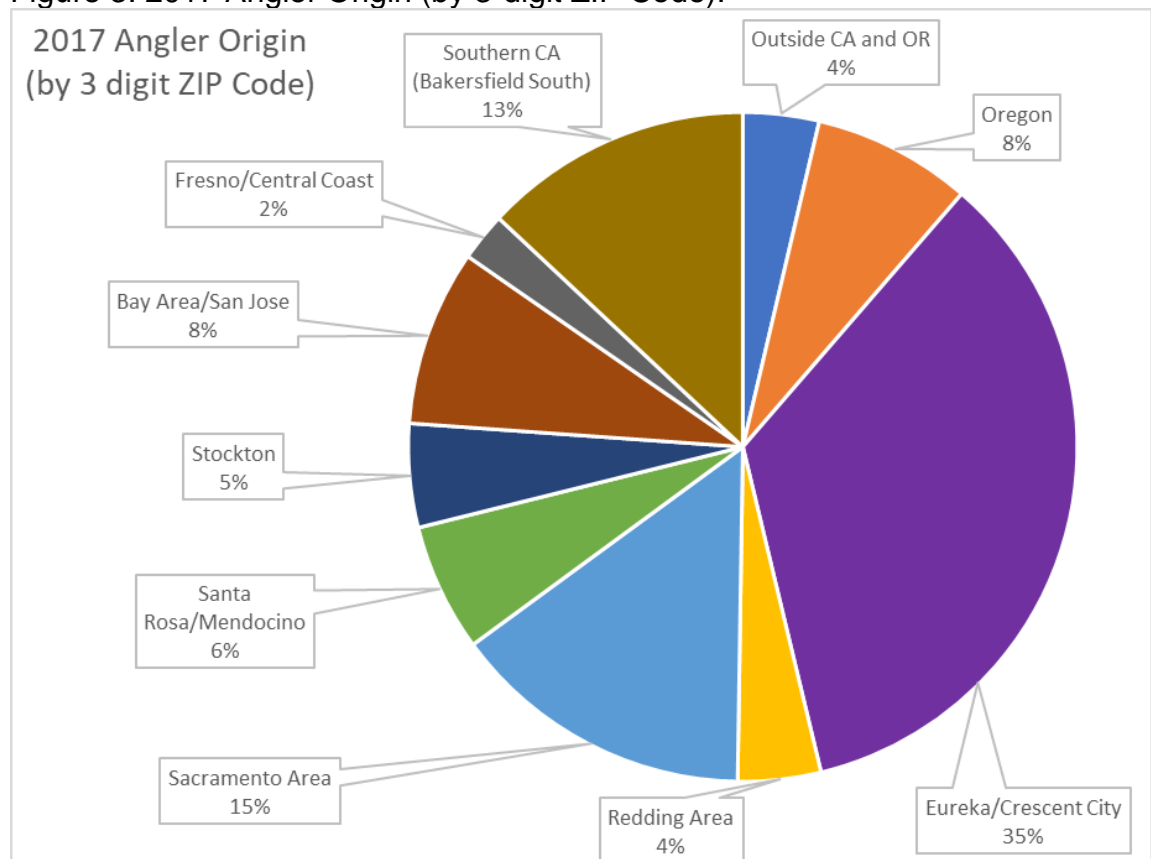
The California State Board of Equalization reports local sales tax rates for the areas under evaluation. Local sales tax rates in Del Norte, Siskiyou, Trinity, and Humboldt counties range from 1.30% to 1.83%. Increases in visitor spending due to increased numbers of visits and in the length of stay could result in sales tax revenue gains that are estimated to range from \$3,288 to \$3,536 over the open period.

b. Transient Occupancy Tax (TOT)

Lower Klamath River spring Chinook Salmon angler creel data sorted by zip code of origin show that a large share (65%) of anglers participating in the fishery are from out of the area (Figure 3).

Sport anglers' survey responses reveal that those who travel a greater distance to the fishery area are more likely to choose to stay overnight in the area. Those who live in the closest proximity to fishery sites and those who fish in the earliest hours of the day show a lower likelihood of staying overnight. Overnight stays are often at private campgrounds, motels, and hotels, all of which collect TOTs. County treasurer tax collectors report the county TOTs, with rates in Del Norte, Siskiyou, Trinity, and Humboldt counties ranging from 8% to 10%. The projected gains in overnight stays range from 974 to 1,047 nights, which could result in gains in local TOT revenues to local governments from \$15,333 to \$16,490 over the open period.

Figure 3. 2017 Angler Origin (by 3-digit ZIP Code).



B. Fiscal Impact on State Government

1. State Government Sales Tax Revenue

Additional spending in the impacted Klamath River Basin areas is expected to also translate into small increases in California state tax revenue in the range of \$13,434 to \$14,449 over the period proposed to remain open, given a six percent state sales tax rate (excluding local taxes) in the affected cities and counties (Table 1).

Table 1. Angler Days Estimated State and Local Sales Tax Revenue 2018-2019, (2019\$).

Survey Year	Angler Days	Spending per Day	Total Angler Local Spending	State Sales Tax Revenues	Local Sales Tax Revenues
2018	1,947	\$ 115	\$ 223,905	\$ 13,434	\$ 3,288
2019	2,094	\$ 115	\$ 240,810	\$ 14,449	\$ 3,536

Source: California Department of Tax and Fee Administration, CDFW Spring Creel Survey, U.S. Department of the Interior, *In-River Sport Fishing Economics Technical Report*, National Oceanographic and Atmospheric Administration, National Marine Fisheries Service, September 2011.

2. California Department of Fish and Wildlife Revenue Impact

a. Changes in North Coast Salmon Report Card Sales

Estimates of North Coast Salmon Report Card sales losses or gains are based on the Department License and Revenue Branch (LRB) sport fishing license volume and revenue historical records. Surveys of the Klamath River Basin fishing community, fishers and businesses also inform the estimates.

Apparent relations between changes in take limits and report card sales may not be indicative of continued patterns in the future. Other factors may influence participation in the fishery, such as gas prices, weather, consumer confidence and other unknowns.

While difficult to predict, the proposed re-adoption could result in an estimated maintenance of North Coast Salmon card sales in the range of 1,000 to 3,000, cards, which could result in card sales revenue gains to the Department from \$6,740 to \$20,220 at the 2020 card price of \$6.74. Any changes in card sales revenue for the two fiscal years after the sunset of the proposed emergency regulation extension cannot be projected as the future status of the candidate species is not known at this time.

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Notice of Exemption

Appendix E

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

County Clerk

County of: _____

From: (Public Agency): _____

(Address)

Project Title: _____

Project Applicant: _____

Project Location - Specific:

Project Location - City: _____ Project Location - County: _____

Description of Nature, Purpose and Beneficiaries of Project:

Name of Public Agency Approving Project: _____

Name of Person or Agency Carrying Out Project: _____

Exempt Status: **(check one):**

- ☐ Ministerial (Sec. 21080(b)(1); 15268);
- ☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
- ☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- ☐ Categorical Exemption. State type and section number: _____
- ☐ Statutory Exemptions. State code number: _____

Reasons why project is exempt:

Lead Agency _____

Contact Person: _____ Area Code/Telephone/Extension: _____

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? ☐ Yes ☐ No

Signature: _____ Date: _____ Title: _____

☐ Signed by Lead Agency ☐ Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: _____

ATTACHMENT TO NOTICE OF EXEMPTION

Emergency regulation 14 CCR 7.50(b)(91.2) - Take of Chinook Salmon CESA

The California Fish and Game Commission (Commission) has taken final action under the Fish and Game Code and the Administrative Procedure Act with respect to the rulemaking identified on the Notice of Exemption. In taking its final action for the purposes of the California Environmental Quality Act (CEQA, Pub. Resources Code, § 21000 *et seq.*), the Commission adopted the regulations relying on the statutory exemption for “Specific actions necessary to prevent or mitigate an emergency” contained in Section 21080(b)(4) of the Public Resources Code and the categorical exemption for “Actions by Regulatory Agencies for Protection of Natural Resources” contained in CEQA Guidelines section 15307 (Cal. Code Regs., tit. 14, §§ 15307.)

Specific Actions Necessary to Prevent or Mitigate an Emergency

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.

On February 6, 2019, the Commission 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 of Fish and Wildlife (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). The Commission also adopted emergency regulations 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 February went into effect February 28, 2019 and expired August 28, 2019. Those regulations prevented recreational fishing in portions of the Klamath and Trinity rivers that previously allowed for limited take of chinook salmon.

At its February 6, 2019 meeting, the Commission 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 the Commission consider shortening the closed periods or otherwise allow some take of Chinook salmon during the spring season. 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

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nature of 2085 protections for candidate species, constitute an emergency that this regulation addresses.

Categorical Exemption to Protect Natural Resources

Moreover, the limited fishing opportunity allowed under these regulations provides protection to the resource as follows:

1. The 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. These wild salmon are destined for spawning in the Upper Salmon River and Upper South Fork Trinity River. Similarly, the opening date on the upper Trinity River protects wild UKTSCS by reducing the fishing season.
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 regulation is consistent with the mitigation fishery objective. The 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.

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.