

State of California
Fish and Game Commission
Final 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 River Spring Chinook Salmon Sport Fishing

- I. Date of Initial Statement of Reasons: December 24, 2019
- II. Date of Pre-Adoption Statement: April 3, 2020
- III. Date of Final Statement of Reasons: April 25, 2020
- IV. Dates and Locations of Scheduled Hearings

(a) Notice Hearing

Date: December 11, 2019 Location: Sacramento, CA

(b) Discussion Hearing

Date: February 21, 2020 Location: Sacramento, CA

(c) Adoption Hearing

Date: April 16, 2020 Location: Teleconference

- V. Update from Initial Statement of Reasons (ISOR):

At its April 16, 2020 teleconference meeting, the Fish and Game Commission (Commission) adopted the addition of subsection (b)(91.2) to Section 7.50, Title 14, California Code of Regulations (CCR), concerning the sport take of Klamath River Basin Spring Chinook Salmon as proposed by the California Department of Fish and Wildlife (Department).

No changes have been made to the originally proposed regulatory language. However, additional information has become available since publication of the Notice of Proposed Action based on fall creel survey data for the Lower Klamath River Basin. The Addendum to the amended STD 399, Economic and Fiscal Impact Statement provides the following information.

Regular creel surveys and tag returns from anglers provide information on the status of Chinook Salmon in the Klamath River Basin. These surveys inform Department of angler fishing effort in the number of angler days (synonymous with the number of trips), hours spent, and salmon harvest.

The preliminary creel data gathered during the late period of the 2019 spring season (which begins May 5 and ends August 5) has been updated since the date of the ISOR to include data from the fall creel survey effort for August 6 -14 (See Table 1). As the proposed addition of subsection (b)(91.2) to Section 7.50 includes a six-week season ending August 14 on the lower Klamath River, inclusion of these additional nine days (August 6 through 14) is reflective of

angling effort for salmon in the first half of August during a time when both spring and fall-run Chinook Salmon could be present in the survey area. Thus, the Department has included such numbers for a comparison of 2019 effort pursuant to the emergency regulation (rulemaking file 2019-0618-03E) to 2018 effort for the full six-week period of July 1-August 14 for evaluation of the economic benefit of providing this angling opportunity which would otherwise be prohibited by California Endangered Species Act (CESA) protections for upper Klamath-Trinity spring Chinook Salmon (UKTSCS).

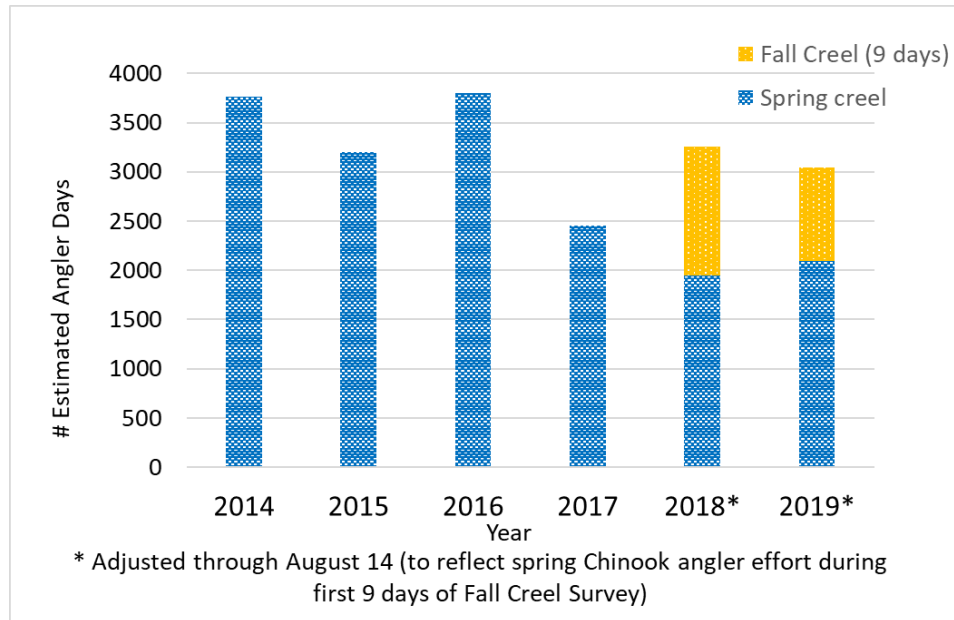
Table 1. Angler days and Chinook Salmon harvest for 2018 and 2019, July 1-August 14.

Survey Year	Angler Days July 1-Aug 5 (Spring Creel)	Angler days Aug 6-14 (Fall Creel)	Total days Jul 1-Aug 14	Salmon Harvest Aug 6-14	% of angler days during Jul 1-Aug 14 period
2018	1,947	1,306	3,253	192	67%
2019	2,092	949	3,041	79	45%

The previously reported data suggest that the maintenance of fishing opportunity on the lower Klamath River and the upper Trinity River during the period of July 1 through 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 the same time period in 2018 (see Figure 1, and the Addendum to the amended STD 399, Economic and Fiscal Impact Statement for more detail). The 2019 spring creel survey shows a minor uptick in the number of estimated angler days from 2018 (147 days – Figure 1, blue bars). However, when examining the nine day period from the fall creel survey from August 6 to 14, comprising the last nine days of the six week period for angling for UKTSCS under the emergency regulations, an overall decrease in both angler days (212 days, or 6.5% – Figure 1, yellow bars) and harvested fish compared to the same period in 2018 was evident.

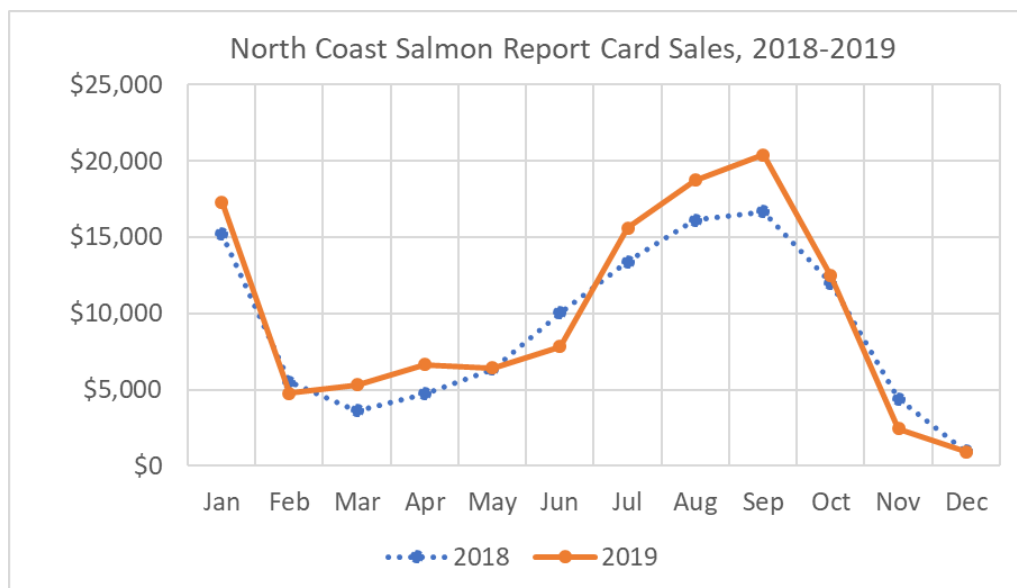
Thus, the emergency regulations continued to result in fishing activity in the area during the period August 6-14, 2019, though not as much activity for the same time period in 2018. Overall, the emergency regulations were successful in maintaining 70% of the fishing trips of a normal spring Chinook Salmon fishery (or at least that portion of the spring fishery between May 7 and August 14). However, more seasons of creel data may reveal different patterns, as other unknown factors unrelated to the regulatory actions may have influenced trips to the affected areas.

Figure 1. Angler Days in the Lower Klamath River by Department angler creel survey July 2 to August 5, 2014 – 2017, July 2 to August 14, 2018 and July 1 to August 14, 2019.



Additional data from the North Coast Salmon Report Card sales between 2018 and 2019, shown in Figure 2, suggest that the emergency regulation resulted in an increase of report card sales in 2019 (9,716 for June through September 2019) compared to 2018 (9,094 for June through September 2018), translating to report card sales revenue gains to the Department for these months of \$6,370 at the 2019 card price of \$6.74. In addition, purchasing of report cards more than doubled between June and July 2019 compared to 2018, presumably due to the re-opening of fishing for the six-week period July 1-August 14. However, more seasons of sales data may reveal different patterns, as other unknown factors unrelated to the regulatory actions may have influenced trips to the affected areas.

Figure 2. North Coast Salmon Report Card Sales, 2018-2019



Refer to the amended STD 399, Economic and Fiscal Impact Statement, and addendum for additional information.

Additional changes from the ISOR include the updates to subsections (d) and (e) of Section X, Impacts of Regulatory Action, as noted in **bold** below.

VI. Summary of Primary Considerations Raised in Opposition and in Support:

No public comments, written or oral have been received on this regulatory proposal during the public comment period.

VII. Location and Index of Rulemaking File:

A rulemaking file with the attached file index is maintained at:

California Fish and Game Commission
1416 Ninth Street, Suite 1320
Sacramento, CA 95814

VIII. Location of Department Files:

Department of Fish and Wildlife
1416 Ninth Street
Sacramento, CA 95814

IX. 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.

(c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

XI. 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 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 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, the creation of new business, the 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

No new costs or savings in Federal funding to the state, but the proposed regulation to permit 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 Department.

- (e) Nondiscretionary Costs/Savings to Local Agencies

No new costs or savings, but 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.

- (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.

Updated 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 spring-run Chinook Salmon (*Oncorhynchus tshawytscha*) in-river sport fishery is 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 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, with a bag limit of one Chinook salmon and a possession limit of two Chinook salmon, 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 CESA, 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 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 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.

Update

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.

However, additional information has become available since publication of the Notice of Proposed Action based on fall creel survey data for the Lower Klamath River Basin. Thus, the Department has included such numbers for a comparison of 2019 effort pursuant to the emergency regulation (rulemaking file 2019-0618-03E) to 2018 effort for the full six-week period of July 1-August 14 for evaluation of the economic benefit of providing this angling opportunity which would otherwise be prohibited by CESA protections for UKTSCS. (See the amended STD 399, Economic and Fiscal Impact Statement.