

STAFF SUMMARY FOR JUNE 16-17, 2021

28. CHINOOK SALMON IN ANADROMOUS WATERS OF THE KLAMATH RIVER BASIN DOWNSTREAM OF IRON GATE AND LEWISTON DAMS**Today's Item**Information ☐Action ☒

If FGC determines that listing upper Klamath-Trinity river spring Chinook salmon (*Oncorhynchus tshawytscha*) (UKTSCS) as a threatened or endangered species under the California Endangered Species Act (CESA) *is not warranted*, consider authorizing publication of notice of intent to continue the Klamath River Basin spring Chinook salmon special regulations.

Summary of Previous/Future Actions

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| • FGC determined listing UKTSCS may be warranted | Feb 6, 2019; Sacramento |
| • Adopted emergency regulations authorizing take under Section 2084 | Apr 17, 2019; Santa Monica |
| • Re-adopted emergency regulations | Dec 11-12, 2019; Sacramento |
| • Re-adopted emergency regulations | Feb 21, 2020; Sacramento |
| • Adopted certificate of compliance regulations authorizing take under Section 2084 | Apr 15-16, 2020; Teleconference |
| • Determine whether listing UKTSCS is warranted (Agenda Item 10 of this meeting) | Jun 16-17, 2021; Webinar/Teleconference |
| • Today's direction to staff | Jun 16-17, 2021; Webinar/Teleconference |
| • Potential notice hearing | Aug 18-19, 2021; Webinar/Teleconference |

Background

In Feb 2019, UKTSCS became a candidate species under CESA, conferring CESA protections during the candidacy period. CESA provides that FGC may adopt regulations to authorize take of certain threatened and endangered species or candidate species under California Fish and Game Code Section 2084.

At its Apr 2019 meeting, FGC adopted emergency regulations pursuant to Section 2084 to allow limited take of UKTSCS at the end of the traditional spring season (Special Order Regarding Take of Chinook Salmon in Anadromous Waters of the Klamath River Basin Downstream of Iron Gate and Lewiston Dams, or "special order"), while providing for substantial protection to UKTSCS, consistent with CESA. The special order focuses on protecting naturally spawning UKTSCS populations in the upper Salmon River, upper South Fork Trinity River, and mainstem Trinity River between Cedar Flat and Lewiston Dam. FGC made the emergency special order regulations "permanent" via a certificate of compliance rulemaking, effective Sep 2020 (Exhibit 1).

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Today, under Agenda Item 10, FGC is scheduled to consider whether listing UKTSCS under CESA is warranted. The language in Section 2084 that authorizes FGC to adopt the special order only applies to fish that are “endangered, threatened, or candidate species.” If FGC finds that listing UKTSCS under CESA is *not* warranted, upon publication of FGC’s findings the species would be removed from the list of candidate species and the special order will no longer be valid.

Regardless of whether FGC decides to list UKTSCS under CESA, FGC may wish to continue or modify the current provisions in the special order in some form to help protect this at-risk ecotype. DFW’s status review report (Agenda Item 10, Exhibit 2, this meeting) states that UKTSCS has “declined substantially, and disproportionately, in comparison to both historical...abundance and UKTR fall Chinook Salmon abundance.” DFW’s report outlines the many threats facing UKTSCS; accordingly, DFW classifies the ecotype as a species of special concern. With this in mind, some measure of continued protection for spawning UKTSCS, such as timing restrictions on angling, is likely appropriate.

If Listing is Not Warranted

If FGC finds that listing *is not warranted*, FGC staff recommends discussing at this meeting the potential for a regular rulemaking process to continue or modify protections for UKTSCS. If FGC wishes to continue some protections, it could direct FGC staff to work with DFW to prepare a notice of proposed rulemaking for consideration at the Aug 2021 FGC meeting. If FGC takes no regulatory action, the Klamath River Basin spring salmon sport fishing season will open Jan 1, 2022.

If Listing is Warranted

If FGC finds that listing *is warranted*, the current special order will remain in place unless FGC takes additional action. FGC could choose to clarify and consolidate the provisions of the special order by relocating them (currently at Title 14, subsection 7.40(b)(51)) into the main Klamath River Basin regulations (at Title 14, subsection 7.40(b)(50)) via the process laid out in Section 100 of Title 1 of the California Code of Regulations. “Relocation” could be accomplished without engaging in a formal rulemaking process. Alternatively, rather than using the Section 100 process to relocate the existing special order regulation as written, FGC could choose to *modify* the provisions of the special order through a formal rulemaking process and could direct FGC staff to work with DFW to prepare a notice of proposed rulemaking for consideration at the Aug 2021 FGC meeting. A third option is to use the Section 100 process now and, at some later date after further consultation with stakeholders, FGC could modify the provisions of the special order through a rulemaking process.

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

FGC staff: Discuss and provide guidance to staff on preserving or modifying provisions of the current UKTSCS special order, and schedule for the Aug 2021 FGC meeting consideration of a notice of intent to amend Klamath River Basin spring Chinook salmon regulations.

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Exhibits

1. [Staff summary for Dec 11-12, 2019 meeting, item 21, for background purposes](#)

Motion

Moved by _____ and seconded by _____ that the Commission adds an item to the August 2021 meeting agenda to consider a notice of intent to amend Klamath River Basin spring Chinook salmon regulations.

STAFF SUMMARY FOR DECEMBER 11-12, 2019
for background purposes only

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

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|---|------------------------------------|
| • 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
for background purposes only

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.