

State of California  
Fish and Game Commission  
Finding of Emergency and Statement of Proposed Emergency Regulatory Action

Emergency Action to Amend subsections (b)(40), (b)(50), and (b)(105) of Section 7.40,  
Title 14, California Code of Regulations  
Re: Chinook Salmon Sport Fishing Closures

Date of Statement: May 31, 2023

Statement of Facts Constituting the Need for Emergency Regulatory Action

**Background**

I. Chinook Salmon Sport Fishing

Consecutive years of drought, habitat compression in the ocean, and associated changes in ocean forage assemblages have created substantially difficult conditions for Chinook Salmon in the southern range of their distribution. In particular, California stocks have recently experienced such significant decline that the two pillars of this west coast fishery, Sacramento and Klamath River fall Chinook (SRFC and KRFC), have reached historical lows in abundance. This significant decline for SRFC and KRFC has led fishery agencies to close California ocean and river fisheries for 2023. In addition, the state of Oregon has severely constrained their ocean fisheries until the fall when contact with California stocks is effectively reduced. Chinook Salmon originating from the Smith River, the Klamath and Trinity rivers, and the Eel River all share similar ocean distribution and in-river habitat challenges to those of SRFC and KRFC. Given that the environmental factors that have reduced these two primary target stocks in California to historical lows are shared among all California salmon stocks, the California Department of Fish and Wildlife (Department) is recommending emergency closure for the remaining Chinook Salmon fisheries in the state. For the purposes of responsible stewardship and conservation, the Department supports exercising an abundance of caution when planning salmon fisheries in California statewide in 2023.

The Department recognizes that Chinook Salmon fishery closures in 2023 will result in socioeconomic and cultural losses for the communities of our state; however, it is necessary to provide every advantage possible to this valuable and cherished resource at this time. Recent and dramatic shifts in climate have led to vastly improved river habitat conditions early in 2023 as a result of above average accumulations of rain and snow. This shift in precipitation has resulted in vastly improved river habitat with higher flow, cooler temperatures, and reduced disease. These improvements are expected to persist, especially as compared to summer and fall conditions experienced over the last few years of extreme drought. The Department expects that putting as many spawning salmon as possible on improved river habitat this spring and fall will be advantageous in efforts to rebound these stocks and rebuild abundances. It is hoped that leveraging this opportunity now will pay dividends in future population recovery and sustainable fishing opportunity.

The proposed emergency regulations will align inland Chinook Salmon sport fishing in the Smith River, Klamath and Trinity rivers, and the Eel River with recent federal regulatory action to close ocean salmon fisheries along the California coast for 2023.

## II. Proposed Emergency Regulations

This proposed regulatory action adds subsection (a)(6) and amends subsections (b)(40), (b)(50), and (b)(105) for Section 7.40, Title 14, CCR, which describes 2023 opening dates for recreational salmon fishing in the Eel, Klamath and Trinity, and Smith rivers, respectively.

### Subsection 7.40(a)(6), General Provisions

The emergency regulations will amend the general provisions to provide a definition for federally recognized tribes and identification requirements for tribal members when engaging in take of Chinook Salmon on the Klamath River, Trinity River, Eel River and Smith River.

### Subsection 7.40(b)(40), Eel River

The emergency regulations will amend Eel River sport fishing Chinook Salmon bag and possession limit language to read “Closed to salmon fishing” except by federally recognized tribes in the following subsections:

- (b)(40)(A)1. From the mouth to Fulmor Road, at its paved junction with the south bank of Eel River. From the effective date through March 31, 2024.
- (b)(40)(A)2. From Fulmor Road, at its paved junction with the south bank of the Eel River, to South Fork Eel River. From the effective date through March 31, 2024.
- (b)(40)(A)3. From South Fork Eel River to Cape Horn Dam. From the effective date through March 31, 2024.
- (b)(40)(B)1. Main stem from its junction with the Eel River to the end of Golden Gate Drive near Bridgeville (approximately 4,000 feet upstream from the Little Golden Gate Bridge). From the effective date through March 31, 2024.
- (b)(40)(C). South Fork Eel River from mouth to Rattlesnake Creek. From the effective date through March 31, 2024.

### Subsection 7.40(b)(50), Klamath and Trinity Rivers

The emergency regulations will amend Klamath River sport fishing Chinook Salmon bag limit and possession language to read “Closed to salmon fishing” except by federally recognized tribes in the following subsections:

- (b)(50)2.b. Klamath River downstream of the Highway 96 bridge at Weitchpec. From the effective date through August 14, 2023.
- (b)(50)6.b. Trinity River main stem downstream of the Old Lewiston Bridge to the Highway 299 West bridge at Cedar Flat. From the effective date through August 31, 2023.
- (b)(50)6.c. Trinity River main stem downstream of the Highway 299 West bridge at Cedar Flat to the Denny Road bridge at Hawkins Bar. From the effective date through August 31, 2023.
- (b)(50)6.e. Trinity River main stem downstream of the Denny Road bridge at Hawkins Bar to the mouth of the South Fork Trinity River. From the effective date through August 31, 2023; and

- (b)(50)6.i. South Fork Trinity River downstream of the South Fork Trinity River bridge at Hyampom to the confluence with the Trinity River. From the effective date through December 31, 2023.

Subsection 7.40(b)(105), Smith River

The emergency regulations will amend Smith River sport fishing Chinook Salmon bag and possession limit language to read “Closed to salmon fishing” except by federally recognized tribes in the following subsections:

- (b)(105)(A). Main stem from the mouth to confluence of Middle and South forks. From the effective date through April 30, 2024;
- (b)(105)(B)1. From mouth to Patrick Creek. From the effective date through April 30, 2024;
- (b)(105)(C)1. From the mouth upstream approximately 1,000 feet to the County Road (George Tryon) bridge and Craigs Creek to Jones Creek. From the effective date through April 30, 2024; and
- (b)(105) (D)1. From the mouth to Stony Creek. From the effective date through March 31, 2024.

III. Findings for the Existence of an Emergency

The California Fish and Game Commission (Commission) considered the following factors in determining that an emergency does exist at this time.

***The magnitude of potential harm:***

The number of Chinook Salmon forecasted to return to California rivers this year is near record low. In response to the critically low abundance forecasts for California Chinook Salmon stocks, federal fishery agencies have closed California ocean and river fisheries for 2023. Currently, the Eel River, Klamath and Trinity rivers, and Smith River are the only waters in California open or scheduled to be open to recreational salmon fishing in 2023. At this time, it is critical that all California Chinook Salmon stocks be protected from fishery impacts. Any additional take of Chinook Salmon in the Eel, Klamath and Trinity, and Smith rivers will harm these important recreational fisheries.

***The existence of a crisis situation:***

Consecutive years of drought, habitat compression in the ocean, and associated changes in ocean forage assemblages have created substantially difficult conditions for Chinook Salmon in the southern range of their distribution. California stocks have recently experienced a significant decline. SRFC and KRFC, in particular, have reached historical lows in abundance. This significant decline for SRFC and KRFC has led federal fishery agencies to close California ocean and river fisheries for 2023. In addition, the Department has recommended to the Commission that all KRFC and SRFC in-river sport fishing be closed in 2023. Chinook Salmon originating from the Smith River, Klamath and Trinity rivers, and Eel River share similar ocean distribution and fishery impacts to KRFC and SRFC. Given that the environmental factors that have reduced these

two primary target stocks in California to historical lows are shared among all California salmon stocks, it is necessary to protect Chinook Salmon stocks from fishery impacts in 2023.

***The immediacy of the need:***

There is an immediate need for action due to the low abundance forecasts for Chinook Salmon stocks in California and anticipated effort shifts to salmon fisheries on the Eel, Klamath and Trinity, and Smith rivers. On April 6, the Pacific Fisheries Management Council adopted recommendations to close ocean salmon fisheries in California for 2023. On April 19, the Department recommended to the Commission that KRFC and SRFC in-river sport fishing be closed in 2023. The recreational salmon fisheries on the Smith and Eel rivers are currently open and the Klamath and Trinity fishery will begin July 1. The Department recognizes that Chinook Salmon stocks in the Eel, Klamath and Trinity, and Smith rivers are threatened by recreational effort shifts as recreational anglers turn to the few remaining fishing opportunities for salmon in California, therefore increasing effort and ultimately take. The regular rulemaking process is inadequate to address the time-sensitive circumstances faced by Chinook Salmon in the Eel, Klamath and Trinity, and Smith rivers. The requirements of the Administrative Procedure Act, the Commission's three separate bi-monthly public meetings required by Fish and Game Code Section 255, and the Office of Administrative Law's 30 working day review period would implement the necessary regulatory changes, at the earliest, in approximately 8 months; well after intensified fishery pressure on Chinook Salmon stock.

***Whether the anticipation of harm has a basis firmer than simple speculation:***

The 2023 KRFC forecast of 103,800 adults is the third lowest on record. Similarly, the 2023 SRFC forecast of 169,800 adults is the third lowest since the implementation of the Sacramento Index in 2008. KRFC have met the status determination criteria as an overfished stock since 2018, and SRFC are currently at risk of approaching overfished status. Chinook Salmon originating from the Smith River, the Klamath and Trinity rivers, and the Eel River all share similar ocean distribution and in-river habitat challenges to those of SRFC and KRFC. Given that the environmental factors that have reduced these two primary target stocks in California to historical lows are shared among all California salmon stocks, an abundance of caution around fishery planning is necessary for the remaining Chinook Salmon fisheries in the state. The proposed fishing closures on the Eel, Klamath and Trinity, and Smith rivers will minimize fishing impacts and the magnitude of potential harm during this crisis situation.

IV. Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State

None. The proposed emergency regulations will make Chinook Salmon fishing in the Eel, Klamath and Trinity, and Smith rivers consistent among the current proposed closures of both the KRFC and SRFC fisheries in the Klamath River Basin and Central Valley rivers, respectively.

(b) Nondiscretionary Costs/Savings to Local Agencies

None.

(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.

(e) Effect on Housing Costs

None.

V. Technical, Theoretical, and/or Empirical Studies, Reports, or Documents Relied Upon:

Pacific Fishery Management Council. April 2023. *Preseason Report III, Council Adopted Management Measures and Environmental Assessment Part 3 for 2023 Ocean Salmon Fishery Regulations.*

[https://www.pcouncil.org/managed\\_fishery/salmon/](https://www.pcouncil.org/managed_fishery/salmon/)

VI. Authority and Reference

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.

VII. Fish and Game Code Section 399 Finding

Delay in the amendments to bag and possession limits for Chinook Salmon puts marine resources at risk. Emergency action is necessary to safeguard Chinook Salmon stocks in a timely manner in conjunction with the 2023 ocean salmon closure.

Pursuant to Section 399 of the Fish and Game Code, the Commission finds that adopting this regulation is necessary for the immediate conservation, preservation, or protection of California Chinook Salmon.

## Informative Digest/Policy Statement Overview

Consecutive years of drought, habitat compression in the ocean, and associated changes in ocean forage assemblages have created substantially difficult conditions for Chinook Salmon in the southern range of their distribution. In particular, California stocks have recently experienced such significant decline that the two pillars of this west coast fishery, Sacramento and Klamath River fall Chinook (SRFC and KRFC), have reached historical lows in abundance. This significant decline for SRFC and KRFC has led fishery agencies to close California ocean and river fisheries for 2023. In addition, the state of Oregon has severely constrained their ocean fisheries until the fall when contact with California stocks is effectively reduced. Chinook Salmon originating from the Smith River, the Klamath and Trinity rivers, and the Eel River all share similar ocean distribution and in-river habitat challenges to those of SRFC and KRFC. Given that the environmental factors that have reduced these two primary target stocks in California to historical lows are shared among all California salmon stocks, the Department is recommending emergency closure for the remaining Chinook Salmon fisheries in the state. For the purposes of responsible stewardship and conservation the Department supports exercising an abundance of caution when planning salmon fisheries in California statewide in 2023.

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### ***Benefits of the Regulation:***

The Commission anticipates benefits to the State's environment by sustainably managing California's Chinook Salmon resources. Other benefits of the proposed regulations are consistency with fishery management goals, and preservation of salmon stocks to help ensure future resource availability past the current low population estimate. The environmental risks arising from the proposed rule more conservatively preserve salmon than existing regulation.

### ***Consistency and Compatibility with Existing Regulations***

Article IV, Section 20 of the State Constitution specifies that the Legislature may delegate to Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to regulate sport fishing in waters of the state (Fish and Game Code sections 200, 205, 315 and 316.5). The

Commission has reviewed its own regulations and finds that the proposed regulations are consistent with other recreational fishing regulations in Title 14, CCR, and therefore finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Commission has searched the California Code of Regulations and finds no other state agency regulations pertaining to potentially closing Chinook Salmon sport fishing seasons due to environmental considerations.