

2019100326

## 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): Cal. Fish and Game Commission  
1416 Ninth St., Room 1320  
Sacramento, CA 95814

(Address)

Project Title: Emergency regulation 14 CCR 7.50(b)(91.2) - take of Chinook Salmon

Project Applicant: N/A

Project Location - Specific:

Waters of the Klamath River Basin Downstream of Iron Gate and Lewiston Dams

Project Location - City: N/A Project Location - County: N/A

Description of Nature, Purpose and Beneficiaries of Project:

Amend Commission regulations to increase compliance with statutory protections of a candidate species and allow for limited take of that species.

Name of Public Agency Approving Project: California Fish and Game Commission

Name of Person or Agency Carrying Out Project: California Department of Fish and Wildlife

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: Section 15307; Section 15061(b)(3)
- ☐ Statutory Exemptions. State code number: \_\_\_\_\_

Reasons why project is exempt:

See attached.

Lead Agency  
Contact Person: Melissa Miller-Henson Area Code/Telephone/Extension: (916) 653-4899

**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: Melissa A. Miller-Henson Date: 10/16/19 Title: Executive Director

☒ 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.

Governor's Office of Planning & Research  
Date Received for filing at OPR: \_\_\_\_\_

**OCT 16 2019**

**STATE CLEARINGHOUSE**

**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

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.