

Agenda Item Summary

BACKGROUND

On October 19, 2018, the Curry Sport Fishing Association and Tom Satterthwaite submitted a petition for rulemaking to the Commission (Attachment 2). The petition requests that the Commission amend existing angling regulations for spring Chinook Salmon in the Rogue River Basin. The submitted petition qualifies as a valid petition under the Administrative Procedures Act (APA), and staff now asks the Commission to rule on the petition. Under the State APA, the Commission is required to either deny the petition in writing or initiate rulemaking proceedings within 90 days after the date of submission of a petition, which is January 17, 2019 in this case.

The Department manages the conservation and harvest of spring Chinook Salmon on the Rogue River based on the *Rogue Spring Chinook Salmon Conservation Plan* adopted by the Commission in September 2007. A comprehensive assessment of that plan, including conservation status and management options, is currently underway and expected to be completed by early January 2019. We plan to present the assessment and any proposed actions to the Commission at the January 2019 meeting, after completing a public review and comment period in December 2018 prior to completion. A very similar petition to the one currently before the Commission was submitted in September 2017. This petition was denied by the Commission December 2017 because, among other reasons, a comprehensive plan assessment was underway that would consider changes to angling regulations.

The purpose of the current petition, similar to the previous one, is to request the modification of angling regulations to allow more harvest of naturally produced (unmarked) spring Chinook Salmon in the lower, middle, and upper portions of the Rogue River starting with the 2019 season and extending for four years. The current fishery is open for hatchery fish only throughout the river to protect early run Spring Chinook from direct harvest, and opens to wild harvest after most of the early run fish have moved upstream. The petition requests modification of angling regulations to allow harvest of naturally produced (unmarked) spring Chinook Salmon from the mouth of the Rogue River to Fishers Ferry boat ramp one month earlier (i.e., May 1) than currently allowed, as well as one month earlier (i.e. June 1) from Fishers Ferry boat ramp to Dodge Bridge. The following existing sport regulations are the subject of the petition (incorporated by reference by OAR 635-016-0080).

Exceptions to Southwest Zone Regulations
(<http://www.eregulations.com/oregon/fishing/southwest-zone/>)

Rogue River

Mouth to Hog Cr boat ramp

- *Open for Chinook salmon Jun 1 – Dec 31.*

Hog Cr boat ramp to Fishers Ferry boat ramp

- *Open for Chinook salmon Jun 1 – Sep 30.*

Fishers Ferry boat ramp to Dodge Bridge

- *Open for Chinook salmon Jul 1 – Aug 31.*

PUBLIC INVOLVEMENT

The Oregon Fish and Wildlife Commission received a petition to amend freshwater angling regulation for naturally-produced spring Chinook Salmon in the Rogue River. At this time, the Commission requests public comment on the petition's proposed amended rule generally and specifically on whether options exist for achieving this regulation's substantive goals in a way that reduces negative economic impact on businesses.

Members of the public have the opportunity to view the petition and staff summaries on the Department website. A press release has also been issued prior to the Commission meeting to inform the public on a pending petition and the nature of the proposed rule changes.

ISSUE 1

THE COMMISSION WILL CONSIDER WHETHER TO DENY THE PETITION OR INITIATE RULEMAKING TO MODIFY RULES RELATED TO THE HARVEST OF NATURALLY PRODUCED SPRING CHINOOK IN THE ROGUE RIVER.

ANALYSIS

In accordance with ORS 183.390(3), the following factors must be considered by the Commission when determining whether to initiate rulemaking or to deny the petition:

The continued need for the rule;

The nature of complaints or comments received concerning the rule from the public;

The complexity of the rule;

The extent to which the rule overlaps, duplicates or conflicts with other state rules or federal regulations and, to the extent feasible, with local government regulations;

The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule; and

The statutory citation or legal basis for the rule.

For the Commission's consideration, Staff provides the following information related to each of these six factors:

1. The continued need for the rule;

In September 2007, the Oregon Fish and Wildlife Commission approved the *Rogue Spring Chinook Salmon Conservation Plan* (OAR 635-500-6525). This plan outlined Oregon Department of Fish and Wildlife's management strategies for spring Chinook Salmon in the Rogue River. The plan was developed in coordination with a public advisory committee representing fishing and conservation interest groups involved in the Rogue River.

The desired status identified in the *Rogue Spring Chinook Salmon Conservation Plan* was to increase the abundance of naturally produced spring Chinook and restore the early run component of the population in order to maintain historical life history characteristics. To help achieve desired status, the plan called for the adoption of angling regulations that protect early-returning, naturally produced (unmarked) spring Chinook from direct harvest. Desired status criteria included a 10-year average of at least 15,000 naturally produced spring Chinook passing Gold Ray Dam, as well as metrics related to migration timing, age structure, spawner distribution, and spawner composition (% hatchery). The plan also allowed for the use of adaptive management as new information became available.

Since adoption of the *Rogue Spring Chinook Salmon Conservation Plan*, the Department has adopted and enforced the angling regulations called for in the plan. The existing rule protects early-run naturally produced spring Chinook from direct harvest, both as they migrate upstream and during their time spent holding in deep pools of the upper Rogue River prior to spawning. Harvest of hatchery (i.e., adipose clipped) spring Chinook is allowed. The harvest of naturally produced spring Chinook is prohibited in the early part of the adult salmon's return (January 1 through May 31). In the river below Fisher's Ferry boat ramp near Gold Hill, the river opens to the harvest of wild fish beginning June 1 after the early run fish have passed. Between Fisher's Ferry and Dodge Bridge, the river opens to wild harvest July 1 after the early run fish have passed. Upstream of Dodge Bridge the river does not open to wild harvest because the early run fish are holding in this reach of the Rogue River.

Returns to the Rogue River of naturally produced spring Chinook Salmon have improved since the adoption of the conservation plan. The 10-year average has increased from 7,596 fish in 2007, when the plan was adopted, to 9,663 fish in 2017. In addition, desired status criteria related to spawner distribution and spawner composition (% hatchery) have been achieved. Unfortunately, hatchery Spring Chinook returns declined in recent years, creating problems in the fishery. In late 2016, the Department began a comprehensive assessment to evaluate plan

implementation progress and determine whether and what changes to management actions might be appropriate as part of a ten-year review of the conservation plan after the 2017 return year. A draft of this *Rogue Spring Chinook Conservation Plan Comprehensive Assessment and Update* has now been completed and is in the final public review stage of development. This document contains a comprehensive review of the progress toward desired status, as called for in the *Rogue Spring Chinook Salmon Conservation Plan*. The document also proposes additional harvest opportunities for naturally produced spring Chinook that are consistent with re-building toward desired status.

In developing the *Rogue Spring Chinook Conservation Plan Comprehensive Assessment and Update*, the Department has, along with other information, taken into consideration the information provided in the petition and a very similar petition to change angling regulations for naturally produced spring Chinook in the Rogue River that was considered by the Commission on December 8, 2017. That petition was denied, and the Commission requested that the Department consider the petitioners' request within the conservation plan review process. That conservation plan assessment and update process is ongoing, includes a public notice and comment period for a draft, and is expected to be completed in December 2018.

2. The nature of complaints or comments received concerning the rule from the public;

At this time, the Department is still in the process of gathering public comment concerning the draft *Rogue Spring Chinook Conservation Plan Comprehensive Assessment and Update*. These public comments are expected to include comments regarding the rule changes in the petition being considered here, as well as other fishery options detailed in the draft *Rogue Spring Chinook Conservation Plan Comprehensive Assessment and Update*. At the December 8, 2017 Commission Meeting, public testimony on a very similar petition included support for the petition that reduces protection on early-run spring Chinook, as well as support for angling regulations that provide more protection for these fish. The Department has considered these comments in the development of fishery opportunities that are consistent with the Native Fish Conservation Policy (OAR 635-007-0502 through 0509) in the draft *Rogue Spring Chinook Conservation Plan Comprehensive Assessment and Update*. The Commission will receive prior to the December Commission meeting all public comment received on the current petition, and members of the public will also have the opportunity to provide any comments orally during the meeting.

3. The complexity of the rule;

Current regulations for harvest of naturally produced spring Chinook Salmon are consistent with the *Rogue Spring Chinook Salmon Conservation Plan* adopted by the Commission in 2007. The Department finds that the existing rules have the same complexity as the proposed amended rules in the petition, and it finds neither are overly complex.

4. The extent to which the rule overlaps, duplicates or conflicts with other state or federal regulations and, to the extent feasible, with local government regulations;

Naturally produced Chinook Salmon in the Rogue River are not listed under the Federal Endangered Species Act; therefore, there are no federal regulations applicable to these populations. Current angling regulations are consistent with the *Rogue Spring Chinook Salmon Conservation Plan* adopted by the Commission in 2007.

5. The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule;

Management actions addressing limiting factors for naturally produced spring Chinook in the Rogue River have been implemented under the *Rogue Spring Chinook Salmon Conservation Plan*. These management actions include seasonal changes in operation at William Jess Dam by the U.S. Army Corps of Engineers, removal or notching of several mainstem dams on the Rogue River, and habitat enhancement on Big Butte Creek. These actions and others planned or underway are expected to improve the status of naturally produced spring Chinook in the Rogue River and are being considered as part of the *Rogue Spring Chinook Conservation Plan Comprehensive Assessment and Update*.

In addition, since 2007 advances in genetic research on Chinook Salmon have identified a specific gene associated with run timing that can differentiate spring Chinook and fall Chinook in the Rogue River. This research indicates that mixed Chinook salmon that have both the spring and fall Chinook versions of this gene have intermediate run timing, and have been included in the count for spring Chinook in the Rogue. Further research is needed to understand the genetic composition of naturally produced Chinook Salmon in the Rogue and the risk that interbreeding with fall Chinook poses to spring Chinook. The Department finds this genetic research supports the need to protect the early-run component of the Chinook population that is composed of pure spring Chinook (as the existing regulations do).

6. The statutory citation or legal basis of the rule.

The legal basis for the existing rule includes but is not limited to the Department's food fish and wildlife policies (ORS 506.109 and ORS 496.012), the Commission's Native Fish Conservation Policy (OAR 635-007-0502 through -0509), the Commission's adoption of the Rogue Spring Chinook Salmon Conservation Plan (OAR 635-500-6525), and the Commission's adoption of the angling regulations called for in the plan (OAR 635-016-0080 through -0090). Current angling regulations are consistent with *Rogue Spring Chinook Salmon Conservation Plan* and the Native Fish Conservation Policy. Current angling regulations are being considered as part of the *Rogue Spring Chinook Salmon Conservation Plan Comprehensive Assessment and Update*, which is in its final stages of development.

Conclusion

Based upon the consideration of the above six factors, staff recommends that the Commission deny the Rogue spring Chinook petition.

OPTIONS

1. Initiate rulemaking proposed by Petition; instruct staff on how to proceed with rule-making.
2. Deny Petition.

**STAFF
RECOMMENDATION**

Option 2.

DRAFT MOTION

I move to deny the rulemaking petition filed by Curry Sport Fishing Association and Tom Satterthwaite, and I request the Department continue its current Conservation Plan review process, including consideration of the modification to existing regulations proposed in the petition.

EFFECTIVE DATE

NA