

State of California
Office of Administrative Law

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OCT 07 2016

In re:
Board of Forestry and Fire Protection

Regulatory Action:

Title 14, California Code of Regulations

Adopt sections:
Amend sections: 895.1, 898.2
Repeal sections:

NOTICE OF APPROVAL OF REGULATORY
ACTION

BOARD OF FORESTRY AND FIRE PROTECTION

Government Code Section 11349.3

OAL Matter Number: 2016-0826-05

OAL Matter Type: Regular (S)

The Board of Forestry and Fire Protection proposed this action to amend sections 895.1 and 898.2 of title 14 of the California Code of Regulations. The proposed amendment to section 895.1 clarifies that existing anadromous salmonid protection regulations do not apply to those portions of watersheds that are upstream of natural or manmade barriers that are permanent and preclude anadromous fish passage. The proposed amendment to section 898.2 will relieve the director of the Department of Forestry and Fire Protection from disapproving timber harvest plans in watersheds where anadromous salmonids that are listed on either the federal or state endangered species acts are present, which is currently required by section 898.2, to allow timber harvesting in watersheds where listed anadromous salmonids are present if a "take" is authorized by the appropriate federal or state wildlife agency in accordance with the federal or state endangered species acts, even when there are no barriers to fish passage.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 1/1/2017 pursuant to section 4554.5 of the Public Resources Code.

Date: October 6, 2016

Richard L. Smith

Richard L. Smith
Senior Attorney

For: Debra M. Cornez
Director

Original: Matt Dias

OFFICE OF ADMINISTRATIVE LAW

300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6225 FAX (916) 323-6826



DEBRA M. CORNEZ
Director

MEMORANDUM

TO: Matt Dias
FROM: OAL Front Desk
DATE: October 10, 2016
RE: Return of Rulemaking Materials
OAL Matter Number 2016-0826-05
OAL Matter Type Regular (S)

OAL hereby returns the rulemaking record your agency submitted for review regarding "Listed Anadromous Salmonid Amendments, 2016."

If this is an approved matter, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved regulation is specified on the Form 400 (see item B.5). **Beginning January 1, 2013**, unless an exemption applies, Government Code section 11343.4 states the effective date of an approved regulation is determined by the date the regulation is filed with the Secretary of State (see the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State) as follows:

- (1) **January 1** if the regulation or order of repeal is filed on September 1 to November 30, inclusive.
- (2) **April 1** if the regulation or order of repeal is filed on December 1 to February 29, inclusive.
- (3) **July 1** if the regulation or order of repeal is filed on March 1 to May 31, inclusive.
- (4) **October 1** if the regulation or order of repeal is filed on June 1 to August 31, inclusive.

If an exemption concerning the effective date of the regulation approved in this matter applies, then it will be specified on the Form 400. The Notice of Approval that OAL sends to the agency will include the effective date of the regulation. The history note that will appear at the end of the regulation section in the California Code of Regulations will also include the regulation's effective date. Additionally, the effective date of the regulation will be noted on OAL's web site after OAL posts the Internet Web site link to the full text of the regulation that is received from the agency. (Gov. Code, secs. 11343 and 11344.)

Please note this new requirement: Unless an exemption applies, Government Code section 11343 now requires:

1. **Section 11343(c)(1):** Within 15 days of OAL filing a state agency's regulation with the Secretary of State, the state agency is required to post the regulation on its Internet Web site in an easily marked and identifiable location. The state agency shall keep the regulation posted on its Internet Web site for at least six months from the date the regulation is filed with the Secretary of State.
2. **Section 11343(c)(2):** Within five (5) days of posting its regulation on its Internet Web site, the state agency shall send to OAL the Internet Web site link of each regulation that the agency posts on its Internet Web site pursuant to section 11343(c)(1).

OAL has established an email address for state agencies to send the Internet Web site link to for each regulation the agency posts. Please send the Internet Web site link for each regulation posted to OAL at postedregslink@oal.ca.gov.

NOTE ABOUT EXEMPTIONS. Posting and linking requirements do not apply to emergency regulations; regulations adopted by FPPC or Conflict of Interest regulations approved by FPPC; or regulations not subject to OAL/APA review. However, an exempt agency may choose to comply with these requirements, and OAL will post the information accordingly.

DO NOT DISCARD OR DESTROY THIS FILE

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the State Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq. regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

NOTICE PUBLICATION/REGULATION SUBMISSION

REGULAR

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

| | | | |
|------------------|---|---|------------------|
| OAL FILE NUMBERS | NOTICE FILE NUMBER Z-2016-0523-01 | REGULATORY ACTION NUMBER 2016-0826055 | EMERGENCY NUMBER |
|------------------|---|---|------------------|

For use by Office of Administrative Law (OAL) only

ENDORSED - FILED
In the office of the Secretary of State
of the State of California

OCT 06 2016

1:33 pm

2016 AUG 26 P 2:18
OFFICE OF
ADMINISTRATIVE LAW

| | |
|--------|-------------|
| NOTICE | REGULATIONS |
|--------|-------------|

AGENCY WITH RULEMAKING AUTHORITY
BOARD OF FORESTRY AND FIRE PROTECTION

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

| | | | |
|--|--|---|-------------------------------------|
| 1. SUBJECT OF NOTICE | TITLE(S) | FIRST SECTION AFFECTED | 2. REQUESTED PUBLICATION DATE |
| 3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other | 4. AGENCY CONTACT PERSON | TELEPHONE NUMBER | FAX NUMBER (Optional) |
| OAL USE ONLY | ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn | NOTICE REGISTER NUMBER 2016, 23-2 | PUBLICATION DATE 6/3/2016 |

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

| | |
|--|--|
| 1a. SUBJECT OF REGULATION(S) LISTED ANADROMOUS SALMONID AMENDMENTS, 2016 | 1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) |
|--|--|

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

| | |
|--|---------------------------------|
| SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.) | ADOPT |
| | AMEND §§ 895.1, 898.2 |
| | REPEAL |

TITLE(S)
14 CCR

3. TYPE OF FILING

| | | | |
|---|---|---|---|
| <input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346) | <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. | <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) | <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) |
| <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) | <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) | <input type="checkbox"/> File & Print | <input type="checkbox"/> Print Only |
| <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) | | <input type="checkbox"/> Other (Specify) _____ | |

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs title 1, §44 and Gov. Code §11347.1)

9-16-16 to 10-3-16 request

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

| | | | |
|---|--|---|--|
| <input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) | <input type="checkbox"/> Effective on filing with Secretary of State | <input type="checkbox"/> §100 Changes Without Regulatory Effect | <input checked="" type="checkbox"/> Effective other (Specify) January 1, 2017 |
|---|--|---|--|

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

| | | |
|--|--|---|
| <input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) | <input type="checkbox"/> Fair Political Practices Commission | <input type="checkbox"/> State Fire Marshal |
| <input type="checkbox"/> Other (Specify) _____ | | |

| | | | |
|---------------------------------------|---|-----------------------|--|
| 7. CONTACT PERSON Matt Dias | TELEPHONE NUMBER 916-653-8007 | FAX NUMBER (Optional) | E-MAIL ADDRESS (Optional) matt.dias@bof.ca.gov |
|---------------------------------------|---|-----------------------|--|

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

| | |
|---|---------------------------|
| SIGNATURE OF AGENCY HEAD OR DESIGNEE | DATE 08/26/2016 |
| TYPED NAME AND TITLE OF SIGNATORY Matt Dias, Executive Officer, Board of Forestry and Fire Protection | |

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

OCT 06 2016

Office of Administrative Law

1 **Board of Forestry and Fire Protection**
2 **LISTED ANADROMOUS SALMONID AMENDMENTS, 2016**
3 **Title 14 of the California Code of Regulations (14 CCR),**
4 **Division 1.5, Chapter 4:**
5 **Subchapter 1, Article 1**
6 **Subchapter 2, Article 2**

7
8 **Amend:**

9 **§ 895.1. Definitions.**

10 *****

11 “Watersheds with listed anadromous salmonids” means any planning watershed
12 where populations of anadromous salmonids that are listed as threatened, endangered,
13 or candidate under the State or Federal Endangered Species Acts, are currently present
14 or can be restored. This definition does not apply to those portions of watersheds that
15 are upstream of barriers, including large dams (where removal and/or fishway
16 construction has been determined by NMFS and California Department of Fish and
17 Wildlife to not be feasible) and natural barriers, such as long term bedrock falls or large
18 static ancient slides with high-gradient or high-velocity barriers, that NMFS and
19 California Department of Fish and Wildlife have determined are permanent and
20 preclude anadromous fish passage.

21 *****

22
23 Note: Authority cited: Sections 4551, 4551.5, 4553, 4561, 4561.5, 4562, 4562.5, 4562.7
24 and 4591.1, Public Resources Code. Reference: Sections 4512, 4513, 4525.5, 4525.7,
25 4526, 4528, 4551, 4551.5, 4561, 4562, 4562.5, 4562.7, 4583.2, 4584, 4591.1, 21001(f),

1 21080.5, 21083.2 and 21084.1, Public Resources Code; CEQA Guidelines Appendix K
2 (printed following Section 15387 of Title 14 Cal. Code of Regulations), *Laupheimer v.*
3 *State* (1988) 200 Cal.App.3d 440; 246 Cal.Rptr. 82 and *Joy Road Area Forest and*
4 *Watershed Association, v. California Department of Forestry & Fire Protection*, Sonoma
5 County Superior Court No. SCV 229850.

6
7 **Amend:**

8 **§ 898.2. Special Conditions Requiring Disapproval of Plans.**

9 The Director shall disapprove a plan as not conforming to the rules of the Board if any
10 one of the following conditions exist:

11 *****

12 (d) Implementation of the plan as proposed would result in either a "taking" ~~of or~~ finding
13 of jeopardy of wildlife species listed as rare, threatened, or endangered, by the Fish
14 and Game Commission, the National Marine Fisheries Service, or Fish and Wildlife
15 Service, or would cause significant, long-term damage to listed species. The Director is
16 not required to disapprove a plan ~~which would result in a "taking" if the "taking" is~~
17 ~~incidental and is authorized by a wildlife agency acting within its authority under state or~~
18 ~~federal endangered species acts.~~ under either of the following circumstances:

19 (1) Which would result in a "taking" if the "taking" is incidental and is authorized by a
20 wildlife agency acting within its authority under state or federal endangered species
21 acts.

22
23 (2) Where anadromous salmonid populations are designated as an experimental
24 population under Section 10(j) of the federal Endangered Species Act, and
25 corresponding regulations under Section 4(d) of the federal Endangered Species Act for

1 those populations provide an exception from take prohibitions under the federal
2 Endangered Species Act for activities subject to the California Forest Practice Rules,
3 and federal and state agencies determine no further take authorizations are necessary,
4 under the federal Endangered Species Act or the California Endangered Species Act.

5 *****

6
7 Note: Authority cited: Sections 4551, 4555 and 4582, Public Resources Code.
8 Reference: Sections 2053, 2080.1, 2090-2097, 2830 and 2835, Fish and Game Code;
9 Sections 4555, 4582.7 and 4582.75, Public Resources Code; Section 51115.1,
10 Government Code; the federal Endangered Species Act of 1973, 16 U.S.C. Section
11 1531 et seq.; and *Laupheimer v. State* (1988) 200 Cal.App.3d 440; 246 Cal.Rptr. 82.

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BOARD OF FORESTRY AND FIRE PROTECTION

P.O. Box 944246
SACRAMENTO, CA 94244-2460
Website: www.bof.fire.ca.gov
(916) 653-8007

**MEMO****2016 OCT -5 P 1:05**

October 05, 2016

**OFFICE OF
ADMINISTRATIVE LAW**

Mr. Rick Smith, Senior Attorney
Office of Administrative Law
300 Capitol Mall
Sacramento, California 95814

Subject: File No. 2016-0826-05S

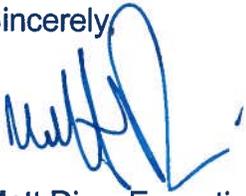
Mr. Smith,

Please find attached the changes and additions to File No. 2016-0826-05S discussed with me on October 5th, 2016. The items discussed are listed below:

- | <u>Item</u> | <u>Description</u> |
|-------------|--|
| 1. | Please replace the originally submitted rulemaking file with rulemaking file delivered to OAL on 10/04/2016 (new rulemaking file); |
| 2. | Please replace the cover page to the new rulemaking file, inserted at the front of the binder, with the enclosed, revised cover page, (I have included two copies for your convenience); |
| 3. | Please use the tabbed divider pages from the originally submitted rulemaking file and place them in the new rulemaking file where they are indicated in the table of contents to the new rulemaking file.; |
| 4. | Please replace the Certification of Completion and Closure in the new rulemaking file with the enclosed, revised Certification of Completion and Closure; |
| 5. | Please replace the final statement of reasons (FSOR) in the new rulemaking file with the enclosed, revised final statement of reasons (FSOR); |
| 6. | Please replace the originally submitted final text attached to the Form 400s with the five copies of the revised final text delivered to OAL on 10/04/2016; |
| 7. | Please add the dates 09/16/2016 to 10/03/2016 in part B.4 of the Form 400s. |

If you have any questions or need additional information, please call me at (916) 653-8007.

Sincerely,



Matt Dias, Executive Officer
State Board of Forestry and Fire Protection