

**Board of Forestry and Fire Protection (Board)
Title 14 of the California Code of Regulations (CCR)**

[Notice Published May 11, 2007]

NOTICE OF PROPOSED RULEMAKING

Coho Salmon Incidental Take Assistance, 2007

The State Board of Forestry and Fire Protection (Board) is proposing a regulatory action that would enable the California Department of Fish and Game (DFG) to establish certain incidental take permitting procedures authorizing the take of coho salmon under California Endangered Species Act (CESA). The proposed regulations set forth certain definitions and substantive measures that facilitate an expedited process for obtaining incidental take permits from the DFG for timber operations that may result in the take of coho salmon. The incidental take permitting procedures, including the expedited process, are being proposed by DFG under a separate rulemaking proposal.

PROPOSED REGULATORY ACTION

The Board proposes to amend the following sections of Title 14 of the California Code of Regulations (14 CCR):

Amend:

§ 895.1	Definitions
§§ 916.9, 936.9 and 956.9	Protection and Restoration in Watersheds with Threatened or Impaired Values
§§ 923.9, 943.9, and 963.9	Roads and Landings in Watersheds with Threatened or Impaired Values

Adopt:

§§ 916.9.1 and 936.9.1	Minimization and Mitigation Measures for Protection and Restoration in Watersheds with Coho Salmon
§§ 916.9.2 and 936.9.2	Additional Measures to Facilitate Incidental Take Authorization in Watersheds with Coho Salmon
§§ 916.11.1 and 936.11.1	Monitoring for Adaptive Management in

Watersheds with Coho Salmon

§§ 923.9.1 and 943.9.1

Minimization and Mitigation Measures for Roads and Landings in Watersheds with Coho Salmon

§§ 923.9.2 and 943.9.2

Additional Measures to Facilitate Incidental Take Authorization in Watersheds with Coho Salmon

PUBLIC HEARING

The Board will hold two public hearings.

Public Hearing #1: The first hearing is on Friday, June 22, 2007, starting at 10:00 a.m., at the Resources Building Auditorium, 1st Floor, and 1416 Ninth Street, Sacramento, California. This hearing will provide the public an opportunity to provide comments, as described below. No Board regulatory actions will be taken at this hearing. Board members may be present for the hearing. This hearing is not a substitute for the Board's regular adoption hearing on July 12, 2007. This hearing is being held jointly with a hearing by DFG to accept public comments on DFG's related proposed regulatory action. DFG's proposed regulations set forth rules and guidelines to implement Fish and Game Commission policies regarding the issuance of incidental take permits for lawful timber operations and activities that may result in the take of coho salmon. The DFG regulations propose to amend 14 CCR, Subdivision 3, Chapter 6, by adding Article 3, sections 787.0 *et seq.*, Incidental Take Permit Guidelines for Timber Operations.

Public Hearing #2: The second hearing is on Thursday, July 12, 2007, starting at 8:00 a.m., at the Inter-Mountain Fair of Shasta County, 44218 A St. McArthur, CA, 96056. At the second hearing, in addition to taking public comments, the Board may take regulatory action to adopt the proposed regulation. This hearing is being held jointly with a hearing by DFG to accept public comments on DFG's related proposed regulatory action, which is described above.

At these hearings, any person may present statements or arguments, orally or in writing, relevant to the Board proposed action described in the *Informative Digest*. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code § 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. **The written comment period ends at 5:00 P.M., on Monday, June 25, 2007.** The Board will consider only written comments received at the Board office by that time (in addition to those written comments received at the public hearing). The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: Christopher Zimny
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
Room 1506-14
1416 9th Street
Sacramento, CA

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

board.public.comments@fire.ca.gov

AUTHORITY AND REFERENCE

Public Resources Code (PRC) § 4551 and 4554.5 authorizes the Board to adopt such rules and regulations as it determines are reasonably necessary to enable it to implement, interpret or make specific sections 4512, 4513 and 4561 of the Public Resources Code. Reference: Public Resources Code sections 4513, 4551.5, 4561 and 21080.5.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

In February 2004, the State Fish and Game Commission approved DFG's coho salmon recovery strategy, including policies to guide the issuance of incidental take authorizations for timber operations and activities under CESA. Pursuant to Fish and Game Code 2112, DFG is required to develop and adopt rules and guidelines to implement those policies. DFG has developed proposed procedural regulations that set forth rules and guidelines to implement these policies, (14 CCR Div. I, Sub div.3, Chapter 6, Sections 787.0 *et seq.*, Incidental Take Permit Guidelines for Timber Operations) and are the subject of a separate Notice of Rulemaking.

The DFG's proposed procedural regulations rely in part upon the Board's proposed regulations that are the subject of this Notice. The proposed Board regulations set forth certain definitions and substantive measures in the FPRs that enable DFG to establish certain incidental take permitting procedures that meet the permit issuance criteria under CESA (Fish and Game Code § 2081, subdivisions (b) and (c)) for incidental take permits, including a certification process for providing incidental take permits under CESA for timber operations and activities that may result in take of coho salmon.

The Board proposal provides minimization and mitigation measures for timber operations that sufficiently provide protection for coho salmon and facilitate a process for DFG's issuance of incidental take permits. The approach allows those applying to the Department of Forestry and Fire Protection (CAL FIRE) for approval of timber harvesting plans in locations of CESA listed coho salmon to utilize an optional expedited process for obtaining from DFG incidental take permits for coho salmon for timber operations and activities that would result in take of the species. The Board proposal includes adopting, on permanent basis, the existing Threatened and Impaired Watershed rules (Protection for Threatened and Impaired Watersheds, 2000, OAL File No. Z00-0118-14, including all amendments and renewal requests under in file Watershed with Threatened or Impaired Values, 2007 OAL File No. Z06-0831-01 and Watershed with Threatened or Impaired Values, 2007 OAL File No. Z00-0245-01) for specific coho salmon watershed. It also provides additional rules under 14 CCR § 916.9.2 [936.9.2] , § 923.9.2 [943.9.2] , and 916.11.1[936.11.] intended to provide enhancements to the FPRs to meet the requirements under CESA for minimization and full mitigation where the optional expedited procedural process of obtaining an incidental taking is used.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has determined the proposed action will have the following effects:

- **Complies with the California Environmental Quality Act (CEQA):** The Board has determined on the basis of its rulemaking process Certified Regulatory Program, information contained in the rulemaking file including an Initial Study, and on the Forest Practice Rules as Certified Regulatory Program, that proposed actions will not result in significant adverse environmental effects. The Board is the lead agency under the California Environmental Quality Act (Pub. Resources Code, § 21000, *et seq.*)(CEQA). The DFG is a responsible agency under CEQA. As such, in accordance with CEQA Guidelines section 15253, DFG intends to use the Board's substitute environmental analysis document prepared by the Board pursuant to its Certified Regulatory Program.
- **Mandate on local agencies and school districts:** None
- **Costs or savings to any State agency:** Adoption of the proposed regulations may result in savings to CAL FIRE in that if the streamlined permitting process is used, it will save CAL FIRE staff resources in timber harvest plan processes and/or consultations or plan reviews with DFG regarding coho salmon issues.
- **Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC § 17500:** None
- **Other non-discretionary cost or savings imposed upon local agencies:** None
- **Cost or savings in federal funding to the State:** None
- **Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states:** The proposed regulatory action facilitates an expedited certification process for obtaining incidental take permits from DFG for timber operations that may result in the take of coho salmon. The certification process would authorize the take of coho salmon, a listed species under CESA. The proposed regulations would minimize and fully mitigate impacts of the timber harvesting activities on coho salmon. Therefore, to the extent businesses are engaged in activities that will take coho salmon and choose to obtain incidental take permits through the certification process, the proposed regulatory action may result in adverse economic impacts directly affecting businesses, including the ability of California businesses to compete with businesses in other states. Refer to the Initial Statement of Reasons for summary of potential economic impacts.

The State Board of Forestry and Fire Protection has made an initial determination that the adoption and amendments of this regulation may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The types of businesses that would be affected include those businesses engaged in activities that may take coho salmon and choose to obtain incidental take permits through the certification process. The proposed regulation includes additional rules under 14 CCR § 916.9.2 [936.9.2] , §

923.9.2 [943.9.2] , and 916.11.1[936.11.] intended to provide enhancements to the FPRs to meet the requirements under CESA for minimization and full mitigation where the optional expedited procedural process of obtaining an incidental take permit is used.

The Board has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

- **Cost impacts on representative private persons or businesses:** Adoption of the proposed regulations may result in adverse economic impacts as described above and in the Initial Statement of Reasons.
- **Significant effect on housing costs:** None
- **Create or eliminate jobs within California; Create new businesses or eliminate existing businesses within California; or affect the expansion of businesses currently doing business within California:** Adoption of the proposed regulations may result in the creation and or the elimination of jobs. Given the potential for additional economic impacts as identified in the Initial Statement of Reasons, there may be the potential for adverse impacts on new or existing jobs; however, these impacts are unlikely to cause the elimination of existing businesses in California. Whether these potential impacts actually occur depends upon the extent to which timber operations and activities result in take of coho salmon under CESA, the level of compliance with the federal ESA, and the costs, if any, of minimizing and mitigating for take under CESA. Therefore, these impacts are speculative and difficult to estimate at this time.

In addition, there is the potential for creation of jobs and businesses, or expansion of businesses in California. The public sector may create new jobs as a result of mitigations such as road treatment, culvert replacement, and habitat enhancement. These jobs would likely be created largely in rural counties with high levels of unemployment. Also, private environmental consulting firms could benefit economically from assisting in the development and implementation of mitigation measures.

- **Effect on small business:** Adoption of the proposed regulations may result in adverse economic impacts as described above and in the Initial Statement of Reasons.
- **The proposed rules do not conflict with, or duplicate Federal regulations.**

BUSINESS REPORTING REQUIREMENT

The regulation does not require a report, which shall apply to businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code § 11346.5(a)(13), the Board must determine that no reasonable alternative it considers or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection
Attn: Christopher Zimny
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 653-9418

The designated backup person in the event Mr. Zimny is not available is Doug Wickizer, California Department of Forestry and Fire Protection, at the above address and phone.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request.

When the *Final Statement of Reasons* has been prepared, the statement will be available from the contact person on request.

A copy of the express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion, is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address. All of the above referenced information is also available on the Board web site at:

http://www.fire.ca.gov/BOF/board/board_proposed_rule_packages.html

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.



Christopher Zimny
Regulations Coordinator
Board of Forestry and Fire Protection

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