

INITIAL STATEMENT OF REASONS

Coho Salmon Incidental Take Assistance Repeal, 2009

[Published October 2, 2009]

Title 14 of the California Code of Regulations (14 CCR):

Repeal:

§§ 916.9.2 [936.9.2] Additional Measures to Facilitate Incidental Take Authorization in Watersheds with Coho Salmon

§§ 923.9.2 [943.9.2] Additional Measures to Facilitate Incidental Take Authorization in Watersheds with Coho Salmon

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THESE REGULATIONS ARE INTENDED TO ADDRESS

On September 17, 2009, the San Francisco Superior Court (Court), in *Environmental Protection Information Center and Sierra Club vs. California State Board of Forestry and Fire Protection and California Department of Forestry and Fire Protection*, Case NO: CGC-07-469244, struck down sections 916.9.2, 923.9.2, 936.9.2 and 943.9.2 of the California Forest Practice Rules. The Court found that these sections purported to determine minimization and full mitigation of impacts under CESA (Fish & G. Code, § 2081) which exceeded the Board's authority. The Board notices this action to repeal the subsections.

SPECIFIC PURPOSE OF THE REGULATION

The proposed repeal of regulations removes from the California Forest Practice Rules (FPRs) subsections struck down by the Court in *Environmental Protection Information Center and Sierra Club vs. California State Board of Forestry and Fire Protection and California Department of Forestry and Fire Protection*,

ALTERNATIVES TO THE REGULATION CONSIDERED BY THE BOARD AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES AND ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

No other alternatives to these proposed regulations were considered by the Board at this time. In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The proposed action will not result in a significant adverse economic impact to the regulated public. The repealed regulations facilitated an expedited certification process for obtaining incidental take permits (ITP) from DFG for timber operations that may result in the take of coho salmon. To the extent that the expedited ITP certification process provided cost saving to the regulated public, the proposed regulation eliminates any of those cost saving opportunities.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS

The Board has not identified any adverse environmental effects from the proposed action. The proposed repealed regulations established substantive requirements that were intended to minimize and fully mitigate impacts of the timber harvesting activities on coho salmon under Fish and Game Code section 2081, subdivisions (b). With the proposed repeal of the regulations, mitigation of impacts of the timber harvesting activities on coho salmon would be accomplished using other legal methods resulting in protection of the species

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Board of Forestry and Fire Protection consulted the following listed information and/or publications as referenced in this *Initial Statement of Reasons*. Unless otherwise noted in this *Initial Statement of Reasons*, the Board did not rely on any other technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

1. Order Granting Petitioners' Joint Motion for Judgment, CASE NO: CGC-07469244, September 17, 2009.
2. Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief, November 15, 2007

Pursuant to Government Code § 11346.2(b)(6): In order to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues as those addressed under the proposed regulation revisions listed in this *Statement of Reasons*; the Board has directed the staff to review the Code of Federal Regulations. The Board staff determined that no unnecessary duplication or conflict exists.

PROPOSED TEXT

The proposed revisions or additions to the existing rule language is represented in the following manner:

UNDERLINE indicates an addition to the California Code of Regulations, and

~~STRIKETHROUGH~~ indicates a deletion from the California Code of Regulations.

All other text is existing rule language.

end