

(2) Reasonable alternatives to the proposal, and
 (3) Mitigation measures to minimize any significant adverse environmental impacts of the proposal.

(b) Recommendations from the department shall consider the relevant portions of policies declared by the state legislature and the commission dealing with the management of fish and wildlife resources.

(c) Recommendations received from any person other than the department shall be considered as a comment on, or counter proposal to, the recommendations received from the department, and a written response shall be prepared by the department.

(d) The commission will evaluate proposals according to how well the recommendations would achieve the purposes and policies of fish and wildlife management described in the Fish and Game Code, and in Division 1, Title 14, California Administrative Code.

(e) After receipt of the recommendation from the department, the commission shall consult with all other public agencies having jurisdiction by law with respect to the activities involved in the recommendation.

(f) Notice of the filing of the recommendation by the department shall be made to the public following the statutory requirements of the Fish and Game Code. The notification shall be provided early enough that people will have at least 30 days, or until the next meeting, whichever occurs first, to respond to the recommendation before the commission takes its action. Notice shall also be mailed to any person who requests in writing such notification.

(g) The commission will not adopt regulations as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment, unless specific economic, social or other conditions make infeasible such project alternatives or such mitigation measures.

(h) The final action on the adopting of regulations shall include the written response of the commission to significant environmental points raised during the evaluation process by other public agencies and members of the public. Responses to comments received prior to the final public meeting when the commission must take its action will be prepared in writing prior to the meeting. Responses to comments received at the final meeting may be made orally by the commission during the meeting. Such oral responses will be included in the official written minutes of the meeting.

(i) Notice of the adoption of a regulation adopted pursuant to Section 21080.5, Public Resources Code, shall be filed with the Secretary for Resources. The notice shall be available for public inspection and shall remain posted for a period of 30 days.

NOTE: Authority cited: Section 21080.5, Public Resources Code, and Section 15050 of the State EIR Guidelines. Reference: Section 21080.5, Public Resources Code, and Section 15050 of the State EIR Guidelines.

HISTORY

1. New section filed 10-19-76; effective thirtieth day thereafter (Register 76, No. 43).
2. Amendment of subsection (a) filed 3-15-77 as an emergency; effective upon filing (Register 77, No. 12).
3. Certificate of Compliance filed 7-8-77 (Register 77, No. 28).
4. Amendment of subsection (a) filed 7-8-77; effective thirtieth day thereafter (Register 77, No. 28).
5. Amendment of NOTE filed 7-16-81; effective thirtieth day thereafter (Register 81, No. 29).
6. Renumbering of Section 3.90 to Section 781.5 filed 2-17-82; designated effective 3-1-82 (Register 82, No. 8).

Chapter 5. Fish and Game Commission, Wildlife Conservation Board, and Department of Fish and Game—Conflict of Interest Code

NOTE: It having been found, pursuant to Government Code Section 11344, that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and

particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

FISH AND GAME COMMISSION
 1416 NINTH ST.
 SACRAMENTO, CALIFORNIA 95814
 WILDLIFE CONSERVATION BOARD
 1807 13TH STREET, SUITE 201
 SACRAMENTO, CALIFORNIA 95814
 DEPARTMENT OF FISH AND GAME
 1416 NINTH ST.
 SACRAMENTO, CALIFORNIA 95814
 FAIR POLITICAL PRACTICES COMMISSION
 428 "J" STREET, SUITE 450
 SACRAMENTO, CALIFORNIA 95814
 ARCHIVES
 SECRETARY OF STATE
 1020 "O" ST.
 SACRAMENTO, CALIFORNIA 95814

The Conflict of Interest Code is designated as Chapter 5 of Title 14 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Section 782. General Provisions Appendix

NOTE: Authority cited: Section 87300 and 87304, Government Code. Reference: Sections 87300, et seq., Government Code.

HISTORY

1. New Chapter 5 (Articles 1-5, Sections 782-786.7) filed 11-9-77; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 10-4-77 (Register 77, No. 46).
2. Repealer of Chapter 5 (Article 1-4, Sections 782-786.7) and new Chapter 5 (Section 782 and Appendix) filed 2-26-81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12-1-80 (Register 81, No. 9).
3. Amendment of Appendix filed 1-20-87; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 10-14-86 (Register 87, No. 4).
4. Amendment of Appendix filed 1-21-93; operative 2-22-93. Submitted to OAL for printing only pursuant to Government Code section 11343.8. Approved by Fair Political Practices Commission 11-9-92 (Register 93, No. 4).
5. Amendment of chapter heading, contact information, section and Appendix filed 6-9-2005; operative 7-9-2005. Approved by Fair Political Practices Commission 4-4-2005 (Register 2005, No. 23).

Chapter 6. Regulations for Implementation of the California Endangered Species Act

Article 1. Take Prohibition; Permits for Incidental Take of Endangered Species, Threatened Species and Candidate Species

§ 783.0. Purpose and Scope of Regulations.

This article implements Section 2080 and Section 2081 of the Fish and Game Code. This article does not affect the Department's authority to authorize take pursuant to any other provision of this division.

NOTE: Authority cited: Sections 702 and 2081(d), Fish and Game Code. Reference: Sections 2080 and 2081, Fish and Game Code.

HISTORY

1. New chapter 6, article 1 (sections 783.0-783.8) and section filed 12-30-98; operative 12-30-98 pursuant to Government Code section 11343.4(d) (Register 99, No. 1).

§ 783.1. Prohibitions.

(a) No person shall import into this State, export out of this State or take, possess, purchase, or sell within this State, any endangered species, threatened species, or part or product thereof, or attempt any of those acts, except as otherwise provided in the California Endangered Species Act, Fish and Game Code Section 2050, et seq. ("CESA"), the Native Plant Protection Act, the Natural Community Conservation Planning Act, the California Desert Native Plants Act, or as authorized under this article in an incidental take permit.

(b) Subsection (a) applies to any species designated as a candidate species under Section 2074.2 of the Fish and Game Code if the Commission has issued notice under Section 2074.4.

(c) Department wildlife management activities. The possession or take of endangered, threatened, or candidate species by employees and agents of the Department for scientific, educational and management purposes, and for law enforcement purposes, is not prohibited.

(d) Take of insects. The take of insects and other invertebrates that are not fish as defined in the Fish and Game Code is not prohibited.

NOTE: Authority cited: Sections 702, 1001, 2081(a) and 2081(d), Fish and Game Code. Reference: Sections 2080, 2085, 2062 and 2067, Fish and Game Code.

HISTORY

1. New section filed 12-30-98; operative 12-30-98 pursuant to Government Code section 11343.4(d) (Register 99, No. 1).

§ 783.2. Incidental Take Permit Applications.

(a) Permit applications. Applications for permits under this article must be submitted to the Regional Manager. Each application must include all of the following:

(1) Applicant's full name, mailing address, and telephone number(s). If the applicant is a corporation, firm, partnership, association, institution, or public or private agency, the name and address of the person responsible for the project or activity requiring the permit, the president or principal officer, and the registered agent for the service of process.

(2) The common and scientific names of the species to be covered by the permit and the species' status under CESA, including whether the species is the subject of rules and guidelines pursuant to Section 2112 and Section 2114 of the Fish and Game Code.

(3) A complete description of the project or activity for which the permit is sought.

(4) The location where the project or activity is to occur or to be conducted.

(5) An analysis of whether and to what extent the project or activity for which the permit is sought could result in the taking of species to be covered by the permit.

(6) An analysis of the impacts of the proposed taking on the species.

(7) An analysis of whether issuance of the incidental take permit would jeopardize the continued existence of a species. This analysis shall include consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (A) known population trends; (B) known threats to the species; and (C) reasonably foreseeable impacts on the species from other related projects and activities.

(8) Proposed measures to minimize and fully mitigate the impacts of the proposed taking.

(9) A proposed plan to monitor compliance with the minimization and mitigation measures and the effectiveness of the measures.

(10) A description of the funding source and the level of funding available for implementation of the minimization and mitigation measures.

(11) Certification in the following language:

I certify that the information submitted in this application is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to suspension or revocation of this permit and to civil and criminal penalties under the laws of the State of California.

(b) Information requirements; consultation with Department. Responses to the requirements of section 783.2(a)(5)-(a)(9) shall be based on the best scientific and other information that is reasonably available. At an applicant's request, the Department shall, to the greatest extent practicable, consult with the applicant regarding the preparation of a permit application in order to ensure that it will meet the requirements of this article when submitted to the Department. An analysis prepared pursuant to state or federal laws other than CESA that meets the requirements of section 783.2 and 783.3 may be submitted in an incidental take permit application.

NOTE: Authority cited: Sections 702 and 2081(d), Fish and Game Code. Reference: Section 2081(b) and (c), Fish and Game Code.

HISTORY

1. New section filed 12-30-98; operative 12-30-98 pursuant to Government Code section 11343.4(d) (Register 99, No. 1).

§ 783.3. Compliance with the California Environmental Quality Act.

(a) Department as responsible agency. In general, the Department will be a responsible agency for purposes of issuing an incidental take permit where another public agency must approve the project or activity for which the permit is sought and the other agency has taken the lead agency role for purposes of compliance with the California Environmental Quality Act, Public Resources Code section 21000, et seq. ("CEQA"). Where the Department will be a responsible agency for purposes of CEQA, the following must be included in the permit application required by section 783.2:

(1) The name, address, telephone number and contact person of the lead agency.

(2) A statement as to whether an environmental impact report, negative declaration, mitigated negative declaration, initial study has been prepared or is being considered, or whether another document prepared pursuant to a regulatory program certified pursuant to Public Resources Code section 21080.5 (and listed in title 14, California Code of Regulations, section 15251) has been prepared or is being considered.

(3) At the option of the applicant, a notice of preparation, notice of determination, or draft or final environmental document may be attached.

(b) Department as lead agency. In general, the Department will act as the lead agency for purposes of CEQA where issuance of the incidental take permit is the only public agency action subject to CEQA that will be taken with regard to the project or activity for which the permit is sought. Where the Department will act as a lead agency for purposes of issuing an incidental take permit, the permit applicant, in addition to the information required by section 783.2, shall provide sufficient information to enable the Department to determine whether the project or activity for which a permit is sought, as proposed, may result in significant adverse environmental effects in addition to the impacts of taking analyzed pursuant to section 783.2, and, if so, whether feasible alternatives or feasible mitigation measures would avoid or substantially lessen any such significant adverse effects. In such cases, each application shall include an analysis of all potentially significant adverse environmental effects which may result from the project or activity, and either (1) a discussion of feasible alternatives and feasible mitigation measures to avoid or substantially lessen any significant adverse environmental effects or (2) a statement that, because the applicant's analysis of the proposed project showed that the proposed project would not have any significant or potentially significant effects on the environment, no alternatives or mitigation measures are proposed to avoid or substantially lessen significant effects on the environment. This statement shall be supported by documentation describing the potential effects examined in reaching this conclusion. If the analysis identifies significant adverse environmental effects for which feasible mitigation measures are not available, it shall also include a statement describing any specific environmental, economic, legal, social, technological, or other benefits which might justify the significant environmental effects of the project or activity. The analysis and information required by this section shall be provided to the Department as soon as reasonably practicable following the submission of a permit application.

NOTE: Authority cited: Sections 702 and 2081(d), Fish and Game Code; and Section 21080.5, Public Resources Code. Reference: Section 2081(b), Fish and Game Code; and Sections 21002.1, 21069, 21080.1, 21080.3, 21080.4, 21080.5 and 21165, Public Resources Code.

HISTORY

1. New section filed 12-30-98; operative 12-30-98 pursuant to Government Code section 11343.4(d) (Register 99, No. 1).

§ 783.4. Incidental Take Permit Review Standards.

(a) Issuance criteria. If an application is submitted in accordance with section 783.2 and section 783.3, the Director shall decide whether or not

an incidental take permit should be issued. A permit may only be issued if the Director finds that:

(1) The take authorized by the permit will be incidental to an otherwise lawful activity.

(2) The applicant will minimize and fully mitigate the impacts of the take authorized under the permit. The measures required to meet this obligation shall be roughly proportional in extent to the impact of the authorized taking on the species. Where various measures are available to meet this obligation, the measures required shall maintain the applicant's objectives to the greatest extent possible. All required measures shall be capable of successful implementation. For purposes of this section only, impacts of taking include all impacts on the species that result from any act that would cause the proposed taking.

(3) The permit will be consistent with any regulations adopted pursuant to Fish and Game Code Sections 2112 and 2114.

(4) The applicant has ensured adequate funding to implement the measures required under the permit to minimize and fully mitigate the impacts of the taking, and to monitor compliance with, and the effectiveness of, the measures.

(b) No incidental take permit shall be issued pursuant to this article if issuance of the permit would jeopardize the continued existence of the species. The Department shall make this determination based on the best scientific and other information that is reasonably available, and shall include consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of

(1) known population trends;

(2) known threats to the species; and

(3) reasonably foreseeable impacts on the species from other related projects and activities.

(c) Permit conditions. Every permit issued under this article shall contain such terms and conditions as the Director deems necessary or appropriate to meet the standards in this section. In determining whether measures are capable of successful implementation, the Director shall consider whether the measures are legally, technologically, economically and biologically practicable. This provision does not preclude the use of new measures or other measures without an as yet established record of success which have reasonable basis for utilization and a reasonable prospect for success.

NOTE: Authority cited: Sections 702 and 2081(d), Fish and Game Code. Reference: Sections 2081(b) and (c), Fish and Game Code.

HISTORY

1. New section filed 12-30-98; operative 12-30-98 pursuant to Government Code section 11343.4(d) (Register 99, No. 1).

§ 783.5. Incidental Take Permit Process.

(a) The Director shall review and render a decision regarding incidental take permit applications in accordance with this section. On-site inspections by the Department may be required prior to a final decision by the Director.

(b) Initial review. The Department shall complete an initial review of each incidental take permit application within 30 days of receipt. If the Department determines that the application is complete, it shall notify the applicant that the application has been accepted and shall commence review of the permit application in accordance with section 783.5(c) or section 783.5(d), as applicable. This determination shall be based solely on whether the applicant has provided information responsive to each required element of sections 783.2 and 783.3 and shall not be based on the merits of the application. If an incomplete or improperly executed application is submitted, the Department shall return the application to the applicant with a description of the deficiency. The applicant shall have 30 days from receipt of the returned application to correct the deficiency and re-submit the application. If the Department takes no action within 30 days of receipt, the application shall be deemed complete. The Department may require supplementary information during the application review process after the application is determined to be complete, or is deemed complete, pursuant to this subsection.

(c) Department as CEQA responsible agency. If the Department is a responsible agency for purposes of CEQA, the Department shall act in accordance with California Code of Regulations, title 14, section 15096 and other applicable provisions of CEQA and the CEQA Guidelines, California Code of Regulations, title 14, section 15000, et seq.. The Director shall decide whether an incidental take permit can be issued under this article, in accordance with CEQA and the CEQA Guidelines, based on a review of the application; the environmental impact report, mitigated negative declaration or negative declaration, or other environmental documentation prepared pursuant to a regulatory program certified pursuant to Public Resources Code section 21080.5 (and listed in title 14, California Code of Regulations, section 15251), prepared by the lead agency; the lead agency's findings under Section 21081 of the Public Resources Code; and any other available, relevant information included in the record by the Department.

(1) If the Department determines that it will not proceed with any of the actions specified in California Code of Regulations, title 14, section 15096(c), the Director shall approve the application and issue a permit, or deny an application, in accordance with this article as soon as possible and no later than the latest of the following dates:

(A) 90 days from the date on which the lead agency approved the activity. However, the Department shall, at the request of the applicant, commence processing the application as soon as the information necessary to commence the processing is available.

(B) 90 days from the date on which the application was accepted as complete by the Department.

(C) If the Department makes a written finding that additional time is necessary due to the complexity of the application or the scope and duration of the requested permit, the 90 day periods for acting upon the permit application may be extended an additional 60 days to a total of 150 days.

(2) If the Director decides to approve the application, the Director shall make findings substantiating compliance with section 783.4 and shall make the findings required of a CEQA responsible agency under California Code of Regulations, title 14, section 15096(h). The Director shall then issue the incidental take permit. Within five working days after the issuance or amendment of a permit, the Department shall file a notice of determination under California Code of Regulations, title 14, section 15096(i).

(3) If the Director decides to deny the application, the Director shall return the application to the applicant with a written statement of the basis for the denial and a description of any measures the Director deems necessary in order for the application to be approved.

(d) Department as lead agency. If the Department is the lead agency under CEQA for purposes of issuing an incidental take permit, the application shall be reviewed, and approved or denied in accordance with this subsection. The Director shall approve an application and issue a permit, or deny the application, under this subsection no later than 120 days from the date on which the completed application is accepted as complete by the Department; provided, however, that the Department may extend this time to no later than 180 days from the date the application is accepted upon a written finding that the extension is necessary due to the complexity of the application or the scope and duration of the requested permit.

(1) Review of environmental analysis. After accepting a completed application, the Department shall review the analysis submitted by the applicant pursuant to section 783.3 and make any revisions that the Director deems necessary or appropriate to comply with CEQA.

(2) Notice of Public Availability of application.

(A) Public review and comment. Once the Department has reviewed and revised the analysis, it shall make the application and analysis available for public review at the headquarters of the region in which the application was submitted and shall distribute copies of a Notice of Public Availability. A minimum of 30 days following distribution of the Notice of Public Availability shall be allowed for public review and comment regarding the application. The Notice of Public Availability shall include the following:

1. the name of the applicant;
2. a brief description of the project or activity for which the permit is sought and its location;
3. the common and scientific names of the species to be covered by the permit;
4. the date on which the Department accepted the application;
5. a description of how copies of the application and analysis can be obtained;

6. the name and telephone number of a contact person within the Department who can answer questions regarding the application; and

7. a statement that the Department seeks written comments from the public regarding the application and analysis, an address to which the comments should be sent, and the deadline for submission of the comments.

(B) Distribution of notice. Copies of the Notice of Public Availability shall be distributed as follows:

1. A copy shall be sent to the office of the County Clerk of the county in which the proposed project or activity would take place and, if applicable, to the planning department of the city with jurisdiction over the project or activity, for posting at the customary place for posting environmental matters.

2. If the Director determines that the proposed project or activity is of Statewide significance, a copy shall be filed with the Office of Planning and Research.

3. A copy shall be sent to any other person upon written request.

4. Copies of the Notice of Public Availability may also be posted or made available at such other locations as the Director deems desirable and feasible to provide adequate public notice.

(3) Consultation. Concurrent with the distribution of the Notice of Public Availability, the Department shall consult with, and request written comments from, all public agencies with jurisdiction by law over the project or activity for which the permit is sought.

(4) Response to comments. The Department shall prepare a written summary and response to all significant environmental points raised during review of the application.

(5) Issuance of permit. The Director's decision regarding the application shall be based on the application and analysis, the written summary and response to significant environmental points, and any other available, relevant information included in the record by the Department. The Director shall determine whether or not to issue an incidental take permit pursuant to this article and, in addition, shall determine whether the project or activity, as proposed, may result in any significant adverse environmental effects in addition to the impacts of taking species to be covered by the permit, and, if so, whether feasible alternatives or feasible mitigation measures would avoid or substantially lessen any significant adverse effects. The Director shall not approve the application, as proposed; if there are feasible mitigation measures or alternatives which would substantially reduce any significant adverse effects. If significant adverse effects will likely result even after the inclusion of feasible mitigation measures or alternatives, the Director may approve the application if the Director first makes findings in accordance with the provisions of Section 21081 of the Public Resources Code.

(A) If the Director decides to approve the application, the Director shall make findings substantiating compliance with section 783.4 and this subsection (d)(5). The Director shall then issue the incidental take permit.

(B) If the Director decides to deny the application, the Director shall return the application to the applicant with a written statement of the basis for the permit denial and a description of any measures the Director deems necessary in order for the application to be approved.

(6) Notice of decision. Within five working days of issuing an incidental take permit or denying an application under this subsection(d), the Director shall file a Notice of Decision, which indicates whether the proposed permit will, or will not, have a significant effect on the environment, with the Secretary of the Resources Agency. The Notice of

Decision shall include a statement that the Director approved the application and has issued an incidental take permit, or that the Director denied the application.

NOTE: Authority cited: Sections 702 and 2081(d), Fish and Game Code; and Section 21080.5, Public Resources Code. Reference: Section 2081(b), Fish and Game Code; and sections 21002.1, 21069, 21080.1, 21080.3, 21080.4, 21080.5 and 21165, Public Resources Code.

HISTORY

1. New section filed 12-30-98; operative 12-30-98 pursuant to Government Code section 11343.4(d) (Register 99, No. 1).

§ 783.6. General Permit Conditions.

The following provisions apply to all permits issued under this article.

(a) Assignment or transfer of permit.

(1) Except as provided in subsection (a)(2) below, no incidental take permit shall be assigned or transferred without the written consent of the Department, which shall not be unreasonably withheld.

(2) With written notice to the Department, any permit may be assigned or transferred without the approval of the Department in the following circumstances:

(A) The sale, merger, annexation, consolidation or other acquisition of an institutional, corporate or public entity permit holder by another entity.

(B) The transfer of a permit from a natural person to the institutional, corporate, or public employer of such individual.

(C) As security for a debt under the provision of any mortgage, deed of trust, indenture, bank credit agreement, or similar instrument.

(b) Renewal of permits.

(1) Applicants for renewal must submit a written application to the Regional Manager at least 60 days prior to the expiration date of the permit. Applicants must certify in writing that all statements and information in the original application remain current and correct, unless previously changed or corrected. If the information is no longer current or correct, the applicant must provide corrected information.

(2) Renewal criteria. The Director shall renew a permit if the application meets the standards in section 783.4.

(3) Continuation of permitted project or activity. Any person holding a valid, renewable, incidental take permit who has submitted a timely application for renewal, may continue the activities authorized by the expired permit until the Director has acted on such person's application for renewal.

(c) Amendment of permit.

(1) Permittee's request. Where circumstances have changed so that a permittee desires to have any condition of a permit modified, such permittee must submit an application and supporting information in conformity with this article.

(2) Department amendments. The Department may amend any permit at any time during its term with the concurrence of the permittee, or as required by law. The Department shall amend a permit as required by law regardless of whether the permittee concurs with such amendment.

(3) Change of name or address. A permittee is not required to amend a permit or obtain a new permit if there is a change in the legal individual or business name, or in the mailing address of the permittee. A permittee is required to notify the Regional Manager within 10 calendar days of such change. This provision does not authorize any change in location of the conduct of the permitted project or activity when approval of the location is a qualifying condition of the permit.

(4) Minor permit amendments. Amendments that would not significantly modify the scope or nature of the permitted project or activity or the minimization, mitigation or monitoring measures in an incidental take permit, as determined by the Department, shall be considered minor permit amendments. Minor permit amendments shall be approved and incorporated into the incidental take permit, or denied, by the Director within 60 days of the permittee's submission of an application for amendment. If the Director approves a minor permit amendment, the Depart-

ment shall not impose any new permit condition or modify any existing permit condition except when the new or modified condition:

- (A) relates solely to the minor permit amendment,
- (B) is required by changes in the law, or
- (C) is needed to make existing permit conditions consistent with the proposed amendment.

(5) Major permit amendments. Amendments that would significantly modify the scope or nature of the permitted project or activity or the minimization, mitigation or monitoring measures in an incidental take permit, or require additional environmental review pursuant to Public Resources Code, section 21166, or California Code of Regulations, title 14, section 15162, as determined by the Department, shall be considered major permit amendments. Requests for major permit amendments shall be reviewed according to the process established for initial permit applications, except that the information and analysis provided in support of an application for a major permit amendment may rely on and supplement the information and analysis used in the initial permit application.

(6) Approval standard. The Director shall approve any minor or major permit amendment if the amended permit would continue to meet the standards in section 783.4.

(d) Alteration of permit. Permits shall not be altered, erased, or mutilated, and any permit which has been altered, erased, or mutilated shall immediately become invalid.

(e) Display of permit. Permits shall be displayed for inspection upon request by the Director or the Director's agents.

(f) Surrender of permit. Any person holding a permit shall surrender such permit to the Department upon notification that the permit has been suspended or revoked and all appeal procedures have been exhausted.

NOTE: Authority cited: Sections 702 and 2081(d), Fish and Game Code. Reference: Section 2081(b), Fish and Game Code.

HISTORY

1. New section filed 12-30-98; operative 12-30-98 pursuant to Government Code section 11343.4(d) (Register 99, No. 1).

§ 783.7. Permit Suspension and Revocation.

(a) Criteria for suspension. The privileges of exercising some or all of the permit authority may be suspended at any time if the permittee is not in compliance with the conditions of the permit. Any action to suspend any privileges under an incidental take permit shall be limited so as to address the discrete action or inaction that has resulted in the suspension, to the extent consistent with the species protection purposes of the permit.

(b) Criteria for revocation. The Director may begin procedures to revoke a permit if the permittee fails within 60 days of written notification pursuant to subsection (c)(3) to correct deficiencies that were the cause of a permit suspension, or if statutory enactments subsequent to the issuance of the permit prohibit the continuation of the permit or the project or activity covered by the permit. Any action to revoke any privileges under an incidental take permit shall be limited so as to address the discrete action or inaction, or statutory enactment, that has resulted in the revocation, to the extent consistent with the species protection purposes of the permit.

(c) Procedure for suspension or revocation.

(1) When the Director believes there are valid grounds for suspending or revoking a permit the permittee shall be notified in writing of the proposed suspension or revocation by certified or registered mail. In no case shall a proposed revocation notice be issued prior to the 60 day period required by subsection (b). The notice shall identify the permit to be suspended or revoked, the reason(s) for such suspension or revocation, the actions necessary to correct the deficiencies, and inform the permittee of the right to object to the proposed suspension or revocation. The Department may amend any notice of suspension or revocation at any time.

(2) Upon receipt of a notice of proposed suspension or revocation the permittee may file a written objection to the proposed action. Such objection must be in writing, must be filed within 45 calendar days of the date of the notice of proposal, must state the reasons why the permittee objects to the proposed suspension or revocation, and may include supporting documentation.

(3) A decision on the proposed suspension or revocation shall be made within 45 days after the end of the objection period. The Department shall notify the permittee in writing of the Director's decision and the reasons therefor. The Department shall also provide the applicant with the information concerning the right to request reconsideration of the decision under section 783.8 of this article and the procedures for requesting reconsideration. No permit may be revoked pursuant to this section unless it has first been suspended pursuant to this section. The permit shall remain valid and effective pending any final determination on suspension under this subsection, except that a permit may be suspended immediately if statutory enactments subsequent to the issuance of the permit prohibit the continuation of the permit or the project or activity covered by the permit. NOTE: Authority cited: Sections 702 and 2081(d), Fish and Game Code. Reference: Section 2081(b), Fish and Game Code.

HISTORY

1. New section filed 12-30-98; operative 12-30-98 pursuant to Government Code section 11343.4(d) (Register 99, No. 1).

§ 783.8. Reconsideration and Appeal Procedures.

(a) Request for reconsideration. Any person may request reconsideration of an action under this article if that person is one of the following:

(1) An applicant for permit issuance, renewal or amendment who has received written notice of denial;

(2) A permittee who has a permit amended, suspended, or revoked; or

(3) A permittee who has a permit issued, renewed, or amended but has not been granted authority by the permit to perform all activities requested in the application; or the permit includes minimization or mitigation measures other than those proposed by the applicant.

(b) Method of requesting reconsideration. Any person requesting reconsideration of an action under this article must comply with the following criteria:

(1) Any request for reconsideration must be in writing, signed by the person requesting reconsideration or by the legal representative of that person, and must be submitted to the Regional Manager.

(2) The request for reconsideration must be received by the Regional Manager within 30 days of the date of notification of the decision for which reconsideration is being requested.

(3) The request for reconsideration shall state the decision for which reconsideration is being requested and shall state the reason(s) for the reconsideration, including presenting any new information or facts pertinent to the issue(s) raised by the request for reconsideration.

(4) The request for reconsideration shall contain a certification in substantially the same form as provided in section 783.2(a)(11). If a request for reconsideration does not contain such certification, but is otherwise timely and appropriate, it shall be held and the person submitting the request shall be given written notice of the need to submit the certification within 15 days. Failure to submit certification shall result in the request being rejected as insufficient in form and content.

(c) Inquiry by the Department. The Department may institute a separate inquiry into the matter under consideration.

(d) Determination of grant or denial of a request for reconsideration. The Department shall notify the permittee of its decision within 45 days of the receipt of the request for reconsideration. This notification shall be in writing, shall state the reasons for the decision, and shall contain a description of the evidence which was relied upon by the issuing officer. The notification shall also provide information concerning the right to appeal and the procedures for making an appeal.

(e) Appeal. A person who has received an adverse decision following submission of a request for reconsideration may submit a written appeal to the Director. An appeal must be submitted within 30 days of the date of the notification of the decision on the request for reconsideration. The appeal shall state the reason(s) and issue(s) upon which the appeal is based and may contain any additional evidence or arguments to support the appeal.

(f) Decision on appeal.

(1) Before a decision is made concerning the appeal, the appellant may present oral arguments before the Director if the Director judges oral arguments are necessary to clarify issues raised in the written record.

(2) The Director shall notify the appellant in writing of his or her decision within 30 calendar days of receipt of the appeal, unless extended for one additional 30-day period for good cause and the appellant is notified of the extension.

(3) The decision of the Director shall constitute the final administrative decision of the Department.

NOTE: Authority cited: Sections 702 and 2081(d), Fish and Game Code. Reference: Section 2081(b), Fish and Game Code.

HISTORY

1. New section filed 12-30-98; operative 12-30-98 pursuant to Government Code section 11343.4(d) (Register 99, No. 1).

Article 2. Take Incidental to Routine and Ongoing Agricultural Activities

§ 786.0. Purposes.

(a) The purpose of this article is to encourage farmers and ranchers engaged in agricultural activities to establish locally designed programs to voluntarily enhance and maintain habitat for endangered and threatened species. These voluntary local programs shall be suited to the particular circumstances of the local agricultural area where each will be implemented.

(b) Upon approval of the voluntary local program by the Department, any taking of candidate, threatened or endangered non-fish species incidental to routine and ongoing agricultural activities is not prohibited by the California Endangered Species Act, Division 3, Chapter 1.5 of the Fish and Game Code, provided that the take occurs on a farm or ranch while implementing the management practices specified in the voluntary local program.

(c) The voluntary local programs authorized pursuant to this article shall provide sufficient flexibility to maximize participation and to gain the maximum wildlife benefits without compromising the economics of agricultural operations.

NOTE: Authority cited: Sections 702 and 2086, Fish and Game Code. Reference: Sections 2062, 2067, 2068, 2080, 2086, 2088 and 2089, Fish and Game Code.

HISTORY

1. New article 2 (sections 786.0-786.6) and section filed 12-31-98; operative 12-31-98 pursuant to Government Code section 11343.4(d) (Register 99, No. 1).
2. Amendment filed 8-28-2002; operative 9-27-2002 (Register 2002, No. 35).

§ 786.1. Definitions.

(a) Management Practices. "Management practices" are practical, achievable agricultural practices that, to the maximum extent practicable, avoid and minimize the take of candidate, threatened or endangered species while encouraging enhancement of wildlife habitat without compromising the economics of agricultural operations when undertaken by a farmer or rancher. Examples of management practices include, but are not limited to, establishing brood ponds, installing artificial nesting structures, reducing harvester speed, integrated pest management techniques, planting fallow fields, delaying fall tillage, flooding harvested fields, and establishing wildlife refugia at margins of fields.

(b) Routine and Ongoing Agricultural Activities. "Routine and ongoing agricultural activities" shall include the cultivation and tillage of the soil; crop rotation; fallowing; dairying; the production, cultivation, growing, replanting and harvesting of any agricultural commodity including viticulture, vermiculture, apiculture, or horticulture; the raising of livestock, fur bearing animals, fish, or poultry; any practices performed by a farmer on a farm as incident to or in conjunction with those farming operations, including the preparation for market, delivery to storage or to market, or delivery to carriers for transportation to market, including any such activities recognized as compatible uses pursuant to the Williamson Act (Government Code sections 51200 et seq.) provided such activities are consistent with the economics of agricultural operations; and other similar agricultural activities as determined by the Department during its review and approval of a particular voluntary local program. Routine and ongoing agricultural activities do not include conversion of agricultural land to nonagricultural use, timber harvesting activities governed by the State Board of Forestry or activities that inten-

tionally reduce habitat and wildlife to facilitate conversion to non-agricultural use. For the purposes of this article and Division 3, Chapter 1.5, Article 3.5 of the Fish and Game Code, the conversion of rangeland to more intensive agricultural uses such as permanent crops is not considered a routine and ongoing agricultural activity. Ordinary pasture maintenance and renovation and dry land farming operations consistent with rangeland management are considered routine and ongoing agricultural activities.

(c) Local Program. A "local program" or a "voluntary local program" is a locally designed voluntary program to encourage the enhancement and maintenance of habitat for candidate, threatened and endangered species and other wildlife in ways compatible with routine and ongoing agricultural activities on farms or ranches, proposed in accordance with section 786.2(a) of this article.

(d) Department. For purposes of this article, "Department" means the Director of the Department or any Regional Manager or other Department representative to whom the Director has delegated duties under this article.

NOTE: Authority cited: Sections 702, 2086 and 2089, Fish and Game Code. Reference: Sections 700, 704, 2062, 2067, 2068, 2086, 2087 and 2089, Fish and Game Code.

HISTORY

1. New section filed 12-31-98; operative 12-31-98 pursuant to Government Code section 11343.4(d) (Register 99, No. 1).
2. Amendment of section and NOTE filed 8-28-2002; operative 9-27-2002 (Register 2002, No. 35).

§ 786.2. Preparation of a Voluntary Local Program.

(a) Local Program Development. A local program shall be developed by a planning committee formed by a group of farmers and/or ranchers or individual farmers or ranchers who own or manage agricultural lands within the geographic area to be covered by the local program. The planning committee, or individual farmer or rancher, shall identify a lead applicant, which may be the local county Agricultural Commissioner or another entity designated by the planning committee. The planning committee shall design a local program in consultation with interested government agencies and in cooperation with interested local private sector entities and interested conservation groups.

(b) Consultation. Individuals or groups of farmers and ranchers developing a voluntary local program are encouraged to consult with the Department, the California Department of Food and Agriculture, the local county Agricultural Commissioner, University of California Cooperative Extension agents, the USDA Natural Resources Conservation Service, local Resource Conservation Districts, local non-profit and private sector entities, or other agricultural or wildlife experts in identifying effective management practices.

(c) Information and Assistance from the Department. Individuals or groups of farmers and ranchers may propose a voluntary local program to the Department for Department review and assistance. When requested, the Department shall advise and assist in the development of the voluntary management practices and voluntary local program. When providing information and assistance, the Department shall recognize that the State consists of many different climates, habitats and geographies and that management practices will vary throughout the State based on local conditions and local farming and ranching activities.

(1) The Department shall assist the individual(s) seeking to establish a voluntary local program with contacts and information from the Department of Food and Agriculture, the local county Agricultural Commissioner, University of California Cooperative Extension agents, local non-profit and private sector entities or other agricultural experts.

(2) The Department will, upon request, provide the best available scientific information in its possession on any candidate, threatened, or endangered species within the vicinity of the proposed voluntary local program and any such information the Department has on possible management practices.

(3) The Department shall serve as a repository for information concerning possible management practices. The Department may collect information from persons with expertise in agriculture, biology or habitat conservation, including but not limited to representatives of the Califor-

nia Department of Food and Agriculture, the U.S. Department of Agriculture, local county agricultural commissioners, University of California Cooperative Extension agents, the Farm Bureau, the Bureau of Land Management, the University of California at Riverside and Davis, California State University at Fresno, California Polytechnic University at Pomona and San Luis Obispo, and the Cattlemen's Association, and shall review the information with the California Department of Food and Agriculture for the purpose of obtaining advice as to the information's practical application to local programs. The Department will incorporate available information developed in the preparation and establishment of each voluntary local program into that repository to facilitate the establishment of subsequent voluntary local programs and to periodically update information.

(d) Voluntary Local Program Plan Elements. The following elements shall be included in the voluntary local program:

(1) Area Description. A description of the area to be covered by the voluntary local program needs to include: geographic boundaries; the number of acres covered by the voluntary local program area; the habitat enhancement opportunities and constraints bearing upon the development of recommended management practices; candidate, threatened, and endangered species and wildlife likely to benefit from the local program; and reasonably attainable interim targets and long-range goals for increasing the quantity and quality of wildlife habitat throughout the program area.

(2) Designated Representative. The local program shall identify the name and address of one or more designated representative(s) who will serve as a contact person for communications between the voluntary local program and Department.

(3) List of Management Practices. The management practices so listed shall be described in an appendix to the voluntary local program in sufficient detail so that farmers, ranchers and program reviewers may understand what the practices are, how these practices may be recognized in the field, and how these practices are intended to minimize the take of candidate, threatened and endangered species while encouraging the enhancement of habitat. The Department shall not require land set-aside or conservation easements as a management practice.

(4) Activities Covered by the Plan. A description of the general types of agricultural activities covered and a reasonable estimate of the type and amount of habitat to be maintained and enhanced and how any significant adverse environmental effects are addressed by the plan. This element may include a description of any agreements required under section 1603 of the Fish and Game Code that are intended to be approved during the term of the voluntary local program.

(5) Best Available Scientific Information. A statement with supporting evidence that the management practices are supported by the best available scientific information for both agricultural and habitat conservation practices. The Department shall not require the development of additional scientific information or data as a condition of approval for the voluntary local program.

(6) Flexibility. A statement with supporting evidence that the voluntary local program is designed to provide sufficient flexibility to maximize participation and to gain maximum wildlife benefits without compromising the economics of agricultural operations.

(7) Environmental Analysis. An environmental analysis meeting the requirements of this subsection shall be prepared and submitted to the Department, except that when another public agency is acting as lead agency under the California Environmental Quality Act, Public Resources Code sections 21000 et seq. ("CEQA"), in the preparation and adoption of the local program, the Department, acting as a responsible agency, will consider the lead agency's environmental document in place of this environmental analysis. The environmental analysis shall include a description of the proposed local program and an analysis of any potentially significant adverse effects of the local program on the environment.

(A) If no potentially significant adverse effect is identified, a statement to that effect shall be provided and supported by a checklist or other documentation, based on substantial evidence.

(B) If potentially significant adverse environmental effects are identified, the following shall be included:

1. A detailed statement of whether additional management practices are necessary to reduce potentially significant adverse effects to a level less than significant; and

2. If potentially significant adverse effects remain after full consideration of the environmental benefits from the proposed management practices, a detailed statement shall be prepared of potentially feasible alternatives to the local plan and additional potentially feasible management practices that would substantially lessen any remaining potentially significant adverse environmental effects. The analysis shall address both short-term and long-term significant effects on the environment, and shall also address growth-inducing effects and potential cumulative effects. The analysis shall identify any significant adverse environmental impacts that remain after implementation of all reasonable and feasible alternatives and management practices. If remaining significant environmental effects are identified, it shall also include a statement describing any public benefits of the plan, including the management practices which substantially lessen the significant environmental effects of the activity.

(8) Administrative Plan. The written administrative plan, which describes how the voluntary local program is administered, shall include: a record keeping process which will document implementation of the program's management practices while protecting the confidentiality of participants and conforming with confidentiality under section 786.2(d)(10) of this article; a procedure for developing, reviewing and revising recommendations for management practices; a procedure for assessing the acreage benefitting from the local program on an annual basis; and a procedure for revoking the participation in the local program of any local program participant who fails to conduct agricultural activities or recommended management practices in a manner which is consistent with the requirements of the local program. Failure to conduct an agricultural activity or recommended management practice due to an act of nature or an event beyond the control of a local program participant shall not constitute grounds for program or individual participant revocation. Any participant whose enrollment is involuntarily revoked shall be required to comply with the procedures for withdrawal from the local program.

(9) Withdrawal and Termination of the Voluntary Local Program. This element shall include terms and conditions for withdrawing individual participation in the voluntary local program or for termination of the entire voluntary local program. These terms and conditions shall establish a reasonable time period and reasonable measures to minimize impacts to listed species in the area during withdrawal from or termination of the local program, without compromising the economics of agricultural operations. These terms and conditions:

(A) Shall provide for notice to the Department of intent to terminate the voluntary local program or of the withdrawal of any individual farmer or rancher.

(B) Shall not require land set-aside for impacts to wildlife caused by withdrawing participation in the voluntary local program, and shall not impose penalties or disincentives for withdrawing participation.

(C) Shall not prohibit take of listed species during termination or withdrawal provided that the terms and conditions governing withdrawal or termination have been followed.

(10) Confidentiality. All information generated by a voluntary local program or an individual landowner in the course of participation in the local program that identifies or indicates the existence of endangered, threatened or otherwise protected species or their habitat on a particular farm or ranch, including but not limited to observations, records, correspondence and communications, shall be confidential to the extent permitted by the Public Records Act and other applicable laws. Confidentiality shall be ensured by the local program, members of the program committee, all public agencies and each of their respective agents and employees who obtain such information to the extent permitted by law. Confidential information may only be used or shared as necessary for the administration, approval or denial of a local program, or as otherwise required by law or expressly authorized in this article. Nothing in this article waives, compromises or eliminates any right of confidentiality recognized in the state's Public Records Act or Evidence Code. Waiver of

any right of confidentiality for such information shall not be a condition for approval of a local program or participation in a local program. The confidentiality provisions of this section extend to the reports prepared pursuant to section 786.7 of this article unless the release of information is authorized in writing by an individual landowner specifically for that purpose.

(11) Annual Report. The annual report shall include a summary of the acreage benefitting from the local program and a summary of the success of the management practices listed pursuant to subsection (d)(3) of this section and recommendations, if any, on how to further improve voluntary participation by farmers and ranchers and further improve benefits to wildlife. The annual report shall not include information generated by a voluntary local program or an individual landowner that identifies or indicates the existence of endangered, threatened or otherwise protected species or their habitat on a particular farm or ranch.

NOTE: Authority cited: Sections 702 and 2086, Fish and Game Code. Reference: Sections 2062, 2067, 2068, 2080 and 2086, Fish and Game Code.

HISTORY

1. New section filed 12-31-98; operative 12-31-98 pursuant to Government Code section 11343.4(d) (Register 99, No. 1).
2. Amendment of section heading and section filed 8-28-2002; operative 9-27-2002 (Register 2002, No. 35).

§ 786.3. Voluntary Local Program Review and Authorization.

A voluntary local program shall be submitted, reviewed and authorized in accordance with this section. During its review of a local program, the Department may extend any of the time periods specified in this section for a period of no more than 15 days by providing written notice of the extension to the designated representative, and including an explanation of the reason additional time is required.

(a) Early Review. Before submitting the voluntary local program including the environmental analysis element for review, the voluntary local program representatives may request a meeting with the Regional Manager or the Regional Manager's designee for an unofficial review of the voluntary local program. The Regional Manager or the Regional Manager's designee is encouraged to meet with representatives of the voluntary local program upon request.

(b) Department liaison. Within 14 days of receiving a request for consultation or the submittal of a voluntary local program, the Department shall designate a staff person at its appropriate regional office to serve as the primary contact with program sponsors during the consultation and review processes. This designated liaison will be responsible for working with the voluntary local program's designated representative and for responding to inquiries from voluntary local program sponsors, keeping program sponsors informed of the status of the Department's review of the voluntary local program, and assisting with communication of Department comments and questions to program sponsors.

(c) Review of Voluntary Local Program. The voluntary local program shall be submitted to the Department for review. The Department shall conduct an initial review of the plan to determine whether the submissions are complete. Within 60 days after receipt of the local program plan, the Department shall report to the local program designee whether the local program as submitted is complete.

(1) If the plan is not complete, the Department shall inform the designee about what additional elements, information or documents are required to complete the plan and environmental analysis.

(2) If the plan is complete, the Department shall conduct a review of the environmental analysis and make any revisions in the environmental analysis that the Department deems necessary or appropriate to accurately describe the voluntary local program and its potential effects on the environment. If the Department makes any revisions to the environmental analysis, the Department shall inform the designee about the revisions before making the materials, including the program plan and the revised environmental analysis, available for public review in order to give the voluntary local program the opportunity to withdraw the proposed program before public review.

(d) Lead Agency — Public Review and Comment. When the Department is acting as CEQA lead agency, after the program plan and any environmental analysis have been reviewed, the Department shall make all materials, including the local program plan and environmental analysis, available for public review at the headquarters of the region in which the plan was submitted and at the Department's headquarters in Sacramento.

(1) Notice of Public Availability. The Department shall distribute copies of a Notice of Public Availability announcing that the voluntary local program and related documents are being made available for public review and comment. A minimum of 30 days shall be allowed for public review and comment after distribution of a Notice of Public Availability. The Notice of Public Availability shall include the following:

(A) The date on which the Department accepted the voluntary local program as complete.

(B) A brief description of the geographic area covered by the application and of the activities proposed to be covered by the local program.

(C) The location where the application is available for public review and the name and telephone numbers of a contact person within the Department who can answer questions regarding the application.

(D) A statement that the Department seeks written comments from the public regarding the plan, an address to which written comments regarding the application should be submitted, and the deadline for submission of the comments.

(2) Publication and Distribution of the Notice. The Department shall publish the Notice of Public Availability at least once in a newspaper of general circulation in the area affected by the local program. Copies of the Notice of Public Availability shall also be distributed as follows:

(A) A copy to the office of the County Clerk of the county or counties in which the proposed activity would occur for posting at the customary place for posting notices of environmental matters.

(B) A copy to the Office of Planning and Research.

(C) A copy to any other person upon written request.

(D) Copies may also be posted or made available at such other locations as the Department deems desirable and reasonably required to provide adequate public notice.

(3) Response to Public Comment. After the public comment period has closed, the Department shall:

(A) Review all public comments received, including those from public agencies with which the Department consults; and

(B) Prepare a written summary and response to all significant environmental points raised during the review of the application.

(e) External Consultation. The Department shall consult with and request written comments from the Department of Food and Agriculture, county agricultural commissioner(s) of the county or counties in which the local program is proposed, and all public agencies with jurisdiction by law over the activity to be covered by the local program. The consultations shall occur during the public comment period when the Department is acting as CEQA lead agency and during the 75-day local program review period when the Department is acting as CEQA responsible agency. In their comments, the Department of Food and Agriculture and the county agricultural commissioner(s) shall consider if the proposed voluntary local program is consistent with the economics of the agricultural operations.

(f) Department's Authorization of the Voluntary Local Program. Within 75 days of the close of the public comment period when the Department is acting as CEQA lead agency, and within 75 days of the Department's determination that the submitted local program is complete when the Department is acting as CEQA responsible agency, the Department shall take one of the following actions:

(1) Make the findings required by subsection (g) of this section and authorize the voluntary local program.

(2) If the Department determines that changes in the voluntary local program are necessary, the Department shall promptly communicate that determination and proposed changes to the voluntary local program's designated representative. With the consent of the voluntary local program designee, the Department may make changes in the voluntary local

program and authorize the revised local program provided the revisions do not require further environmental analysis or public notice.

(3) If major changes requiring additional time or further environmental review are needed, the Department shall reject the voluntary local program and convey the identified deficiencies in the local program plan to the designee for further revisions.

(g) **Mandatory Findings for Authorization of Local Program.** The director shall authorize a voluntary local program only upon making the following written findings in support of that authorization:

(1) That the voluntary local program includes management practices that will, to the greatest extent practicable:

- (A) avoid the take of listed species,
- (B) minimize take of species that cannot be avoided,
- (C) encourage the enhancement of habitat; and
- (D) maximize wildlife benefits without compromising the economics of agricultural operations.

(2) That the local program is consistent with the goals and policies of the California Endangered Species Act and is supported by the best available scientific information.

(3) For every significant adverse environmental effect that has been identified for a local program, one or more of the findings required by section 21081 of the Public Resources Code. The Department may not approve any local program for which significant adverse environmental effects have been identified if feasible alternatives or feasible mitigation measures are available that would substantially lessen a remaining significant adverse environmental effect and those alternatives or measures have not been incorporated into the local program. For purposes of these findings:

(A) "Feasible" means "feasible" as defined in section 21061.1 of the Public Resources Code.

(B) "Environmental impact report" means an environmental impact report prepared pursuant to CEQA or, if the Secretary for Resources certifies this article under section 21080.5 of the Public Resources Code, an environmental analysis prepared pursuant to this article.

(C) Mitigation measures shall consist of new or revised management practices designed to reduce or avoid significant adverse environmental effects.

(h) **Notice of Decision.** Within five working days of authorizing or amending a voluntary local program, the Director shall file a Notice of Decision with the Secretary for Resources. The Notice of Decision shall include a statement that the Director authorized or amended the local program.

NOTE: Authority cited: Sections 702 and 2086, Fish and Game Code. Reference: Sections 2062, 2067, 2068 and 2086, Fish and Game Code.

HISTORY

1. New section filed 12-31-98; operative 12-31-98 pursuant to Government Code section 11343.4(d) (Register 99, No. 1).
2. Amendment of section heading and repealer and new section filed 8-28-2002; operative 9-27-2002 (Register 2002, No. 35).

§ 786.4. Amendments to the Voluntary Local Program.

(a) The voluntary local program may initiate an amendment to a local program by providing written notification to the Department and by providing the Department with the necessary information for review. The Department review and approval of such amendments shall be governed by the following provisions. The Director shall approve any minor or major program amendment if the amended program would continue to meet the standards in section 786.3(g) of this article.

(1) **Minor Amendments.** Amendments that the Department determines will not significantly modify the scope or nature of the local program; will not likely result in a significant adverse impact on candidate, threatened, or endangered species beyond that anticipated from the originally approved plan; will not likely diminish the habitat-enhancing benefits of the local program; and will otherwise meet the standards in section 786.3(g) of this article shall be considered minor amendments to the local program. The Director shall approve minor amendments and incorporate them into the local program, or shall deny the minor amendments, within

30 days of submission of a minor amendment to the Department. Minor amendments may be used to adapt a local program's management practices based on experience in implementing the local program to make those practices more effective in meeting the standards in section 786.3(g) of this article, provided the Department determines the changes meet the criteria in this subsection (a)(1) for minor amendments. For a minor amendment of a local program for which the Department adopted an environmental analysis, the Department may prepare an addendum to the environmental analysis or other appropriate document.

(2) **Major Amendments.** Amendments that the Department determines would significantly modify the scope or nature of the local program, likely result in a significant adverse impact on candidate, threatened, or endangered species beyond that anticipated from the originally approved plan, diminish the habitat-enhancing benefits of the local program, or require additional environmental review pursuant to section 21166 of the Public Resources Code or California Code of Regulations, Title 14, section 15162, shall be considered major amendments to the local program. Requests for major amendments shall be reviewed according to the process established in this article for new local programs, except that the information and analysis provided in support of an application for a major amendment may rely on supplemental information to the analysis used in the initial submittal for the local program.

(b) The Department may initiate an amendment to a local program pursuant to this subsection if it believes that an amendment is reasonably necessary to bring the local program into compliance with the provisions in section 2086(b) of the Fish and Game Code or any other relevant provision of law.

(1) To make minor amendments as defined in subsection (a)(1) of this section, the Department shall notify in writing the voluntary local program designee of the proposed minor amendment and give the voluntary local program participants 60 days to accept or decline the proposed minor amendments. If the voluntary local program decides to decline the proposed minor amendments, the Department may initiate steps necessary to allow for the termination of the program or allow individuals to withdraw from the voluntary local program. If the voluntary local program accepts the amendments or fails to respond within the 60 days, the Department may approve the minor amendments with no further consultation.

(2) To make major amendments as defined in subsection (a)(2) of this section, the Department must make a finding that the program is not in compliance with section 2086(b) of the Fish and Game Code and state its rationale. The local program designee shall be notified in writing of the findings and rationale and be given 60 days to respond to deficiencies outlined by the Department. If the voluntary local program fails to amend the program, as directed by the Department, the Department may initiate steps necessary to terminate the program and allow individuals to withdraw from the voluntary local program.

NOTE: Authority cited: Sections 702 and 2086, Fish and Game Code. Reference: Sections 2062, 2067, 2068, 2080 and 2086, Fish and Game Code.

HISTORY

1. New section filed 12-31-98; operative 12-31-98 pursuant to Government Code section 11343.4(d) (Register 99, No. 1).
2. Renumbering of former section 786.4 to new section 786.6 and new section filed 8-28-2002; operative 9-27-2002 (Register 2002, No. 35).

§ 786.5. Department Termination of a Voluntary Local Program.

If the Department terminates a voluntary local program because it no longer complies with section 2086(b) of the Fish and Game Code, termination shall be conducted consistently with the terms and conditions established pursuant to section 786.2(d)(9) of this article. Individual participants following the terms and conditions of withdrawal shall continue to receive take authorization until withdrawal has been completed.

NOTE: Authority cited: Sections 702 and 2086, Fish and Game Code. Reference: Sections 2080 and 2086, Fish and Game Code.

HISTORY

1. New section filed 12-31-98; operative 12-31-98 pursuant to Government Code section 11343.4(d) (Register 99, No. 1).

2. Renumbering of former section 786.5 to new section 786.7 and new section filed 8-28-2002; operative 9-27-2002 (Register 2002, No. 35).

§ 786.6. Take Authorization.

Any taking of candidate, threatened or endangered species incidental to routine and ongoing agricultural activities is not prohibited by Division 3, Chapter 1.5 of the Fish and Game Code if the take occurs while management practices in a voluntary local program authorized pursuant to this article are being followed, except that this section does not authorize the take of fish species that are a member of the class Osteichthyes. The Department recognizes that management practices, if successful, will increase the number of individuals of candidate, threatened and endangered species in proximity to farms and ranches as a result of management practices. This article is intended to protect farmers and ranchers from legal liability for take that may result from their voluntary participation in a voluntary local program.

NOTE: Authority cited: Sections 702 and 2086, Fish and Game Code. Reference: Sections 2062, 2067, 2068, 2080, 2086(c) and 2088, Fish and Game Code.

HISTORY

1. New section filed 12-31-98; operative 12-31-98 pursuant to Government Code section 11343.4(d) (Register 99, No. 1).
2. Renumbering of former section 786.6 to new section 786.8 and renumbering and amendment of former section 786.4 to section 786.6 filed 8-28-2002; operative 9-27-2002 (Register 2002, No. 35).

§ 786.7. Reports to the Legislature.

(a) Beginning in 2000, and every five years thereafter, the Department shall submit a written report to the appropriate policy committees of the Legislature regarding the effects of voluntary local programs.

(b) The Department shall consult with the Department of Food and Agriculture in evaluating the voluntary local programs and preparing the report.

(c) The report shall contain:

- (1) A summary of voluntary local programs currently established;
- (2) An analysis of trends in temporary and permanent acreage benefiting from the voluntary local programs, including an estimate of the amount of land upon which routine and ongoing agricultural activities are conducted;
- (3) Examples of farmer and rancher cooperation in designing and implementing the voluntary local programs; and
- (4) Recommendations to improve voluntary participation by farmers and ranchers.

NOTE: Authority cited: Sections 702 and 2086, Fish and Game Code. Reference: Section 2086(d)(2), Fish and Game Code.

HISTORY

1. Renumbering and amendment of former section 786.5 to new section 786.7 filed 8-28-2002; operative 9-27-2002 (Register 2002, No. 35).

§ 786.8. Construction with Other Statutes.

Nothing in this Article precludes the Department from authorizing agricultural conservation programs pursuant to other provisions in Division 3, Chapter 1.5 of the Fish and Game Code. Take that occurs incidental to farm or ranch operations may independently be authorized by the Department under section 2081 or 2835 of the Fish and Game Code, provided the requirements of those sections are satisfied. In addition, the specific provisions in this Article that authorize incidental take by participants in a voluntary local program shall not be construed to limit the application of section 2087 of the Fish and Game Code, which provides that accidental take of candidate, threatened and endangered species is not prohibited during routine and ongoing agricultural activities without regard to whether a voluntary local program has been established.

NOTE: Authority cited: Sections 702 and 2086, Fish and Game Code. Reference: Sections 2062, 2067, 2068, 2080, 2086, 2087 and 2835, Fish and Game Code.

HISTORY

1. Renumbering and amendment of former section 786.6 to new section 786.8 filed 8-28-2002; operative 9-27-2002 (Register 2002, No. 35).

Article 3. Incidental Take Permit Guidelines for Timber Operations

§ 787.0. Purpose and Scope of Regulations.

(a) The purpose of this article is to establish rules and guidelines in accordance with Section 2112 of the Fish and Game Code to implement Fish and Game Commission policies regarding the issuance of incidental take permits pursuant to Section 2081 of the Fish and Game Code for timber operations or activities that may take coho salmon, a species that is listed as threatened or endangered under the California Endangered Species Act, Fish and Game Code sections 2050, et seq. ("CESA"). The Fish and Game Commission approved the *Recovery Strategy for California Coho Salmon (Oncorhynchus kisutch)* (February 2004), and approved for inclusion specified policies pursuant to Section 2112 of the Fish and Game Code to guide the issuance of incidental take permits under Section 2081 of the Fish and Game Code for timber operations or activities. This article sets forth rules and guidelines to implement those policies. In accordance with section 2112 of the Fish and Game Code, this article specifies conditions and circumstances when: (1) take is prohibited; (2) an incidental take permit is required; and (3) an incidental take permit is not required. This article outlines various ways to obtain incidental take permits for timber operations and activities, including an expedited process for obtaining incidental take permits by certification pursuant to these regulations, and through the normal permitting process set forth in CESA implementing regulations, California Code of Regulations, title 14, section 783.0 et seq.. The standards for issuance of incidental take permits are the permit issuance criteria set forth in section 2081(b) and (c) of the Fish and Game Code. This article is not intended to create a presumption that any particular timber operation or activity will incidentally take coho salmon.

(b) This article does not affect the Department's authority to authorize take pursuant to any other provision of the Fish and Game Code or any other provision of the California Code of Regulations including, but not limited to, take authorizations issued or approved by the Department pursuant to section 2835 of the Fish and Game Code.

NOTE: Authority cited: Sections 702, 2080, 2081(d) and 2112, Fish and Game Code. Reference: Sections 702, 2080, 2081(b), 2081(c) and 2112, Fish and Game Code.

HISTORY

1. New article 3 (sections 787.0-787.9) and section filed 2-11-2008; operative 2-11-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 7).

§ 787.1. Definitions.

(a) The terms used in this article are defined by the definitions provided in the Forest Practice Rules, California Code of Regulations, title 14, section 895.1, et seq., except as specifically provided in this article:

(1) Jeopardy Determination. A "jeopardy determination" is the Department's determination, made in accordance with section 787.6 as to whether issuance of an incidental take permit for proposed timber operations activities would jeopardize the continued existence of coho salmon.

(2) Recovery Unit. A "recovery unit" is a group of watersheds related hydrologically, geologically and ecologically which constitute unique and important components of an Evolutionarily Significant Unit for coho salmon. The coho salmon recovery units are delineated and described in the *Recovery Strategy for California Coho Salmon (Oncorhynchus kisutch)* (February 2004), inclusive of amendments.

(3) Watersheds with Coho Salmon. "Watersheds with coho salmon" means any planning watershed(s) where coho salmon (*Oncorhynchus kisutch*) have been documented by the Department of Fish and Game to be present during or after 1990. A list of watersheds with coho salmon is available at <http://www.dfg.ca.gov/habcon/timber/index.html>

NOTE: Authority cited: Sections 702, 2081(d) and 2112, Fish and Game Code. Reference: Sections 702, 2081(b), 2081(c) and 2112, Fish and Game Code.

HISTORY

1. New section filed 2-11-2008; operative 2-11-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 7).

2. Change without regulatory effect repealing definition (a)(1) in conformance with *Environmental Protection Information Center, et al., v. California Department of Fish and Game*, Superior Court of the State of California, County of San Francisco, Case No. CPF-08-508127, and renumbering subsections filed 9-21-2010 pursuant to section 100, title 1, California Code of Regulations (Register 2010, No. 39).

§ 787.2. Take Determination for Timber Operations. [Repealed]

NOTE: Authority cited: Sections 702, 711.7, 2080, 2081(d) and 2112, Fish and Game Code; and Sections 21067, 21069, 21070, 21080.1, 21080.3, 21080.4, 21080.5, 21082.2 and 21104.2, Public Resources Code. Reference: Sections 702, 711.7, 2080, 2081(b), 2081(c) and 2112, Fish and Game Code; and Sections 21067, 21069, 21070, 21080.1, 21080.3, 21080.4, 21080.5, 21082.2 and 21104.2, Public Resources Code.

HISTORY

1. New section filed 2-11-2008; operative 2-11-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 7).
2. Change without regulatory effect repealing section in conformance with *Environmental Protection Information Center, et al., v. California Department of Fish and Game*, Superior Court of the State of California, County of San Francisco, Case No. CPF-08-508127, filed 9-21-2010 pursuant to section 100, title 1, California Code of Regulations (Register 2010, No. 39).

§ 787.3. Take of Coho Salmon from Timber Operations Prohibited.

Any unauthorized take of coho salmon is prohibited and may be subject to criminal action pursuant to the Fish and Game Code.

NOTE: Authority cited: Sections 702, 2080 and 2112, Fish and Game Code. Reference: Sections 702, 2080 and 2112, Fish and Game Code.

HISTORY

1. New section filed 2-11-2008; operative 2-11-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 7).

§ 787.4. Incidental Take Permit for Timber Operations Required.

In order to issue an incidental take permit under the processes outlined in this section, the permit issuance criteria set forth in Section 2081(b) of the Fish and Game Code must be met. In addition, as required by Section 2081(c) of the Fish and Game Code, the Department shall not issue an incidental take permit for coho salmon if issuance of the permit would jeopardize the continued existence of the species. The Department will determine whether issuance of the permit would jeopardize the continued existence of the species in accordance with section 787.6.

NOTE: Authority cited: Sections 702, 2080, 2081(d) and 2112, Fish and Game Code. Reference: Sections 702, 2080, 2081(b), 2081(c) and 2112, Fish and Game Code.

HISTORY

1. New section filed 2-11-2008; operative 2-11-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 7).
2. Change without regulatory effect repealing subsections (a)-(a)(4) in conformance with *Environmental Protection Information Center, et al., v. California Department of Fish and Game*, Superior Court of the State of California, County of San Francisco, Case No. CPF-08-508127, and repealing subsection (b) designated filed 9-21-2010 pursuant to section 100, title 1, California Code of Regulations (Register 2010, No. 39).

§ 787.5. Incidental Take Permit for Timber Operations Not Required.

(a) If the Department determines, pursuant to section 2080.1 of the Fish and Game Code, that an incidental take statement or permit for coho salmon issued by the Secretary of Commerce for proposed timber operations is consistent with CESA, no further authorization or approval is necessary.

(b) Regardless of whether the Department first makes a determination regarding the take of coho salmon, the Department and any project proponent who intends to meet the requirements of the Natural Community Conservation Planning Act (Fish and Game Code section 2800 *et seq*) may enter into a planning agreement pursuant to section 2810. The planning agreement must include an interim process during plan development for project review. The interim process may include measures for timber operations or activities which the Department concludes will avoid take. Timber operations or activities carried out in accordance with

any such interim process that avoids take will not require an incidental take permit under section 2081 of the Fish and Game Code.

NOTE: Authority cited: Sections 702, 2080, 2080.1, 2081, 2112 and 2810, Fish and Game Code. Reference: Sections 702, 2080, 2080.1, 2081, 2112 and 2810, Fish and Game Code.

HISTORY

1. New section filed 2-11-2008; operative 2-11-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 7).
2. Change without regulatory effect repealing subsections (a)-(b) in conformance with *Environmental Protection Information Center, et al., v. California Department of Fish and Game*, Superior Court of the State of California, County of San Francisco, Case No. CPF-08-508127, and relettering subsections filed 9-21-2010 pursuant to section 100, title 1, California Code of Regulations (Register 2010, No. 39).

§ 787.6. Jeopardy from Timber Operations Prohibited.

(a) A jeopardy determination will be made using an analysis at the scale of the coho salmon recovery unit and will be made for the Evolutionarily Significant Unit. A jeopardy determination must be based upon the best scientific and other information that is reasonably available, which may include, but not necessarily be limited to, consideration of:

- (1) coho salmon's ability to survive and reproduce; and
- (2) any adverse impacts of the taking on coho salmon's ability to survive and reproduce in light of:
 - (A) known population trends;
 - (B) known threats to the species; and
 - (C) reasonably foreseeable impacts on the species from other related projects and activities.

(b) The Department could determine that proposed timber operations will jeopardize the continued existence of coho salmon if one or more of the following criteria are met and the impact will likely reduce the numbers of coho salmon in the recovery unit returning to spawn successfully in future years.

(1) One or more cohorts of coho salmon within the recovery unit return in very low numbers, or not at all, and timber operations will likely "take" a substantial number of any life stage of coho salmon.

(2) Timber operations will create a barrier to passage or substantially reduce access by coho salmon to any habitat used for migration, spawning or rearing.

(3) One or more cohorts of coho salmon within the recovery unit return in very low numbers, or not at all, and timber operations will directly or incrementally through cumulative effects render existing spawning or rearing habitat unsuitable for continued use by coho salmon.

(4) Exceptional project specific circumstances exist or are proposed which will reduce the numbers of coho salmon in the recovery unit returning to spawn successfully in future years.

(c) Where the Department determines that proposed timber operations are likely to jeopardize the continued existence of coho salmon, the Department shall consult, upon request by the project proponent or Lead Agency, and specify reasonable and prudent minimization and mitigation measures which, if fully implemented, will avoid jeopardy while maintaining the project purpose to the greatest extent possible.

(d) Where, following such consultation, the project proponent declines to incorporate any of the specified reasonable and prudent minimization and mitigation measures into the proposed project, the Department shall not issue an incidental take permit. If, however, the project proponent agrees to incorporate all of the specified reasonable and prudent minimization and mitigation measures into the proposed project to avoid jeopardy, the Department may issue an incidental take permit if the permit issuance criteria set forth in Section 2081(b) are met.

NOTE: Authority cited: Sections 702, 2080, 2081(c) and 2112, Fish and Game Code. Reference: Sections 702, 2080, 2081(c) and 2112, Fish and Game Code.

HISTORY

1. New section filed 2-11-2008; operative 2-11-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 7).
2. Change without regulatory effect repealing subsection (a) in conformance with *Environmental Protection Information Center, et al., v. California Department of Fish and Game*, Superior Court of the State of California, County of San Francisco, Case No. CPF-08-508127, and relettering subsections filed 9-21-2010

pursuant to section 100, title 1, California Code of Regulations (Register 2010, No. 39).

§ 787.7. Incidental Take Permit by Certification for Timber Operations.

(a) The Department may permit incidental take of coho salmon from timber operations by certification of compliance under this section if all of the following are satisfied:

(1) The permittee certifies in writing that the permittee agrees to comply with and incorporate into its timber operations all minimization and mitigation measures specified in Forest Practice Rules, California Code of Regulations, title 14, sections 916.9.1 (936.9.1), 916.9.2, (936.9.2), 923.9.1 (943.9.1), and 923.9.2 (943.9.2) as identified and described in a THP or Notice of Timber Operations attached to the certification. Pre-consultation with the Department prior to submittal of the certification and attached THP or Notice of Timber Operations is strongly recommended in order to facilitate acceptance and return receipt of the certification.

(2) The permittee includes implementation and effectiveness monitoring procedures and schedules in the Timber Harvesting Plan (THP) or Notice of Timber Operations. Monitoring which is specified in the THP or Notice of Timber Operations to meet other regulatory requirements may be determined by the Department to satisfy the issuance criteria for an incidental take permit.

(3) The permittee provides a financial security for performance with terms and in an amount acceptable to the Department in accordance with section 787.8.

(4) The permittee provides written consent to the Department for access to inspect timber operations during and following completion of operations for compliance monitoring.

(5) The Department returns a signed receipt of the certification finding that it meets the requirements of Sections 2081(b) and (c) of the Fish and Game Code. If any requirement is not met (e.g., a financial security in a form and amount acceptable to the Department is not provided), the Department shall deny the certification and notify the permittee.

(6) The THP or Notice of Timber Operations which is the subject of the certification is approved by the California Department of Forestry and Fire Protection.

(b) Effect of Certification.

(1) A certification that is signed by the Department is an incidental take permit for coho salmon that becomes effective only after both of the following have occurred:

(A) The permittee receives the signed certification from the Department from the appropriate regional office; and

(B) The THP or Notice of Timber Operations attached to the certification, which contains the required minimization and mitigation measures, is approved by the California Department of Forestry and Fire Protection;

(2) The incidental take permit by certification authorizes incidental take of coho salmon from the timber operations described in the THP or Notice of Timber Operations that is attached to the certification. Any incidental take from operations that deviate from such timber operations, whether under subsequent amendments to the THP or Notice of Timber Operations or otherwise, is not authorized by this permit by certification.

(3) CESA implementing regulations governing permit revocation and suspension (California Code of Regulations, title 14, section 783.7) apply to an incidental take permit by certification.

(c) Form of Certification. The certification required by section 787.7 shall take substantially the following form:

CERTIFICATION OF COMPLIANCE

I certify that all of the minimization and mitigation measures set forth in Forest Practice Rules, California Code of Regulations, title 14, sections 916.9.1 (936.9.1), 916.9.2, (936.9.2), 923.9.1 (943.9.1), and 923.9.2 (943.9.2) including any alternative measures provided in these sections are included as enforceable elements of the attached Timber Harvesting Plan (THP) or Nonindustrial Timber Management Plan (NTMP) Notice of Timber Operations.

I acknowledge that these measures are roughly proportional in extent to the impact of the authorized take of the species, the measures maintain my project objectives to the greatest extent possible, and they are capable of successful implementation. I understand that this permit allows incidental take of coho salmon pursuant to CESA; it does not authorize the violation of any Federal, State or local laws or regulations. I understand that this incidental take permit becomes effective after both of the following have occurred: (1) the THP or Notice of Timber Operations containing the required measures is approved by the Department of Forestry and Fire Protection; and (2) I have received receipt of the certification signed by the Department of Fish and Game from the appropriate address below. I understand that this certification permits incidental take of coho salmon from the timber operations described in the attached THP or Notice of Timber Operations. Any incidental take from operations that deviate from such timber operations, whether under subsequent amendments to the THP or Notice of Timber Operations or otherwise, is not authorized by this permit by certification.

I certify that the information submitted in this certification is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein or failure to comply with the terms of the permit (e.g., unauthorized take under CESA for undertaking a project that differs from the one described in the attached THP or Notice of Timber Operations, or failure to properly implement required minimization and mitigation measures) may subject me to suspension or revocation of this permit and to civil and criminal penalties under the laws of the State of California.

THP or NTMP designation: _____

Proposed beginning date of timber operations: _____

End date for timber operations: _____

Attached is the security for performance, calculated in accordance with section 787.8, ensuring adequate funding to implement measures to minimize and fully mitigate impacts of authorized take, and for monitoring compliance with and effectiveness of, those measures. The undersigned is responsible for immediately notifying the Department of Fish and Game of any deviations from the above.

(RPF or authorized signature) _____

Date _____

The undersigned is authorized to provide consent to the Department of Fish and Game to access and inspect the subject timber operations during and following completion of operations, and hereby provides such authorization to the Department of Fish and Game.

(authorized representative signature) _____

Date _____

For Del Norte, Humboldt, Mendocino, Siskiyou or Trinity Counties

REGIONAL MANAGER
DEPARTMENT OF FISH AND GAME
601 LOCUST STREET
REDDING, CA 96001
(530) 225.2300

For Santa Cruz, San Mateo, Marin, or Sonoma Counties

REGIONAL MANAGER
DEPARTMENT OF FISH AND GAME
P.O. BOX 47
YOUNTVILLE, CA 94599
(707) 944.5500

The Department of Fish and Game [circle one: finds/does not find] that: (1) the activities identified in the attached THP or NTMP Notice of Timber Operations may result in take of coho salmon incidental to an otherwise lawful activity; where the Department of Fish and Game finds that the activities may result in incidental take, the Department of Fish and Game finds that: (2) the impacts of authorized take will be minimized and fully mitigated; the measures required to meet this obligation are roughly proportional in extent to the impact of the authorized take; where various measures are available to meet this obligation, the impacts of take, the measures maintain the applicant's objectives to the greatest extent possible; and the measures are capable of successful implementation; (3) this permit by certification of compliance is consistent with reg-

ulations adopted pursuant to Sections 2112 and 2114 of the Fish and Game Code; (4) the permittee has assured adequate funding to implement the required measures and for monitoring compliance with and effectiveness of those measures; (5) and issuance of the permit by certification which is approved by the signature below will not jeopardize the continued existence of coho salmon. The Department of Fish and Game's findings are based upon the certification submitted; the approved THP or Notice of Timber Operations and associated environmental review and impact analysis; the administrative records supporting the incorporated Forest Practice Rules, California Code of Regulations, title 14, sections 916.9.1 (936.9.1), 916.9.2, (936.9.2), 923.9.1 (943.9.1), and 923.9.2 (943.9.2), and the Incidental Take Permit Guidelines for Timber Operations, section 787.0 *et seq.*, and other information the Department of Fish and Game had before it at the time of the certification.

DFG Regional Manager

Date

(d) Department Review and Response. The Department shall review and approve or deny the certification as soon as possible and no later than 30 days following receipt of all information specified in California Code of Regulations, title 14, section 783.4 by the appropriate Regional Manager.

NOTE: Authority cited: Sections 702, 2081(d) and 2112, Fish and Game Code. Reference: Sections 702, 2081(b), 2081(c) and 2112, Fish and Game Code.

HISTORY

1. New section filed 2-11-2008; operative 2-11-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 7).

§ 787.8. Security for Performance for Incidental Take Permits.

(a) As required by Fish and Game Code section 2081(b)(4) and CESA implementing regulations, California Code of Regulations, title 14, section 783.4(a)(4), the permit applicant must assure adequate funding to implement the required measures and for monitoring compliance with, and effectiveness of, those measures. Acceptable instruments of financial security include a pledged savings or trust account, certificate of deposit, or irrevocable letter of credit, the terms of which must be approved by the Department. Other instruments and their terms must be approved by the Department. Security must be provided to the appropriate Department Regional Manager by certified mail together with the Certification of Compliance.

(b) Where incidental take is authorized through section 787.5(c), no additional security for performance is required.

(c) Where incidental take is authorized through section 787.4(a)(2), (3) or (4), security for performance is required and shall be determined on a project specific basis.

(d) Where incidental take is authorized through section 787.4(a)(1), security shall be provided in accordance with the following and shall include a Road Component and an Area Component.

(1) Road Component

(A) The security for performance for the Road Component shall be calculated according to the following schedule for all roads appurtenant to the proposed THP or Notice of Timber Operations, which lie within a watershed with coho salmon.

(i) \$5,000/mile for all road segments within Class I watercourse and lake protection zones

(ii) \$2500/mile for all road segments within Class II watercourse and lake protection zones

(iii) \$1000/mile for all road segments within Equipment Exclusion Zones and Equipment Limitation Zones which are established for Class III Watercourses, inner gorges and connected headwall swales.

(iv) For each new, reconstructed or temporary Class I watercourse crossings additional security in the amount of \$2000/crossing shall be required. Where an existing Class I watercourse crossing will be used with-

out modification, additional security in the amount of \$500/crossing shall be required.

(v) For each new, reconstructed or temporary Class II watercourse crossing, additional security in the amount of \$1000/crossing shall be required. Where an existing Class II watercourse crossing will be used without modification, additional security in the amount of \$500/crossing shall be required.

(vi) For each new, reconstructed or temporary Class III watercourse crossings additional security in the amount of \$500/crossing shall be required. Where an existing Class III watercourse crossing will be used but not reconstructed, additional security in the amount of \$250/crossing shall be required.

(B) The security for performance for the Road Component will be returned following a written request by the permittee to the Department upon completion of the Prescribed Maintenance Period provided that each requirement of Forest Practice Rules, California Code of Regulations, title 14, sections 923.9.1 (943.9.1), and 923.9.2 (943.9.2) has been properly implemented. The Department shall make its best effort to return the security within 45 days of receipt of said request.

(C) The security for performance for the Road Component will be forfeited by the permittee if each requirement of Forest Practice Rules, California Code of Regulations, title 14, sections 923.9.1 (943.9.1), and 923.9.2 (943.9.2) has not been properly implemented, except that the Department may, at its discretion, return all or part of the security for performance of an applicable component if in the Department's judgment the Permittee has completely remedied its failure to properly implement a required measure or measures.

(2) Area Component

(A) The security for performance for the Area Component shall be calculated at the rate of \$500/acre for all proposed Watercourse and Lake Protection Zones and those Equipment Exclusion Zones and Equipment Limitation Zones which are established for Class III Watercourses, inner gorges and connected headwall swales.

(B) The security for performance for the Area Component will be returned to the permittee upon filing of the Notice of Completion, and after receipt of a written request from the permittee to the Department, provided that all requirements of Forest Practice Rules, California Code of Regulations, title 14, sections 916.9.1 (936.9.1) and 916.9.2, (936.9.2) have been properly implemented. The Department shall make its best effort to return the security within 45 days of receipt of said request.

(C) The security for performance for the Area Component Security will be forfeited by the permittee if any requirement of Forest Practice Rules, California Code of Regulations, title 14, sections 916.9.1 (936.9.1) and 916.9.2, (936.9.2) has not been properly implemented, except that the Department may, at its discretion, return all or part of the security for performance of an applicable component if in the Department's judgment the Permittee has completely remedied its failure to properly implement a required measure or measures.

(e) The full amount of the required security for performance must remain in place for the life of the permit. In the event that the Department accesses all or part of the security for performance, within 30 days thereof the permittee will be required to replenish the amount of security to the full amount required by the Department.

(f) Notwithstanding, Section 787.7(a) the Department may, at its discretion, refuse to permit incidental take of coho salmon from timber operations by certification of compliance under this article if the applicant previously obtained an incidental take permit by certification of compliance under this article and the security for performance for that permit was forfeited in whole or part for a failure to properly implement a required measure or measures.

NOTE: Authority cited: Sections 702, 2081(d) and 2112, Fish and Game Code. Reference: Sections 702, 2081(b), 2081(c) and 2112, Fish and Game Code.

HISTORY

1. New section filed 2-11-2008; operative 2-11-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 7).