

## Memorandum

Date: January 22, 2009

To: John Carlson, Jr.  
Executive Director  
Fish and Game Commission

From: Donald Koch   
Director  
Department of Fish and Game

Subject: Proposed Incidental Take Authorization During 12-Month Candidacy For California Tiger Salamander (Fish & G. Code, § 2084)

Attached please find a proposal for the Fish and Game Commission to add section 749.4 to Title 14 of the California Code of Regulations. The proposal would authorize incidental take of California tiger salamander (*Ambystoma californiense*) during the species' candidacy under the California Endangered Species Act (CESA), subject to various terms and conditions. As you will recall, the Commission is required to designate the California tiger salamander as a candidate species under CESA pursuant to a peremptory writ of mandate issued by the Sacramento County Superior Court on January 24, 2007. (See also *Center for Biological Diversity v. California Fish and Game Commission* (2008) 166 Cal.App.4<sup>th</sup> 597.)

### Attachment

cc: John McCamman, Chief Deputy Director  
Sonke Mastrup, Deputy Director  
Kevin Hunting, Deputy Director  
Sandra Morey, Regional Manager  
Chuck Armor, Regional Manager  
Dr. Jeffrey R. Single, Regional Manager  
Ann S. Malcolm, General Counsel  
John H. Mattox, Senior Staff Counsel  
Stephanie Tom Coupe, Deputy Assistant Director  
Tina Bartlett, Habitat Conservation Branch  
Eric Loft, Wildlife Branch

ACTION TO ADD SECTION 749.4  
TITLE 14, CALIFORNIA CODE OF REGULATIONS, RE:  
SPECIAL ORDER RELATING TO INCIDENTAL TAKE OF  
CALIFORNIA TIGER SALAMANDER DURING CANDIDACY PERIOD

749.4 Incidental Take of California Tiger Salamander (*Ambystoma californiense*)  
During Candidacy Period.

This regulation authorizes take of California Tiger Salamander (*Ambystoma californiense*), subject to certain terms and conditions, during the species' candidacy for listing as an endangered or threatened species pursuant to the California Endangered Species Act (Fish & G. Code, § 2050 et seq.).

(a) Take Authorization

Subject to the terms and conditions prescribed by this section, the Commission authorizes take of California tiger salamander during the candidacy period where such take is incidental to an otherwise lawful activity.

(1) Incidental Take Authorized Pursuant to the Federal Endangered Species Act

Incidental take of California tiger salamander is authorized where such take is consistent with and otherwise authorized pursuant to the Federal Endangered Species Act (16 U.S.C. § 1531 et seq.).

(2) Lake or Streambed Alteration Agreements

Incidental take of California tiger salamander is authorized where: (i) take occurs as the result of an activity covered by a lake or streambed alteration agreement issued by the Department of Fish and Game pursuant to Fish and Game Code section 1602, subdivision (a)(4)(B); (ii) the take occurs within the area specifically covered by the lake or streambed agreement; and (iii) the agreement holder is in compliance with the terms and conditions prescribed by the agreement at the time incidental take occurs.

(3) Agricultural Activities

Incidental take of California tiger salamander as a result of routine and ongoing agricultural operations on land in an existing agricultural use is authorized as set forth in this paragraph.

(A) For purposes of this paragraph "routine and ongoing agricultural operations" shall have the same meaning as defined by California Code of Regulations, Title 14, section 786.1, subdivision (b), except routine and

ongoing agricultural operations shall not include: (i) the conversion of agricultural land to a nonagricultural use, excluding the conversion of land in existing agricultural use to conserve, restore, protect, or enhance fish or wildlife habitat; (ii) the conversion of rangeland or natural lands to more intensive agricultural uses, including but not limited to, the conversion of rangeland or natural lands to permanent crops, dry land farming, row crops, and/or any cultivated row crops unless the alterations to the land were commenced before the candidacy period; (iii) the use of toxic or suffocating gases to control ground-burrowing rodents; (iv) the improvement, upgrade, or construction of new roads; or (v) the intentional introduction into a stock pond of species that may prey on California tiger salamander adults, larvae, or eggs.

(B) For purposes of this paragraph “agricultural use” shall mean the use of land for the purpose of producing an agricultural commodity for a personal or commercial purpose.

(b) Additions, Modification, or Revocation

(1) Incidental take of California tiger salamander from activities not addressed in this section may be authorized during the candidacy period by the Commission pursuant to Fish and Game Code section 2084, or by the Department on a case-by-case basis pursuant to Fish and Game Code Section 2081, or other authority provided by law.

(2) The Commission may modify or repeal this regulation in whole or in part as provided by law, including modification or repeal based on a determination that any activity or project may cause jeopardy to the continued existence of California tiger salamander.

Note: Authority cited: Sections 200, 202, 205, 240 and 2084, Fish and Game Code. Reference: Sections 200, 202, 205, 240, 2080, 2084 and 2085, Fish and Game Code.