

CALIFORNIA FISH AND GAME COMMISSION
FINDING OF EMERGENCY AND
STATEMENT OF PROPOSED EMERGENCY REGULATORY ACTION

Emergency Action to
Re-adopt Section 749.13
Title 14, California Code of Regulations
Re: Incidental Take of Southern California Steelhead
#2022-1103-01EE

ADDENDUM

November 10, 2022

On April 21, 2022, the California Fish and Game Commission found that the listing of Southern California steelhead (*Oncorhynchus mykiss*) as a candidate species under the California Endangered Species Act (CESA) may be warranted. This determination designated the steelhead as a candidate. As a candidate species, the species is provided the same protections as if it were permanently listed. The Department of Fish and Wildlife (Department) has one year from the candidacy determination to deliver its status review to the Commission, whereupon the final listing determination is made and the candidacy period ends.

However, it is necessary for the Commission to allow limited take of the species during the candidacy period, which is provided under Section 2084 of the California Fish and Game Code. Through emergency action taken at the same April 21, 2022 meeting, the Commission adopted regulations to allow limited take of the species for a period of six months. On October 13, 2022, the Commission re-adopted the same Fish and Game Code Section 2084 regulation. It is expected that the Commission will readopt these regulations in a future meeting for a second and final time. This would allow take provisions for the duration of the year-long CESA candidacy period.

Per Section 2084, the Commission may only regulate “the taking of any candidate species”. Once the steelhead is no longer a candidate, any steelhead regulations under Section 2084 become inoperative. The Commission lacks authority to extend past this time (with a single exception that is not relevant in this case).

Therefore, by definition, the Commission cannot pursue a permanent (certification of compliance) rulemaking because the regulation cannot become permanent. While the Department can request a six-month extension to its status review, and/or occasionally Department status reviews are delayed, thereby prolonging the candidacy beyond a year, at this time the Commission believes that a year will be sufficient time for relevant agencies to apply for steelhead take coverage under this regulation.