

PROPOSED REGULATORY TEXT

Section 749.13, Title 14, California Code of Regulations, is re-adopted to read:

§ 749.13. Emergency Regulation Relating to Take of Southern California Steelhead (*Oncorhynchus mykiss*) During Candidacy Period.

The commission authorizes the take of Southern California steelhead during the candidacy period for each of the projects or activities described in this section, subject to the following terms and conditions:

(a) The proponent of a project or activity seeking take authorization pursuant to this section shall submit to the department by emailing to SCSH@wildlife.ca.gov or mailing to California Department of Fish and Wildlife, Fisheries Branch, Attention: Southern California Steelhead Take Authorization, P.O. Box 944209, Sacramento, CA 94244-2090 written documentation to demonstrate that the project or activity:

(1) Relates to flood control; a "highway" as defined in Section 360 of the Vehicle Code; or the diversion, impoundment, or discharge of water;

(2) Provides flood protection necessary to prevent flood damage to communities or infrastructure and is therefore immediately necessary to avoid serious harm to the public peace, health, or safety; public-safety benefits through highway maintenance or improvements and is therefore immediately necessary to avoid serious harm to the public peace, health, or safety; or water supply or water treatment for essential domestic, agricultural, industrial, or other commercial uses and is therefore immediately necessary to avoid serious harm to the public peace, health, or safety;

(3) Has valid take authorization from the National Marine Fisheries Service through a federal incidental take statement or incidental take permit under the federal Endangered Species Act for the Southern California steelhead Distinct Population Segment. The written documentation required by this subsection (a)(3) shall include a copy of the incidental take statement or incidental take permit through which the project or activity has valid take authorization from the National Marine Fisheries Service and shall also include any associated biological assessment, biological opinion, or habitat conservation plan; and

(4) Does not require the proponent of the project or activity to submit a written notification pursuant to Fish and Game Code Section 1602 or the proponent of the project or activity has submitted a notification pursuant to Section 1602 and has either received a final agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code or paid the applicable fees pursuant to Section 1609.

(b) Within thirty calendar days of receipt of the written documentation required by subsection (a), the department shall determine in writing whether the project or activity satisfies the criteria in subsections (a)(1) through (4).

(1) If the department determines the project or activity does not satisfy the criteria in subsections (a)(1) through (4), the department shall provide a written explanation detailing the reasons for its determination.

(2) If the department determines the project or activity does satisfy the criteria in subsections (a)(1) through (4), the department shall provide the proponent of the project or activity written confirmation of take authorization pursuant to this section.

(c) The proponent of a project or activity receiving take authorization pursuant to subsection (b)(2) shall undertake the project or activity as described in the federal incidental take statement or incidental take permit for the project or activity. The state take authorization conferred by this section shall be for the same type and amount of take as the federal take authorization required by subsection (a)(3). If the department determines the proponent of a project or activity receiving take authorization pursuant to subsection (b)(2) has not undertaken the project or activity as described in the federal take authorization required by subsection (a)(3) or has exceeded the type or amount of take authorized by the federal take authorization required by subsection (a)(3), the department shall revoke the state take authorization conferred by this section for the duration of the Southern California steelhead candidacy period.

(d) If the federal take authorization that satisfied subsection (a)(3) for a project or activity is amended, is replaced, expires, or is revoked, the Department shall revoke the state take authorization conferred by this section. If the proponent of the project or activity receives new federal take authorization, it may reapply for state take authorization using the process set forth in subsection (a).

(e) Nothing in this section is intended to be or shall be construed to be a general project or activity approval. It shall be the responsibility of the proponent of each project or activity receiving take authorization pursuant to this section to obtain all necessary permits and approvals and to comply with all applicable federal, state, and local laws.

NOTE: Authority cited: Sections 399 and 2084, Fish and Game Code.

Reference: Sections 399 and 2084, Fish and Game Code.