

1 Adopt: 787.0. Purpose and Scope of Regulations.

2

3 (a) The purpose of this article is to establish rules and
4 guidelines in accordance with Section 2112 of the Fish and Game Code
5 to implement Fish and Game Commission policies regarding the issuance
6 of incidental take permits pursuant to Section 2081 of the Fish and
7 Game Code for timber operations or activities that may take coho
8 salmon, a species that is listed as threatened or endangered under the
9 California Endangered Species Act, Fish and Game Code sections 2050,
10 et seq. ("CESA"). The Fish and Game Commission approved the Recovery
11 Strategy for California Coho Salmon (*Oncorhynchus kisutch*) (February
12 2004), and approved for inclusion specified policies pursuant to
13 Section 2112 of the Fish and Game Code to guide the issuance of
14 incidental take permits under Section 2081 of the Fish and Game Code
15 for timber operations or activities. This article sets forth rules and
16 guidelines to implement those policies. In accordance with section
17 2112 of the Fish and Game Code, this article specifies conditions and
18 circumstances when: (1) take is prohibited; (2) an incidental take
19 permit is required; and (3) an incidental take permit is not required.
20 This article outlines various ways to obtain incidental take permits
21 for timber operations and activities, including an expedited process
22 for obtaining incidental take permits by certification pursuant to
23 these regulations, and through the normal permitting process set forth
24 in CESA implementing regulations, California Code of Regulations,
25 title 14, section 783.0 et seq.. The standards for issuance of
incidental take permits are the permit issuance criteria set forth in

1 section 2081(b) and (c) of the Fish and Game Code. This article is not
2 intended to create a presumption that any particular timber operation
3 or activity will incidentally take coho salmon.

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

9
10 Note: Authority cited: Sections 702, 2080, 2081(d), and 2112, Fish and
11 Game Code.

12 Reference: Sections 702, 2080, 2081(b) and (c), and 2112, Fish and
13 Game Code.

14
15 **Adopt: 787.1. Definitions.**

16
17 (a) The terms used in this article are defined by the definitions
18 provided in the Forest Practice Rules, California Code of Regulations,
19 title 14, section 895.1, et seq., except as specifically provided in
20 this article:

21 (1) Coho Salmon Impact Evaluation. A "coho salmon impact
22 evaluation" is an evaluation by the Department of potential impacts of
23 proposed timber operations to coho salmon, conducted in accordance
24 with section 787.9.

25 (2) Jeopardy Determination. A "jeopardy determination" is the
Department's determination, made in accordance with section 787.6 as

1 to whether issuance of an incidental take permit for proposed timber
2 operations activities would jeopardize the continued existence of coho
3 salmon.

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

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

15
16 Note: Authority cited: Sections 702, 2081(d) and 2112, Fish and Game
17 Code.

18 Reference: Sections 702, 2081(b) and (c) and 2112, Fish and Game Code.

19
20 **Adopt: 787.2 Take Determination for Timber Operations.**

21
22 (a) When acting as a Lead, Responsible or Trustee Agency under
23 the California Environmental Quality Act, Public Resources Code
24 section 21000 et seq. ("CEQA"), where timber operations are proposed
25 in watersheds with coho salmon, subject to the availability of staff,
the Department will prepare a "coho salmon impact evaluation" in

1 accordance with section 787.9 and determine whether the proposed
2 timber operations will or are likely to take one or more life stages
3 of coho salmon. Any determination that take will or is likely to occur
4 shall include a description of the activities and project specific
5 conditions which may lead to take.

6 (b) The following is a list of activities that could potentially
7 take coho salmon. This list is not exhaustive and there is no
8 presumption that take will necessarily occur whenever these activities
9 are implemented.

10 (1) Construction, maintenance, replacement and removal of
11 watercourse crossings (e.g., culverts, bridges and Humboldt
12 crossings);

13 (2) Watercourse bank stabilization;

14 (3) Construction, maintenance, replacement, removal and use of
15 fords (i.e., low water crossings);

16 (4) Development, maintenance and operation of water diversion and
17 drafting sites;

18 (5) Construction, maintenance, and use of segments of roads, skid
19 trails, landings and associated drainage facilities hydrologically
20 connected to watercourses;

21 (6) Any physical modification of a channel zone including removal
22 of large wood from a Class I channel zone;

23 (7) Landslides initiated or accelerated by timber operations;

24 (8) Timber operations in a Class I watercourse and lake
25 protection zone, accessible to coho salmon;

1 Note: Authority cited: Sections 702, 711.7, 2080, 2081(d) and 2112,
2 Fish and Game Code; and Sections 21067, 21069, 21070, 21080.1,
3 21080.3, 21080.4, 21080.5, 21082.2, and 21104.2, Public Resources
4 Code.

5 Reference: Sections 702, 711.7, 2080, 2081(b) and (c), and 2112, Fish
6 and Game Code; Sections 21067, 21069, 21070, 21080.1, 21080.3,
7 21080.4, 21080.5, 21082.2, and 21104.2, Public Resources Code.

8
9 **Adopt: 787.3 Take of Coho salmon from Timber Operations Prohibited.**

10
11 Any unauthorized take of coho salmon is prohibited and may be
12 subject to criminal action pursuant to the Fish and Game Code.

13
14 Note: Authority cited: Sections 702, 2080, and 2112, Fish and Game
15 Code.

16 Reference: Sections 702, 2080, and 2112, Fish and Game Code.

17
18 **Adopt: 787.4. Incidental Take Permit for Timber Operations Required.**

19
20 (a) If the Department determines that proposed timber operations,
21 including activities specified in section 787.2(b) could potentially
22 take coho salmon, and the proposed project is not revised to avoid
23 take in accordance with section 787.5, the Department may authorize
24 incidental take of coho salmon by issuing a permit under the authority
25 of Section 2081 of the Fish and Game Code using any of the following
processes if subsection (b) of this section is met:

1 (1) Incidental take permit by certification. The Department may
2 issue an incidental take permit by certification pursuant to section
3 787.7 for timber operations that are not the subject of a timberland
4 conversion permit when timber operations in watersheds with coho
5 salmon incorporate all of the minimization and mitigation measures set
6 forth in Forest Practice Rules, California Code of Regulations, title
7 14, sections 916.9.1 (936.9.1) (a)-(t), 916.9.2, (936.9.2), 923.9.1
8 (943.9.1), and 923.9.2 (943.9.2).

9 (2) Incidental take permit incorporating selected measures. An
10 applicant may propose, and the Department will consider an incidental
11 take permit application prepared in accordance with CESA implementing
12 regulations, California Code of Regulations, title 14, section 783.0
13 et seq., for timber operations that incorporate selected measures from
14 Forest Practice Rules, California Code of Regulations, title 14,
15 sections 916.9.1 (936.9.1), 916.9.2, (936.9.2), 923.9.1 (943.9.1), and
16 923.9.2 (943.9.2). The Department may issue an incidental take permit
17 in accordance with CESA implementing regulations, California Code of
18 Regulations, title 14, section 783.0 et seq.

19 (3) Incidental take permit incorporating watershed evaluation-
20 based measures. An applicant may propose, and the Department will
21 consider an incidental take permit application prepared in accordance
22 with CESA implementing regulations, California Code of Regulations,
23 title 14, section 783.0 et seq., for timber operations that
24 incorporate minimization and mitigation measures based on a watershed
25 evaluation. The watershed evaluation must include the components set
forth below and shall be included in addition to the requirements of

1 California Code of Regulations, title 14, section 783.2(a). The
2 Department may issue an incidental take permit in accordance with CESA
3 implementing regulations, California Code of Regulations, title 14,
4 section 783.0 et seq., for timber operations that incorporate
5 minimization and mitigation measures based upon an evaluation of
6 watershed conditions, risks and limiting factors for coho salmon where
7 the timber operations are proposed.

8 (A) The following are required components of a watershed
9 evaluation:

10 (i) Description of assessment area.

11 (ii) Status of coho salmon within each planning watershed in the
12 assessment area.

13 (iii) Status of coho salmon habitat conditions and water quality
14 within each planning watershed in the assessment area.

15 (iv) Identification and prioritization of limiting factors. A
16 reasoned analysis shall assign ratings of high, moderate and low to
17 those factors which may individually or cumulatively limit coho salmon
18 distribution and abundance in the watershed.

19 (v) Proposed planning watershed specific management practices to
20 prevent or control discharges and environmental impacts from timber
21 operations that could contribute to the identified high and moderate
22 risk limiting factors, and; corrective actions that would reduce or
23 eliminate the high and moderate risk limiting factors on the landscape
24 and mitigate the impacts of timber operations which cause or
25 contribute to those limiting factors.

1 (vi) A plan and schedule for implementing proposed management
2 practices.

3 (vii) A program for monitoring implementation and effectiveness
4 of the management practices and, where the plan is not effective in
5 limiting or eliminating the limiting factors as planned, an adaptive
6 management strategy for changing the plan and schedule to ensure that
7 limiting factors are reduced or eliminated in the watershed.

8 (4) Incidental take permit incorporating alternative measures. An
9 applicant may propose, and the Department will consider an incidental
10 take permit application in accordance with CESA implementing
11 regulations, California Code of Regulations, title 14, section 783.0
12 et seq. The application submitted in accordance with California Code
13 of Regulations, title 14, section 783.2 may specify minimization and
14 mitigation measures included in the Forest Practice Rules, California
15 Code of Regulations, title 14, sections 916.9.1 (936.9.1), 916.9.2,
16 (936.9.2), 923.9.1 (943.9.1), and 923.9.2 (943.9.2) and/or project
17 specific minimization and mitigation measures developed by the
18 applicant. The Department will review and render a decision on the
19 application in accordance with California Code of Regulations, title
20 14, sections 783.3, 783.4, and 783.5

21 (b) In order to issue an incidental take permit under the
22 processes outlined in this section, the permit issuance criteria set
23 forth in Section 2081(b) of the Fish and Game Code must be met. In
24 addition, as required by Section 2081(c) of the Fish and Game Code,
25 the Department shall not issue an incidental take permit for coho

1 salmon if issuance of the permit would jeopardize the continued
2 existence of the species. The Department will determine whether
3 issuance of the permit would jeopardize the continued existence of the
4 species in accordance with section 787.6.

5
6 Note: Authority cited: Sections 702, 2080, 2081(d), and 2112, Fish and
7 Game Code.

8 Reference: Sections 702, 2080, 2081(b) and (c), and 2112, Fish and
9 Game Code.

10
11 **Adopt: 787.5. Incidental Take Permit for Timber Operations Not**
12 **Required.**

13
14 (a) If the Department determines proposed timber operations will
15 avoid take of coho salmon, an incidental take permit under section
16 2081 of the Fish and Game Code is not required.

17 (b) If the Department determines proposed timber operations,
18 including activities specified in section 787.2(a), could potentially
19 take coho salmon, and as a result of a request by the project
20 proponent or Lead Agency to consult with the Department, the project
21 proponent revises or incorporates specific measures into the proposed
22 project or the Lead Agency requires specific measures to be
23 incorporated into the proposed project that the Department determines
24 will avoid take, an incidental take permit under section 2081 of the
25 Fish and Game Code is not required.

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

6 (d) Regardless of whether the Department first makes a
7 determination regarding the take of coho salmon, the Department and
8 any project proponent who intends to meet the requirements of the
9 Natural Community Conservation Planning Act (Fish and Game Code
10 section 2800 et seq) may enter into a planning agreement pursuant to
11 section 2810. The planning agreement must include an interim process
12 during plan development for project review. The interim process may
13 include measures for timber operations or activities which the
14 Department concludes will avoid take. Timber operations or activities
15 carried out in accordance with any such interim process that avoids
16 take will not require an incidental take permit under section 2081 of
17 the Fish and Game Code.

18
19 Note: Authority cited: Sections 702, 2080, 2080.1, 2081, 2112, and
20 2810, Fish and Game Code.

21 Reference: Sections 702, 2080, 2080.1, 2081, 2112, and 2810, Fish and
22 Game Code.

1 Adopt: 787.6. Jeopardy from Timber Operations Prohibited

2
3 (a) If the Department determines that take will, or is likely to
4 result from proposed timber operations, the Department must conduct an
5 additional analysis to determine if issuance of an incidental take
6 permit for the proposed timber operations will jeopardize the
7 continued existence of coho salmon. This means determining whether
8 issuance of an incidental take permit for proposed activities would be
9 expected, directly or indirectly, to substantially reduce the
10 likelihood of survival of coho salmon in the wild by reducing the
11 reproduction, numbers or distribution of the species.

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

18 (1) coho salmon's ability to survive and reproduce; and

19 (2) any adverse impacts of the taking on coho salmon's ability to
20 survive and reproduce in light of :

21 (A) known population trends;

22 (B) known threats to the species; and

23 (C) reasonably foreseeable impacts on the species from other
24 related projects and activities.

25 (c) The Department could determine that proposed timber
operations will jeopardize the continued existence of coho salmon if

1 one or more of the following criteria are met and the impact will
2 likely reduce the numbers of coho salmon in the recovery unit
3 returning to spawn successfully in future years.

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

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

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

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

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

25 (e) Where, following such consultation, the project proponent
declines to incorporate any of the specified reasonable and prudent

1 minimization and mitigation measures into the proposed project, the
2 Department shall not issue an incidental take permit. If, however, the
3 project proponent agrees to incorporate all of the specified
4 reasonable and prudent minimization and mitigation measures into the
5 proposed project to avoid jeopardy, the Department may issue an
6 incidental take permit if the permit issuance criteria set forth in
7 Section 2081(b) are met.

8
9 Note: Authority cited: Sections 702, 2080, 2081(c) and 2112, Fish and
10 Game Code.

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

12
13 **Adopt: 787.7 Incidental Take Permit by Certification for Timber**
14 **Operations**

15
16 (a) The Department may permit incidental take of coho salmon from
17 timber operations by certification of compliance under this section if
18 all of the following are satisfied:

19 (1) The permittee certifies in writing that the permittee agrees
20 to comply with and incorporate into its timber operations all
21 minimization and mitigation measures specified in Forest Practice
22 Rules, California Code of Regulations, title 14, sections 916.9.1
23 (936.9.1), 916.9.2, (936.9.2), 923.9.1 (943.9.1), and 923.9.2
24 (943.9.2) as identified and described in a THP or Notice of Timber
25 Operations attached to the certification. Preconsultation with the
Department prior to submittal of the certification and attached THP or

1 Notice of Timber Operations is strongly recommended in order to
2 facilitate acceptance and return receipt of the certification.

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

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

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

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

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

24 (b) Effect of Certification.
25

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

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

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

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

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

20 (c) Form of Certification. The certification required by section
21 787.7 shall take substantially the following form:

22
23 CERTIFICATION OF COMPLIANCE

24
25 I certify that all of the minimization and mitigation measures set
forth in Forest Practice Rules, California Code of Regulations, title

1 14, sections 916.9.1 (936.9.1), 916.9.2, (936.9.2), 923.9.1 (943.9.1),
2 and 923.9.2 (943.9.2) including any alternative measures provided in
3 these sections are included as enforceable elements of the attached
4 Timber Harvesting Plan (THP) or Nonindustrial Timber Management Plan
5 (NTMP) Notice of Timber Operations.

6
7 I acknowledge that these measures are roughly proportional in extent
8 to the impact of the authorized take of the species, the measures
9 maintain my project objectives to the greatest extent possible, and
10 they are capable of successful implementation. I understand that this
11 permit allows incidental take of coho salmon pursuant to CESA; it does
12 not authorize the violation of any Federal, State or local laws or
13 regulations. I understand that this incidental take permit becomes
14 effective after both of the following have occurred: (1) the THP or
15 Notice of Timber Operations containing the required measures is
16 approved by the Department of Forestry and Fire Protection; and (2) I
17 have received receipt of the certification signed by the Department of
18 Fish and Game from the appropriate address below. I understand that
19 this certification permits incidental take of coho salmon from the
20 timber operations described in the attached THP or Notice of Timber
21 Operations. Any incidental take from operations that deviate from such
22 timber operations, whether under subsequent amendments to the THP or
23 Notice of Timber Operations or otherwise, is not authorized by this
24 permit by certification.

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

10

11 THP or NTMP designation: _____

12 Proposed beginning date of timber operations: _____

13 End date for timber operations: _____

14

15 Attached is the security for performance, calculated in accordance
16 with section 787.8, ensuring adequate funding to implement measures to
17 minimize and fully mitigate impacts of authorized take, and for
18 monitoring compliance with and effectiveness of, those measures.

19 The undersigned is responsible for immediately notifying the
20 Department of Fish and Game of any deviations from the above.

21

22 _____

23 (RPF or authorized representative signature) _____ Date

24

25 The undersigned is authorized to provide consent to the Department of
Fish and Game to access and inspect the subject timber operations

1 during and following completion of operations, and hereby provides
2 such authorization to the Department of Fish and Game.

3
4
5
6 (authorized representative signature) Date

7
8 For Del Norte, Humboldt, Mendocino, Siskiyou or Trinity Counties

9
10 Regional Manager
11 Department of Fish and Game
12 601 Locust Street
13 Redding, CA 96001
14 (530) 225.2300

15
16 For Santa Cruz, San Mateo, Marin, or Sonoma Counties

17
18 Regional Manager
19 Department of Fish and Game
20 P.O. Box 47
21 Yountville, CA 94599
22 (707) 944.5500

23
24 The Department of Fish and Game [circle one: finds/does not find]
25 that: (1) the activities identified in the attached THP or NTMP Notice

1 of Timber Operations may result in take of coho salmon incidental to
2 an otherwise lawful activity; where the Department of Fish and Game
3 finds that the activities may result in incidental take, the
4 Department of Fish and Game finds that: (2) the impacts of authorized
5 take will be minimized and fully mitigated; the measures required to
6 meet this obligation are roughly proportional in extent to the impact
7 of the authorized take; where various measures are available to meet
8 this obligation, the impacts of take, the measures maintain the
9 applicant's objectives to the greatest extent possible; and the
10 measures are capable of successful implementation; (3) this permit by
11 certification of compliance is consistent with regulations adopted
12 pursuant to Sections 2112 and 2114 of the Fish and Game Code; (4) the
13 permittee has assured adequate funding to implement the required
14 measures and for monitoring compliance with and effectiveness of those
15 measures; (5) and issuance of the permit by certification which is
16 approved by the signature below will not jeopardize the continued
17 existence of coho salmon. The Department of Fish and Game's findings
18 are based upon the certification submitted; the approved THP or Notice
19 of Timber Operations and associated environmental review and impact
20 analysis; the administrative records supporting the incorporated
21 Forest Practice Rules, California Code of Regulations, title 14,
22 sections 916.9.1 (936.9.1), 916.9.2, (936.9.2), 923.9.1 (943.9.1), and
23 923.9.2 (943.9.2), and the Incidental Take Permit Guidelines for
24 Timber Operations, section 787.0 et seq., and other information the
25 Department of Fish and Game had before it at the time of the
certification.

1
2
3 DFG Regional Manager

Date

4
5 (d) Department Review and Response. The Department shall review and
6 approve or deny the certification as soon as possible and no later than 30
7 days following receipt of all information specified in California Code of
8 Regulations, title 14, section 783.4 by the appropriate Regional Manager.

9
10 Note: Authority cited: Sections 702, 2081(d), and 2112, Fish and Game
11 Code.

12 Reference: Sections 702, 2081(b) and (c), and 2112, Fish and Game
13 Code.

14
15 **Adopt: 787.8 Security for Performance for Incidental Take Permits**

16
17 (a) As required by Fish and Game Code section 2081(b)(4) and CESA
18 implementing regulations, California Code of Regulations, title 14,
19 section 783.4(a)(4), the permit applicant must assure adequate funding
20 to implement the required measures and for monitoring compliance with,
21 and effectiveness of, those measures. Acceptable instruments of
22 financial security include a pledged savings or trust account,
23 certificate of deposit, or irrevocable letter of credit, the terms of
24 which must be approved by the Department. Other instruments and their
25 terms must be approved by the Department. Security must be provided to

1 the appropriate Department Regional Manager by certified mail together
2 with the Certification of Compliance.

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

5 (c) Where incidental take is authorized through section 787.4(a)
6 (2), (3) or (4), security for performance is required and shall be
7 determined on a project specific basis.

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

11 (1) Road Component

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

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

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

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

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

1 without modification, additional security in the amount of
2 \$500/crossing shall be required.

3 (v) For each new, reconstructed or temporary Class II watercourse
4 crossing, additional security in the amount of \$1000/crossing shall be
5 required. Where an existing Class II watercourse crossing will be used
6 without modification, additional security in the amount of
7 \$500/crossing shall be required.

8 (vi) For each new, reconstructed or temporary Class III
9 watercourse crossings additional security in the amount of
10 \$500/crossing shall be required. Where an existing Class III
11 watercourse crossing will be used but not reconstructed, additional
12 security in the amount of \$250/crossing shall be required.

13 (B) The security for performance for the Road Component will be
14 returned following a written request by the permittee to the
15 Department upon completion of the Prescribed Maintenance Period
16 provided that each requirement of Forest Practice Rules, California
17 Code of Regulations, title 14, sections 923.9.1 (943.9.1), and 923.9.2
18 (943.9.2) has been properly implemented. The Department shall make its
19 best effort to return the security within 45 days of receipt of said request.

20 (C) The security for performance for the Road Component will be
21 forfeited by the permittee if each requirements of Forest Practice
22 Rules, California Code of Regulations, title 14, sections 923.9.1
23 (943.9.1), and 923.9.2 (943.9.2) has not been properly implemented,
24 except that the Department may, at its discretion, return all or part
25 of the security for performance of an applicable component if in the

1 Department's judgment the Permittee has completely remedied its
2 failure to properly implement a required measure or measures.

3 (2) Area Component

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

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

17 (C) The security for performance for the Area Component Security
18 will be forfeited by the permittee if any requirements of Forest
19 Practice Rules, California Code of Regulations, title 14, sections
20 916.9.1 (936.9.1) and 916.9.2, (936.9.2) has not been properly
21 implemented, except that the Department may, at its discretion, return
22 all or part of the security for performance of an applicable component
23 if in the Department's judgment the Permittee has completely remedied
24 its failure to properly implement a required measure or measures.

25 (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

1 Department accesses all or part of the security for performance,
2 within 30 days thereof the permittee will be required to replenish the
3 amount of security to the full amount required by the Department.

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

11
12 Note: Authority cited: Sections 702, 2081(d), and 2112, Fish and Game
13 Code.

14 Reference: Sections 702, 2081(b) and (c), and 2112, Fish and Game
15 Code.

16
17 **Adopt: 787.9 Coho Salmon Impact Evaluation**

18
19 (a) When acting as a Lead, Responsible, or Trustee Agency under
20 CEQA, and, subject to the availability of sufficient staff, the
21 Department will evaluate potential impacts of proposed timber
22 operations on coho salmon. Where the Department is a Responsible or
23 Trustee Agency, the Department shall provide a reasoned analysis and
24 determination, to the extent possible within the time frames
25 established by regulation for environmental review and within any

1 written communication to the Lead Agency addressing any other trustee
2 responsibilities of the Department.

3 (b) The Department may determine that proposed timber operations
4 will have potentially significant impacts within watersheds with coho
5 salmon if one or more of the following criteria are met:

6 (1) One or more cohorts of coho salmon return in low numbers or
7 not at all, and timber operations will contribute net additional
8 sediment to spawning and rearing habitat in the planning watershed
9 where timber operations are proposed or the planning watershed
10 immediately downstream.

11 (2) One or more cohorts of coho salmon return in very low
12 numbers, or not at all, and timber operations will further reduce
13 shading within a Class I watercourse and lake protection zone
14 accessible to coho salmon, in a planning watershed where water
15 temperatures limit habitat suitability for any life stage of coho
16 salmon.

17 (3) One or more cohorts of coho salmon return in very low
18 numbers, or not at all, and timber operations will reduce the
19 potential for recruitment of functional large woody material from the
20 Class I watercourse and lake protection zone into a Class I
21 watercourse accessible to coho salmon in a planning watershed where
22 excessive sediment impairs coho salmon spawning or rearing.

23 (4) A substantial number of coho salmon will likely be taken by
24 the proposed timber operations. For this determination, "substantial "
25 means that the impact will, by itself, reduce the likelihood of coho
salmon returning to spawn successfully in future years.

1 (5) The proposed timber operations will likely reduce access to
2 habitat used by coho salmon for migration, spawning or rearing.

3 (c) Where the Department determines that project impacts are
4 likely to be significant, Department staff shall identify and propose
5 mitigation measures intended to reduce potentially significant impacts
6 to a level which is less than significant.

7 (d) Where timber operations incorporate all of the measures set
8 forth in Forest Practice Rules, California Code of Regulations, title
9 14, sections 895.1; 916.9 and 936.9 and 956.9; 923.9, 943.9 and 963.9;
10 916.9.1 and 936.9.1; 916.9.2 and 936.9.2; 916.11.1 and 936.11.1;
11 923.9.1 and 943.9.1; and 923.9.2 and 943.9.2, the Department shall
12 conclude that any impacts pursuant to 787.9(b)(1-5) have been
13 sufficiently mitigated to a level which is less than significant.

14
15 Note: Authority cited: Sections 702, 711.7, and 2112, Fish and Game
16 Code; and Sections 21067, 21069, 21070, 21080.1, 21080.3, 21080.4,
17 21080.5, 21082.2, and 21104.2, Public Resources Code.

18 Reference: Sections 702, 711.7, and 2112, Fish and Game Code; Sections
19 21067, 21069, 21070, 21080.1, 21080.3, 21080.4, 21080.5, 21082.2, and
20 21104.2, Public Resources Code.