

NOTE: THIS REGULATION WAS SET ASIDE BY ORDER OF THE COURT ON MAY 29, 2012 AND IS NO LONGER IN FORCE OR EFFECT.

Regulatory Language

Section 749.7, Title 14, CCR, is added to read:

749.7 Incidental Take of Black-Backed Woodpecker (*Picoides arcticus*) During Candidacy Period

This regulation authorizes take, as defined by Fish and Game Code section 86, of the Black-backed woodpecker subject to certain terms and conditions during the species' candidacy under the California Endangered Species Act (Fish & G. Code, §2050 et seq.).

(a) Take Authorization.

The Commission authorizes the take of Black-backed woodpecker during the candidacy period subject to the terms and conditions herein.

(1) Scientific, Education or Management Activities.

Take of the Black-backed woodpecker incidental to scientific, education, or management activities is authorized.

(2) Activities to Protect, Restore, Conserve or Enhance.

Take of the Black-backed woodpecker incidental to otherwise lawful activities initiated to protect, restore, conserve, or enhance a state or federally threatened or endangered species and its habitat is authorized.

(3) Wildland Fire Response and Related Vegetation Management.

Take of the Black-backed woodpecker incidental to otherwise lawful wildland fire prevention, response, and suppression activities, including related vegetation management, is authorized. For purposes of this authorization, vegetation or fuels management activity shall mean an activity to reduce hazardous fuels and prevent or reduce the risk of wildland fires authorized or otherwise permitted by the Z'berg Nejedly Forest Practice Act (Public Resources Code, Section 4511 et seq.), the Forest Practice Rules of the Board of Forestry, which are found in Chapters 4, 4.5, and 10, of Title 14 of the California Code of Regulations, the Wildland Fire Protection and Resources Management Act of 1978 (Public Resources Code, Section 4461-4480), the California Forest Improvement Act of 1978 (Public Resources Code, Section 4790 et seq.),

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the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), or other applicable law.

(4) Forest Practices and Timber Harvest.

Take of the Black-backed woodpecker incidental to otherwise lawful timber operations is authorized. For purposes of this authorization, an otherwise lawful timber operation shall mean a timber operation authorized or otherwise permitted by the Z'Berg Nejedly Forest Practice Act (Public Resources Code, Section 4511 et seq.), the Forest Practice Rules of the Board of Forestry, which are found in Chapters 4, 4.5, and 10, of Title 14 of the California Code of Regulations, or other applicable law.

(b) Application of the California Environmental Quality Act.

Consistent with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), if a state or local agency determines that an activity identified in subdivision (a) will result in a significant impact on the Black-backed woodpecker, the agency should not approve the activity as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant impact on the Black-backed woodpecker. (See Pub. Resources Code, § 21002.) Measures or project changes required as part of a state or local agency authorization to address significant impacts on the Black-backed woodpecker may include measures to conserve the species, including avoidance or preservation of habitat attributes relied on by the species. Voluntary measures to aid in the conservation of the Black-backed woodpecker shall also be encouraged.

(c) Reporting.

Any person, individual, organization, or public agency for which incidental take of the Black-backed woodpecker is authorized pursuant to subdivision (a) shall report observations and detections of the Black-backed woodpecker, including take, to the Department of Fish and Game on a semi-annual basis during the candidacy period. Observations, detections, and take of the Black-backed woodpecker pursuant to this subdivision shall be reported on a semi-annual basis during the candidacy period for the Black-backed woodpecker. Observations, detections, and take shall be reported pursuant to this subdivision to the Department of Fish and Game, Wildlife Branch, Attn: Black-backed Woodpecker Observations, 1812 Ninth St., Sacramento, CA 95811, or by email submission to wildlifestrategy@dfg.ca.gov. Information reported to the Department pursuant to this subdivision shall include as available: a contact name; the date and location (GPS coordinates preferred) of the observation, detection, or take; and details regarding the animal(s) observed.

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(d) Additions, Modifications, or Revocation.

(1) Incidental take of the Black-backed woodpecker 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, pursuant to law, if it determines that any activity or project may cause jeopardy to the continued existence of the Black-backed woodpecker.

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