

**ECONOMIC AND FISCAL IMPACT STATEMENT**

(REGULATIONS AND ORDERS)

STD. 399 (REV. 12/2008)

See SAM Section 6601 - 6616 for Instructions and Code Citations

DEPARTMENT NAME Fish and Game Commission	CONTACT PERSON	TELEPHONE NUMBER
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Incidental take of black-backed woodpecker during candidacy		NOTICE FILE NUMBER Z

**ECONOMIC IMPACT STATEMENT**

A. ESTIMATED PRIVATE SECTOR COST IMPACTS (Include calculations and assumptions in the rulemaking record.)

1. Check the appropriate box(es) below to indicate whether this regulation:

- a. Impacts businesses and/or employees
- b. Impacts small businesses
- c. Impacts jobs or occupations
- d. Impacts California competitiveness
- e. Imposes reporting requirements
- f. Imposes prescriptive instead of performance
- g. Impacts individuals
- h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.)

h. (cont.) N/A per Government Code 11346.1(b)(2), citing Government Code 11346.5(a)(2)-(6)

(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: N/A Describe the types of businesses (Include nonprofits.): \_\_\_\_\_

Enter the number or percentage of total businesses impacted that are small businesses: \_\_\_\_\_

3. Enter the number of businesses that will be created: N/A eliminated: \_\_\_\_\_

Explain: \_\_\_\_\_

4. Indicate the geographic extent of impacts:  Statewide  Local or regional (List areas.): N/A

5. Enter the number of jobs created: \_\_\_\_\_ or eliminated: \_\_\_\_\_ Describe the types of jobs or occupations impacted: N/A

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

Yes  No If yes, explain briefly: \_\_\_\_\_

B. ESTIMATED COSTS (Include calculations and assumptions in the rulemaking record.)

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ N/A

a. Initial costs for a small business: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

b. Initial costs for a typical business: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

c. Initial costs for an individual: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

d. Describe other economic costs that may occur: \_\_\_\_\_

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

2. If multiple industries are impacted, enter the share of total costs for each industry: N/A

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. (Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.): \$ N/A

4. Will this regulation directly impact housing costs?  Yes  No If yes, enter the annual dollar cost per housing unit: \_\_\_\_\_ and the number of units: \_\_\_\_\_

5. Are there comparable Federal regulations?  Yes  No Explain the need for State regulation given the existence or absence of Federal regulations: \_\_\_\_\_

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ \_\_\_\_\_

C. ESTIMATED BENEFITS (Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. Briefly summarize the benefits that may result from this regulation and who will benefit: N/A

2. Are the benefits the result of:  specific statutory requirements, or  goals developed by the agency based on broad statutory authority?

Explain: \_\_\_\_\_

3. What are the total statewide benefits from this regulation over its lifetime? \$ \_\_\_\_\_

D. ALTERNATIVES TO THE REGULATION (Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: N/A

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation:	Benefit: \$ _____	Cost: \$ _____
Alternative 1:	Benefit: \$ _____	Cost: \$ _____
Alternative 2:	Benefit: \$ _____	Cost: \$ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: N/A

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs?  Yes  No

Explain: N/A

E. MAJOR REGULATIONS (Include calculations and assumptions in the rulemaking record.) Cal/EPA boards, offices, and departments are subject to the following additional requirements per Health and Safety Code section 57005.

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million?  Yes  No (If No, skip the rest of this section.)

2. Briefly describe each equally as an effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: \_\_\_\_\_

Alternative 2: \_\_\_\_\_

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation:	\$ _____	Cost-effectiveness ratio: \$ _____
Alternative 1:	\$ _____	Cost-effectiveness ratio: \$ _____
Alternative 2:	\$ _____	Cost-effectiveness ratio: \$ _____

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

a. is provided in \_\_\_\_\_, Budget Act of \_\_\_\_\_ or Chapter \_\_\_\_\_, Statutes of \_\_\_\_\_

b. will be requested in the \_\_\_\_\_ Governor's Budget for appropriation in Budget Act of \_\_\_\_\_  
(FISCAL YEAR)

2. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

a. implements the Federal mandate contained in \_\_\_\_\_

b. implements the court mandate set forth by the \_\_\_\_\_  
court in the case of \_\_\_\_\_ vs. \_\_\_\_\_

c. implements a mandate of the people of this State expressed in their approval of Proposition No. \_\_\_\_\_ at the \_\_\_\_\_  
election; (DATE)

d. is issued only in response to a specific request from the \_\_\_\_\_  
\_\_\_\_\_, which is/are the only local entity(s) affected;

e. will be fully financed from the \_\_\_\_\_ authorized by Section \_\_\_\_\_  
(FEES, REVENUE, ETC.)  
\_\_\_\_\_ of the \_\_\_\_\_ Code;

f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit;

g. creates, eliminates, or changes the penalty for a new crime or infraction contained in \_\_\_\_\_

3. Savings of approximately \$ unknown annually. (see attachment)

4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law regulations.

**ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)**

5. No fiscal impact exists because this regulation does not affect any local entity or program.

6. Other.

**B. FISCAL EFFECT ON STATE GOVERNMENT** (Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year. It is anticipated that State agencies will:

a. be able to absorb these additional costs within their existing budgets and resources.

b. request an increase in the currently authorized budget level for the \_\_\_\_\_ fiscal year.

2. Savings of approximately \$ unknown in the current State Fiscal Year. *(see attachment)*

3. No fiscal impact exists because this regulation does not affect any State agency or program.

4. Other.

**C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS** (Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

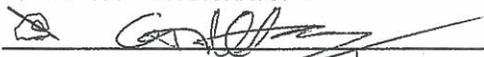
1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.

2. Savings of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.

3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.

4. Other.

FISCAL OFFICER SIGNATURE



DATE

11/2/11

AGENCY SECRETARY<sup>1</sup>  
APPROVAL/CONCURRENCE

 Jon K. Fisch

DATE

30 December 2011

DEPARTMENT OF FINANCE<sup>2</sup>  
APPROVAL/CONCURRENCE

PROGRAM BUDGET MANAGER  


DATE

1. The signature attests that the agency has completed the STD.399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or department not under an Agency Secretary must have the form signed by the highest ranking official in the organization.
2. Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD.399.

## Attachment to Form 399

### **Fish and Game Commission Analysis of the Fiscal Impacts of Implementing California Code of Regulations, Title 14, section 749.7: Incidental Take of the Black-Back Woodpecker During Candidacy Period**

The provisions of the Administrative Procedure Act (APA) do not require an analysis of the economic impact of the proposed regulatory action on businesses and private persons. Section 11346.1, subdivision (b)(2), of the Government Code requires that any finding of an emergency shall include a written statement containing the information required by paragraphs (2) to (6) of subdivision (a) of Section 11346.5. Paragraph 2 requires reference to the authority under which the regulation is proposed and a reference to the particular code sections or other provisions of law that are being implemented, interpreted, or made specific. Paragraph 3 requires an informative digest. Paragraph 4 requires any other matters as are prescribed by statute applicable to the specific state agency or to any specific regulation or class of regulations. The requirements of paragraphs 2 through 4 can be found in Emergency Action to Add Section 749.7, Title 14, CCR, Re: Special Order Relating to Incidental Take of Black-backed Woodpecker (*Picoides arcticus*) During Candidacy Period. Paragraph 5 requires a determination as to whether the regulation imposes a mandate on local agencies or school districts and, if so whether the mandate requires state reimbursement as required by law. The Commission finds adoption of the emergency regulation in the present case does not impose a mandate as described by Paragraph 5. Paragraph 6, which requires an estimate of the cost or savings to any state or local agency, is addressed below.

The emergency regulation will provide savings to state and local entities in this fiscal year and in a portion of the next fiscal year as the emergency regulation could potentially be in place for one year following its adoption by the Commission. In the absence of this regulation, individuals engaged in otherwise lawful activities that may result in take of the Black-backed Woodpecker, a species designated as a candidate species pursuant to the California Endangered Species Act (CESA), would have to obtain an incidental take permit (ITP) from the Department of Fish and Game (Department) on a project-by-project basis pursuant to Fish and Game Code section 2081, or take authorization as otherwise available under existing state law, in order to avoid potential criminal liability. The issuance of ITPs or other take authorization under CESA or the Fish and Game Code generally is a complicated and lengthy process. Further, the number of individuals that would need to apply for take authorization under CESA in the absence of this regulation is unknown, but potentially numerous.

This regulation will provide savings to the Department because the issuance of ITPs on a project-by-project basis would require the Department to determine in

each instance if: (1) authorized take is incidental to a lawful activity; (2) the impacts of the authorized take are minimized and fully mitigated; (3) the measures required to minimize and fully mitigate the impacts of the authorized take are roughly proportional in extent to the impact of the taking on the species, maintain the applicant's objectives to the greatest extent possible, and are capable of successful implementation; (4) adequate funding is provided to implement the required minimization and mitigation measures and to monitor compliance with and the effectiveness of the measures; and (5) issuance of the ITP will not jeopardize the continued existence of the Black-backed Woodpecker.

The Department's process for evaluating, preparing, and issuing an ITP involves: (1) assigning staff in Department Regional Offices where a project is or is proposed to be located to review each ITP application to ensure it is complete; (2) providing an acceptance letter to the applicant; (3) working with the applicant to the greatest extent practicable to develop and prepare the application and proposed ITP; (4) to review and make a final decision regarding the substantive adequacy of the proposed ITP, and preparing and adopting related findings required under controlling regulations; and (5) complying as either a lead or responsible agency with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), including preparing and adopting a Mitigation Monitoring and Reporting Plan, as appropriate, and filing a notice of determination. (See generally Cal. Code Regs., tit. 14, § 783.0 et seq.) In addition, in terms of the Department's internal procedures for preparing, processing, and reviewing proposed ITPs, the initial effort by the Regional Office and the related documents are forwarded to and reviewed by the Department's Habitat Conservation and Planning Branch (HCPB), headquartered in Sacramento. HCPB review is coordinated with and followed by legal review of the proposed ITP permitting package by the Department's Office of the General Counsel prior to final action by the Regional Office. The number of hours and level of staff expertise required at each step in the ITP review process for each project varies, but it is usually considerable. The emergency regulation, in this respect, will provide considerable savings to the Department during the candidacy period for ITP review and processing.

The emergency regulation will also provide savings to other state and local entities that would require an individual ITP authorizing incidental take of Black-backed Woodpecker during the species' candidacy period absent this regulation. If these entities are required to obtain an ITP, they will have to expend personnel and other resources to: (1) work with Department staff to prepare the ITP application and proposed permit, and related permitting documents, including documentation to comply with the requirements of CEQA, and (2) prepare and submit a mitigation plan in coordination with Department staff. The mitigation plan would identify measures to avoid and minimize the take of the Black-backed Woodpecker and to fully mitigate the impact of the take. These measures can vary from project to project, and thus the expense of implementing the measures also varies widely. Some of the take mitigation and minimization measures used

in ITPs for other currently-listed species include: delineation of construction sites; take avoidance measures tailored to the affected species; preconstruction notification to the Department; employee education programs; reporting procedures when an individual of the species is killed, injured or trapped; compliance inspections and reports; acquisition and transfer of habitat management lands; and associated funding (including funding for document processing and for initial protection (e.g., fencing, posting, clean-up) and endowments for management of the lands in perpetuity).

Absent adoption of the emergency regulation, state and local agencies, and the regulated community will bear the timing and process costs associated with project-by-project permitting by the Department. Regulations implementing CESA contemplate a roughly six month review by the Department for proposed ITPs. Appropriate CEQA review for individual ITPs also affects the timing of permits issued by the Department. (Cal. Code Regs., tit. 14, §§ 783.3, 783.5.) The number and timing of permits issued by the Department is also a product of economic conditions, the State of California's ongoing fiscal crises, and the resources actually available to the Department to administer the permitting program.

CalFire, for example, with its mandate to prevent, respond, and suppress wildland fires would avoid timing and processing costs for individual ITPs with the adoption of Section 749.7. In some instances, the need for and the timing and process costs associated with individual ITPs could delay important prevention and suppression activities. That could lead, in turn, to a greater number and intensity of wildland fires, and greater overall cost for prevention, response, and suppression activities by CalFire.

Additionally, reopening existing timber harvesting plans (THPs), in addition to participating in review and issuance of new THPs in the Black-backed Woodpecker's range, would pose a significant burden on CalFire, local agencies, and the Department. Without this emergency regulation, many routine and ongoing otherwise lawful timber operations on land already managed for timber harvest would be delayed or cancelled entirely while awaiting the necessary State CESA authorization. These delays and cancellations could cause significant economic harm to persons already lawfully engaged in such activities, their employees, their local communities, and the State of California.

This regulation will additionally save ITP applicants the resources they would otherwise have to expend to negotiate and fund security acceptable to the Department to ensure that sufficient funding is available to carry out mitigation measures and monitoring requirements.