

Regulatory Language

Section 749.5, Title 14, CCR is added to read:

§ 749.5. Incidental Take of Pacific Fisher (*Martes pennanti*) During Candidacy Period. This regulation authorizes the taking of Pacific fisher (*Martes pennanti*), subject to certain terms and conditions, during the species' candidacy under the California Endangered Species Act (Fish and Game Code, Section 2050 et seq.).

(a) Take Authorization.

The Commission authorizes the take of Pacific fisher during the candidacy period subject to the terms and conditions herein.

(1) Forest Practices and Timber Harvest.

Incidental take of Pacific fisher is authorized for otherwise lawful timber operations. 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. The Z'Berg Nejedly Forest Practice Act and Forest Practice Rules can be found at the following website: http://www.fire.ca.gov/resource_mgt/resource_mgt_forestpractice.php.

(2) Vegetation Management to Prevent or Reduce Wildland Fire.

Incidental take of Pacific fisher is authorized for otherwise lawful vegetation or fuels management activities necessary to reduce hazardous fuels and prevent or reduce the risk of catastrophic wildland fires. For purposes of this authorization, an otherwise lawful vegetation or fuels management activity shall mean an activity to reduce hazardous fuels and prevent or reduce the risk of catastrophic 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.), the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), or other applicable law.

(3) Wildland Fire and Fire Response.

Take of Pacific fisher incidental to otherwise lawful wildland fire response and suppression activities is authorized.

(4) Management, Monitoring, and Research Activities.

Incidental take of Pacific fisher is authorized relative to Department approved or supported survey, monitoring, research, and translocation plans. Department approvals of management, monitoring, and research activities may be provided pursuant to a memorandum of understanding, a scientific collecting permit, or other Department authorization provided by 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 Pacific fisher, 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 Pacific fisher. (See Public Resources Code, Section 21002.) Measures or project changes required as part of a state or local agency authorization to address significant impacts on Pacific fisher 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 Pacific fisher shall also be encouraged.

(c) Reporting.

Any person, individual, organization, or public agency for which incidental take of Pacific fisher is authorized pursuant to subdivision (a), shall report observations and detections of Pacific fisher, including take, to the Department of Fish and Game on a semi-annual basis during the candidacy period. Observations, detections, and take of Pacific fisher pursuant to this subdivision for the previous six months shall be reported by the first day of March and the first day of September, respectively, during the candidacy period for Pacific fisher. Observations, detections, and take shall be reported pursuant to this subdivision to the Department of Fish and Game, Wildlife Branch, Attn: Fisher Observations, 1812 Ninth St., Sacramento, CA 95814, or by email submission to fisherdata@dfg.ca.gov. Information reported to the Department pursuant to this subdivision shall include as available: a contact name; the date and location (GPS coordinate preferred) of the observation, detection, or take; and details regarding the animal(s) observed.

(d) Additions, Modifications or Revocation.

(1) Incidental take of Pacific fisher 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 Pacific fisher.

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.