

**ECONOMIC AND FISCAL IMPACT STATEMENT**  
*(REGULATIONS AND ORDERS)*

STD. 399 (Rev. 2-98)

See SAM Sections 6600 - 6680 for Instructions and Code Citations

|   |                |                                    |
|---|----------------|------------------------------------|
| DEPARTMENT NAME<br>Fish and Game Commission   | CONTACT PERSON | TELEPHONE NUMBER<br>(916) 653-4899 |
| DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400<br>Incidental Take of Pacific Fisher During Candidacy Period |                | NOTICE FILE NUMBER<br>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 standards
- g. Impacts individuals
- h. None of the above *(Explain below. Complete the Fiscal Impact Statement as appropriate.)*

h. (cont.) N/A per Government Code Section 11346.1(b)(2), citing Government Code Section 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: N/A

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

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

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

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

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: N/A

**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? \$ \_\_\_\_\_

- 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. 2-98)

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: N/A

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

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: N/A

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

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. 2-98)

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 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 (Item \_\_\_\_\_, 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 \_\_\_\_\_ (FEES, REVENUE, ETC.)  
\_\_\_\_\_ authorized by Section \_\_\_\_\_  
\_\_\_\_\_ 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.

3. Savings of approximately \$ unknown annually. **Please see attachment.**

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

**ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 2-98)**

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. **Please 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 \$ unknown in the current State Fiscal Year. **Please see attachment.**
3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
4. Other.

| SIGNATURE                           | TITLE         |
|-------------------------------------|---------------|
|                                     |               |
| AGENCY SECRETARY <sup>1</sup>       | DATE          |
| APPROVAL/CONCURRENCE  Jon K Hsicher | 17 April 2009 |
| DEPARTMENT OF FINANCE <sup>2</sup>  | DATE          |
| APPROVAL/CONCURRENCE                |               |

1. The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments 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 6600-6670 require completion of the 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 749.5: Incidental Take of Pacific Fisher 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 (5) and (6) of subdivision (a) of Section 11346.5. 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 Pacific fisher, a species designated as a candidate species pursuant to 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 as otherwise available under existing law, in order to avoid potential criminal liability. The issuance of ITPs or permits authorizing incidental take under CESA 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.

This regulation will provide savings to the Department because the issuance of ITPs would require Department personnel 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 Pacific fisher.

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 develop and prepare the application and proposed ITP; and (4) drafting findings under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), a Mitigation Monitoring and Reporting Plan, and a Notice of Determination. The ITP and permitting package generally must then be 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 ITP and permitting package from the Department's Office of the General Counsel (OGC). The number of hours and level of staff expertise required at each level of review for each project varies, but is usually considerable.

This regulation will provide savings to other state and local entities that would require an individual ITP authorizing incidental take of Pacific fisher 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 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 Pacific fisher 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).

This regulation will additionally save 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.