

BOARD OF FORESTRY AND FIRE PROTECTION

Resources Building
Room 1506-14
1416 9th Street
Sacramento, CA 94244-2460
Attention: Matt Dias, Executive Officer
Tel: (916) 653-8007

September 16th, 2016

15-DAY NOTICE OF ADDITION OF DOCUMENTS AND INFORMATION TO RULEMAKING FILE

Pursuant to the requirements of Government Code sections 11346.8(d), 11346.9(a)(1), and 11347.1, the Board of Forestry and Fire Protection is providing notice that a document which the Board has relied upon in adopting the proposed regulations pertaining to listed anadromous salmonid amendments has been added to the rulemaking file and is available for public inspection and comment.

The following document has been added to the rulemaking file:

Supplement to the Initial Statement of Reasons

This document is available for public inspection at the Board's office located at the Resources Building, Room 1506-14, 1416 9th Street, Sacramento, CA 94244 from September 16, 2016 through October 3, 2016 between the hours of 8:00 a.m. and 5:00 p.m. If you have any comments regarding the documents and other information, written comments must be submitted to the Board by 5:00 p.m. on October 3, 2016, to:

Matt Dias, Executive Officer
Board of Forestry and Fire Protection
1416 9th Street, Room 1506-14
Sacramento, CA 94244-2460
(916) 653-8007

All written comments received by 5:00 p.m. October 3, 2016, which pertain to the above-listed document will be reviewed and responded to by the Board's staff as part of the compilation of the rulemaking file.

Board of Forestry and Fire Protection

SUPPLEMENT TO THE INITIAL STATEMENT OF REASONS (ISOR)

“Listed Anadromous Salmonid Amendments, 2016”

**Title 14 of the California Code of Regulations (14 CCR),
Division 1.5, Chapter 4:
Subchapter 1, Article 1
Amend: § 895.1
Subchapter 2, Article 2
Amend: § 898.2**

The Board of Forestry and Fire Protection (Board) intends this Supplement to the Initial Statement of Reasons (ISOR) to provide an Economic Impact Assessment that satisfies the requirements of Government Code section §11346.3(b)(1)(A) – (D).

The text that has been added to the ISOR is shown below in underscore, while the deleted text of the ISOR is shown below in strikeout.

The Economic Impact Assessment of the draft regulatory proposal “Listed Anadromous Salmonid Amendments, 2016” is as follows:

ECONOMIC IMPACT ASSESSMENT

The Economic Impact Assessment is provided below pursuant to Government Code section 11346.3(b)(1)(A)-(D).

The proposed regulations clarify and make specific 14 CCR §895.1 and §898.2 on how the introduction of experimental listed anadromous salmonids above permanent barriers to fish anadromy will be handled in regards to timber management activities governed by the FPRs. Additionally, it allows the Director to authorize “take” of listed anadromous species, and does not require immediate disapproval of timber management plans by the Director if a listed species is found to be in jeopardy, if either it is (1) authorized by a state or federal wildlife agency acting within its authority, or (2) when anadromous salmonids are deemed to be a part of a Section 10(j) experimental population under the federal Endangered Species Act.

The main purpose of these regulations is to make rules that are currently implicit within the FPRs explicit, to ensure the protection of timber management activities when experimental listed anadromous salmonids are introduced above permanent barriers, or are found to be in jeopardy or subject to take.

Creation or Elimination of Jobs within the State of California

These regulations are designed to make what is currently implicit within the FPRs explicit, assist wildlife agencies in reintroducing experimental listed anadromous salmonids in historical but currently unoccupied habitats, all while protecting landowner's rights to manage timber under the applicable provisions of the FPRs. These amendments to the rules will ensure landowner protection from the experimental introduction of listed anadromous salmonids, which otherwise would enact the Board's more stringent Anadromous Salmonid Protection (ASP) rules. These rules seek to not hinder timber management activities or CAL FIRE review time upon plan submission when listed anadromous salmonids have been introduced into watercourses that may be impacted by timber management operations. Timber operations are expected to continue on at their normal rate. Therefore, no jobs are expected to be created or eliminated.

Expansion of Businesses or Elimination of Existing Businesses Within the State of California

The regulations are simply making what is currently implicit within the rules explicit. Also, it is ensuring that timber management activities both ongoing and into the future will not be impacted by wildlife agencies introducing listed anadromous salmonids into watersheds above permanent barriers to fish anadromy. Therefore, if these rules are approved, it has been determined that timber operations will continue to progress at their current rate with or without the introduction of experimental listed anadromous salmonids. Therefore, no expansion or elimination of existing business within the State of California is expected.

Creation of New Businesses

As previously stated, these regulations seeks to protect otherwise legal timber management activities governed by the FPRs from the introduction of listed anadromous salmonids above permanent barriers to anadromy, and allow the Director to permit take of introduced listed salmonid species under special circumstances elaborated upon in the rule text. These regulations do not enhance forestry business opportunities or projects, they merely protect legal timber harvest activities that are currently being conducted or will in the future from the introduction of listed anadromous salmonids. Therefore, no businesses are expected to be created as a result of these amendments.

Benefits of the Regulations

The primary benefit is to protect landowner's rights to legally harvest timber without further restriction from the ASP rules when listed anadromous salmonids are introduced above permanent barriers to fish anadromy. Also, these regulations allow the director to authorize take of listed anadromous salmonids under special circumstances, rather than immediate disapproval, which is currently required within 14 CCR §898.2.

In conclusion, the proposed action:

(A) will not create or eliminate jobs within California;

(B) will not create new businesses or eliminate existing businesses within California;

(C) will not affect the expansion of businesses currently doing business within California.

(D) will yield nonmonetary benefits through improved implementation of the Forest Practice Rules that will yield improved resource protection, planning (efficiency in plan development and plan review), and enforcement (more enforceable and achievable).

ECONOMIC IMPACT ANALYSIS (pursuant to ~~GOV § 11346.3(b)(1)(A)-(D) and provided pursuant to 11346.3(a)(3)~~)

~~The effect of the proposed action is to clarify the intent behind existing definitions in the rules while also taking into account provisions in the federal ESA that may be used as part of a reintroduction effort for listed anadromous salmonids. The proposed action will not change the application of the existing forest practices rules following clarification.~~

~~The proposed action:~~

~~(A) will create jobs within California;~~

~~(A) will not eliminate jobs within California;~~

~~(B) will create new businesses;~~

~~(B) will not eliminate existing businesses within California;~~

~~(C) will beneficially affect the expansion of businesses currently doing business within California.~~

~~(D) Nonmonetary benefits may result. The primary benefit of the proposed action is to clarify the intent in the Forest Practice Rules regarding when the Anadromous Salmonid Protection Rules may or may not apply and to clarify when the Director may approve a timber harvest plan that may result in take of experimental populations of federally listed anadromous salmonids. Clarity in the definitions will provide forestry practitioners and forest landowners with assurances that the more restrictive Anadromous Salmonid Protection rules will not necessarily apply to areas where experimental populations are reintroduced above permanent barriers to migration. Additionally, specific language regarding when the Director may approve a plan resulting in incidental take of anadromous salmonids will provide additional assurances to forestry practitioners and forest landowners that they will not be subject to varying interpretations regarding the intent of the rules. These modifications will help ensure forest management, in areas where reintroduction of experimental populations of anadromous salmonids, with an appropriate 4(d) take limit, are not subject to the same standards as areas where listed anadromous salmonids are present or where access to habitat could be restored without the need to remove large permanent barriers to upstream migration. These changes will likely alleviate forest landowner and forestry practitioner concerns over additional regulatory limits and liability concerns regarding to their forest management practices, thereby minimizing concerns over reintroduction efforts. Ultimately, this will help to promote the conservation and recovery of many populations of listed anadromous salmonids in California in areas subject to the CA FPRs.~~

~~(E) No jobs are expected to be eliminated.~~

1 **Board of Forestry and Fire Protection**
2 **LISTED ANADROMOUS SALMONID AMENDMENTS, 2016**
3 **Title 14 of the California Code of Regulations (14 CCR),**
4 **Division 1.5, Chapter 4:**
5 **Subchapter 1, Article 1**
6 **Subchapter 2, Article 2**
7

8 **Amend:**

9 **§ 895.1. Definitions.**

10 *****

11 “Watersheds with listed anadromous salmonids” means any planning watershed
12 where populations of anadromous salmonids that are listed as threatened, endangered,
13 or candidate under the State or Federal Endangered Species Acts, are currently present
14 or can be restored. This definition does not apply to those portions of watersheds that
15 are upstream of barriers, including large dams (where removal and/or fishway
16 construction has been determined by NMFS and California Department of Fish and
17 Wildlife to not be feasible) and natural barriers, such as long term bedrock falls or large
18 static ancient slides with high-gradient or high-velocity barriers, that NMFS and
19 California Department of Fish and Wildlife have determined are permanent and
20 preclude anadromous fish passage.

21 *****

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23 Note: Authority cited: Sections 4551, 4551.5, 4553, 4561, 4561.5, 4562, 4562.5, 4562.7
24 and 4591.1, Public Resources Code. Reference: Sections 4512, 4513, 4525.5, 4525.7,
25 4526, 4528, 4551, 4551.5, 4561, 4562, 4562.5, 4562.7, 4583.2, 4584, 4591.1, 21001(f),

1 21080.5, 21083.2 and 21084.1, Public Resources Code; CEQA Guidelines Appendix K
2 (printed following Section 15387 of Title 14 Cal. Code of Regulations), *Laupheimer v.*
3 *State* (1988) 200 Cal.App.3d 440; 246 Cal.Rptr. 82 and *Joy Road Area Forest and*
4 *Watershed Association, v. California Department of Forestry & Fire Protection*, Sonoma
5 County Superior Court No. SCV 229850.

6
7 **Amend:**

8 **§ 898.2. Special Conditions Requiring Disapproval of Plans.**

9 The Director shall disapprove a plan as not conforming to the rules of the Board if any
10 one of the following conditions exist:

11 *****

12 (d) Implementation of the plan as proposed would result in either a "taking" or finding or
13 ~~of~~ jeopardy of wildlife species listed as rare, threatened, or endangered, by the Fish and
14 Game Commission, the National Marine Fisheries Service, or Fish and Wildlife Service,
15 or would cause significant, long-term damage to listed species. The Director is not
16 required to disapprove a plan ~~which would result in a "taking" if the "taking" is incidental~~
17 ~~and is authorized by a wildlife agency acting within its authority under state or federal~~
18 ~~endangered species acts.~~ under either of the following circumstances:

19 **(1) Which would result in a "taking" if the "taking" is incidental and is authorized by a**
20 **wildlife agency acting within its authority under state or federal endangered species**
21 **acts.**

22
23 **(2) Where anadromous salmonid populations are designated as an experimental**
24 **population under Section 10(j) of the federal Endangered Species Act, and**
25 **corresponding regulations under Section 4(d) of the federal Endangered Species Act for**

1 those populations provide an exception from take prohibitions under the federal
2 Endangered Species Act for activities subject to the California Forest Practice Rules,
3 and federal and state agencies determine no further take authorizations are necessary,
4 under the federal Endangered Species Act or the California Endangered Species Act.

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7 *****Note: Authority cited: Sections 4551, 4555 and 4582, Public Resources Code.
8 Reference: Sections 2053, 2080.1, 2090-2097, 2830 and 2835, Fish and Game Code;
9 Sections 4555, 4582.7 and 4582.75, Public Resources Code; Section 51115.1,
10 Government Code; the federal Endangered Species Act of 1973, 16 U.S.C. Section
11 1531 et seq.; and *Laupheimer v. State* (1988) 200 Cal.App.3d 440; 246 Cal.Rptr. 82.
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