

STAFF SUMMARY FOR DECEMBER 14-15, 2022

14. CONDITIONAL TAKE OF SOUTHERN CALIFORNIA STEELHEAD (CONSENT)**Today's Item**Information ☐Action ☒

Consider adopting a second, 90-day extension of emergency regulations to allow take of southern California steelhead (*Oncorhynchus mykiss*) under certain circumstances during the California Endangered Species Act (CECA) candidacy period.

Summary of Previous/Future Actions

- | | |
|---|-----------------------------------|
| • Adopted emergency regulation | Apr 20-21, 2022; Monterey |
| • Emergency readoption | Oct 12-13, 2022; Kings Beach |
| • Today's potential emergency readoption | Dec 14-15, 2022; San Diego |

Background

In Apr 2022, FGC accepted for consideration a CESA petition requesting to list southern California steelhead as endangered under CESA; FGC's decision resulted in the species receiving candidate species status. As a candidate species, take of southern California steelhead is prohibited unless otherwise authorized by FGC.

California Fish and Game Code Section 2084 provides that the Commission may adopt regulations to authorize take of candidate species, based on the best available scientific information, when the take is otherwise consistent with CESA. FGC may adopt a regulation under Section 2084 on an emergency basis when it determines that a situation exists that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.

At its Apr 2022 meeting, FGC adopted an emergency regulation to temporarily authorize the take of southern California steelhead in certain situations, adding the regulation to Section 749.13. FGC found that an emergency exists because of the immediate, serious harm to the public peace, health or safety that would be caused by work delays or stoppages for projects or activities that relate to flood control and provide flood protection necessary to prevent flood damage to communities or infrastructure; projects or activities that relate to highways and provide public-safety benefits through highway maintenance or improvements; or projects or activities that relate to the diversion, impoundment, or discharge of water and provide water supply or water treatment for essential domestic, agricultural, industrial, or other commercial uses.

The emergency regulation was originally set to expire on Nov 14, 2022. At its Oct 2022 meeting, FGC readopted the emergency regulations for an additional 90 days (see exhibits 1 and 2 for background information). If not extended again by FGC, the current extension will expire on Feb 10, 2023. If readopted, the regulation will be extended until May 11, 2023. For today's meeting, DFW provided a draft finding of emergency and a draft statement of proposed emergency regulatory action for FGC to consider in re-adopting the emergency regulation (Exhibit 3).

STAFF SUMMARY FOR DECEMBER 14-15, 2022

Significant Public Comments (N/A)**Recommendation**

FGC staff: FGC staff recommends that FGC find, pursuant to Section 399 of the Fish and Game Code, that adopting the proposed emergency regulation is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

FGC staff recommends that FGC further determine, pursuant to Section 11346.1 of the Government Code, that an emergency situation still exists and find the proposed regulation is necessary to address the emergency.

Therefore, FGC staff recommends that the Commission adopt a 90-day extension for the southern California steelhead emergency regulation as recommended by DFW.

Exhibits

1. [Staff summary from Apr 20-21, 2022 \(for background purposes only\)](#)
2. [DFW memo for Section 749.13, received Nov 7, 2022](#)
3. [Draft statement of proposed emergency regulatory action, informative digest and proposed regulation text for Section 749.13](#)
4. [Draft economic and fiscal impact statement \(STD 399\) and addendum](#)

Motion

Moved by _____ and seconded by _____, that the Commission adopts the staff recommendations for items 11 through 15 on the consent calendar.

STAFF SUMMARY FOR APRIL 20-21, 2022
(FOR BACKGROUND PURPOSES ONLY)

24. CONDITIONAL TAKE OF SOUTHERN CALIFORNIA STEELHEAD

Today's Item

Information ☐

Action ☒

If the Commission determines that listing may be warranted, consider regulatory action to allow take of southern California steelhead (*Oncorhynchus mykiss*) under certain circumstances by either authorizing a notice of intent to adopt a regulation at a future meeting or adopting an emergency regulation at this meeting, and consider taking final action under the California Environmental Quality Act.

Summary of Previous/Future Actions (for full summary, see Agenda Item 23)

- **Today discuss and consider authorizing conditional take of southern California steelhead** **Apr 20-21, 2022; Monterey/Trinidad**

Background

At its Feb 16-17, 2022 meeting, FGC held a public hearing regarding the petition to list southern California steelhead (SCS) as an endangered species under the California Endangered Species Act (CESA). After oral testimony concluded, FGC discussed the item, closed the public hearing and administrative record pursuant to California Fish and Game Code Section 2074.2, and continued deliberation on the question of whether listing SCS as endangered may be warranted to today's meeting (Agenda Item 23). FGC also asked staff to work with DFW, the petitioner, tribes, and other interested parties to develop a draft regulation, consistent with the purposes of CESA, that would permit the take of SCS and allow critical infrastructure and other essential projects to continue operations.

If FGC determines that listing may be warranted, SCS will become a candidate species and DFW will undertake a one-year status review before FGC makes a final decision on listing. Candidate species are protected from unauthorized take during the remainder of the listing process pursuant to Fish and Game Code Section 2085. Fish and Game Code Section 2084 permits FGC to authorize the take of any candidate species, subject to terms and conditions it prescribes and based on the best available scientific information, consistent with CESA.

DFW proposes a draft regulation (Exhibit 2) that, if adopted by FGC, would authorize take of SCS during the candidacy period. The take authorization would apply to certain projects or activities that relate to flood control, highways and the diversion, impoundment, or discharge of water that provide certain benefits to public peace, health, safety or general welfare, and that meet other specific conditions described in the proposed addition of Section 749.13. The take authorization would be contingent on a current, valid federal instrument that authorizes take under the federal Endangered Species Act – a biological opinion or an incidental take permit issued by the National Marine Fisheries Service. The project proponent must demonstrate they have complied with Fish and Game Code Section 1602 by (1) submitting a final lake and streambed alteration agreement (LSAA), (2) indicating they have initiated the process of obtaining an LSAA by paying the applicable fees, or (3) affirming that an LSAA is not required for the project. As proposed, DFW would examine all submitted materials and make a written determination as to whether all requirements have been met.

STAFF SUMMARY FOR APRIL 20-21, 2022
(FOR BACKGROUND PURPOSES ONLY)

An emergency exists because of the immediate, serious harm to the public health, safety, or general welfare that would be caused by work delays or stoppages for projects or activities that relate to: (1) flood control and provide flood protection necessary to prevent flood damage to communities or infrastructure; (2) projects or activities that relate to highways and provide public-safety benefits through highway maintenance or improvements; or (3) projects or activities that relate to the diversion, impoundment or discharge of water and that provide water supply or water treatment for essential domestic, agricultural, industrial or other commercial uses. Under the regulation, DFW may only authorize take for projects that meet the California Administrative Procedure Act definition of an emergency, namely, those for which not issuing take authorization would cause “serious harm to the public peace, health, safety, or general welfare.”

Regarding projects or activities that provide water supply, on March 28, 2022 Governor Newsom ordered through Executive Order N-7-22 that the previously proclaimed states of emergency due to extreme and expanding drought conditions that exist across all the counties of California shall remain in full force and effect. The critical need for water delivery under these serious drought conditions reinforces the emergency nature of the regulation.

Today, FGC will discuss and consider the potential regulation to authorize conditional take of SCS during the candidacy period. By adopting this regulation, FGC would authorize the incidental take of SCS during the candidacy period that may result from activities previously mentioned.

If FGC adopts an emergency regulation at this meeting, staff would submit the regulation to the Office of Administrative Law for filing. If FGC authorizes a notice of proposed rulemaking (i.e., regular rulemaking in lieu of an emergency regulation) at this meeting, the regulation would be considered at a future meeting. A regulation adopted pursuant to FGC’s authority under Section 2084 would only authorize take during the time that SCS is a candidate species under CESA.

Significant Public Comments

1. Casitas Municipal Water District requests that, if FGC finds listing SCS under CESA may be warranted, FGC authorize interim incidental take in accordance with Fish and Game Code Section 2084 for operations, maintenance and repair of existing water system facilities (Exhibit 4).
2. United Water Conservation District provides information on its operations and two of its water projects, and supports Section 2084 language attributed to the Association of California Water Agencies, which is similar to the language proposed by DFW. In the absence of such a regulation, it urges FGC to include United’s facilities in any Section 2084 regulation that allows for take of SCS during its candidacy period (Exhibit 5).
3. Orange County Water District states that it would be beneficial for DFW and FGC staff to clarify in the Section 2084 regulation that stocked fish are not “native” SCS as it would avoid needless confusion and improper allegations in the future should stocked fish be found dead as part of normal operations of the water agencies (Exhibit 6).

STAFF SUMMARY FOR APRIL 20-21, 2022
(FOR BACKGROUND PURPOSES ONLY)

Recommendation

FGC staff: Adopt the proposed emergency regulation authorizing conditional take of southern California steelhead as proposed in exhibits 1 and 2 and discussed today.

Exhibits

1. DFW memo for proposed Section 749.13, received Apr 6, 2022
2. Draft statement of proposed emergency regulatory action and proposed regulation text, received Apr 6, 2022
3. Draft economic and fiscal impact statement (STD 399) and addendum, received Apr 6, 2022
4. Letter from Michael L. Flood, General Manager, Casitas Municipal Water District, received Apr 6, 2022
5. Letter from Anthony Emmert, Assistant General Manager, United Water Conservation District, received Apr 7, 2022
6. Letter from Michael R. Markus, General Manager, Orange County Water District, received Apr 7, 2022

Motion

Moved by _____ and seconded by _____ that the Commission finds, pursuant to Section 399 of the Fish and Game Code, that adopting the proposed emergency regulation is necessary for the immediate preservation of the public peace, health, safety, or general welfare.

The Commission further determines, pursuant to Section 11346.1 of the Government Code, that an emergency situation exists and finds the proposed regulation is necessary to address the emergency.

Therefore, the Commission adopts the emergency regulation to add Section 749.13 to Title 14, California Code of Regulations, as discussed today.

Memorandum

Date: November 9, 2022

To: Melissa Miller-Henson
Executive Director
Fish and Game Commission

From: Charlton H. Bonham
Director

Subject: **Agenda item for December meeting - Submittal of Emergency Statement for Re-adopt of Addition of Section 749.13 to Title 14, California Code of Regulations: Incidental Take of Southern California Steelhead**

Please find attached the Finding of Emergency and Statement of Proposed Emergency Regulatory Action to Re-adopt the Addition of Section 794.13 to Title 14, California Code of Regulations (Emergency Statement), STD399 Economic and Fiscal Impact Statement, and STD399 Addendum. At the February 17, 2022, Fish and Game Commission (Commission) meeting, the Commission asked the Department of Fish and Wildlife (Department) to work with stakeholders to develop a potential Fish and Game Code (FGC) Section 2084 regulation that would allow take of Southern California steelhead under certain conditions. At its April 20-21, 2022, meeting, the Commission determined that listing Southern California steelhead (*Oncorhynchus mykiss*) as endangered under the California Endangered Species Act (CESA) may be warranted pursuant to FGC Section 2074.2.

Candidate species are protected from take under CESA pursuant to FGC Sections 2080 and 2085 during the CESA status review period. Under FGC Section 2084, CESA provides that the Commission may adopt regulations to authorize take of candidate species, based on the best available scientific information, when the take is otherwise consistent with CESA. As with all regulations, the Commission may adopt a regulation under FGC Section 2084 on an emergency basis when it determines that a situation exists which threatens public health and safety or general welfare.

The Department worked with stakeholders to develop regulations, under FGC Section 2084, which the Commission adopted through an emergency rulemaking action at the Commission's April 20-21, 2022, meeting. The Commission re-adopted this regulation under emergency authority at its October 12-13, 2022, meeting. The Commission may consider another re-adoption of this regulation described in the attached Emergency Statement through an emergency rulemaking action at the Commission's December 14-15, 2022, meeting. If adopted by the Commission and approved by the Office of Administrative Law (OAL), this potential emergency regulation would be effective upon filing by the OAL and the regulation would continue for a period of 90 days. If the Commission adopts this regulation, the Commission would, subject to specific terms and conditions, continue to authorize the incidental take of Southern California

Melissa Miller-Henson, Executive Director
Fish and Game Commission
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steelhead during the CESA candidacy period that may result from projects or activities related to flood control; highways; and the diversion, impoundment, or discharge of water that provide certain public benefits.

If you have any questions or need additional information, please contact Ed Pert, Regional Manager, South Coast Region, via email at SCSH@Wildlife.ca.gov.

Attachments: Emergency Statement
STD399 Economic and Fiscal Impact Statement
STD399 Addendum

cc: Chad Dibble, Deputy Director
Wildlife and Fisheries Division

Jay Rowan, Branch Chief
Fisheries Branch

Ed Pert, Regional Manager
South Coast Region

Richard Burg, Program Manager
South Coast Region

Erinn Wilson-Olgin, Program Manager
South Coast Region

Chris Stoots, Assistant Chief
Law Enforcement Division

Brian Hennes, Attorney
Office of the General Counsel

Ona Alminas, Program Manager
Regulations Unit

Jenn Bacon, Analyst
Fish and Game Commission

David Thesell, Program Manager
Fish and Game Commission

CALIFORNIA FISH AND GAME COMMISSION
FINDING OF EMERGENCY AND
STATEMENT OF PROPOSED EMERGENCY REGULATORY ACTION

Emergency Action to
Re-adopt Section 749.13
Title 14, California Code of Regulations
Re: Incidental Take of Southern California Steelhead

Date of Statement: October 20, 2022

Unless otherwise specified, all section references in this document are to Title 14, California Code of Regulations.

I. Statement of Facts Constituting the Need for Emergency Regulatory Action

Background

On June 14, 2021, the California Fish and Game Commission (Commission) received a petition (the Petition) from California Trout to list Southern California steelhead (*Oncorhynchus mykiss*, herein referred to as “SCS”), as endangered under the California Endangered Species Act (CESA). SCS is defined in the petition as all *O. mykiss*, including anadromous and resident life histories, below manmade and natural complete barriers to anadromy from the Santa Maria River, San Luis Obispo County (inclusive) to the U.S. Mexico border. The anadromous and resident life history forms of the species *O. mykiss* commonly referred to as “steelhead” and “rainbow trout,” respectively, overlap in distribution and interbreed throughout much of their range.

A Southern California steelhead Distinct Population Segment (Southern California steelhead DPS) is currently listed under the federal Endangered Species Act (50 C.F.R. § 224.101). That federal listing has the same geographic scope as the SCS CESA listing proposed by California Trout in its petition; however, the federal listing only includes the anadromous life history of *O. mykiss* and does not include *O. mykiss* with resident life histories. It is important to note that it is difficult if not impossible to visually distinguish between the two life histories in freshwater, especially during early life stages. Even genetic analysis may not reveal which life history an individual *O. mykiss* has or will express. Accordingly, for management purposes the National Marine Fisheries Service generally considers any *O. mykiss* within the rivers included in the geographic scope of the Southern California steelhead DPS listing to be a part of that listing unit.

On December 15, 2021, the Commission received the California Department of Fish and Wildlife’s (Department) 90-day evaluation report on the Petition. In that evaluation report the Department determined that there is sufficient scientific information in the petition to indicate that the petitioned action may be warranted.

On February 17, 2022, the Commission closed the public hearing and administrative record and continued the deliberation and decision on whether listing SCS as endangered under CESA may be warranted to a future Commission meeting to be held no later than May 18, 2022. Continuing the deliberation and decision allowed the Commission to consider a potential Fish and Game Code Section (FGC) 2084 regulation in the same Commission meeting in

which the Commission might make a may-be-warranted finding that would make SCS a candidate species under CESA.

On April 21, 2022, the Commission found that listing SCS under CESA may be warranted pursuant to FGC Section 2074.2, and SCS became a CESA candidate species upon the Commission's publication of a notice of finding that the Commission has accepted the California Trout Petition for consideration and designated SCS as a candidate species under CESA. In the same meeting, the Commission adopted the FGC Section 2084 regulation through emergency authority. On October 13, 2022, the Commission re-adopted the same FGC Section 2084 regulation. On December 15, 2022, the Commission re-adopted the same FGC Section 2084 regulation for a second time.

Statutory Authority

Candidate-species are protected from take under CESA pursuant to FGC sections 2080 and 2085. FGC Section 86 states that "[t]ake means hunt, pursue, catch, capture, or kill or attempt to hunt, pursue, catch, capture, or kill." Under FGC Section 2084, CESA provides that the Commission may adopt regulations to authorize take of candidate species, based on the best available scientific information, when the take is otherwise consistent with CESA. As with all regulations, the Commission may adopt a regulation under Section 2084 on an emergency basis when it determines that a situation exists that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.

Consistency Determinations (CD) pursuant to FGC Section 2080.1 or Incidental Take Permits (ITP) pursuant to FGC Section 2081, subdivision (b), may also authorize the take of CESA candidate species. CESA take may only be authorized through a CD after the Department has determined that a project's federal take authorization under the federal Endangered Species Act meets certain CESA criteria; some federal take authorizations will likely not entirely meet those criteria. The Department may authorize CESA take through an ITP on a project-specific basis, which would be a substantially more lengthy and costly process for getting CESA take authorization than through this proposed emergency regulation.

Finding of Emergency

The Commission considered the following factors in determining whether an emergency exists: public health, safety, and general welfare, as well as the magnitude of potential harm; the immediacy of the need; and whether the anticipation of harm has a basis firmer than simple speculation and has determined that an emergency regulation authorized under FGC Section 2084 is needed. In this case, an emergency exists because of the immediate, serious harm to the public health, safety, or general welfare that would be caused by work delays or stoppages for projects or activities that relate to flood control and provide flood protection necessary to prevent flood damage to communities or infrastructure; projects or activities that relate to highways and provide public-safety benefits through highway maintenance or improvements; or projects or activities that relate to the diversion, impoundment, or discharge of water and provide water supply or water treatment for essential domestic, agricultural, industrial, or other commercial uses. Regarding projects or activities that provide water supply, on March 28, 2022, in Executive Order N-7-22, Governor Newsom ordered that the previously proclaimed states of emergency due to extreme and expanding drought conditions that exist across all the counties of California shall remain in full force and effect. The proposed readoption of Section

749.13 extends the emergency regulation to allow incidental take of SCS during CESA candidacy for certain activities subject to specific terms and conditions described below.

II. Proposed Emergency Regulations

Under this emergency regulation the Commission will continue to authorize the incidental take of SCS during the candidacy period that may occur during the implementation of certain projects or activities that relate to flood control; highways; and the diversion, impoundment, or discharge of water; that provide certain benefits to public peace, health, safety, or general welfare; and that meet other specific conditions described in the proposed addition of Section 749.13. The following paragraphs justify each subsection as follows:

749.13(a): This subsection is necessary to inform how the proponent of a project or activity seeking take authorization shall submit to the Department written documentation via email or physical mail to demonstrate that the project or activity satisfies the criteria in subsections (a)(1) through (4).

(a)(1): This subsection lists the types of projects or activities that would satisfy this first of four criteria in subsections (a)(1) through (4). Flood control, and the diversion, impoundment, or discharge of water are mentioned to define to project proponents of the scope of in-stream activities and applicability of this regulation. The definition of “highway” in subsection (a)(1) is the same as in Section 360 of the California Vehicular Code: “Highway” is a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. Highway includes street.” Referencing this code is necessary to ensure clarity to project proponents of the scope of transportation nexus and applicability of this regulation.

(a)(2): This subsection describes the public benefits that the types of projects or activities listed in subsection (a)(1) must provide to satisfy this second of four criteria in subsections (a)(1) through (4).

Projects or activities that provide flood protection necessary to prevent flood damage to communities or infrastructure may take SCS through work in wetted streams. Without CESA take authorization through this emergency regulation for the take of SCS during candidacy, the risk of unlawful take of a CESA candidate species may cause these flood-protection projects or activities to not be undertaken or significantly delayed if they must instead seek CESA take authorization from the Department through other non-emergency CESA take authorization pathways.

Projects or activities that provide public-safety benefits through highway maintenance or improvements may take SCS through work in wetted streams. Take of SCS may occur during the construction of highway projects when water diversions, which dewater streams and rivers that may be occupied by SCS, are necessary to install bridges or culverts. Without CESA authorization through this emergency regulation for the take of SCS during candidacy, the risk of unlawful take of a CESA candidate species may cause these highway maintenance or improvement projects or activities to not be undertaken or significantly delayed if they must instead seek CESA take authorization from the Department through other non-emergency CESA take authorization pathways. Highway maintenance or improvement projects provide public-safety benefits by their nature. Approval of such projects will rely on the project meeting the criteria that it is necessary to avoid serious harm to the public peace, health, or safety to

ensure that not only is the project an emergency but also that it provides the public benefit. Only those projects where the stoppage or delay would cause harm would be approved.

Ongoing water diversions that provide drinking water or supply water for agriculture, local industries, or other commercial uses are necessary to ensure public health, safety, and general welfare. Projects or activities that provide water supply or water treatment for essential domestic, agricultural, industrial, or other commercial uses may take SCS through work in wetted streams. Take of SCS may occur through dewatering of streams and rivers or entrainment or injury at a point of diversion. Without CESA authorization for the take of a CESA candidate species through this emergency regulation, the risk of unlawful take of a CESA candidate species may cause these water-supply or water-treatment projects or activities to not be undertaken or significantly delayed if they must instead seek CESA take authorization from the Department through other non-emergency CESA-take-authorization pathways.

(a)(3): This subsection describes the federal take authorization and associated documents that are required to satisfy this third of four criteria in subsections (a)(1) through (4). This required federal take authorization is specifically cross-referenced in subsections 749.13(c) and (d).

(a)(4): This subsection describes the requirement related to notification pursuant to FGC Section 1602 that is necessary to satisfy this fourth of four criteria in subsections (a)(1) through (4). Under FGC 1602, when an entity is required to notify the Department and the Department determines the activity may substantially adversely affect an existing fish and wildlife resource, the Department may issue a final agreement to that entity that includes reasonable measures necessary to protect the resource, which may include SCS.

(b): This subsection creates a 30-day timeline, which is necessary to give the Department sufficient time to review the written documentation that the proponent of a project or activity has submitted and make a determination on whether the project or activity satisfies the criteria in subsections (a)(1) through (4) while also ensuring that the Department will promptly make such determinations.

(b)(1) and (b)(2): The requirements in these subsections that the Department make its determinations in writing are intended to ensure transparency and clarity in the Department's determinations.

(c): This subsection describes how any CESA take authorization conferred by this emergency regulation shall have the same operational requirements and be for the same type and amount of take as the federal take authorization for the project or activity that satisfied subsection (a)(3). This subsection is intended to limit the scope of the CESA take authorization (operational requirements and type and amount of take) to the scope of the federal take authorization that CESA take authorization is based on. Further, this subsection is intended to provide a mechanism for the Department to revoke the CESA take authorization if the project or activity is not complying with the terms of its federal take authorization.

(d): This subsection is intended to ensure that only projects that continue to have valid federal take authorization will continue to have CESA take authorization.

(e): This subsection describing responsibility of project proponent to ensure consistency with all applicable laws is necessary to clarify the limitations of the intended effect of this emergency regulation.

III. Identification of Reports or Documents Supporting Regulation Change

A summary of general scientific information on the life history of Southern California steelhead is presented in the National Marine Fisheries Service's Southern California Steelhead Recovery Plan published in January 2012 available online at:

<https://www.fisheries.noaa.gov/resource/document/southern-california-steelhead-recovery-plan>.

IV. Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

(a) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The Commission anticipates that there will be costs to the State, specifically the (Department). Estimated program costs of \$6,584.96 over the extended emergency regulation period of 90 days will be absorbed within existing budgets.

Table 1. Estimated Department Implementation Costs for Making Determinations as Required Under this Emergency Regulation Relating to Take of Southern California Steelhead

DFW Classification	Activity/Task	Hourly Rate ¹	Hours per Task	Projected Cost
Senior Environmental Scientist (Region)	Review whether project or activity satisfies specified criteria	\$76.35	2	\$152.70
Senior Environmental Scientist (Fisheries Branch)	Review whether project or activity satisfies specified criteria	\$76.35	2	\$152.70
Senior Environmental Scientist	Meet with proponent to discuss whether project or activity satisfies specified criteria and write explanation of Department's determination on whether it does or does not	\$76.35	6	\$458.10
Senior Environmental Scientist, Supervisor	Meet with proponent to discuss whether project or activity satisfies specified criteria and write explanation of Department's determination on whether it does or does not	\$101.80	6	\$610.80
Environmental Program Manager	Meet with proponent to discuss whether project or activity satisfies specified criteria and write explanation of Department's determination on whether it does or does not	\$123.92	6	\$743.52

DFW Classification	Activity/Task	Hourly Rate ¹	Hours per Task	Projected Cost
Regional Manager	Meet with proponent to discuss whether project or activity satisfies specified criteria and write explanation of Department's determination on whether it does or does not	\$123.02	2	\$246.04
Attorney IV	Consultation with Region	\$110.72	4	\$466.92
	Subtotal per project			\$2,830.78
	Overhead ²	16.31%		\$461.70
	Total per project cost			\$3,292.48
	Grand Total for two (2) Projects			\$6,584.96

¹ Hourly Rate includes mean wages per CalHR payscale 2022 and Department benefit rates.

² Non-Federal Project Overhead rate for FY 2022/23 is 16.31% per Department Budget Branch.

Note: Minor discrepancies (less than \$1.00) may be apparent in total costs due to rounding error.

Other State agencies, such as California Department of Transportation (Caltrans) may also be affected if they pursue a take allowance through the Department. An estimate of Caltrans potential per project costs is detailed in Table 2.

Table 2. Estimated Caltrans Implementation Costs for Take of Southern California Steelhead

Caltrans Classification	Activity/Task	Hourly Rate ¹	Hours per Task	Projected Cost
Senior Planner	Draft correspondence	\$67.84	1.00	\$67.84
Attorney IV	Review correspondence	\$116.73	0.33	\$38.52
Deputy Director	Approve filing	\$129.88	0.25	\$32.47
	Subtotal per project		1.58	\$138.83
	Overhead²	16.31%		\$22.64
	Total per project costs			\$161.47

¹ Hourly Rate includes mean wages per CalHR payscale 2022 and estimated benefit rates.

² Non-Federal Project Overhead rate for FY 2022/23 is estimated to be 16.31% estimate

Note: Minor discrepancies (less than \$1.00) may be apparent in total costs due to rounding error.

(b) Nondiscretionary Costs/Savings to Local Agencies:

This emergency regulation will not introduce nondiscretionary costs or savings to local agencies. Should an agency choose to consider the review and issuance of a permit, the process would likely entail the review of project plans, census information, and relocation plans.

(c) Programs Mandated on Local Agencies or School Districts:

None.

(d) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code:

None.

V. Authority and Reference

The Commission adopts this emergency action pursuant to the authority vested by Sections 399 and 2084 of the Fish and Game Code to implement, interpret, or make specific Sections 399 and 2084 of the Fish and Game Code.

VI. Section 399 Finding

Delays or stoppages for projects or activities that relate to flood control and provide flood protection necessary to prevent flood damage to communities or infrastructure that would likely occur without this emergency regulation because of SCS CESA protections would jeopardize that flood protection.

Delays or stoppages for projects or activities that relate to highways and provide public-safety benefits through highway maintenance or improvements that would likely occur without this emergency regulation because of SCS CESA protections would jeopardize those public safety benefits.

Delays or stoppages for projects or activities related to the diversion, impoundment, or discharge of water that provide water supply or water treatment for essential domestic, agricultural, industrial, or commercial uses that would likely occur without this emergency regulation because of SCS CESA protections would jeopardize those water supply or water treatment public benefits. Regarding projects or activities that provide water supply, on March 28, 2022, in Executive Order N-7-22, Governor Newsom ordered that the previously proclaimed states of emergency due to extreme and expanding drought conditions that exist across all the counties of California shall remain in full force and effect.

Pursuant to Section 399, subdivision (b), of the Fish and Game Code, the Commission finds, based on the information above, that adopting this regulation is necessary for the immediate preservation of the public peace, health and safety, and general welfare.

Informative Digest

On June 14, 2021, the California Fish and Game Commission (Commission) received a petition (the Petition) from California Trout to list Southern California steelhead (*Oncorhynchus mykiss*, hereinafter “SCS”), as endangered under the California Endangered Species Act (CESA). SCS is defined in the petition as all *O. mykiss*, including anadromous and resident life histories, below manmade and natural complete barriers to anadromy from the Santa Maria River, San Luis Obispo County (inclusive) to the U.S. Mexico border. The anadromous and resident life history forms of the species *O. mykiss* commonly referred to as “steelhead” and “rainbow trout,” respectively, overlap in distribution and interbreed throughout much of their range. It is difficult if not impossible to visually distinguish between the two life histories in freshwater, especially during early life stages.

A Southern California steelhead Distinct Population Segment (Southern California steelhead DPS) is currently listed under the federal Endangered Species Act. That federal-listing has the same geographic scope as the SCS CESA listing proposed by California Trout in its petition; however, the federal listing only includes the anadromous life history of *O. mykiss*. It is important to note that it is difficult if not impossible to visually distinguish between the two life histories in freshwater, especially during early life stages. Even genetic analysis may not reveal which life history an individual *O. mykiss* has or will express. Accordingly, for management purposes the National Marine Fisheries Service generally considers any *O. mykiss* within the rivers included in the geographic scope of the Southern California steelhead DPS listing to be a part of that listing unit.

On December 15, 2021, the Commission received the California Department of Fish and Wildlife’s (Department) 90-day evaluation report on the Petition. In that evaluation report the Department determined that there is sufficient scientific information in the petition to indicate that the petitioned action may be warranted.

On February 17, 2022, the Commission closed the public hearing and administrative record and continued the deliberation and decision on whether listing SCS as endangered under CESA may be warranted to a future Commission meeting to be held no later than May 18, 2022. Continuing the deliberation and decision allowed the Commission to consider a potential 2084 regulation in the same Commission meeting in which the Commission might make a may-be-warranted finding that would make SCS a candidate species under CESA.

On April 21, 2022, the Commission found that listing SCS under CESA may be warranted pursuant to FGC Section 2074.2, and SCS became a CESA candidate species upon the Commission’s publication of a notice of finding that the Commission has accepted the California Trout Petition for consideration and designated SCS as a candidate species under CESA. In the same meeting, the Commission adopted a Fish and Game Code Section 2084 regulation through emergency authority. On October 13, 2022, the Commission re-adopted the same Fish and Game Code Section 2084 regulation. On December 15, 2022, the Commission re-adopted the same Fish and Game Code Section 2084 regulation for a second time.

Candidate-species are protected from take under CESA pursuant to Fish and Game Code (FGC) sections 2080 and 2085. FGC Section 86 states that “[t]ake means hunt, pursue, catch, capture, or kill or attempt to hunt, pursue, catch, capture, or kill.” Under FGC Section 2084, CESA provides that the Commission may adopt regulations to authorize take of candidate species, based on the best available scientific information, when the take is otherwise

consistent with CESA. As with all regulations, the Commission may adopt a regulation under Section 2084 on an emergency basis when it determines that a situation exists that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.

Consistency Determinations (CD) pursuant to FGC Section 2080.1 or Incidental Take Permits (ITP) pursuant to FGC Section 2081, subdivision (b), may also authorize the take of CESA candidate species. CESA take may only be authorized through a CD after the Department has determined that a project's federal take authorization under the federal Endangered Species Act meets certain CESA criteria; some federal take authorizations will likely not entirely meet those criteria. The Department may authorize CESA take through an ITP on a project-specific basis, which would be a substantially more lengthy and costly process for getting CESA take authorization than through this proposed emergency regulation.

The Commission considered the following factors in determining whether an emergency exists: public health, safety, and general welfare, as well as the magnitude of potential harm; the immediacy of the need; and whether the anticipation of harm has a basis firmer than simple speculation and has determined that an emergency regulation authorized under FGC Section 2084 is needed. In this case, an emergency exists because of the immediate, serious harm to the public health, safety, or general welfare that would be caused by work delays or stoppages for projects or activities that relate to flood control and provide flood protection necessary to prevent flood damage to communities or infrastructure; projects or activities that relate to highways and provide public-safety benefits through highway maintenance or improvements; or projects or activities that relate to the diversion, impoundment, or discharge of water and provide water supply or water treatment for essential domestic, agricultural, industrial, or other commercial uses. Regarding projects or activities that provide water supply, on March 28, 2022, in Executive Order N-7-22, Governor Newsom ordered that the previously proclaimed states of emergency due to extreme and expanding drought conditions that exist across all the counties of California shall remain in full force and effect. The proposed readoption of the emergency regulation Section 749.13 allows incidental take of SCS during CESA candidacy for certain activities subject to specific terms and conditions described below.

Commission staff have searched the California Code of Regulations and have found no other state regulation relating to the Commission's ability to allow for incidental take of a candidate species under CESA, and therefore concludes that the proposed regulation is neither inconsistent nor incompatible with existing state regulation.

PROPOSED REGULATORY TEXT

Section 749.13, Title 14, California Code of Regulations, is re-adopted to read:

§ 749.13. Emergency Regulation Relating to Take of Southern California Steelhead (*Oncorhynchus mykiss*) During Candidacy Period.

The commission authorizes the take of Southern California steelhead during the candidacy period for each of the projects or activities described in this section, subject to the following terms and conditions:

(a) The proponent of a project or activity seeking take authorization pursuant to this section shall submit to the department by emailing to SCSH@wildlife.ca.gov or mailing to California Department of Fish and Wildlife, Fisheries Branch, Attention: Southern California Steelhead Take Authorization, P.O. Box 944209, Sacramento, CA 94244-2090 written documentation to demonstrate that the project or activity:

(1) Relates to flood control; a “highway” as defined in Section 360 of the Vehicle Code; or the diversion, impoundment, or discharge of water;

(2) Provides flood protection necessary to prevent flood damage to communities or infrastructure and is therefore immediately necessary to avoid serious harm to the public peace, health, or safety; public-safety benefits through highway maintenance or improvements and is therefore immediately necessary to avoid serious harm to the public peace, health, or safety; or water supply or water treatment for essential domestic, agricultural, industrial, or other commercial uses and is therefore immediately necessary to avoid serious harm to the public peace, health, or safety;

(3) Has valid take authorization from the National Marine Fisheries Service through a federal incidental take statement or incidental take permit under the federal Endangered Species Act for the Southern California steelhead Distinct Population Segment. The written documentation required by this subsection (a)(3) shall include a copy of the incidental take statement or incidental take permit through which the project or activity has valid take authorization from the National Marine Fisheries Service and shall also include any associated biological assessment, biological opinion, or habitat conservation plan; and

(4) Does not require the proponent of the project or activity to submit a written notification pursuant to Fish and Game Code Section 1602 or the proponent of the project or activity has submitted a notification pursuant to Section 1602 and has either received a final agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code or paid the applicable fees pursuant to Section 1609.

(b) Within thirty calendar days of receipt of the written documentation required by subsection (a), the department shall determine in writing whether the project or activity satisfies the criteria in subsections (a)(1) through (4).

(1) If the department determines the project or activity does not satisfy the criteria in subsections (a)(1) through (4), the department shall provide a written explanation detailing the reasons for its determination.

(2) If the department determines the project or activity does satisfy the criteria in subsections (a)(1) through (4), the department shall provide the proponent of the project or activity written confirmation of take authorization pursuant to this section.

(c) The proponent of a project or activity receiving take authorization pursuant to subsection (b)(2) shall undertake the project or activity as described in the federal incidental take statement or incidental take permit for the project or activity. The state take authorization conferred by this section shall be for the same type and amount of take as the federal take authorization required by subsection (a)(3). If the department determines the proponent of a project or activity receiving take authorization pursuant to subsection (b)(2) has not undertaken the project or activity as described in the federal take authorization required by subsection (a)(3) or has exceeded the type or amount of take authorized by the federal take authorization required by subsection (a)(3), the department shall revoke the state take authorization conferred by this section for the duration of the Southern California steelhead candidacy period.

(d) If the federal take authorization that satisfied subsection (a)(3) for a project or activity is amended, is replaced, expires, or is revoked, the Department shall revoke the state take authorization conferred by this section. If the proponent of the project or activity receives new federal take authorization, it may reapply for state take authorization using the process set forth in subsection (a).

(e) Nothing in this section is intended to be or shall be construed to be a general project or activity approval. It shall be the responsibility of the proponent of each project or activity receiving take authorization pursuant to this section to obtain all necessary permits and approvals and to comply with all applicable federal, state, and local laws.

NOTE: Authority cited: Sections 399 and 2084, Fish and Game Code.

Reference: Sections 399 and 2084, Fish and Game Code.

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

STD. 399 (Rev. 10/2019)

ECONOMIC IMPACT STATEMENT

DEPARTMENT NAME Fish and Game Commission	CONTACT PERSON David Thesell	EMAIL ADDRESS fgc@fgc.ca.gov	TELEPHONE NUMBER 916 902-9291
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Extend Emergency to Add Section 749.13 ,Title 14, CCR, Re: Incidental Take of Southern California Steelhead			NOTICE FILE NUMBER Z

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:

- | | |
|--|---|
| <input type="checkbox"/> a. Impacts business and/or employees | <input type="checkbox"/> e. Imposes reporting requirements |
| <input type="checkbox"/> b. Impacts small businesses | <input type="checkbox"/> f. Imposes prescriptive instead of performance |
| <input type="checkbox"/> c. Impacts jobs or occupations | <input type="checkbox"/> g. Impacts individuals |
| <input type="checkbox"/> d. Impacts California competitiveness | <input checked="" type="checkbox"/> h. None of the above (Explain below): |

**Emergency action does not require economic assessment;
only fiscal impact assessment is required.**

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

If box in Item 1.h. is checked, complete the Fiscal Impact Statement as appropriate.

2. The _____ estimates that the economic impact of this regulation (which includes the fiscal impact) is:
(Agency/Department)

- ☐ Below \$10 million
- ☐ Between \$10 and \$25 million
- ☐ Between \$25 and \$50 million
- ☐ Over \$50 million *[If the economic impact is over \$50 million, agencies are required to submit a [Standardized Regulatory Impact Assessment](#) as specified in Government Code Section 11346.3(c)]*

3. Enter the total number of businesses impacted: _____

Describe the types of businesses (Include nonprofits): _____

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

4. Enter the number of businesses that will be created: _____ eliminated: _____

Explain: _____

5. Indicate the geographic extent of impacts: ☐ Statewide
☐ Local or regional (List areas): _____

6. Enter the number of jobs created: _____ and eliminated: _____

Describe the types of jobs or occupations impacted: _____

7. 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: _____

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

STD. 399 (Rev. 10/2019)

ECONOMIC IMPACT STATEMENT (CONTINUED)**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: _____

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

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. \$ _____4. Will this regulation directly impact housing costs? ☐ YES ☐ NO

If YES, enter the annual dollar cost per housing unit: \$ _____

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 of the regulation, which may include among others, the health and welfare of California residents, worker safety and the State's environment: _____

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? \$ _____

4. Briefly describe any expansion of businesses currently doing business within the State of California that would result from this regulation: _____

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: _____

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

STD. 399 (Rev. 10/2019)

DRAFT DOCUMENT**ECONOMIC IMPACT STATEMENT (CONTINUED)**

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: _____

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 ☐ NOExplain: _____
_____**E. MAJOR REGULATIONS** *Include calculations and assumptions in the rulemaking record.****California Environmental Protection Agency (Cal/EPA) boards, offices and departments are required to submit the following (per Health and Safety Code section 57005). Otherwise, skip to E4.***1. Will the estimated costs of this regulation to California business enterprises **exceed \$10 million**? ☐ YES ☐ NO***If YES, complete E2. and E3******If NO, skip to E4***

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

Alternative 1: _____

Alternative 2: _____

(Attach additional pages for other alternatives)

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

Regulation: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 1: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 2: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

4. Will the regulation subject to OAL review have an estimated economic impact to business enterprises and individuals located in or doing business in California exceeding \$50 million in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through 12 months after the major regulation is estimated to be fully implemented?

☐ YES ☐ NO*If YES, agencies are required to submit a [Standardized Regulatory Impact Assessment \(SRIA\)](#) as specified in Government Code Section 11346.3(c) and to include the SRIA in the Initial Statement of Reasons.*

5. Briefly describe the following:

The increase or decrease of investment in the State: _____
_____The incentive for innovation in products, materials or processes: _____
_____The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency: _____

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

STD. 399 (Rev. 10/2019)

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 in the current State Fiscal Year which are reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

- ☐ a. Funding provided in _____

Budget Act of _____ or Chapter _____, Statutes of _____

- ☐ b. Funding will be requested in the Governor's Budget Act of _____

Fiscal Year: _____

- ☐ 2. Additional expenditures in the current State Fiscal Year which are NOT reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

Check reason(s) this regulation is not reimbursable and provide the appropriate information:

- ☐ a. Implements the Federal mandate contained in _____

- ☐ b. Implements the court mandate set forth by the _____ Court.

Case of: _____ vs. _____

- ☐ c. Implements a mandate of the people of this State expressed in their approval of Proposition No. _____

Date of Election: _____

- ☐ d. Issued only in response to a specific request from affected local entity(s).

Local entity(s) affected: _____

- ☐ e. Will be fully financed from the fees, revenue, etc. from: _____

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;

- ☐ g. Creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

- ☐ 3. Annual Savings. (approximate)

\$ _____

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

- ☐ 5. No fiscal impact exists. This regulation does not affect any local entity or program.

- ☒ 6. Other. Explain No nondiscretionary costs to local govts. are imposed. There is no fee for local agencies should they choose to apply for an incidental take permit.

The permit process would be discretionary and would only entail time spent reviewing project plans, census information, and relocation plans.

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

STD. 399 (Rev. 10/2019)

DRAFT DOCUMENT**FISCAL IMPACT STATEMENT (CONTINUED)**

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 in the current State Fiscal Year. (Approximate)

\$ 6,585

It is anticipated that State agencies will:

☒ a. Absorb these additional costs within their existing budgets and resources.

☐ b. Increase the currently authorized budget level for the _____ Fiscal Year

☐ 2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

☐ 3. No fiscal impact exists. This regulation does not affect any State agency or program.

☒ 4. Other. Explain Other State agencies, such as California Department of Transportation (Caltrans) may also be affected if they choose to pursue a take allowance through the Department (See Addendum).

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 in the current State Fiscal Year. (Approximate)

\$ _____

☐ 2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

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

☐ 4. Other. Explain _____

FISCAL OFFICER SIGNATURE

DATE

11/4/2022

DocuSigned by:

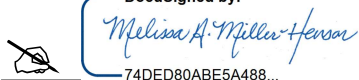
Dan Reagan

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 departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.

AGENCY SECRETARY

DATE

11/23/2022

DocuSigned by:

Melissa A. Miller-Henson

Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399.

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER

DATE



STD399 CALCULATIONS WORKSHEET ADDENDUM

Extension of Emergency Action to Add Section 749.13,
Title 14, California Code of Regulations
Re: Incidental Take of Southern California Steelhead
(Re-Adopt II)

Economic Impact Statement

Emergency regulations do not require an economic impact statement; only fiscal impacts must be evaluated (California Government Code Section 11346.1).

Fiscal Impact Statement

A. Fiscal Effect on Local Government

The proposed readoption of Section 749.13 to Title 14, California Code of Regulations (CCR) extends the emergency regulation allowing incidental take of Southern California steelhead (*Oncorhynchus mykiss*), during the California Endangered Species Act (CESA) candidacy period for certain water diversion and supply activities. The proposed addition of Section 749.13 does have the potential to have a fiscal impact on local government, that would not be eligible for state reimbursement (pursuit to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

B. Fiscal Effect on State Government

The Commission anticipates that there will be a fiscal effect on the State, specifically the California Department of Fish and Wildlife (Department) for program startup and implementation as shown in Table 1. The implementation costs per project are estimated to be \$3,292.48. The Department anticipates approximately two (2) remaining projects, resulting in total program costs of \$6,584.96 over the 90 days of the extension of the emergency action. The identified program costs are within existing budgets.

Table 1. Estimated Department Implementation Costs for Making Determinations as Required Under this Emergency Regulation Relating to Take of Southern California Steelhead

DFW Classification	Activity/Task	Hourly Rate¹	Hours per Task	Projected Cost
Senior Environmental Scientist (Region)	Review whether project or activity satisfies specified criteria	\$76.35	2	\$152.70
Senior Environmental Scientist (Fisheries Branch)	Review whether project or activity satisfies specified criteria	\$76.35	2	\$152.70
Senior Environmental Scientist	Meet with proponent to discuss whether project or activity satisfies specified criteria and write explanation of Department's determination on whether it does or does not	\$76.35	6	\$458.10
Senior Environmental Scientist, Supervisor	Meet with proponent to discuss whether project or activity satisfies specified criteria and write explanation of Department's determination on whether it does or does not	\$101.80	6	\$610.80
Environmental Program Manager	Meet with proponent to discuss whether project or activity satisfies specified criteria and write explanation of Department's determination on whether it does or does not	\$123.92	6	\$743.52
Regional Manager	Meet with proponent to discuss whether project or activity satisfies specified criteria and write explanation of Department's determination on whether it does or does not	\$123.02	2	\$246.04
Attorney IV	Consultation with Region	\$110.72	4	\$466.92
	Subtotal per project			\$2,830.78
	Overhead ²	16.31%		\$461.70
	Total per project cost			\$3,292.48
	Grand Total for two (2) Projects			\$6,584.96

¹ Hourly Rate includes mean wages per CalHR payscale 2022 and Department benefit rates.² Non-Federal Project Overhead rate for FY 2022/23 is 16.31% per Department Budget Branch.

Note: Minor discrepancies (less than \$1.00) may be apparent in total costs due to rounding error.

Other State agencies, such as California Department of Transportation (Caltrans) may also be affected if they pursue a take allowance through the Department. An estimate of Caltrans potential per project costs is detailed in Table 2.

Table 2. Estimated Caltrans Implementation Costs for Take of Southern California Steelhead

Caltrans Classification	Activity/Task	Hourly Rate ¹	Hours per Task	Projected Cost
Senior Planner	Draft correspondence	\$67.84	1.00	\$67.84
Attorney IV	Review correspondence	\$116.73	0.33	\$38.52
Deputy Director	Approve filing	\$129.88	0.25	\$32.47
	Subtotal		1.58	\$138.83
	Overhead ²	16.31%		\$22.64
	Total per project costs			\$161.47

¹ Hourly Rate includes mean wages per CalHR payscale 2022 and estimated benefit rates.

² Non-Federal Project Overhead rate for FY 2022/23 is estimated to be 16.31%.

Note: Minor discrepancies (less than \$1.00) may be apparent in total costs due to rounding error.

C. Fiscal Effect on Federal Funding of State Programs

The proposed action will not have a fiscal effect on federal funding of state programs.