

**State of California  
Office of Administrative Law**

**In re:**  
**Fish and Game Commission**

**Regulatory Action:**

**Title 14, California Code of Regulations**

**Adopt sections:** 749.7

**Amend sections:**

**Repeal sections:**

**NOTICE OF APPROVAL OF EMERGENCY  
REGULATORY ACTION**

**Government Code Sections 11346.1 and  
11349.6**

**OAL File No. 2011-1230-03 E**

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This is the adoption of a regulation that will authorize the incidental take of the Black-backed woodpecker under specified circumstances during the period of time the species is a candidate for listing as threatened or endangered under the California Endangered Species Act (Fish and Game Code sections 2050 et seq.).

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 1/6/2012 and will expire on 7/6/2012. The Certificate of Compliance for this action is due no later than 7/5/2012.

**Date:** 1/5/2012



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David D. Potter  
Senior Staff Counsel

**For:** DEBRA M. CORNEZ  
Assistant Chief Counsel/Acting Director

**Original:** Sonke Mastrup  
**Copy:** Sheri Tiemann

# EMERGENCY

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-08)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2011-1230-03E
For use by Office of Administrative Law (OAL) only		2011 DEC 30 PM 1:58	
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Fish and Game Commission			AGENCY FILE NUMBER (if any)

2011 JAN -5 PM 4:13  
2012 sv

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice Proposed <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Incidental Take of Black-backed Woodpecker During Candidacy	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) ENDORSED APPROVED JAN 05 2012 Office of Administrative Law
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	
ADOPT 749.7	
AMEND	
TITLE(S) 14	REPEAL
3. TYPE OF FILING	
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)	<input type="checkbox"/> Effective 30th day after filing with Secretary of State <input type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> §100 Changes Without Regulatory Effect <input checked="" type="checkbox"/> Effective other (Specify) <u>January 6, 2012</u>
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY	<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____
7. CONTACT PERSON Sheri Tiemann	TELEPHONE NUMBER (916) 654-9872
FAX NUMBER (Optional) (916) 653-5040	E-MAIL ADDRESS (Optional) STiemann@fgc.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Jon K Fischer</i>	DATE 30 December 2011
TYPED NAME AND TITLE OF SIGNATORY Jon K. Fischer, Deputy Executive Director	

## Regulatory Language

Section 749.7, Title 14, CCR, is added to read:

### 749.7 Incidental Take of Black-Backed Woodpecker (*Picoides arcticus*) During Candidacy Period

This regulation authorizes take, as defined by Fish and Game Code section 86, of the Black-backed woodpecker subject to certain terms and conditions during the species' candidacy under the California Endangered Species Act (Fish & G. Code, §2050 et seq.).

#### (a) Take Authorization.

The Commission authorizes the take of Black-backed woodpecker during the candidacy period subject to the terms and conditions herein.

##### (1) Scientific, Education or Management Activities.

Take of the Black-backed woodpecker incidental to scientific, education, or management activities is authorized.

##### (2) Activities to Protect, Restore, Conserve or Enhance.

Take of the Black-backed woodpecker incidental to otherwise lawful activities initiated to protect, restore, conserve, or enhance a state or federally threatened or endangered species and its habitat is authorized.

##### (3) Wildland Fire Response and Related Vegetation Management.

Take of the Black-backed woodpecker incidental to otherwise lawful wildland fire prevention, response, and suppression activities, including related vegetation management, is authorized. For purposes of this authorization, vegetation or fuels management activity shall mean an activity to reduce hazardous fuels and prevent or reduce the risk of wildland fires authorized or otherwise permitted by the Z'Berg Nejedly Forest Practice Act (Public Resources Code, Section 4511 et seq.), the Forest Practice Rules of the Board of Forestry, which are found in Chapters 4, 4.5, and 10, of Title 14 of the California Code of Regulations, the Wildland Fire Protection and Resources Management Act of 1978 (Public Resources Code, Section 4461-4480), the California Forest Improvement Act of 1978 (Public Resources Code, Section 4790 et seq.), the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), or other applicable law.

(4) Forest Practices and Timber Harvest.

Take of the Black-backed woodpecker incidental to otherwise lawful timber operations is authorized. For purposes of this authorization, an otherwise lawful timber operation shall mean a timber operation authorized or otherwise permitted by the Z'Berg Nejedly Forest Practice Act (Public Resources Code, Section 4511 et seq.), the Forest Practice Rules of the Board of Forestry, which are found in Chapters 4, 4.5, and 10, of Title 14 of the California Code of Regulations, or other applicable law.

(b) Application of the California Environmental Quality Act.

Consistent with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), if a state or local agency determines that an activity identified in subdivision (a) will result in a significant impact on the Black-backed woodpecker, the agency should not approve the activity as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant impact on the Black-backed woodpecker. (See Pub. Resources Code, § 21002.) Measures or project changes required as part of a state or local agency authorization to address significant impacts on the Black-backed woodpecker may include measures to conserve the species, including avoidance or preservation of habitat attributes relied on by the species. Voluntary measures to aid in the conservation of the Black-backed woodpecker shall also be encouraged.

(c) Reporting.

Any person, individual, organization, or public agency for which incidental take of the Black-backed woodpecker is authorized pursuant to subdivision (a) shall report observations and detections of the Black-backed woodpecker, including take, to the Department of Fish and Game on a semi-annual basis during the candidacy period. Observations, detections, and take of the Black-backed woodpecker pursuant to this subdivision shall be reported on a semi-annual basis during the candidacy period for the Black-backed woodpecker. Observations, detections, and take shall be reported pursuant to this subdivision to the Department of Fish and Game, Wildlife Branch, Attn: Black-backed Woodpecker Observations, 1812 Ninth St., Sacramento, CA 95811, or by email submission to [wildlifestrategy@dfg.ca.gov](mailto:wildlifestrategy@dfg.ca.gov). Information reported to the Department pursuant to this subdivision shall include as available: a contact name; the date and location (GPS coordinates preferred) of the observation, detection, or take; and details regarding the animal(s) observed.

(d) Additions, Modifications, or Revocation.

(1) Incidental take of the Black-backed woodpecker from activities not addressed in this section may be authorized during the candidacy period by the Commission pursuant to Fish and Game Code Section 2084, or by the Department on a case-

by-case basis pursuant to Fish and Game Code Section 2081, or other authority provided by law.

(2) The Commission may modify or repeal this regulation in whole or in part, pursuant to law, if it determines that any activity or project may cause jeopardy to the continued existence of the Black-backed woodpecker.

Note: Authority cited: Sections 200, 202, 240 and 2084, Fish and Game Code.  
Reference: Sections 200, 202, 240, 2080, 2084 and 2085, Fish and Game Code.