

**State of California
Office of Administrative Law**

In re:
Fish and Game Commission

Regulatory Action:

Title 14, California Code of Regulations

Adopt sections: 749.6

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL File No. 2011-0328-03 EE

This is a readopt of a prior emergency regulatory action that allowed the incidental take of Mountain Yellow-legged Frog during its candidacy for listing as an endangered or threatened species under the California Endangered Species Act (CESA), in accordance with Fish and Game Code section 2084. This action provides for take incidental to seven different activities (e.g., scientific collection, fire prevention, water storage, etc.). The Fish & Game Commission has historically relied on the authority in section 2084 to permit take of candidate species on numerous occasions, most recently in 2009.

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 4/12/2011 and will expire on 7/12/2011. The Certificate of Compliance for this action is due no later than 7/11/2011.

Date: 4/6/2011


Eric Partington
Staff Counsel

Original: Jon Fischer
Copy: Sheri Tiemann

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

EMERGENCY REGULATIONS SUBMISSION

STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

ENDORSED FILED IN THE OFFICE OF

2011 APR -6 PM 2:11

Debra Bowen
DEBRA BOWEN
SECRETARY OF STATE

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2011-0328-03EE
For use by Office of Administrative Law (OAL) only		2011 MAR 28 PM 1:47	
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Fish and Game Commission			AGENCY FILE NUMBER (if any)

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 re Proposed 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 Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE		NOTICE REGISTER NUMBER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 Mountain Yellow-Legged Frog During Candidacy	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2010-0930-03E
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 749.6
	AMEND
TITLE(S) 14	REPEAL
3. TYPE OF FILING	
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<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 nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)	
<input type="checkbox"/> File & Print	
<input type="checkbox"/> Print Only	
<input type="checkbox"/> Other (Specify) _____	
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)	
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) April 12, 2011
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"/> Other (Specify) _____	<input type="checkbox"/> State Fire Marshal
7. CONTACT PERSON Sheri Tiemann	TELEPHONE NUMBER (916) 654-9872
FAX NUMBER (Optional) (916) 653-5040	E-MAIL ADDRESS (Optional)

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 28 March 2011
TYPED NAME AND TITLE OF SIGNATORY Jon K. Fischer, Acting Executive Director	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

APR 06 2011

Office of Administrative Law

Regulatory Language

Section 749.6, Title 14, CCR, is added to read:

749.6 Incidental Take of Mountain Yellow-Legged Frog (*Rana muscosa* and *Rana sierrae*) During Candidacy Period

This regulation authorizes take as defined by Fish and Game Code section 86, of Mountain yellow-legged frog (*Rana muscosa* and *Rana sierrae*), subject to certain terms and conditions, during the species' candidacy under the California Endangered Species Act (Fish and Game Code, section 2050 et seq.).

(a) Take Authorization.

The Commission authorizes the take of Mountain yellow-legged frog during the candidacy period subject to the terms and conditions herein.

(1) Scientific, Education or Management Activities.

Take of Mountain yellow-legged frog incidental to scientific, education or management activities is authorized.

(2) Scientific Collecting Activities.

Take of Mountain yellow-legged frog authorized by a scientific collecting permit issued by the Department of Fish and Game pursuant to California Code of Regulations, Title 14, section 650, or a recovery permit issued by a federal wildlife agency pursuant to United States Code, Title 16, section 1539, subdivision (a)(1)(A), is authorized.

(3) Activities to Protect, Restore, Conserve or Enhance.

Take of Mountain yellow-legged frog incidental to otherwise lawful activities where the purpose of the activity is to protect, restore, conserve or enhance a species designated as an endangered, threatened, or candidate species under state or federal law, or such species' habitat is authorized.

(4) Fish Hatchery and Stocking Activities.

Take of Mountain yellow-legged frog incidental to fish hatchery and related stocking activities consistent with the project description and related mitigation measures identified in the Department of Fish and Game (Department) and U.S. Fish & Wildlife Service Hatchery and Stocking Program Joint Environmental Impact Report/Environmental Impact Statement (SCH. No. 2008082025), as certified by the Department on January 11, 2010, is authorized.

(5) Wildland Fire Response and Related Vegetation Management.

Take of Mountain yellow-legged frog incidental to otherwise lawful wildland fire prevention, response and suppression activities, including related vegetation management, is authorized.

(6) Water Storage and Conveyance Activities

Take of Mountain yellow-legged frog incidental to otherwise lawful water storage and conveyance activities is authorized.

(7) Forest Practices and Timber Harvest.

Incidental take of Mountain yellow-legged frog is authorized for otherwise lawful timber operations. For purposes of this authorization, an otherwise lawful timber operation shall mean a timber operation authorized or otherwise permitted by the Z'Berg Nejedly Forest Practice Act (Public Resources Code, Section 4511 et seq.), the Forest Practice Rules of the Board of Forestry, which are found in Chapters 4, 4.5, and 10, of Title 14 of the California Code of Regulations, or other applicable law. The Z'Berg Nejedly Forest Practice Act and Forest Practice Rules can be found at the following website: http://www.fire.ca.gov/resource_mgt/resource_mgt_forestpractice.php.

(b) Reporting.

Any person, individual, organization, or public agency for which incidental take of Mountain yellow-legged frog is authorized pursuant to subdivision (a), shall report observations and detections of Mountain yellow-legged frog, including take, to the Department of Fish and Game on a semi-annual basis during the candidacy period. Observations, detections, and take shall be reported pursuant to this subdivision to the Department of Fish and Game, Fisheries Branch, Attn: Mountain yellow-legged frog observations, 830 S St., Sacramento, CA 95811, or by email submission to mylfddata@dfg.ca.gov. Information reported to the Department pursuant to this subdivision shall include as available: a contact name; the date and location (GPS coordinate preferred) of the observation, detection, or take; and details regarding the animal(s) observed.

(c) Additions, Modifications or Revocation.

(1) Incidental take of Mountain yellow-legged frog 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 Mountain yellow-legged frog.

Note: Authority cited: Sections 200, 202, 205, 240 and 2084, Fish and Game Code. Reference: Sections 200, 202, 205, 240, 2080, 2084 and 2085, Fish and Game Code.