

## Black-Backed Woodpecker and Timber Operations

On December 15, 2011, the California Fish and Game Commission accepted for consideration the petition submitted to list the black-backed woodpecker (*Picoides arcticus*) as threatened or endangered. This action has resulted in this species receiving the interim designation of “candidate species” per FGC § 2068<sup>1</sup>, effective January 6, 2012, under the California Endangered Species Act<sup>2</sup>. Candidate species are protected against take<sup>3</sup> per FGC §§ 2080 and 2085<sup>4</sup>. Also effective January 6, 2012 are emergency regulations per 14 CCR § 749.7<sup>5</sup>, which authorize take of the black-backed woodpecker subject to certain terms and conditions during the species’ candidacy. The emergency regulations authorize take incidental to otherwise lawful timber operations (among other things). “Otherwise lawful timber operations” consist of those activities permitted by the Z’Berg Nejedly Forest Practice Act, the Forest Practice Rules, or other applicable law. In addition, when evaluating permits for proposed timber operations, the emergency regulations direct the Department of Forestry and Fire Protection and other applicable state agencies to ensure feasible measures are adopted to mitigate any identified significant adverse impacts to the black-backed woodpecker to a level less than significant. The Department of Fish and Game has provided “Interim Guidelines for Black-Backed Woodpecker” (see links below). These guidelines cover the species’ breeding season, breeding habitat, and primary threats, as well as providing guidelines for minimizing and mitigating incidental take associated with otherwise lawful timber operations. Timber operations proposed within the range of the black-backed woodpecker need to address possible impacts to the species as follows:

1. For discretionary projects (timber harvesting plans, modified timber harvesting plans, program timber harvesting plans and non-industrial timber management plans), the registered professional forester should determine: (1) whether the project is located within the range of the bird; (2) the likelihood of the bird being present on the project area; (3) the nature of the proposed timber operations and whether they may take, or cause a significant adverse effect to, the bird; and (4) based on (1)-(3), whether the project should incorporate appropriate measures to mitigate and minimize take and

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<sup>1</sup> FGC § 2068. "Candidate species" means a native species or subspecies of a bird, mammal, fish, amphibian, reptile, or plant that the commission has formally noticed as being under review by the department for addition to either the list of endangered species or the list of threatened species, or a species for which the commission has published a notice of proposed regulation to add the species to either list.

<sup>2</sup> FGC § 2050 *et seq.* See: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=fgc&group=02001-03000&file=2050-2069>

<sup>3</sup> FGC § 86. "Take" means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.

<sup>4</sup> FGC § 2080. No person shall import into this state, export out of this state, or take, possess, purchase, or sell within this state, any species, or any part or product thereof, that the commission determines to be an endangered species or a threatened species, or attempt any of those acts, except as otherwise provided in this chapter, the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of this code), or the California Desert Native Plants Act (Division 23 (commencing with Section 80001) of the Food and Agricultural Code).

FGC § 2085. The provisions of this article shall apply to any species designated as a candidate species under Section 2074.2 if notice has been given pursuant to Section 2074.4.

<sup>5</sup> See: [http://www.fgc.ca.gov/regulations/2011/749\\_7eregs.pdf](http://www.fgc.ca.gov/regulations/2011/749_7eregs.pdf).

mitigate significant adverse effects to the bird. Item (4) can be done by incorporating the Department of Fish and Game's "Interim Guidelines for Black-Backed Woodpecker."

2. For non-discretionary projects (exemption and emergency notices), the registered professional forester or timber owner, whichever applies, should determine: (1) whether the proposed timber operations are located within the range of the bird; (2) the likelihood of the bird being present on the area where timber operations will occur; (3) the nature of the proposed timber operations and whether they may take, or cause a significant adverse effect to, the bird; and (4) based on (1)-(3), whether the licensed timber operator should apply appropriate measures to mitigate and minimize take and mitigate significant adverse effects to the bird. Item (4) can be done by applying the Department of Fish and Game's "Interim Guidelines for Black-Backed Woodpecker."

### **Other Information**

- The Department of Fish and Game has 12 months to review the petition to list the black-backed woodpecker, evaluate the available information, and report back to the Fish and Game Commission whether or not the petitioned action is warranted.
- The emergency regulations under 14 CCR § 749.7 will expire on July 6, 2012. The Fish and Game Commission may re-adopt them for a period of up to 180 additional days while considering the petition to list the bird.
- The California Department of Forestry and Fire Protection has prepared species information for the black-backed woodpecker, which is posted on its Forest Practice website (see links below).

### **Important Links**

[Public notice: Black-backed woodpecker candidacy](#)

[DFG's Interim Guidelines for Black-backed Woodpecker](#)

[Petition to List the Black-backed Woodpecker](#)

[Black-backed Woodpecker Species Information](#)

[Black-Backed Woodpecker Emergency Regulations](#)