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Edmund G. Brown Jr., Governor

Mike Yaun, Acting Executive Director  
1416 Ninth Street, Room 1320  
Sacramento, CA 95814  
(916) 653-4899  
www.fgc.ca.gov

## Fish and Game Commission



Wildlife Heritage and Conservation  
Since 1870

May 6, 2016

TO ALL INTERESTED AND AFFECTED PARTIES:

This is to provide you with a copy of the notice of proposed regulatory action to amend Sections 300, 311, and 745.5, Title 14, California Code of Regulations, regarding Upland game bird hunting, which will be published in the California Regulatory Notice Register on May 6, 2016.

Please note the dates of the public hearings related to this matter and associated deadlines for receipt of written comments. Additional information and all associated documents may be found on the Fish and Game Commission website at [www.fgc.ca.gov](http://www.fgc.ca.gov).

Craig Stowers, Department of Fish and Wildlife, phone (916) 445-3553, has been designated to respond to questions on the substance of the proposed regulations for Sections 300 and 311. Captain Patrick Foy, Department of Fish and Wildlife, phone (916) 651-6692, has been designated to respond to questions on the substance of the proposed regulations for Sections 745.5.

Sincerely,

Caren Woodson  
Associate Governmental Program Analyst

Attachment

2016 MAY -9 A 10:31  
BOARD OF SUPERVISORS

**TITLE 14. Fish and Game Commission  
Notice of Proposed Changes in Regulations**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 200, 202, 203, 355, 12155.5 of the Fish and Game Code and to implement, interpret or make specific Sections 200, 202, 203, 203.1, 215, 220, 355, 356, 3004.5, 4340, 4754, 12154, 12155, 12155.5 and 12156 of said Code, proposes to amend Sections 300, 311, and 745.5, Title 14, California Code of Regulations, relating to upland game birds, methods authorized for taking resident small game, and revocation or suspension of hunting or sport fishing privileges.

**Informative Digest/Policy Statement Overview**

The regulations in Section 300, Title 14, California Code of Regulations (CCR), provide general hunting seasons for taking resident and migratory upland game birds. Section 311 identifies the authorized methods of take for all resident small game species. Section 745.5 sets forth the procedures for the suspension or revocation of a person's hunting or sport fishing license or permit privileges. The Department is recommending the following regulation changes:

1. Amend subsection 300(a)(1)(D)4.: Adjusts the annual number of General Season sage grouse hunting permits by zone for the 2016-17 season.
2. Amend subsection 300(a)(1)(F): Deletes the current white-tailed ptarmigan hunting zone description and adds a new statewide area allowing ptarmigan to be taken anywhere they are found in California in accordance with the authorized season, bag limit, and possession limit.
3. Amend Section 311(e) by adding a new subsection (1): Requires the use of broad head blades which will not pass through a hole seven-eighths inch in diameter on hunting arrows and crossbow bolts for the take of wild turkey.
4. Amend Section 311(k) and add a new subsection (1): Authorizes possession of a firearm during archery-only seasons by hunters authorized to carry concealable firearms via a CCW permit or peace officer endorsement. Use of a firearm to hunt during archery only seasons is a violation.
5. Amend subsections 745.5(b) and (c). Authorizes revocation or suspension of hunting or sport fishing privileges by the Department for violation of Section 311 as amended.

**Benefits of the Proposed Regulations**

Adoption of sustainable upland game seasons, bag and possession limits, and authorized methods of take provides for the maintenance of sufficient populations of upland game birds to ensure their continued existence.

**Non-monetary benefits to the public**

The Commission does not anticipate non-monetary benefits to the protection of public health and safety, worker safety, the prevention of discrimination, the promotion of fairness or social equity and the increase in openness and transparency in business and government.

**Evaluation of incompatibility with existing regulations**

The Commission has reviewed its regulations in Title 14, CCR, and conducted a search of other regulations on this topic and has concluded that the proposed amendments to section 300, 311, and 745.5 are neither inconsistent nor incompatible with existing State regulations. No other

State agency has the authority to promulgate hunting regulations.

**NOTICE IS GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Bakersfield Elks Lodge #266, 1616 30th Street, Bakersfield, California, on June 23 at 8:00 a.m., or as soon thereafter as the matter may be heard.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Lake Natoma Inn Hotel & Conference Center, 702 Gold Lake Drive, Folsom, California, on August 25, at 8:00 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before August 11, 2016, at the address given below, or by email to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on August 19, 2016. All comments must be received no later than August 25, 2016, at the hearing in Folsom, California. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Michael Yaun, Acting Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Michael Yaun or Caren Woodson at the preceding address or phone number. **Craig Stowers, Department of Fish and Wildlife, phone (916) 445-3553, has been designated to respond to questions on the substance of the proposed regulations for Sections 300 and 311. Captain Patrick Foy, Department of Fish and Wildlife, phone (916) 651-6692, has been designated to respond to questions on the substance of the proposed regulations for Sections 745.5.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

#### Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

**Impact of Regulatory Action/Results of the Economic Impact Assessment**

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

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because the regulations propose only minor changes not affecting business.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission does not anticipate any impacts on the creation or elimination of jobs or businesses in California or on the expansion of businesses in California; and, does not anticipate benefits to worker safety, because the regulations propose only minor changes not affecting jobs.

The Commission anticipates benefits to the health and welfare of California residents. The proposed regulations are intended to provide continued recreational opportunity to the public. Hunting provides opportunities for multi-generational family activities and promotes respect for California's environment by the future stewards of the State's resources.

The Commission anticipates benefits to the environment by the sustainable management of California's upland game resources. The fees that hunters pay for licenses and stamps are used for conservation.

- (c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None.

- (f) Programs Mandated on Local Agencies or School Districts: None.

- (g) 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.

(h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Michael Yaun  
Acting Executive Director

Dated: 4/26/2016

**Commissioners**  
**Eric Sklar**, President  
Saint Helena  
**Jacque Hostler-Carmesin**, Vice President  
McKinleyville  
**Anthony C. Williams**, Member  
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## Fish and Game Commission



*Wildlife Heritage and Conservation*  
Since 1870

May 6, 2016

2016 MAY -9 A 10:32  
BOARD OF SUPERVISORS

TO ALL INTERESTED AND AFFECTED PARTIES:

This is to provide you with a copy of the notice of proposed regulatory action to add Section 250.2, Title 14, California Code of Regulations, relating to establishing a nonlead ammunition coupon program, which will be published in the California Regulatory Notice Register on May 6, 2016.

Please note the dates of the public hearings related to this matter and associated deadlines for receipt of written comments. Additional information and all associated documents may be found on the Fish and Game Commission website at [www.fgc.ca.gov](http://www.fgc.ca.gov).

Craig Stowers, Department of Fish and Wildlife, phone 916-445-3553, has been designated to respond to questions on the substance of the proposed regulations.

Sincerely,

Caren Woodson  
Associate Governmental Program Analyst

Attachment

**TITLE 14. Fish and Game Commission  
Notice of Proposed Changes in Regulations**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by Section 3004.5 of the Fish and Game Code and to implement, interpret or make specific Section 3004.5 of said Code, proposes to add Section 250.2, Title 14, California Code of Regulations, relating to establishing a nonlead ammunition coupon program.

**Informative Digest/Policy Statement Overview**

Assembly Bill 711 (Chapter 742, Statutes of 2013) amended Section 3004.5 of the Fish and Game Code and required the Fish and Game Commission (Commission) to promulgate regulations requiring the use of nonlead ammunition when taking all wildlife with a firearm not later than July, 2019. On April 9, 2015, the Commission adopted new regulations in Section 250.1, Title 14, CCR, to phase-in the statutory requirement for nonlead ammunition by July, 2019. If non-state funding is available, Fish and Game Code sections 3004.5(d)(1) and (d)(2) require the Commission to establish a process that will provide hunters with nonlead ammunition at no or reduced charge.

The Department of Fish and Wildlife (Department) has identified a potential non-state source of funding as the U.S. Fish and Wildlife Service's Wildlife and Sport Fish Restoration program, Wildlife Restoration Account, commonly referred to as the Pittman-Robertson (PR) fund. The PR fund is an appropriate source of funding for this program because the funding for it is based on federal excise fees levied against the purchase of ammunition and firearms. Hunters have been supporting a significant portion of the PR funds available for wildlife conservation since 1937.

To be able to apply for and ultimately grant the PR funds, the Department needs an established process in regulations adopted by the Commission. This regulatory proposal would establish a new Section 250.2 in Title 14, CCR, for the Commission process to implement a nonlead ammunition coupon program administered by the Department.

**PROPOSED CHANGES**

- The Commission will establish a process by which the Department implements a nonlead ammunition coupon program to provide nonlead ammunition with no or reduced cost to hunters using non-state funds as required by Fish and Game Code Section 3004.5.
- Eligible hunter is any hunter who meets all of the following requirements:
  - Is 18 years of age or older as of July 1 and holds a valid permit tag to hunt deer, elk, black bear, bighorn sheep, wild pig, pronghorn antelope, or upland game; and
  - is not prohibited from possessing ammunition pursuant to Penal Code section 30305.
- The program will be administered by an agent of the department and awarding of non-state funds will be administered as a grant. The department's agent will be selected through a public solicitation process.
- The coupon program will award nonlead ammunition to hunters through monthly random drawings of valid applicant names until all allocated funds for the program in the license year are exhausted. The number of applicants to draw and select each month shall be determined by the Department's agent, and announced on their website after the program is established and available funding is known.
- Hunters drawn for the coupon program will be able to select no more than one box of nonlead ammunition from a list of available and certified nonlead ammunition. A box of nonlead ammunition is 20 centerfire cartridges or 25 shotgun shells.

- The program may be offered and implemented for license year 2017-18, and for subsequent license years, provided funding is available as determined by the department.

**BENEFITS OF THE PROPOSED ACTION:**

The proposed action will provide an incentive for hunters to start using nonlead ammunition in advance of it being mandated by regulation in July 2019. This will result in less lead released into the environment from hunting. Additionally, the proposed action will slightly reduce the hardship on hunters having to switch to nonlead ammunition by providing it to successful applicants. Encouraging the use of nonlead ammunition may help sustain hunting activity levels, fees from which support wildlife conservation. While the proposed action will not satisfy all hunters who are opposed to the lead ammunition ban, it demonstrates the Commission and Department's commitment to work toward a practical and less disruptive implementation of the nonlead statute as recommended by the Governor in his signing message for this legislation.

**EVALUATION OF INCOMPATIBILITY WITH EXISTING REGULATIONS:**

Section 20, Article IV, of the State Constitution specifies that the Legislature may delegate to the Fish and Game Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to regulate the take of wildlife including methods. No other State agency has the authority to promulgate such regulations. The Commission has searched the CCR for any regulations regarding nonlead ammunition and has found no such regulation; therefore the Commission has concluded that the proposed regulations are neither inconsistent nor incompatible with existing State regulations.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Bakersfield Elks Lodge #266, 1616 30th Street, in Bakersfield, California, on June 23, 2016, at 8:00 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before June 9, 2016, at the address given below, or by email to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). All comments must be received no later than June 23, 2016, at the hearing in Bakersfield, California. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Michael Yaun, Acting Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Michael Yaun or Caren Woodson at the preceding address or phone number. **Craig Stowers, Department of Fish and Wildlife, phone 916-445-3553, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text



If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

**Impact of Regulatory Action/Results of the Economic Impact Assessment**

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

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because the regulation only proposes a process that may or may not be implemented depending on the Department's ability to successfully issue a grant for the coupon program.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission does not anticipate any significant impacts on the creation or elimination of jobs within the State as a result of this regulatory change or a resultant coupon program for nonlead ammunition. The program will not affect the availability or cost of nonlead ammunition in California, but will help offset the increased cost of nonlead ammunition for hunters.

The Commission does not anticipate benefits to the health and welfare of California residents because this regulatory action will not impact the health and welfare of California residents.

The Commission does not anticipate benefits to worker safety because this regulatory action does not address worker safety.

The Commission anticipates benefits to the environment because implementation would likely increase the use of nonlead ammunition by hunters, resulting in less lead being released into the environment.

- (c) Cost Impacts on a Representative Private Person or Business:

The Commission anticipates reduced costs for nonlead ammunition for eligible private persons upon the coupon program implementation. Businesses and private persons, not involved in hunting, will not be impacted by any direct cost. In the event that a number of

hunting trips are supported by the coupon program, private persons and businesses may experience positive indirect cost impacts through sustained hunter spending.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) 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.
- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Michael Yaun  
Acting Executive Director

Dated: 4/26/2016

**Commissioners**  
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## Fish and Game Commission



*Wildlife Heritage and Conservation*  
Since 1870

May 6, 2016

TO ALL INTERESTED AND AFFECTED PARTIES:

This is to provide you with a copy of the notice of proposed regulatory action to amend Sections 550, 550.5, 551, 552, 630 and 702, and repeal Subsections 703(a)(2) and 703(c), Title 14, California Code of Regulations, regarding Department of Fish and Wildlife Lands Pass Program and Land Public Uses, which will be published in the California Regulatory Notice Register on May 6, 2016.

Please note the dates of the public hearings related to this matter and associated deadlines for receipt of written comments. Additional information and all associated documents may be found on the Fish and Game Commission website at [www.fgc.ca.gov](http://www.fgc.ca.gov).

Julie Horenstein, Department of Fish and Wildlife, phone 916-324-3772, has been designated to respond to questions on the substance of the proposed regulations.

Sincerely,

Caren Woodson  
Associate Governmental Program Analyst

Attachment

2016 MAY -9 A 10:32

BOARD OF SUPERVISORS

**TITLE 14. Fish and Game Commission  
Notice of Proposed Changes in Regulations**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by Section(s) 200, 202, 203, 355, 710, 710.5, 710.7, 713, 1002, 1050, 1053, 1526, 1528, 1530, 1580, 1581, 1583, 1585, 1587, 1761, 1745, 1764, 1765, 1907, 2118, 2120, 2122, 2150, 2150.2, 2157, 2190, 3004.5, 3031, and 10504 of the Fish and Game Code and to implement, interpret or make specific Section(s) 355, 711, 713, 1050, 1053, 1055.3, 1526, 1528, 1530, 1580, 1581, 1582, 1583, 1584, 1585, 1590, 1591, 1764, 1745, 1756, 1765, 2006, 2116, 2116.5, 2117, 2118, 2120, 2125, 2150, 2150.2, 2151, 2157, 2190, 2193, 2271, 3004.5, 8314, 10504, 12000, and 12002, 12002.5 of said Code, proposes to amend Sections 550, 550.5, 551, 552, 630 and 702, and repeal Subsections 703(a)(2) and 703(c), Title 14, California Code of Regulations, relating to Department of Fish and Wildlife Lands Pass Program and Lands Public Uses.

**Informative Digest/Policy Statement Overview**

**The Current Lands Pass Program**

The majority of lands managed by the Department of Fish and Wildlife (Department) are designated as wildlife areas or ecological reserves. Current regulations for the public use of Department lands include an entry pass program ("the Lands Pass Program") for visitors to certain wildlife areas and ecological reserves who do not possess a hunting, fishing or trapping license. This program was established by the Native Species Conservation and Enhancement Act of 1988 (Fish and Game Code (FGC) Sections 1750-1772).

The current Title 14, California Code of Regulations (CCR) regulations that address this program include:

- 550(c): This section discusses passes and entry permits for department lands in general. It does not distinguish between passes for hunting and Lands Passes. It explains that for properties that require a fee for entry, each visitor must purchase a pass and exchange that pass for an entry permit.
- 550.5(c): This section provides more detailed information about obtaining passes and entry permits and:
  - 550.5(c)(6) specifically explains that a daily or annual "wildlife viewing" pass (referred to as a Lands Pass in other Department publications) and an entry permit are required to enter properties listed in subsections 551(w) and 630(c). It also explains how the price of these passes is adjusted each year, and that visitors who present a valid hunting, fishing or trapping license are exempt from purchasing a daily or annual pass.
  - 550.5(c)(6) does not include the requirement in FGC section 1764 and 1765 that all visitors under the age of 16 are exempt from the pass requirement and that organized school and youth groups are exempt from the pass requirement.

For 2016, a daily Lands Pass costs \$4.00 and an annual Lands Pass costs \$22.50. The passes may be purchased online, from department license offices or authorized license agents through the Automated License Data System (ALDS). Like other permits or licenses sold by the

Department, the price is adjusted annually according to Section 699, Title 14, CCR. Generally speaking, the price of Lands Passes increases by roughly two percent each year.

Five wildlife areas and two ecological reserves currently participate in the Lands Pass Program. They are:

- Gray Lodge Wildlife Area
- Grizzly Island Wildlife Area
- Los Banos Wildlife Area
- Imperial Wildlife Area
- San Jacinto Wildlife Area
- Elkhorn Slough Ecological Reserve
- Upper Newport Bay Ecological Reserve

Purpose of Amendments to Regulations Regarding the Lands Pass Program:

The Legislature has recognized that the Department does not receive adequate revenue to manage the fish and wildlife resources of the State (FGC Section 710). Voluntary programs, such as a Native Species Stamp, were initiated with a concerted campaign in the late 1980's and early 1990's in compliance with FGC sections 1763, 1766 and 1769. These programs were unsuccessful in generating sufficient revenue to cover their costs. The Legislature also directed that the segment of the public that uses Department lands, but does not support them through the purchase of hunting, fishing or trapping licenses, should provide support through purchase of Lands Passes for the use of designated properties (FGC sections 1745, 1764 and 1765).

By expanding the number of wildlife areas and ecological reserves that participate in the Lands Pass Program, the Department may receive additional funds to manage wildlife areas and ecological reserves. One aspect of the Lands Pass Program that has been impractical to implement, particularly since the adoption of the ALDS as the means for selling passes, is the requirement that Lands Passes be exchanged for an entry permit. This is due to the lack of staff available to exchange Lands Passes for entry permits.

If the proposed regulations are adopted, the following changes will be made to the Lands Pass Program through amendments to Sections 550, 550.5, 551, 630 and 702, Title 14, CCR:

1. The Lands Pass Program will no longer require visitors to exchange their Lands Pass for an entry permit. This requires amendments to sections 550 and 550.5 to more clearly distinguish between passes issued for hunting, which are exchanged for entry permits, and Lands Passes which are not exchanged for entry permits.
2. In Section 551, the following 28 wildlife areas will be added to the Lands Pass Program:

Ash Creek Wildlife Area  
Bass Hill Wildlife Area  
Battle Creek Wildlife Area  
Butte Valley Wildlife Area  
Cache Creek Wildlife Area  
Crescent City Marsh Wildlife Area  
Eel River Wildlife Area

Elk Creek Wetlands Wildlife Area  
Elk River Wildlife Area  
Fay Slough Wildlife Area  
Hollenbeck Canyon Wildlife Area  
Honey Lake Wildlife Area  
Hope Valley Wildlife Area  
Horseshoe Ranch Wildlife Area

Lake Earl Wildlife Area  
Mad River Slough Wildlife Area  
Mendota Wildlife Area  
Mouth of Cottonwood Creek Wildlife Area  
Napa-Sonoma Marshes Wildlife Area  
North Grasslands Wildlife Area  
San Felipe Valley Wildlife Area

Shasta Valley Wildlife Area  
South Spit Wildlife Area  
Tehama Wildlife Area  
Upper Butte Basin Wildlife Area  
Volta Wildlife Area  
Willow Creek Wildlife Area  
Yolo Bypass Wildlife Area

3. In Section 630, the following eight areas will be added to the Lands Pass Program:

Batiquitos Lagoon Ecological Reserve  
Boden Canyon Ecological Reserve  
Bolsa Chica Ecological Reserve  
Buena Vista Lagoon Ecological Reserve

Canebrake Ecological Reserve  
North Table Mountain Ecological Reserve  
San Elijo Lagoon Ecological Reserve  
Woodbridge Ecological Reserve

Purpose of Amendments to Other Wildlife Area and Ecological Reserve Title 14, CCR, Regulations:

1. Three site-specific regulations that were inadvertently omitted when the land regulations were reorganized in 2014 will be re-entered into Section 551. The restrictions have been kept in place on a temporary basis under the authority of the Regional Manager for the subject areas. These regulations prohibit horses on the Battle Creek and Mouth of Cottonwood Creek Wildlife Areas, and prohibit non-hunting visitors from entering Shasta Valley Wildlife Area on shoot days during the waterfowl season.
2. Various changes are proposed in Section 552 for the National Wildlife Refuges that are also designated as state wildlife areas. These changes are proposed in order to improve the consistency of the state regulations with federal regulations for these refuges and were requested by the U.S. Fish and Wildlife Service.
3. Pursuant to FGC Section 3031, the age limit for people participating as junior hunters on Department lands increased from 15 years old, to persons who are under 18 years of age as of July 1 of the licensing year. This necessitated changes to wording to subsections of Section 550.5 that formerly did not include 16, 17 and 18 year olds as junior hunters. The end result in terms of the numbers of adults and younger people who can be included in a hunting party or assigned to designated hunting zone, blind or pond is the same as with the existing regulations. The change in the age limit for junior hunters also necessitated adding language that 16 and 17 year olds who hunt without adult supervision may not be accompanied by visitors under 16 years of age.
4. Pursuant to FGC Section 3004.5, Section 550 was amended to require hunters to use ammunition consistent with Section 250.1, Title 14, CCR, (i.e., nonlead ammunition) when hunting on Department lands.
5. In Section 551, archery will be added as a method of take for the special wild pig hunt at the Joice Island Unit of the Grizzly Island Wildlife Area and all legal methods of take for

big game will be allowed for the special tule elk hunt on that wildlife area. Visitors will also be allowed to resume off-highway vehicles on roads open to motor vehicles on the Tehama Wildlife Area.

6. Also in Section 551, the Green Island Unit of the Napa-Sonoma Marsh Wildlife Area will be opened for public use. This property was closed because it was the site of extensive, multi-phased habitat restoration projects, which are now complete. Opening the unit to public use is consistent with the management plan for the Wildlife Area.
7. FGC Section 1587 will be implemented by adding language to Section 630, Title 14, CCR, stating that the Mirage Trail on the Magnesia Springs Ecological Reserve is open for hiking from May 1 through January 31.
8. Subsection 703(a)(2) will be deleted. The fees for Special Use Permits will be relocated to Section 702, and the title of Section 702 will be amended to reflect that it includes fees for a variety of public uses on Department lands.
9. Subsections 702(d) and 703(c), which repeat the language in existing Section 699, are proposed for deletion to reduce duplicative regulations.
10. Additional minor editorial changes are also proposed to improve the clarity and consistency of the regulations, improve enforceability, correct typographical errors, and align regulatory language.

#### Benefits of the Regulations:

The addition of 36 properties to the Lands Pass Program may result in additional funds available for the management of wildlife areas and ecological reserves under the jurisdiction of the Department. The Lands Pass Program will be more practical to implement by discontinuing the requirement to obtain an entry permit in exchange for a daily Lands Pass or the presentation of an annual Lands Pass. The state regulations for public use of National Wildlife Refuges that are also designated as state wildlife areas will be consistent with federal regulations. Environmental quality is expected to benefit as a result of compliance with Section 250.1, Title 14, CCR, which prohibits the use of lead ammunition for hunting on Department lands.

#### Consistency with State Regulations

The Commission has conducted a search of the California Code of Regulations and has concluded that the proposed regulations are neither inconsistent nor incompatible with existing State regulations.

**NOTICE IS GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Bakersfield Elks Lodge #266, 1616 30th Street, in Bakersfield California, on June 23, 2016, at 8:00 a.m., or as soon thereafter as the matter may be heard.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Lake Natoma Inn Hotel & Conference Center, 702 Gold Lake Drive, in Folsom, California, on August 25, 2016, at 8:00 a.m., or as soon

thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before August 11, 2016 at the address given below, or by email to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on August 19, 2016. All comments must be received no later than August 25, at the hearing in Folsom, California. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Michael Yaun, Acting Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Michael Yaun or Caren Woodson at the preceding address or phone number. Julie Horenstein, Department of Fish and Wildlife, phone 916-324-3772, has been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, the regulatory language, the Notice, and other rulemaking documents may be obtained from the address above or from the Fish and Game Commission website at <http://www.fgc.ca.gov>.

#### Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

#### Impact of Regulatory Action/Results of the Economic Impact Assessment

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

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with



businesses in other states because the proposed changes do not add or remove any existing public uses.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

Because the proposed regulations will not change existing activities on Department lands, the Commission does not anticipate any impact on the creation or elimination of jobs within the state, the creation or elimination of new or existing businesses, or the expansion of businesses in California. The proposed regulations will not affect the health and welfare of California residents or worker safety. The proposed changes may have a beneficial effect on the State's environment by removing lead ammunition from Department lands.

- (c) Cost Impacts on a Representative Private Person or Business:

Visitors to the properties listed in proposed subsections 551(w) and 630(c), Title 14, CCR, would be required to purchase a daily or annual Lands Pass. The price of Lands Passes and annual adjustments are included in FGC Section 1765. The costs of 2016 Lands Passes are as follows:

1.	Daily Lands Pass	\$4.00
2.	Annual Lands Pass	\$22.50

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

The Department will have some start-up and ongoing costs in expanding the number of properties that participate in the Lands Pass Program. However the existing fees will recover those costs. Any revenue exceeding the Lands Pass Program costs is to augment ongoing property management costs.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) 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.
- (h) Effect on Housing Costs: None.

#### Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Michael Yaun  
Acting Executive Director

Dated: 4/26/2016

**Commissioners**  
**Eric Sklar, President**  
Saint Helena  
**Jacque Hostler-Carmesin, Vice President**  
McKinleyville  
**Anthony C. Williams, Member**  
Huntington Beach  
Vacant, Member  
Vacant, Member

STATE OF CALIFORNIA  
Edmund G. Brown Jr., Governor

**Mike Yaun, Acting Executive Director**  
1416 Ninth Street, Room 1320  
Sacramento, CA 95814  
(916) 653-4899  
www.fgc.ca.gov

## Fish and Game Commission



*Wildlife Heritage and Conservation*  
*Since 1870*

May 4, 2016

TO ALL AFFECTED AND INTERESTED PARTIES:

This is to provide you with a Notice of Findings regarding fisher (*Pekania*) which will be published in the California Regulatory Notice Register on May 6, 2016.

Sincerely,

Handwritten signature of Sheri Tiemann in cursive script.

Sheri Tiemann  
Associate Governmental Program Analyst

Attachment

2016 MAY -9 A 10:32  
BOARD OF SUPERVISORS

## NOTICE OF FINDINGS

### Fisher

#### *(Pekania [formerly Martes] pennanti)*

**NOTICE IS HEREBY GIVEN** that the California Fish and Game Commission (Commission), at its meeting in Fortuna, California on August 5, 2015, made a finding pursuant to Fish and Game Code Section 2075.5, in response to a petition requesting that the Commission add the fisher (*Pekania [formerly Martes] pennanti*) to the list of threatened or endangered species under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.). The Commission made the finding that listing the Southern Sierra Nevada Evolutionarily Significant Unit (ESU) as threatened is warranted, and that listing the Northern California ESU is not warranted. (See also Cal. Code Regs., tit. 14, § 670.1, subd. (i).)

### I. Background and Procedural History

#### Petition History

On January 23, 2008, the Commission received the "Petition to List the Pacific fisher (*Martes pennanti*) as an Endangered or Threatened Species under the California Endangered Species Act" (January 22, 2008; hereafter, the Petition), as submitted by the Center for Biological Diversity (Petitioner). Commission staff transmitted the Petition to the Department of Fish and Wildlife (Department) pursuant to Fish and Game Code Section 2073 on January 31, 2008, and the Commission published formal notice of receipt of the Petition on February 11, 2008 (Cal. Reg. Notice Register 2008, No. 8-Z, p. 275). After evaluating the Petition and other relevant information the Department possessed or received, the Department determined that based on the information in the Petition, there was not sufficient scientific information to indicate that the petitioned action may be warranted, and recommended the Commission reject the Petition. On August 7, 2008, the Commission voted to reject the Petition. On February 5, 2009, the Commission voted to delay the adoption of findings ratifying its August 2008 decision, indicating it would reconsider its earlier action at the next Commission meeting. On March 4, 2009, the Commission set aside its August 2008 determination rejecting the Petition, and instead voted to accept the Petition and initiate a review of the species' status in California. Upon publication of the Commission's notice of determination, the fisher was designated a candidate species on April 24, 2009 (Cal. Reg. Notice Register 2009, No. 17-Z, p. 609).

Following the Commission's designation of the fisher as a candidate species, the Department notified affected and interested parties and solicited data and comments on the petitioned action pursuant to Fish and Game Code Section 2074.4. (see also Cal.

Code Regs., tit. 14, § 670.1(f)(2).) Subsequently, the Department commenced its review of the status of the species. On March 1, 2010 the Department Director delivered a status review to the Commission pursuant to Fish and Game Code Section 2074.6, including a recommendation that, based upon the best scientific information available to the Department, the petitioned action is not warranted.

On April 7, 2010, at its meeting in Monterey, California, the Commission took up consideration of the Petition and received public testimony on the matter. However, in an effort to fully consider comments related to an earlier draft of the Department's status review that the Department released for peer review beginning on January 23, 2010 (Peer Review Draft), the Commission voted to table consideration as to whether the petitioned action is warranted until it could receive additional testimony at its May meeting in Stockton, California.

The Department provided public notice soliciting additional scientific review and related public input until May 28, 2010, regarding the Department's Status review and the related peer review effort. The Department briefed the Commission on May 20, 2010, regarding additional scientific and public review, and on May 25, 2010, the Department released the Peer Review Draft to the public. On June 9, 2010, the Commission received from the Department a memorandum and related table summarizing, evaluating, and responding to the additional scientific input regarding the Status Review and related peer review effort.

The Commission received additional public and Department testimony at the June 23, 2010 meeting in Folsom, California, and voted that designating fisher as an endangered or threatened species under CESA was not warranted, adopting related findings at the September 15, 2010 meeting in Sacramento, California, and publishing notice of the decision on October 1, 2010. (Cal. Reg. Notice Register 2010, No. 40-Z, pp. 1601-1610.)

Petitioner brought a legal challenge and *Center for Biological Diversity v. California Fish and Game Commission, et al.* was heard in San Francisco Superior Court on April 24, 2012. (Super. Ct. San Francisco County, 2012, No. CGC-10-505205.) On July 20, 2012, Judge Kahn signed an order requiring the Department to solicit independent peer review of the Department's Status Report and listing recommendation, and also requiring the Commission to set aside its findings and reconsider its decision. Consistent with that order, the Commission, at its November 7, 2012 meeting in Los Angeles, California, set aside its September 15, 2010 finding that listing the fisher as threatened or endangered was not warranted. (Cal. Reg. Notice Register 2013, No. 12-Z, pp. 487-488.) Having provided related notice, the fisher once again became a candidate species under CESA. In September 2012, following notice of entry of

judgment, the Department reinitiated a status review of fisher pursuant to the court's order.

On June 8, 2015 the Commission received a second status review of fisher from the Department Director pursuant to Fish and Game Code Section 2074.6, which designated fishers inhabiting portions of northern California and the southern Sierra Nevada as separate Evolutionarily Significant Units (ESUs). The boundaries of each ESU represent the Department's assessment of the current range of fishers in California. The status review included graphical representations of the ESUs. The Northern California Evolutionarily Significant Unit (NC ESU) consists of those fisher that occur within California in the Klamath Mountains, Coast Range, southern Cascades, and northern Sierra Nevada. The Southern Sierra Nevada Evolutionarily Significant Unit (SSN ESU) consists of those fisher that occur within California south of the Merced River.

The use of ESUs by the Department to evaluate the status of species pursuant to CESA is supported by the 2007 determination by California's Third District Court of Appeal in *California Forestry Ass'n v. Fish and Game Commission* (156 Cal.App.4th 1535, 1547-1548) that the term "species or subspecies" as used in CESA (Fish & G. Code, §§ 2062 and 2067) includes Evolutionarily Significant Units. To be considered an ESU, a population must meet two criteria: 1) it must be reproductively isolated from other conspecific (i.e., same species) population units, and 2) it must represent an important component of the evolutionary legacy of the species (Waples 1991). The status review determined that the two ESUs were separated by a distance that equated to more than 4 times the maximum dispersal distance reported for fishers. The status review also determined that maintenance of populations that are geographically widespread and genetically diverse is important because they may consist of individuals capable of exploiting a broader range of habitats and resources than less spatially or genetically diverse populations.

On August 5, 2015, at its meeting in Fortuna, California, the Commission took up consideration of the Petition and received public testimony on the matter, then voted to add the SSN ESU of fisher to the list of threatened species, while finding that the petitioned action as to the NC ESU is not warranted.

### **Species Description**

The fisher is a member of the order Carnivora, family Mustelidae. Fishers have a slender weasel-like body with relatively short legs and a long well-furred tail (Douglas and Strickland 1987:511). Though they often appear uniformly black from a distance, they are generally dark brown over most of their bodies with white or cream patches distributed on their undersurfaces (Powell 1993). Throughout their range, adult female

fishers typically weigh between 4.4 and 5.5 pounds (2-2.5kg), and measure 28 to 34 inches (75-95cm) in total length. Adult males, which are generally much larger than females, vary in weight from 7.7 to 12.1 pounds (3.5-5.5kg), and in total length from 35 to 47 inches (90-120cm). Fishers are generalist predators and consume a wide variety of prey, as well as carrion, plant matter, and fungi (Powell 1993:10). Studies indicate that fishers in California appear to consume a greater diversity of prey than elsewhere in western North America (Zielinski and Duncan 2004; Golightly et al. 2006; Lofroth et al. 2010). Across their range, fisher prey predominantly on the largest mammals they can consistently catch (e.g., porcupines, snowshoe hares, gray squirrels, carrion). Predation from bobcats, mountain lions, and coyotes appears to be the most significant cause of mortality for fishers in California (Wengert et al. 2014). The relationships between fishers and other carnivores where their ranges overlap are not well understood, however, throughout their range, fishers potentially compete with a variety of other carnivores including coyotes, foxes, bobcats, lynx, American martens, weasels, and wolverines (Lofroth et al. 2010:10; Powell and Zielinski 1994; Campbell 2004).

### **Federal Status**

The fisher is considered a sensitive species by the United States Forest Service and the Bureau of Land Management. A sensitive species is a plant or animal species identified by a Regional Forester for which population viability is a concern based on significant current or predicted downward trends in its numbers, density, or habitat capability that reduce its existing distribution (USDA Forest Service n.d.).

On December 5, 2000, the United States Fish and Wildlife Service (USFWS) received a petition from the Center for Biological Diversity and other groups to add the Distinct Population Segment of the fisher that includes portions of California, Oregon, and Washington (West Coast DPS), to the list of endangered species pursuant to the Federal Endangered Species Act of 1973 (16 U.S.C. § 1531 *et seq.*) (ESA), and to concurrently designate critical habitat for this DPS. On April 8, 2004, the USFWS published a 12-month status review (69 FR 18769) finding that the West Coast DPS of fisher warranted listing, but was precluded by higher priority actions and through this finding added the fisher to the federal candidate species list. On October 7, 2014, the USFWS published its proposal to list the West Coast DPS of fisher as a threatened species. As a federal candidate species, fishers receive no statutory protection under the ESA. The USFWS is scheduled to make a listing decision on the West Coast DPS of fisher on April 7, 2016.

## II. STATUTORY AND LEGAL FRAMEWORK

The Commission, as established by the California Constitution, has exclusive statutory authority under California law to designate endangered, threatened, and candidate species under CESA. (Cal. Const., art. IV, § 20, subd. (b); Fish & G. Code, § 2070.) The CESA listing process for fisher began in the present case with the Petitioners' submittal of the Petition to the Commission on January 23, 2008. Pursuant to FGC Section 2073, on January 31, 2008 the Commission transmitted the petition to the Department for review pursuant to FGC Section 2073.5. The regulatory and legal process that ensued is described in some detail in the preceding section above, along with related references to the FGC and controlling regulation. The CESA listing process generally is also described in some detail in published appellate case law in California, including:

- *Mountain Lion Foundation v. California Fish and Game Commission* (1997) 16 Cal.4<sup>th</sup> 105, 114-116;
- *California Forestry Association v. California Fish and Game Commission* (2007) 156 Cal.App.4<sup>th</sup> 1535, 1541-1542;
- *Center for Biological Diversity v. California Fish and Game Commission* (2008) 166 Cal.App.4<sup>th</sup> 597, 600; and
- *Natural Resources Defense Council v. California Fish and Game Commission* (1994) 28 Cal.App.4<sup>th</sup> 1104, 1111-1116.

The "is warranted" determination at issue here for fisher stems from Commission obligations established by FGC Section 2075.5. Under this provision, the Commission is required to make one of two findings for a candidate species at the end of the CESA listing process; namely, whether the petitioned action is warranted or is not warranted. Here, with respect to the SSN ESU of fisher, the Commission made the finding under section 2075.5(a)(2) that the petitioned action is warranted. With respect to the NC ESU of fisher, the Commission made the finding under Section 2075.5(a)(1) that the petitioned action is not warranted.

The Commission was guided in making these determinations by statutory provisions and other controlling law. The Fish and Game Code, for example, defines an endangered species under CESA as "a native species or subspecies of a bird, mammal, fish, amphibian, reptile or plant which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, over exploitation, predation, competition, or disease." (Fish & G. Code, § 2062.) Similarly, the Fish and Game Code defines a threatened species under CESA as "a native species or subspecies of a bird, mammal, fish, amphibian, reptile or plant that, although not presently threatened with extinction, is likely to become an endangered species in the foreseeable future in the absence of the special protection and management efforts required by this chapter." (*Id.*, § 2067.)



The Commission also considered Title 14, Section 670.1, subdivision (i)(1)(A), of the California Code of Regulations in making its determination regarding fisher. This provision provides, in pertinent part, that a species shall be listed as endangered or threatened under CESA if the Commission determines that the species' continued existence is in serious danger or is threatened by any one or any combination of the following factors:

1. Present or threatened modification or destruction of its habitat;
2. Overexploitation;
3. Predation;
4. Competition;
5. Disease; or
6. Other natural occurrences or human-related activities.

Fish and Game Code section 2070 provides similar guidance. This section provides that the Commission shall add or remove species from the list of endangered and threatened species under CESA only upon receipt of sufficient scientific information that the action is warranted. Similarly, CESA provides policy direction not specific to the Commission per se, indicating that all state agencies, boards, and commissions shall seek to conserve endangered and threatened species and shall utilize their authority in furtherance of the purposes of CESA. (Fish & G. Code, § 2055.) This policy direction does not compel a particular determination by the Commission in the CESA listing context. Nevertheless, "[l]aws providing for the conservation of natural resources' such as the CESA 'are of great remedial and public importance and thus should be construed liberally.'" (*California Forestry Association v. California Fish and Game Commission*, supra, 156 Cal. App.4th at pp. 1545-1546, citing *San Bernardino Valley Audubon Society v. City of Moreno Valley* (1996) 44 Cal.App.4th 593, 601; Fish & G. Code, §§ 2051, 2052.)

Finally in considering these factors, CESA and controlling regulations require the Commission to actively seek and consider related input from the public and any interested party. (See, e.g., Id., §§ 2071, 2074.4, 2078; Cal. Code Regs., tit. 14, § 670.1, subd. (h).) The related notice obligations and public hearing opportunities before the Commission are also considerable. (Fish & G. Code, §§ 2073.3, 2074, 2074.2, 2075, 2075.5, 2078; Cal. Code Regs., tit. 14, § 670.1, subds. (c), (e), (g), (i); see also Gov. Code, § 11120 et seq.) All of these obligations are in addition to the requirements prescribed for the Department in the CESA listing process, including an initial evaluation of the petition and a related recommendation regarding candidacy, and a review of the candidate species' status culminating with a report and recommendation

to the Commission as to whether listing is warranted based on the best available science. (Fish & G. Code, §§ 2073.4, 2073.5, 2074.4, 2074.6; Cal. Code Regs., tit. 14, § 670.1, subds. (d), (f), (h).)

### **III. Factual and Scientific Bases for the Commission's Final Determination**

The factual and scientific bases for the Commission's identification of two ESUs, determination that designating the SSN ESU of fisher as a threatened species under CESA is warranted, and designating that the NC ESU of fisher as a threatened or endangered species is not warranted, are set forth in detail in the Commission's record of proceedings including the Petition, the Department's Petition Evaluation Report, the Department's status review, written and oral comments received from members of the public, the regulated community, tribal entities, the scientific community and other evidence included in the Commission's record of proceedings.

The Commission determines that the continued existence of the SSN ESU of fisher in the State of California is in serious danger or threatened by one or a combination of the following factors as required by the California Code of Regulations Title 14, Section 670.1, subdivision (i)(1)(A):

1. Present or threatened modification or destruction of its habitat;
2. Overexploitation;
3. Predation;
4. Competition;
5. Disease; or
6. Other natural occurrences or human-related activities.

The Commission also determines that the information in the Commission's record constitutes the best scientific information available and establishes that designating the SSN ESU of fisher as a threatened species under CESA is warranted. Similarly, the Commission determines that the SSN ESU of fisher, while not presently threatened with extinction, is likely to become an endangered species in the foreseeable future in the absence of the special protection and management efforts required by CESA.

The items highlighted here and detailed in the following section represent only a portion of the complex issues aired and considered by the Commission during the CESA listing process for the fisher. Similarly, the issues addressed in these findings represent some, but not all of the evidence, issues, and considerations affecting the Commission's final determination. Other issues aired before and considered by the Commission are

addressed in detail in the record before the Commission, which record is incorporated herein by reference.

## **Background**

The Commission bases its “is warranted” finding for the SSN fisher ESU most fundamentally on the small population size of the species in the area is a risk to the continued existence of the species in California.

## **Threats**

### **Small Population Size and Isolation**

Grinnell et al. (1937) considered the range of fishers in California to extend south from the Oregon border to Lake and Marin counties, eastward to Mount Shasta and the Southern Cascades, and to include the southern Cascades south of Mount Shasta through the Sierra Nevada Mountains to Greenhorn Mountain in Kern County. Few records of fishers inhabiting the central and northern Sierra Nevada exist, creating a gap in the species’ distribution that has been frequently described in the literature. A number of studies have commented on this gap and considered fishers to have been extirpated from this region during the 20<sup>th</sup> century (Zielinski et al. 1995; Drew et al. 2003:59). However, recent genetic work by Knaus et al. (2011) and Tucker et al. (2012) indicates fishers in the southern Sierra Nevada became isolated from northern California populations long before European settlement. The fisher population in the SSN ESU is likely at greater risk of extirpation than fishers in the NC ESU, due to its small population size, limited geographic range, narrow and linear configuration of available habitat, and isolation. The SSN ESU fisher population probably contains fewer than 300 adults (Spencer et al. 2015:7) which, coupled with its isolation, increases its vulnerability to stochastic (random) environmental or demographic events, including catastrophic fire or disease. Small populations are also at greater risk from the loss of genetic diversity, including inbreeding depression.

### **Human Related Activities**

Life history characteristics of fishers, such as large home range, low fecundity (reproductive rate), and limited dispersal across large areas of open habitat, are thought to make fishers particularly vulnerable to landscape-level habitat alterations such as extensive logging, loss from large stand-replacing wildfires, and conversion and introduction of toxicants associated with marijuana cultivation.

The volume of timber harvested on public and private lands in California has generally declined since the late 1980s, and fishers are known to establish home ranges and successfully reproduce within forested landscapes that have been and are being

intensively managed primarily for timber production, including industrial ownerships where ongoing intensive even-aged management is the norm.

In recent decades the frequency, severity, and extent of fires has increased in California. However, the contemporary extent of wildfires burning annually in California is considerably less than the estimated 1.8 million hectares (4.5 million acres) that burned annually in the state pre-1800 (Stephens et al. 2007:212). Despite the occurrence of some large, high intensity fires in the southern Sierra in recent years, wildfires in the region are generally heavily suppressed. The majority of future scenarios modeled in the literature indicate significant increases in large wildfires are likely by the middle of this century. Wildfires affect habitats used by fishers and can directly affect individual animals. Stochastic event of the type would have an increased impact on the SSN ESU as small populations are especially vulnerable to such impacts.

The California Department of Forestry and Fire Protection (CAL FIRE) has estimated that statewide, between 2000 and 2040, about 10,500 km<sup>2</sup> (4,054 mi<sup>2</sup>) of private forests and rangelands will be impacted by new development (FRAP 2003:7). The resulting habitat alteration including conversion and fragmentation of habitat will negatively impact Fishers in California. The SSN ESU is particularly susceptible to further fragmentation by such impacts and the Department's status review identified particular anticipated development that could create further barriers to dispersal for the SSN ESU.

Fishers in California are frequently exposed to anticoagulant rodenticides and to other toxicants. Fishers are opportunistic generalist predators and may be exposed to toxicants directly through consumption of flavored baits. Rodenticide baits flavored to be more attractive to rodents (with such flavors as sucrose, bacon, fish, cheese, peanut butter, and apple) would likely appeal to fishers (Gabriel et al. 2012c). Furthermore, intentional wildlife poisoning has occurred through the distribution of food items such as canned tuna or sardines laced with pesticides (Gabriel et al. 2013). Fishers could also be exposed to toxicants secondarily through consumption of prey. This is likely the primary means of anticoagulant rodenticide exposure because of the toxicant's persistence in the body tissue of poisoned prey; secondary exposure of mustelids to anticoagulant rodenticides has occurred in rodent control operations (Alterio 1996). Evidence from laboratory and field studies in other species supports the premise that pesticide exposure can indirectly affect survival (Ahdaya et al. 1976, Grue et al. 1991, Martin and Solomon 1991, Gordon 1994, Li and Kawada 2006, Janeway et al. 2007, Riley et al. 2007, Vidal et al. 2009, Zabrodskii et al. 2012).

Finally climate change could be a significant threat to the fisher in California. The SSN ESU is likely at greater risk of experiencing potentially adverse effects of a warming

climate than fishers in the NC ESU due to its comparatively small population size and susceptibility to fragmentation.

#### **IV. FINAL DETERMINATION BY THE COMMISSION**

The Commission has weighed and evaluated the information for and against designating the Southern Sierra Nevada and Northern California fisher evolutionarily significant units as threatened or endangered species under CESA. This information includes scientific and other general evidence in the Petition; the Department's Petition Evaluation Report; the Department's 2010 and 2015 status reviews; the Department's related recommendations; written and oral comments received from members of the public, the regulated community, various public agencies, and the scientific community; and other evidence included in the Commission's record of proceedings.

Based upon the evidence in the record the Commission has determined that the best scientific information available indicates that the continued existence of the Northern California evolutionarily significant unit of fisher is not in serious danger or threatened by present or threatened modifications or destruction of the species' habitat, predation, competition, disease, or other natural occurrences or human-related activities, where such factors are considered individually or in combination. (See generally Cal. Code Regs., tit. 14, § 670.1, subd. (i)(2); Fish & G. Code, § 2075.5, subd. (a)(1).) The Commission determines that there is sufficient scientific information to indicate that designating the Northern California evolutionarily significant unit as threatened or endangered is not warranted, and that with adoption and publication of these findings the Northern California fisher evolutionarily significant unit shall be removed from the list of candidate species maintained pursuant to Fish and Game Code section 2074.2.

Based upon the evidence in the record the Commission has determined that the best scientific information available indicates that the continued existence of the Southern Sierra Nevada fisher evolutionarily significant unit is in serious danger or threatened by present or threatened modifications or destruction of the species' habitat, predation, competition, disease, or other natural occurrences or human-related activities, where such factors are considered individually or in combination. (See generally Cal. Code Regs., tit. 14, § 670.1, subd. (i)(1)(A); Fish & G. Code, §§ 2062, 2067.) The Commission determines that there is sufficient scientific information to indicate that designating the Southern Sierra Nevada fisher evolutionarily significant unit as a threatened species under CESA is warranted at this time and that with adoption and publication of these findings the Southern Sierra Nevada fisher evolutionarily significant unit of fisher for purposes of its legal status under CESA and further proceedings under the California Administrative Procedure Act, shall be listed as threatened.

## References

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- Douglas, C. W. and M. A. Strickland. 1987. Fisher. In Wild furbearer management and conservation in North America (M. Novak, J. A. Baker, M. E. Obbard & B. Malloch, eds.). Ontario Ministry of Natural Resources, Ontario, Canada, p.511.
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