



STANISLAUS COUNTY FISH AND WILDLIFE COMMITTEE

3800 CORNUCOPIA WAY, SUITE C, MODESTO, CALIFORNIA 95358



THURSDAY, April 27, 2017

Meeting Time: 4:00 P.M.

Location: DER Conference Room, 3800 Cornucopia Way, Ste. C, Modesto (Stanislaus Building - 2nd floor)

AGENDA

Call Meeting to Order & Introductions:

The Stanislaus County *Fish & Wildlife Committee (F&WC)* encourages public participation and welcomes the public's interest.

Members of the public may be heard on any item of the Fish and Wildlife Committee's agenda. A person addressing the Committee will be limited to five (5) minutes, unless the Chairperson of the Committee grants a longer period of time. The Committee will allow comments by members of the public on an agenda item only during consideration of the item.

Requests for Funds & Project Updates:

1. No requests for funds received
2. No project updates

Correspondence:

1. Notice of Proposed Emergency Action, dated February 16, 2017
2. Notice of Findings Lassics Lupine, dated February 22, 2017
3. Notice of Findings Flat-Tailed Horned Lizard, dated February 22, 2017
4. Notice of Published Code Use of Dogs for Pursuit, dated February 23, 2017
5. Notice of Proposed Regulatory Action relating to upland game bird, dated April 7, 2017

Agenda Items:

1. Public Comment(s)
2. Approval of January 26, 2017 Meeting Minutes
3. Wildlife Management Report
4. Fishery Report
5. Wildlife Enforcement Report
6. Wood Duck Report
7. Review and approve changes to the Committee's Fund Procedures (Section 8)
8. Review and approve purposed draft of Committee Bylaws (Membership and Attendance sections)
9. Old Business
10. Committee Comments

FW Members
Cristen Langner, DFG
Steve Tsao, DFG
Phil McKay, DFG

Adjourn: Next meeting – Thursday, July 27, 2017 at 4:00 p.m.

Please notify the Department of Parks and Recreation at 525-6770 in advance if you will be attending this meeting and/or require special accommodation for the meeting.

REASONABLE ACCOMMODATIONS: In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Committee Secretary at (209) 525-6770. Notification 72 hours prior to the meeting will enable the Department to make reasonable arrangements to ensure accessibility to this meeting. Agendas can also be found online at <http://www.stancounty.com/parks/fish-wildlife-committee.shtm> subject to staff's ability to post prior to the meeting. Materials related to an item on this Agenda submitted to the Committee after distribution of the agenda packet are available for public inspection during normal business hours at the main office of the Department of Parks and Recreation, 3800 Cornucopia Way, Suite C, Modesto, CA 95358.



STANISLAUS COUNTY FISH AND WILDLIFE COMMITTEE



PARKS AND RECREATION

Jami Aggers, Director

Merry Mayhew, Asst. Director

Ed Ayers, Chair

3800 CORNUCOPIA WAY, SUITE C, MODESTO, CALIFORNIA 95358



MINUTES

JANUARY 26, 2017 AT 4:00 P.M.

3800 CORNUCOPIA WAY, 2ND FLOOR, CONFERENCE ROOM

(Agendas can be found online at <http://www.stancounty.com/parks/fish-wildlife-committee.shtm>)

COUNTY FISH & WILDLIFE MEMBERS PRESENT:

Ed Ayers, D2
Jim Atherstone, D3
Bob Bashaw, D5
Ken Meidl, D4
Vernon Gladney D1*
(*present by telephone conference)

STATE FISH & WILDLIFE REPRESENTATIVE:

Phil Mckay

PARKS & RECREATION STAFF PRESENT:

Cathy Gomez
Lisa Velarde

ABSENT:

Jason Guignard, D1 (Excused)
Anthony Maxwell, D2
Ed Channing, ALT (Excused)
Dave Doubledee, ALT
Cody Johnsen, ALT
Don Vanwey, ALT

GUESTS PRESENT:

Trina Waller, East Stan. ESRCD
Alexandria Riedinger, ESRCD
Sandra Loza, Stan. County B.O.S.

A. CALL TO ORDER & INTRODUCTIONS

Ed Ayers called the meeting to order. Introductions were made for all present at the meeting.

Ed Ayers

B. REQUESTS FOR FUNDS/PROJECT UPDATES

1. Cathy Gomez gave a project update for Stanislaus County fish planting fund request of \$7,125.00 for fish from Golden State Bait (Blue Gil, Red Ear Sun Fish, and Catfish) for Modesto and Woodward Reservoirs. With approval, the committee asked for feedback from customers at the reservoirs. 250 survey cards were sent out at Modesto and Woodward Reservoirs and containers are out for collecting survey cards and continue to take surveys and report feedback. Surveys worked well, results were positive, and provided good feedback for the department. Pictures were circulated of the fishing expedition and the following survey results (in blue) were received to date:

- **What type of fish do you catch?** Trout / catfish / bass / carp
- **How many do you catch on average?** 2 / 3 / 3-5 / Up to the limit
- **How many times per year do you fish?** 2 / 12 / 15 / 20 / 50 times at Modesto Res. / Fall and Winter / Spring and Fall

ACTIONS & REPORTER

Cathy Gomez, Grant
Writer, Stan. County
Parks & Recreation

- **Survey Comments:**

- Plant more fish and I'd fish more often
- Excellent amenities
- Friendly personnel
- Jeff and Rob (county employees) are always helpful with fishing tips
- Good fishing
- Close to home and safe
- More plants
- Plant bass
- No food for bass (Only 1 negative comment from the survey)

Cathy informed the committee the State plants trout once per year at the reservoirs. Cathy thanked the committee for funding.

2. The request for funds from the U.S. Army Corp of Engineers in the amount not to exceed \$2,675.00 to purchase fish for the annual Kids Fishing Fun Day on Saturday, May 6, 2017 was reviewed. Vernon Gladney was corresponding and voted by phone to obtain quorum. The request for funds was unanimously approved.

*Motion by Bashaw,
Atherstone,
unanimous approval*

3. A project fund update was given by Trina Walley and Alexandria Riedinger for the annual Stanislaus River Salmon Festival. Trina brought calendars from the contest held and reports the annual Salmon festival event was a success with great weather and it was a beautiful day in Knights Ferry. Several partner agencies came to provide hands-on activities for the families and kids on everything to do with the river, wildlife and fishing. Volunteers were available to assist with parking management, and as a result more accurate vehicle count and attendance count was obtained. Approximately 2300 vehicles were counted and estimated about 2.1 persons per car, for a total of 4,830 attendees; 73% adults and 27% kids. Leading up to the event there is a coordinated effort to reach out to all schools along the Stanislaus River, and students are invited to participate in the artwork contest led by Modesto Junior College, and a committee of different agencies go through and select the top 16 for awards and for the calendar entry winners. The tee shirts, purchased with funds from the committee, were used at the Army Corp of Engineers booth. The kids were given fishing prints for the shirts and they were a great hit. There were more salmon viewed from the bridge this year. They would like to expand to another tee shirt booth at this years' event, and Trina stated they are going to be returning to the committee with a request for the next festival in November. ESRCD is trying to remain consistent and keep the same date, which would be around November 11th, Veterans Day holiday. Ed Ayers appreciated the attendance of guests to the Fish and Wildlife committee meeting in person to provide the information.

*Trina Walley Program
Coordinator, ESRCD
Alexandria Riedinger,
ESRCD*

4. Phil McKay gave an update on the Kids Fishing Day event sponsored by U.S. Army Corp of Engineers. Phil reported that it has been held for approximately 12 years or so, and is an activity provided for "at-risk" kids. This event is coordinated with PAL and includes volunteers with approximately 30 kids in attendance. In addition to fishing, kids are provided various activities and there is food provided. A designated area of a large pond is sectioned off for the event with poles and bait provided for fishing instruction. The majority of kids have never had any fishing experience, and the kids get pretty good at baiting and fishing during the event. The fish can be taken home by the kids, and they have a great time for 3-4 hours.

McKay

C. CORRESPONDENCE

The Committee acknowledged the correspondence received and suggested further action or comment be directed to the corresponding agency as listed on the agenda and referred correspondence.

ACTIONS

Ayers, Atherstone

D. PUBLIC COMMENTS No comment was received.	ACTIONS & REPORTER
E. APPROVAL OF MINUTES Minutes for the October, 2016 meeting were reviewed and approved as presented.	ACTIONS <i>Atherstone, Bashaw, unanimous approval</i>
F. WILDLIFE MANAGEMENT REPORT Nothing to report.	ACTIONS & REPORTER <i>McKay</i>
G. FISHERY REPORT Phil McKay reported that the salmon population numbers are up – 3,500 for Tuolumne, 13,000 for Stanislaus, and 3,500 for Merced. The increase of fish is due to additional rain and irrigation water in the canals. Due to the amount of rain, the water was released which resulted in fishing rescues due to fish going into the drain ditches.	ACTIONS & REPORTER <i>McKay</i>
H. WILDLIFE ENFORCEMENT REPORT Phil McKay reported that there is a new Game Warden, Jeff Moran, who started January 1 st , formerly from Merced County Sheriff Department. There are now two Game Wardens in Stanislaus County. Phil also reported due to more rain there are more potential discharges from dairies and other agricultural facilities. The rain may dilute the impact of the discharge and fewer of these discharges are occurring. There have been two discharges reported by enforcement recently. Reports of lion sightings have increased in several areas of the county.	REPORTER <i>McKay</i>
I. WOOD DUCK REPORT Ed Ayers contacted the California Waterfowl Association regarding the wood duck program effort and they have agreed to take over this project. Caroline Brady, who is the Waterfowl Program Coordinator, has found a person to handle our area. There are approximately 40 boxes out, and several locations were discussed. A meeting is scheduled for March, and the equipment will be picked up and relocated. The former Fish & Wildlife committee program included a weekly report of efforts by CSU students for about 20 years. In the past, this committee would provide mileage for the students every year which may be revisited in the future. No program resources were available for this last year, but the prospect is good for the next year with the change in administration.	ACTIONS & REPORTER <i>Ayers</i>
J. COMMITTEE FUND PRODECURES A Stanislaus County Sole-Source criteria document was presented for use by the committee when purchasing a specific brand or product with only one vendor available. Due to membership quorum needed, the committee will revisit this topic at the next meeting on April 27th.	ACTIONS & REPORTER <i>Ayers</i>

K. COMMITTEE MEMBERSHIP**ACTIONS & REPORTER**

The Fish & Wildlife Committee now has 7 members and 2 vacancies for a total of 9, and 4 alternates. Members are needed for the vacancies and several districts need representation. The committee bylaws state alternate members are needed in case of absence and the chairman proposed that the bylaws be amended to include 5 alternates. Members will be asked to review and sign the attendance policy, and a note will be included regarding phone attendance for all meeting notices. The chairman recommended the following attendance policy additions:

Ayers

- Regular members must notify the Chairman or Secretary as soon as possible when unable to attend.
- The committee will consist of 5 alternates, and a member may contact any of the alternates to attend in their place prior to the meeting.
- A record of attendance will be kept by the Secretary with notation of any excused absences.
- Any members with 3 unexcused absences can be terminated from the committee without notice.
- Participation by conference phone is available for every meeting with advanced notification to committee chairperson or secretary.

L. OLD BUSINESS AND COMMITTEE COMMENTS**ACTIONS & REPORTER**

There was no old business and no committee comments.

M. ADJOURNMENT & NEXT MEETING**ACTIONS & REPORTER**

There being no further business, the meeting was adjourned.
The next regular meeting of the Fish and Wildlife Committee will be held on:

Thursday, April 27, 2017 at 4:00 p.m.
Conference Room, 2nd Floor
3800 Cornucopia Way, Modesto

Prepared By: Lisa Velarde, Fish & Wildlife Secretary

209-525-6721

Agendas can also be found online at <http://www.stancounty.com/parks/fish-wildlife-committee.shtml> subject to staff's ability to post prior to the meeting. Materials related to an item on this agenda submitted to the Commission after distribution of the agenda packet are available for public inspection during normal business hours at the main office of the Department of Parks and Recreation, 3800 Cornucopia Way, Suite C, Modesto, CA 95358.

CRITERIA FOR SOLE SOURCE/SOLE BRAND

A. FACTORS WHICH MAY BE APPLICABLE

Respond specifically to each question below in preparing a justification.

1. If the product requested is one-of-a-kind item, provide background information on how this was determined.
2. Provide information on why a particular product and/or vendor was chosen.
3. Provide information on other vendors that were contacted and why they can not provide the requested product. Is the selected vendor also the manufacturer?
4. If unique features are required to successfully perform the required function, identify what those features are and why they are required. BE SPECIFIC.
5. Provide information on other models available and why they were rejected. Provide brand name, model, vendor name, date and name of each person contacted.

B. FACTORS WHICH DO NOT APPLY

The following factors should not be included in your sole source/sole brand justification. They will not be considered and only tend to confuse the evaluation process.

1. Personal preference for a product of vendor.
2. Cost, vendor performance, local service, maintenance, and delivery (these are award factors in competitive bidding).
3. Features which exceed the minimum department requirements, e.g. heavy duty.
4. Explanation for the actual need and basic use for the equipment, unless the information relates to a request for "unique features."
5. The statement "no substitutions" will not be considered without completion of the "Justification for Sole Source/Sole Brand" form.

If you need assistance in completing this justification for sole source/sole brand form, please contact the Purchasing office at 525-6319.

COUNTY OF STANISLAUS

JUSTIFICATION FOR SOLE SOURCE/SOLE BRAND

Requisition Number: _____

Dated: _____

Item: _____

- ☐ Sole Source: Item is available from only one vendor. Item is one-of-a-kind item and is not sold through distributors. Manufacturer is a sole distributor.
- ☐ Sole Brand: Various Vendors can supply the specified model & brand, and competitive bids will be solicited for the brand requested only.

Refer to the instructions on the back of this form for required criteria before completion.

JUSTIFICATION: (Attach additional sheets, if necessary)

CERTIFICATION:

I am aware of the requirements set forth in the County's Purchasing Policy & Procedures Manual for competitive bidding and the established criteria for justification for sole source/sole brand purchasing. As an approved department representative, I have gathered technical information and have made a concerted effort to review comparable/equal equipment. This is documented in this justification. I hereby certify as to the validity of the information and feel confident that this justification for sole source/sole brand meets the County's criteria and is accurate.

This form was completed by:

NAME

DEPARTMENTAL
APPROVAL: _____
DIRECTOR (or Authorized Rep.)/Date

DEPT/DIVISION REPRESENTATIVE/PHONE

PROCUREMENT
APPROVAL: _____
PURCHASING AGENT APPROVAL

Stanislaus County Fish and Wildlife Committee Bylaws

Effective: 10/24/2013 APPROVED

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PURPOSE:

DRAFT

The Fish and Wildlife Committee shall review and vote to approve all fund request proposals related to fish and wildlife matters within Stanislaus County and shall provide recommendations to the Board of Supervisors and/or Department of Fish and Wildlife under the provisions set forth in the California Fish and Wildlife Code sections 13100-13104.

MEMBERSHIP:

The Fish and Wildlife Committee will consist of nine members and ~~nine~~ **five** alternate members. Alternate members will attend a meeting in the absence of a Committee member. The Committee shall strive to appoint one resident of each of the five supervisorial districts of the county as a member or alternate member. Members may live or work in the appointed district to be a representative of that district. All members of the Committee shall be residents or work within Stanislaus County.

TERMS AND ELECTION:

The members of the Fish and Wildlife Committee shall be nominated by the chairperson of the Committee and approved by the voting members of the Committee. The chairperson of the Committee shall be elected by the Committee and will serve for a four-year term. The chairperson may appoint to fill a vacancy upon approval of the Committee. Alternate members may fill a vacancy in the Committee. (October—every 4 years)

COMPENSATION:

All of the members of the Fish and Wildlife Committee shall serve without compensation, except that they shall be entitled to be reimbursed for mileage upon approval of the Committee.

MEETINGS:

The Fish and Wildlife Committee shall establish a time and place for regular meetings which shall be held at least once every three months. Special meetings may be held upon the call of the chairperson. The date and location of the regular meetings will be decided at the end of each calendar year. All meetings of the Committee shall be conducted in an orderly and systematic manner to permit the input of interested parties and the resolution of all matters coming before the Committee.

ATTENDANCE AND VACANCY:

The Fish and Wildlife Committee members must attend a minimum of three meetings a year. Alternate members must attend a minimum of two meetings per year. **A record of attendance will be kept by the Secretary with notation of any excused absences.** After a member fails to attend three consecutive meetings, unless excused by the Committee, membership thereon shall be automatically terminated and a successor shall be appointed by the chairperson to serve as a member. Alternate members may serve in the absence of any Committee member. Members shall inform **any of the five** alternate members to attend in their place should they be unable to attend a meeting. **Regular members should notify the Chairman or Secretary as soon as possible when unable to attend. Participation by conference phone is available for every meeting with advanced notification to committee chairperson or secretary.**



Stanislaus County Fish and Wildlife Committee Bylaws

Effective: 10/24/2013 APPROVED

Page 2 of 2

DRAFT

QUORUM:

The majority of members shall constitute a quorum for the transaction of business by the Fish and Wildlife Committee, but a lesser number may adjourn from time to time. Alternate members will stand in the place of a member in their absence to obtain a quorum. All transactions of business will be recorded and filed as permanent record of the Committee.

POWERS AND DUTIES:

The Fish and Wildlife Committee shall have the following powers and duties:

1. It shall have charge of promoting and communicating all matters related to fish and wildlife, including the proposing of concerns or recommendations to the board of supervisors and/or California Department of Fish and Wildlife;
2. It shall promote present and future fish and wildlife preservation in Stanislaus County including coordinating with other public authorities;
3. It shall inventory and review County fish and wildlife habitats and recommend/participate in developing/restoring the identified areas;
4. It shall have the authority to expend from the County Fish and Wildlife Fund up to \$3,000 or to not exceed three percent of the average amount received by the fund during the previous three-year period annually, whichever is greater, excluding any funds carried over from a previous fiscal year, for reasonable administrative costs pursuant to the provisions of the California Fish and Wildlife codes § 13103-j;
5. It shall adopt rules and regulations for its proceedings and for such other purposes as may be helpful in carrying on of a fish and wildlife management program under its supervision;
6. It shall have charge of approving or disapproving fund requests for the purpose of fish and wildlife preservation in accordance to the California Department of Fish and Wildlife codes § 13100 – 13104.

ALLOCATION OF GIFTS

1. Stanislaus County shall annually allocate for fish and wildlife purposes the proceeds from all gifts, legacies, or bequests received for purpose of fish and wildlife management and preservation.
2. All monies allocated to the Stanislaus Fish and Wildlife Fund 1727 shall be expended for the purpose of protection, conservation, propagation, and preservation of fish and wildlife, and for the payment of salaries of persons employed for said work. (*Section 13100-13103, California Fish and Wildlife Code*)

DISCLAIMER

The Stanislaus Fish and Wildlife Bylaws may be subject to change. A change proposition may be submitted at a Stanislaus Fish and Wildlife Committee meeting. The chairperson will approve or deny the proposal for change to be placed on the following meeting agenda for review and approval. Upon placement on the agenda, the Committee will have the period between the current meeting and the next meeting to review and consider the proposition for adoption.



Developed By: Fish and Wildlife Committee
Revisions:

FISH AND WILDLIFE COMMITTEE

Commissioners
Eric Sklar, President
Saint Helena
Jacque Hostler-Carmesin, Vice President
McKinleyville
Anthony C. Williams, Member
Huntington Beach
Russell E. Burns, Member
Napa
Peter S. Silva, Member
El Cajon

STATE OF CALIFORNIA
Edmund G. Brown Jr., Governor

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

Fish and Game Commission



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STANISLAUS COUNTY
ENVIRONMENTAL RESOURCES

February 16, 2017

NOTICE OF PROPOSED EMERGENCY ACTION

Incidental Take of Tricolored Blackbird (*Agelaius tricolor*) During Candidacy Period

Pursuant to the requirements of Government Code Section 11346.1(a)(1), the Fish and Game Commission (Commission) is providing notice of proposed emergency action with regards to the above-entitled emergency regulation.

SUBMISSION OF COMMENTS

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a Notice of the Proposed Emergency Action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code Section 11349.6.

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail or e-mail, relevant to the proposed emergency regulatory action. Written comments submitted via U.S. mail or e-mail must be received at OAL within five days after the Commission submits the emergency regulations to OAL for review.

Please reference submitted comments as regarding "Tricolored Blackbird" addressed to:

Mailing Address: Reference Attorney
Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

California Fish and Game Commission
Attn: Sheri Tiemann
1416 Ninth Street, Room 1320
Sacramento, CA 95814

E-mail Address: staff@oal.ca.gov

fgc@fgc.ca.gov

Fax No.: 916-323-6826

For the status of the Commission's submittal to OAL for review, and the end of the five-day written submittal period, please consult OAL's website at <http://www.oal.ca.gov> under the heading "Emergency Regulations."

**FISH AND GAME COMMISSION
STATEMENT OF EMERGENCY ACTION**

Emergency Action to Add Section 749.9, Title 14, CCR,
Re: Special Order Relating to Incidental Take of Tricolored Blackbird (*Agelaius tricolor*)
During Candidacy Period

I. Introduction

The Fish and Game Commission (Commission) is the decision-making body that implements the California Endangered Species Act (CESA) (Section 2050 et seq. of the Fish and Game Code (FGC)). As described in greater detail below, CESA authorizes the Commission to establish lists of threatened and endangered species, and to add or remove species from those lists if it finds, upon receipt of sufficient scientific information, that the action is warranted. Pursuant to Section 2084, FGC, the Commission may authorize, subject to the terms and conditions it prescribes, the taking of any candidate species while the Department of Fish and Wildlife (Department) and Commission evaluate whether the species should be listed as threatened or endangered under CESA.

On December 10, 2015, the Commission considered the adoption of findings designating tricolored blackbird as a candidate species under CESA. The Commission has prepared this Statement of Emergency Action under the Administrative Procedure Act (APA) (Gov. Code Section 11340 et seq.) in connection with its subsequent adoption of Section 749.9 of Title 14 of the California Code of Regulations (CCR). The Commission's adoption of Section 749.9 as an emergency action under APA is based, in part, on authority provided by FGC sections 399 and 2084. Pursuant to FGC Section 2084, Section 749.9, Title 14, CCR, will authorize incidental "take" of tricolored blackbird during candidacy, subject to certain terms and conditions prescribed by the Commission. (See generally FGC, sections 2080, 2084, 2085 and 86.)

As set forth below, the Commission designated tricolored blackbird as a candidate species under CESA and finds that adopting Section 749.9 pursuant to FGC sections 399 and 2084 constitutes a necessary emergency action by the Commission under APA. In the absence of this emergency regulation, individuals engaging in activities authorized pursuant to Section 749.9 would need to obtain an incidental take permit (ITP) or other authorization from the Department on a project-by-project basis to avoid potential criminal liability for violating CESA. Issuing individual ITPs authorizing incidental take is a complicated and lengthy process, and the Commission finds specifically that it is not feasible for the regulated community to obtain, and the Department to issue, ITPs or other authorizations on a project-by-project basis for the numerous activities that would otherwise be prohibited during the candidacy period for tricolored blackbird.

Historically, tricolored blackbirds nested in native flora in or adjacent to wetlands in the Central Valley and elsewhere across the State of California. Concomitant with the loss

Absent this regulation, enrollment in the NRCS program may decline. Furthermore, farmers may elect to plant lower value crops that do not provide nesting habitat for tricolored blackbird, thereby decreasing available nesting habitat; farmers may harvest their crop early before onset of the nesting season, which would decrease the value of the crop and also decrease available nesting habitat; or farmers may risk harvesting their crop even if tricolored blackbird are present.

Without this emergency regulation, prospective permittees, many of whom already have the necessary entitlements to proceed with their approved projects, would be subject to CESA's take prohibition without, by any reasonable measure, an ability to obtain the necessary state authorization during the candidacy period. As a practical matter, activities that result in the take of tricolored blackbird would be prohibited and could not be implemented pending final action by the Commission on the listing petition, an action whereby tricolored blackbird may or may not be listed as endangered or threatened under CESA. As a result, many projects that are planned or underway that provide great economic and other benefits to the permittees, their employees, their local communities, and the State of California would be postponed during the candidacy period or canceled entirely. The Commission finds this threatened result constitutes an emergency under APA requiring immediate action.

II. Background

On October 8, 2014, the Commission received a petition from the Center for Biological Diversity to take emergency action to list the tricolored blackbird (*Agelaius tricolor*) as endangered under CESA. On December 3, 2014, the Commission listed tricolored blackbird as endangered through emergency regulations that expired on June 30, 2015. In the interim, the Department prepared and submitted to the Commission a petition evaluation as required by CESA. The petition evaluation was received by the Commission at its April 9, 2015, meeting and on June 11, 2015, the Commission made a decision that listing tricolored blackbird as endangered was not warranted. On August 19, 2015, the Center for Biological Diversity submitted a petition that was largely the same as the petition submitted to the Commission on October 8, 2014, to take emergency action to list the tricolored blackbird as an endangered species. The petition included an addendum composed of two new relevant studies on the tricolored blackbird. On December 10, 2015, the Commission adopted findings designating the tricolored blackbird as a candidate species under CESA. On December 8, 2016, the Commission approved the Department's request for a six month extension to complete the status and peer review process for the petition to list tricolored blackbird as an endangered species; this six month extension will further delay final resolution of the tricolored blackbird final listing decision, which cannot occur until after the Commission receives the Department's completed status review pursuant to Fish and Game Code Sections 2074.6 and 2075.

III. Facts Constituting the Need for Emergency Action

APA defines an "emergency" to mean "a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare." (Gov. Code

conserve, or enhance habitat for a species designated as an endangered, threatened, or candidate species under state or federal law.

Without Section 749.9, subsection (a)(1), take of the tricolored blackbird incidental to otherwise lawful activities to protect, restore, conserve, or enhance habitat for a species designated as an endangered, threatened, or candidate species under state or federal law would require authorization by the Department through an individual ITP which is a lengthy, complicated process. Ongoing and planned activities to protect, restore, conserve, or enhance habitat are critical during this candidacy period. The status of many listed species is precarious, and even the slightest delay in initiated or continued implementation of any related conservation actions could adversely affect or otherwise cause further decline of these species. In addition, any further decline in the status of listed species will lead to increased costs to the Department because more resources will be required to get the species to the point where protective measures are no longer necessary. Increased cost will also be shouldered by prospective permittees, who will be charged with funding the mitigation and related monitoring required for the impacts of their project on the species.

Adoption of this emergency regulation would minimize the hardships that would be caused by delays in ongoing or new lawful activities to protect, restore, conserve, and enhance the habitat of state or federally threatened or endangered species (including the tricolored blackbird). The Commission finds that impacts to activities to protect, restore, conserve, or enhance habitat of state or federally threatened or endangered species caused by designating the tricolored blackbird as a candidate species, constitute an emergency under the APA requiring immediate action.

(2) Actions to Monitor Tricolored Blackbird Breeding Colonies.

Section 749.9, subsection (a)(2), authorizes take of tricolored blackbird incidental to efforts to monitor active tricolored blackbird breeding colonies, including entering colonies to perform walking transects. Only trained observers who are approved by the Department will be authorized to engage in such monitoring.

Without Section 749.9, subsection (a)(2), there would not be the necessary monitoring to ensure the protection and immediate conservation of tricolored blackbird during the upcoming harvest of grain fields planted for silage. Department guidance suggests that walking survey transects through a portion of the colony could be used to estimate the nesting stage of breeding colonies and inform decisions that must be made to comply with subsection (a)(3).

(3) Harvest of Grain Crops under a Harvest Management Program to Protect Colonies.

Section 749.9, subsection(a)(3), authorizes take of tricolored blackbird incidental to harvest of grain fields and related agricultural activities where an individual participates in a harvest management program administered by the Natural Resources Conservation Service (NRCS), or harvest management program administered or approved by the Department; the harvest management program shall include the

jeopardize the continued existence of the species. The Commission finds, in this respect, that the regulation subject to this determination will ensure appropriate interim protections for the tricolored blackbird while the Department conducts an 18-month review of the status of the candidate species and the Commission makes its final determination regarding listing under CESA.

IV. Express Finding of Emergency

Pursuant to the authority vested in the Commission by FGC Section 399, and for the reasons set forth above, the Commission expressly finds that the adoption of this regulation is necessary for the immediate conservation, preservation, or protection of fish and wildlife resources, or for the immediate preservation of the public general welfare. The Commission specifically finds that the adoption of this regulation will allow activities that may affect the tricolored blackbird to continue during the candidacy period as long as those activities are conducted in a manner consistent with the protections specified in this regulation.

V. Authority and Reference Citations

Authority: FGC Sections 200, 265, 399 and 2084.

Reference: FGC Sections 200, 265, 399, 2080, 2084 and 2085.

VIII. Informative Digest

The sections below describe laws relating to listing species under CESA, the effect of this emergency regulation, a description of related federal law, and a policy statement overview.

A. Laws Related to the Emergency Regulation - Listing under CESA

1. Petition and Acceptance

FGC Section 2070 requires the Commission to establish a list of endangered species and a list of threatened species. Any interested person may petition the Commission to add a species to the endangered or threatened list by following the requirements in FGC Sections 2072 and 2072.3. If a petition is not factually incomplete and is on the appropriate form, it is forwarded to the Department for evaluation.

FGC Section 2073.5 sets out the process for accepting for further consideration or rejecting a petition to list a species and, if the petition is accepted, a process for actually determining whether listing of the species as threatened or endangered is ultimately warranted. The first step toward petition acceptance involves a 90-day review of the petition by the Department to determine whether the petition contains sufficient information to indicate that the petitioned action may be warranted. The Department prepares a report to the Commission that recommends rejection or acceptance of the petition based on its evaluation.

as threatened or endangered "is warranted" or "is not warranted." If listing is not warranted in the Commission's judgment, take of the former candidate species is no longer prohibited under CESA. (*Id.*, Section 2075.5.)

B. Effect of the Emergency Action

Section 749.9 of Title 14 of the California Code of Regulations would authorize take, as defined by FGC Section 86, of the tricolored blackbird during its candidacy subject to the following terms and conditions:

(a) Take Authorization.

The Commission authorizes the take of tricolored blackbird during the candidacy period subject to the terms and conditions herein.

(1) Actions to Protect, Restore, Conserve or Enhance Habitat.

Take of tricolored blackbird incidental to otherwise lawful activity, where the purpose of the activity is to protect, restore, conserve, or enhance habitat for a species designated as an endangered, threatened, or candidate species under state or federal law.

(2) Actions to Monitor Tricolored blackbird Breeding Colonies.

Take of tricolored blackbird incidental to efforts to monitor active tricolored blackbird breeding colonies, including entering colonies to perform walking transects. Only trained observers who are approved by the Department will be authorized to engage in such monitoring.

(3) Harvest of Grain Crops Under Harvest Management Program to Protect Colonies.

Take of tricolored blackbird incidental to harvest of grain fields and related agricultural activities is authorized where an individual participates in a harvest management program administered by NRCS, or harvest management program administered or approved by the Department; the harvest management program shall include the establishment of a buffer zone and harvest date as described under Topics 1 and 2 in the document "California Department of Fish and Wildlife (Department) Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015" (adopted on March 19, 2015 and available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=99310&inline>). The individual seeking authorization for take incidental to harvest of grain fields and related agricultural activities shall receive written confirmation of participation in the harvest management program and must obtain specific authorization for the timing of harvest and related agricultural activities from NRCS, the Department,

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

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

The Commission has determined that the adoption of Section 749.9 of Title 14 of the California Code of Regulations as an emergency regulation pursuant to FGC Section 2084 will not result in costs or savings in federal funding to the State.

(b) Nondiscretionary Costs/Savings to Local Agencies:

The Commission has determined that adoption of Section 749.9 of Title 14 of the California Code of Regulations as an emergency regulation pursuant to FGC Section 2084 will likely provide cost savings to local agencies in an undetermined amount. In the absence of the emergency regulation, the Department would have to authorize take of the tricolored blackbird on a project-by-project basis, which is both time-consuming and costly to local agencies seeking take authorization. These delays and cancellations would cause great economic harm to persons already lawfully engaged in such activities, their employees, their local communities, and the State of California.

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

The Commission has determined that the adoption of Section 749.9 of Title 14 of the California Code of Regulations as an emergency regulation does not impose a mandate on local agencies or school districts.

(d) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4; Government Code: None.

(e) Effect on Housing Costs:

The Commission has determined that the adoption of Section 749.9 of Title 14 of the California Code of Regulations as an emergency regulation will not result in any cost to any local agency or school district for which Government Code sections 17500 through 17630 require reimbursement and will not affect housing costs.

(f) Costs or Savings to State Agencies

The Commission has determined that adoption of Section 749.9 of Title 14 of the California Code of Regulations as an emergency regulation pursuant to FGC Section 2084 will likely provide cost savings to state agencies in an undetermined amount. In the absence of the emergency regulation, the Department would have to authorize take of the tricolored blackbird on a project-by-project basis, which is both

Regulatory Text

Section 749.9, Title 14, CCR, is added to read:

749.9 Incidental Take of Tricolored Blackbird (*Agelaius tricolor*) During Candidacy Period

This regulation authorizes take as defined by Fish and Game Code Section 86, of tricolored blackbird in the limited circumstances described below, 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 tricolored blackbird during the candidacy period subject to the terms and conditions herein.

(1) Actions to Protect, Restore, Conserve, or Enhance Habitat.

Take of tricolored blackbird incidental to otherwise lawful activity, where the purpose of the activity is to protect, restore, conserve, or enhance habitat for a species designated as an endangered, threatened, or candidate species under state or federal law.

(2) Actions to Monitor Tricolored Blackbird Breeding Colonies.

Take of tricolored blackbird incidental to efforts to monitor active tricolored blackbird breeding colonies, including entering colonies to perform walking transects. Only trained observers who are approved by the department will be authorized to engage in such monitoring.

(3) Harvest of Grain Crops Under Harvest Management Program to Protect Colonies.

Take of tricolored blackbird incidental to harvest of grain fields and related agricultural activities is authorized where an individual participates in a harvest management program administered by the Natural Resources Conservation Service (NRCS), or harvest management program administered or approved by the department; the harvest management program shall include the establishment of a buffer zone and harvest date as described under Topics 1 and 2 in the document "California Department of Fish and Wildlife (Department) Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015" (adopted on March 19, 2015 and available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=99310&inline>).
The individual seeking authorization for take incidental to harvest of grain fields and related agricultural activities shall receive written confirmation of participation in the harvest management program and must obtain specific authorization for the timing of harvest and related agricultural activities from NRCS, the

Commissioners
Eric Sklar, President
Saint Helena
Jacque Hostler-Carmesin, Vice President
McKinleyville
Anthony C. Williams, Member
Huntington Beach
Russell E. Burns, Member
Napa
Peter S. Silva, Member
El Cajon

STATE OF CALIFORNIA
Edmund G. Brown Jr., Governor

Valerie Termini, 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

February 22, 2017

TO ALL INTERESTED AND AFFECTED PARTIES:

This is to provide you with a Notice of Findings regarding the petition to list Lassics lupine as endangered under the California Endangered Species Act. This notice will be published in the California Regulatory Notice Register on February 24, 2017.

Sincerely,

Sheri Tiemann
Associate Governmental Program Analyst

Attachment

Commissioners
Eric Sklar, President
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Jacque Hostler-Carmesin, Vice President
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CALIFORNIA FISH AND GAME COMMISSION NOTICE OF FINDINGS

Lassics lupine (*Lupinus constancei*)

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 2074.2 of the Fish and Game Code, the California Fish and Game Commission (Commission), at its February 8, 2017, meeting in Rohnert Park, California, accepted for consideration the petition submitted to list Lassics lupine as an endangered species. Pursuant to subdivision (e)(2) of Section 2074.2 of the Fish and Game Code, the Commission determined that the amount of information contained in the petition, when considered in light of the Department of Fish and Wildlife's (Department) written report, the comments received, and the remainder of the administrative record, would lead a reasonable person to conclude there is a substantial possibility the requested listing could occur.

Based on that finding and the acceptance of the petition, the Commission is also providing notice that the aforementioned species is a candidate species as defined by Section 2068 of the Fish and Game Code.

Within one year of the date of publication of this notice of findings, the Department shall submit a written report, pursuant to Section 2074.6 of the Fish and Game Code, indicating whether the petitioned action is warranted. Copies of the petition, as well as minutes of the February 8, 2017 Commission meeting, are on file and available for public review from the agency representative, Valerie Termini, Executive Director, Fish and Game Commission, 1416 Ninth Street, Room 1320, Sacramento, California 95814, phone (916) 653-4899. Written comments or data related to the petitioned action should be directed to the Commission at the aforementioned address.

Fish and Game Commission

February 14, 2017

Valerie Termini
Executive Director

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

February 22, 2017

TO ALL INTERESTED AND AFFECTED PARTIES:

This is to provide you with a Notice of Findings regarding the petition to list flat-tailed horned lizard as threatened or endangered under the California Endangered Species Act. This notice will be published in the California Regulatory Notice Register on February 24, 2017.

Sincerely,

Sheri Tiemann
Associate Governmental Program Analyst

Attachment

NOTICE OF FINDINGS
Flat-Tailed Horned Lizard
(*Phrynosoma mcallii*)

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), at its December 8, 2016 meeting in San Diego, California, made a finding pursuant to Fish and Game Code Section 2075.5, that the petitioned action to add the flat-tailed horned lizard (*Phrynosoma mcallii*) to the list of threatened or endangered species under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.) is not warranted. (See also Cal. Code Regs., tit. 14, § 670.1, subd. (i)(1).)

NOTICE IS ALSO GIVEN that, at its February 8, 2017 meeting in Rohnert Park, California, the Commission adopted the following findings outlining the reasons for its rejection of the petition.

I. BACKGROUND AND PROCEDURAL HISTORY

A. Petition History

The Center for Biological Diversity (Petitioners) submitted a petition (Petition) to the Commission on June 10, 2014 to list the flat-tailed horned lizard (*Phrynosoma mcallii*) as an endangered species pursuant to CESA ("A Petition to List the Flat-tailed Horned Lizard (*Phrynosoma mcallii*) as Endangered under the California Endangered Species Act"). The Commission transmitted the Petition to the Department pursuant to Fish and Game Code Section 2073 on June 12, 2014, and published formal notice of receipt on July 11, 2014 (Cal. Reg. Notice Register 2014, No. 28-Z, p. 1238).

The Department evaluated the Petition, using the information in that document and other relevant information available at that time, and found that the scientific information presented in the Petition was sufficient to indicate that the petitioned action may be warranted. On September 30, 2014, the Department submitted to the Commission its evaluation of the Petition, "Evaluation of the Petition from the Center for Biological Diversity to List the Flat-Tailed Horned Lizard (*Phrynosoma mcallii*) as Endangered Under the California Endangered Species Act" (Petition Evaluation). The Department recommended that the Commission accept the Petition pursuant to Fish and Game Code Section 2073.5.

On February 12, 2015, at its meeting in Sacramento, California, the Commission considered the Petition, the Department's Petition Evaluation, and received public comment. The Commission determined there was sufficient information in the Petition to indicate that the petitioned action may be warranted and accepted for consideration the

Petition. The flat-tailed horned lizard was designated a candidate species on March 6, 2015 (Cal. Reg. Notice Register 2015, No. 10-Z, p. 410).

The Department promptly notified affected parties by issuing a press release, posting notice on the Department's website, and sending targeted letters to stakeholder groups, including scientific researchers holding scientific collecting permits for flat-tailed horned lizard. (Fish & Game Code, § 2074.4).

Consistent with Fish and Game Code Section 2074.6 and its implementing regulations, the Department commenced a twelve-month status review of the flat-tailed horned lizard following published notice of its designation as a candidate species under CESA. As an integral part of that effort, the Department solicited data, comments, and other information from interested members of the public and the scientific and academic communities. The Department received fourteen pieces of correspondence during the public notice period ending September 14, 2015. Comments included those from members of the public without stated affiliation as well as comments on behalf of state and federal agencies, local governments, and special interest groups. Some comments provided additional scientific papers, other reports, GIS files, and photographs. At its scheduled public meeting on February 11, 2016, in Sacramento, California, the Commission granted the Department a six-month extension to facilitate external peer review.

On June 22, 2016, the Department submitted a preliminary draft of its status review for independent scientific peer review by a number of individuals acknowledged to be experts on flat-tailed horned lizard, possessing the knowledge and expertise to critique the scientific validity of the report. (Fish & G. Code, § 2074.8; Cal. Code Regs., tit. 14, § 670.1, subd. (f)(2).) On September 30, 2016, the Department submitted its final "Report to the Fish and Game Commission a Status Review of the Flat-tailed Horned Lizard (*Phrynosoma mcallii*) in California" (Status Review). Based on its Status Review and the best available science, the Department recommended to the Commission that designating flat-tailed horned lizard as threatened or endangered under CESA is not warranted (Fish & G. Code, § 2074.6; Cal. Code Regs., tit. 14, § 670.1, subd. (f).). Following receipt, the Commission made the Department's Status Review available to the public, inviting further review and input. (Cal. Code Regs., tit. 14, § 670.1, subd. (g).)

On December 8, 2016, at its meeting in San Diego, California, the Commission received public comment, accepted additional information from Petitioners and the public, and considered final action regarding the Petition to designate flat-tailed horned lizard as a threatened or endangered species under CESA. (Fish & G. Code, § 2075.5; Cal. Code Regs., tit. 14, § 670.1, subd. (i).) After receiving public comment, the Commission closed the administrative record of proceedings for the Petition. (Fish & G. Code,

§ 2075.5, subd. (a).) The Commission considered the petition, further information submitted by Petitioners, public comment, the Department's 2014 Petition Evaluation, the Department's 2016 Status Review, and other information included in the Commission's administrative record of proceedings. Following public comment and deliberation, the Commission determined, based on the best available science, that designating the flat-tailed horned lizard as a threatened or endangered species under CESA is not warranted. (Fish & G. Code, § 2075.5, subd. (e)(1); Cal. Code Regs., tit. 14, § 670.1, subd. (i)(2)). The Commission directed its staff, in coordination with the Department, to prepare findings of fact consistent with the Commission's determination and to present those findings for consideration and ratification at the Commission's February 8, 2017 meeting in Rohnert Park, California.

B. Species Description

Flat-tailed horned lizards are typical of other horned lizards in the genus *Phrynosoma*, which are characterized by an ant-rich diet, squat dorsoventrally flattened bodies, cranial horns, body fringe, cryptic coloration, reluctance to run when approached, and a long active period. Flat-tailed horned lizards have a relatively low reproductive output compared to other horned lizards and rarely live beyond three years. Ants, primarily harvester ants, comprise 97% of their diet, higher than any other species of horned lizard, but they also can opportunistically consume large quantities of smaller ants and other invertebrates. They have relatively long active seasons compared to other horned lizards and large home ranges for their size.

The flat-tailed horned lizard has the smallest range of any horned lizard found within the United States and has among the smallest distributions of all horned lizards. The species is restricted to appropriate substrates within southeastern California, the extreme southwestern portion of Arizona, and the adjacent portions of northeastern Baja California and northwestern Sonora, Mexico. Approximately one-quarter of the species' range is within California, where it is confined to lower elevations throughout much of the Salton Trough, in sections of eastern San Diego County, central Riverside County, and western and southern Imperial County.

High quality flat-tailed horned lizard habitat is characterized as areas of low relief with finely packed sandy soils that are covered with loose, fine, wind-blown sands. Favorable habitat is typically associated with the creosote bush shrub community, especially a creosote-bursage assemblage. Flat-tailed horned lizards have been recorded in a broad range of habitats in California, including sandy flats and hills, badlands, salt flats, and gravelly soils. They have also been found on rocky slopes at lower elevations, along the vegetated edges of active sand dunes, on stabilized sand fields, and, less frequently, within active dunes themselves. The species has also been observed in low densities using fallowed agricultural fields dominated by non-native weedy species.

Flat-tailed horned lizards have lost a substantial amount of habitat within their historical range in California due primarily to flooding of the Salton Sea in the early 1900s and urban and agricultural development in the Imperial, Coachella, and Borrego Valleys. The exact amount of habitat loss is difficult to determine as the species' current and historic range boundaries are not well-understood, a common problem for cryptic species. However, habitat loss has been estimated at approximately 60% in Imperial County, greater than 90% in Riverside County, and 10% in San Diego County.

Historically flat-tailed horned lizards were considered rare and uncommon in many places, while simultaneously being considered the most common reptile in others, the former potentially owing to the species' cryptic coloration and low detectability. Loss of habitat and accounts of localized declines led to concern for the status of flat-tailed horned lizards in the 1970s. Rangewide surveys in California were conducted in the late 1970s to determine the species' distribution and abundance, and population monitoring has occurred regularly since then. These surveys have revealed that flat-tailed horned lizard abundance can fluctuate significantly over short periods of time, most often in response to precipitation and commensurate availability of resources. The species' low detectability and variable annual abundance makes identifying population declines challenging; however, the data available suggest the species is still relatively widespread, and significant, ongoing declines in abundance have not been reported over much of the species' range. The exception is the Coachella Valley, where the species has been extirpated from many of the locations it once inhabited as recently as the 1980s, and the remaining populations are small and isolated.

C. Current Regulatory Status

The flat-tailed horned lizard is designated as a Priority 2 Species of Special Concern by the Department and as Sensitive Species by the Bureau of Land Management (BLM). The species was previously petitioned for listing as endangered under the California Endangered Species Act (CESA) in 1988. In 1989, the Department recommended the Commission list the flat-tailed horned lizard as a threatened species under CESA, but the Commission voted against listing, citing insufficient scientific information on population densities. In 1993, the United States Fish and Wildlife Service (USFWS) published a proposed rule to list the flat-tailed horned lizard as threatened under the federal Endangered Species Act (ESA). In 1997, multiple State and federal agencies entered into an Interagency Conservation Agreement to implement a Rangewide Management Strategy (RMS) aimed at maintaining self-sustaining populations of flat-tailed horned lizards in perpetuity. That year, the USFWS withdrew its proposed listing rule. Subsequently, multiple court decisions led to the USFWS re-instating the proposed rule and re-evaluating the available data. After each reconsideration of the best science available, the agency determined that listing under the ESA was not warranted in 2003,

2006, and most recently in 2011. The flat-tailed horned lizard is a covered species under the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP).

Approximately 77% of the flat-tailed horned lizard's range in California is managed by public entities, and approximately 99% of those public lands are managed by agencies that implement the flat-tailed horned lizard RMS. Approximately 60% of the species' range in California is managed by the BLM. Four flat-tailed horned lizard Management Areas, comprising approximately 21% of the species' range in California, and one Research Area (5%) have been designated in California under the RMS. There are several conservation measures in the RMS, including population monitoring and research conducted in these areas. Additionally, within the Management Areas, there is a 1% cap on permanent habitat disturbance and a requirement for mitigation in the form of financial compensation for lost habitat. These funds are primarily used to acquire private inholdings within the Management Areas to ensure there are large areas of relatively intact habitat available for the species.

II. STATUTORY AND LEGAL FRAMEWORK

The Commission has prepared these findings as part of its final action under CESA regarding the Petition to designate the flat-tailed horned lizard as a threatened or endangered species under CESA. As set forth above, the Commission's determination that listing flat-tailed horned lizard is not warranted marks the end of formal administrative proceedings under CESA. (See generally Fish & G. Code, § 2070 et seq.; Cal. Code Regs., tit. 14, § 670.1.) 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 flat-tailed horned lizard began in the present case with Petitioners' submittal of their Petition to the Commission in June 10, 2014 (Cal. Reg. Notice Register 2014, No. 28-Z, p. 1238). The regulatory process that ensued is described above in some detail, along with related references to the Fish and Game Code 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.4th 105, 114-116;
- *California Forestry Association v. California Fish and Game Commission* (2007) 156 Cal.App.4th 1535, 1541-1542;
- *Center for Biological Diversity v. California Fish and Game Commission* (2008) 166 Cal.App.4th 597, 600; and
- *Natural Resources Defense Council v. California Fish and Game Commission* (1994) 28 Cal.App.4th 1104, 1111-1116.

The “is not warranted” determination at issue here for the flat-tailed horned lizard stems from Commission obligations established by Fish and Game Code section 2075.5(e). 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: whether the petitioned action is warranted or is not warranted. Here with respect to the flat-tailed horned lizard, the Commission made the finding under Section 2075.5(e) that the petitioned action is not warranted.

The Commission was guided in making this determination by various 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.)

As established by published appellate case law in California, the term “range” for purposes of CESA means the range of the species within California (*California Forestry Association v. California Fish and Game Commission, supra*, 156 Cal. App.4th at p. 1540, 1549-1551.).

The Commission was also guided in making its determination regarding the flat-tailed horned lizard by Title 14, Section 670.1, subdivision (i)(1)(A), of the California Code of Regulations. This provision provides, in pertinent part, that a species shall be listed as endangered or threatened under CESA if the Commission determines that the continued existence of the species 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 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. Yet, the Commission made its determination regarding flat-tailed horned lizard mindful of this policy direction, acknowledging that “[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 12-month status review of the candidate species 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 BASIS FOR THE COMMISSION’S FINDINGS

The factual and scientific bases for the Commission’s finding that designating the flat-tailed horned lizard as a threatened or endangered species under CESA is not warranted are set forth in detail in the Commission’s administrative record of proceedings. The evidence in the administrative record in support of the Commission’s determination includes, but is not limited to, the Department’s 2014 Petition Evaluation and 2016 Status Review, and other information specifically presented to the Commission and otherwise included in the Commission’s administrative record as it exists up to and including the Commission meeting in San Diego, California on December 8, 2016. The administrative record also includes these findings.

The Commission finds the substantial evidence highlighted in the preceding paragraph, along with other evidence in the administrative record, supports the Commission’s determination that the continued existence of the flat-tailed horned lizard in the State of California is not in serious danger of becoming extinct or threatened by on or a 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.

The Commission also finds that the same evidence constitutes sufficient scientific information to establish that designating the flat-tailed horned lizard as a threatened or endangered species under CESA is not warranted. The Commission finds in this respect that the flat-tailed horned lizard is not in serious danger of becoming extinct throughout all, or a significant portion, of its range in California. Similarly, the Commission finds that the flat-tailed horned lizard is not presently threatened and it is unlikely to become an endangered species in the foreseeable future in the absence of special protection and management efforts required by CESA.

The following Commission findings highlight in more detail some of the scientific and factual information and other evidence in the administrative record of proceedings that support the Commission's determination that designating the flat-tailed horned lizard as a threatened or endangered species under CESA is not warranted:

1. Flat-tailed lizards are sometimes difficult to detect due to the species' cryptic coloration and low detectability. Accounts of localized declines led to initial concerns on the status of the species in the 1970s, and range wide surveys in California were conducted to determine the species' distribution and abundance. Population monitoring since then has shown that flat-tailed horned lizard abundance can fluctuate significantly over short periods of time, but data suggests the species is still relatively widespread and significant, ongoing declines in abundance have not been reported over the majority of the species' range.
2. Although expansion of urban and renewable energy development is expected to continue within the flat-tailed horned lizard's range, the Desert Renewable Energy Conservation Plan (the BLM Land Use Plan Amendment) is expected to reduce impacts to the species by focusing most development on or near existing disturbed areas and existing transmission lines as opposed to relatively undisturbed open desert. Approximately 60% of the species' range in California is managed by the BLM. Existing conservation measures under the RMS put a 1% cap on permanent habitat disturbance and include a requirement for mitigation in the form of financial compensation for lost habitat.
3. The areas available for mineral extraction in Imperial County is largely depleted, and oil, gas, and hold exploration have proved unprofitable.

4. Although off-highway vehicle (OHV) activity can degrade habitat quality and directly kill flat-tailed horned lizards, there is little evidence of significant population declines as a result of OHV activity.
5. Illegal activities along the California-Mexico border and the operations of U.S. Customs and Border Protection may degrade flat-tailed horned lizard habitat near the border and may fragment populations. However, increased border security can also benefit the species by reducing the amount of illegal border crossings and associated trash and cross-country pursuits.
6. While roads may pose a localized threat to flat-tailed horned lizards through habitat fragmentation and edge effects associated with road mortality, the severity of the threat depends on the vulnerability of the flat-tailed horned lizard population and the surrounding land use. Areas where this is likely a problem are relatively concentrated within the Coachella and Imperial Valleys, and this area comprises only a small fraction of the flat-tailed horned lizard's range.
7. Invasive species like Sahara mustard may be playing a role in flat-tailed horned lizard declines in certain portions of the species' range; however the degree to which invasive plants are having widespread population-level impacts is unknown.
8. Because flat-tailed horned lizards live in a highly arid environment and have evolved with drought, large and healthy populations are expected to rebound.

IV. ADDITIONAL CONSIDERATIONS INFORMING THE COMMISSION'S FINAL DETERMINATION

The Commission's determination that designating flat-tailed horned lizard as a threatened or endangered species under CESA is not warranted; it is informed by various additional considerations. In general, the Fish and Game Code contemplates a roughly twelve-month long CESA listing process before the Commission, including multiple opportunities for public and Department review and input and peer review (See generally Fish & G. Code, § 2070 et seq.; Cal. Code Regs., tit. 14, § 670.1.). From the initial receipt of the Petition in June 2014 through the Commission's decision on December 8, 2016, that listing is not warranted, the Department and the Commission received numerous comments and other significant public input regarding the status of flat-tailed horned lizard from a biological and scientific standpoint and with respect to the petitioned action under CESA. The Commission, as highlighted below, was informed by and considered all of these issues, among others, in making its final determination that designating flat-tailed horned lizard as a threatened or endangered species under CESA is not warranted (Fish & G. Code, § 2075.5, subd. (e)(1); Cal. Code Regs., tit. 14, § 670.1, subd. (i)(2).).

V. SCIENTIFIC DETERMINATIONS REGARDING THE STATUS OF THE FLAT-TAILED HORNED LIZARD

CESA defines an endangered species as one “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.). CESA defines a threatened species as one “that, although not presently threatened with extinction, is likely to become an endangered species in the foreseeable future in the absence of special protection and management efforts required by [CESA]” (Id., § 2067).

Pursuant to CESA’s implementing regulations, a “species shall be listed as endangered or threatened ... if the Commission determines that its continued existence is in serious danger or is threatened by anyone 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” (Cal. Code Regs., tit. 14, § 670.1, subd. (i)(1)(A).).

A. Present or Threatened Modification or Destruction of Habitat

- Impacts from agricultural development are fairly concentrated and are not expected to increase significantly in the future. Threats from urban development impact a relatively small area compared to the species’ range. Agricultural and urban development are not considered a significant threat to the flat-tailed horned lizard at this time.
- Renewable energy development is expected to continue within the flat-tailed horned lizard’s range, but current development plans are expected to focus impacts on or near existing disturbed areas and existing transmission lines as opposed to relatively undisturbed open desert. Renewable energy development does not appear to pose a threat to flat-tailed horned lizard at this time.
- While there is potential for mining activities with the flat-tailed horned lizard’s range, the area available for mineral extraction are largely depleted or have proven unprofitable. Therefore, the threat to flat-tailed horned lizard posed by mining is considered relatively small.
- It is reasonable to expect that where off-road vehicle use substantially reduces native shrubs or prey, it could pose a threat to flat-tailed horned lizard. However, few focused studies have found a demonstrable connection between OHV and population –level adverse impacts on flat-tailed horned lizards. OHV activated does not seem to pose a threat to flat-tailed horned lizards at this time.
- Although activities on the United States-Mexican border likely cause adverse effects from road mortality and potentially increased avian predation, as well as

mortality and habitat degradation associated with cross-country travel by Border Patrol agents, there are also benefits to increased security such as reduced habitat damage from illegal border crossings. Overall, border activities do not pose a serious threat to flat-tailed horned lizards at this time.

- Flat-tailed horned lizard habitat on military land is protected through the Sikes Act and managed in a way to conserve the species, so military activities do not appear to pose a significant threat to the species at present.
- Based on the best scientific information available, the Commission finds that the continued existence of the flat-tailed horned lizard is not in serious danger or threatened by present or threatened modification or destruction of habitat.

B. Overexploitation

- Collecting for the pet trade does not appear to be a current threat, and horned lizards are notably difficult to keep alive in captivity due to their specialized diet.
- Research activities take place over a very small portion of the species' range.
- Based on the best scientific information available, the Commission finds that the continued existence of the flat-tailed horned lizard is not in serious danger or threatened by overexploitation.

C. Predation

- To the extent increases in predation exist, they are likely concentrated to development within the Imperial, Coachella, and Borrego Valleys, an area which comprises a small fraction of the flat-tailed horned lizard's range.
- Based on the best scientific information available, the Commission finds that the continued existence of the flat-tailed horned lizard is not in serious danger or threatened by predation.

D. Competition

- There is no evidence to suggest that competition threatens Flat-tailed Horned Lizards.
- Based on the best scientific information available, the Commission finds that the continued existence of the flat-tailed horned lizard is not in serious danger or threatened by competition.

E. Disease

- There is no evidence to suggest that disease threatens Flat-tailed Horned Lizards.

- Based on the best scientific information available, the Commission finds that the continued existence of the flat-tailed horned lizard is not in serious danger or threatened by disease.

F. Other Natural Occurrences or Human-Related Activities

- While habitat fragmentation, edge effects, and small population sizes may pose threats to flat-tailed horned lizards in some portions of their California range, the degree to which this adversely impacts the species as a whole is uncertain. Outside of the Coachella Valley, there are large expanses of relatively intact habitat. As long as the RMS is implemented, a substantial portion of the species' range in California will remain relatively undisturbed in that area.
- Major roads, canals, and railroads may cause habitat fragmentation and/or edge effects. Additionally, major roads causing mortality could lead to a population sink, while minor lightly traveled roads and OHV trails likely contribute to a lesser degree. However, the degree to which flat-tailed horned lizards are affected by these features is largely unknown throughout most of the species' range.
- There is no evidence to suggest that herbicides, pesticides, or other contaminants pose a significant threat to flat-tailed horned lizard.
- Although invasive species like Sahara mustard appear to be playing a role in localized declines of flat-tailed horned lizard, the degree to which invasive plants are having widespread population-level impacts is unknown. Additionally, populations in management areas appear stable over time. Non-native ants do not appear to pose a threat to flat-tailed horned lizards.
- While small, isolated populations of flat-tailed horned lizards may be threatened by drought, on the whole the species evolved with drought and should rebound.
- The potential threat from climate change is uncertain and the degree to which it will threaten the continued survival of the species is unknown.
- Based on the best scientific information available, the Commission finds that the continued existence of the flat-tailed horned lizard is not in serious danger or threatened by other natural occurrences or human-related activities.

G. Summary of Key Findings

Based on the criteria described above, the best scientific information available to the Commission indicates that the flat-tailed horned lizard is not currently in serious danger of becoming extinct in California within the next few decades, nor in the foreseeable future in the absence of special protection and management under CESA.

The current size of the population is uncertain, and any recent trends showing a decline in population size may be a normal fluctuation in response to drought or other

environmental conditions. Studies underway may provide additional insights into the status of the flat-tailed horned lizard in California. However, at this time the Department does not feel the population levels are such that would require listing.

The Department evaluated other factors, such as habitat loss, degradation, and fragmentation associated with urban and renewable energy development; mining; off-highway vehicle use and border activities; habitat fragmentation and mortality associated with heavily traveled roads; human subsidized predation; invasive species; and climate change. Based on the Department's analysis, none of these factors is considered to be a serious threat to the continued existence of the flat-tailed horned lizard. Additionally, overexploitation, competition, and disease are not considered threats to the species at this time.

Based on the best scientific information available, the Department concluded the continued existence of the flat-tailed horned lizard is not in serious danger or threatened. Further, the Department generated the following recommendations to prioritize conservation, research, regulation and monitoring activities.

- Revisit flat-tailed horned lizard status in three to five years. Several efforts are underway that should provide additional insights into the status of flat-tailed horned lizard in California. Additionally, the next three to five years will likely reveal whether the species can rebound from prolonged drought in light of the current stresses it is facing. If the data indicate a change in status is warranted, the Department should prepare appropriate document to address the newly acquired data.
- Increase Department participation in the RMS implementation through identifying outside funding opportunities and providing staff to assist with population monitoring, habitat restoration, education and outreach, and international coordination and collaboration.
- Work on multiple fronts to improve population and habitat monitoring
 - Encourage agencies to dedicate funding sufficient to fully implement the occupancy and demography survey protocols on all RMS lands.
 - Expand monitoring to sites outside RMS lands to obtain a more complete range-wide status assessment.
 - Collect and analyze data on environmental covariates, such as habitat quality, predators and prey, and anthropogenic threats so that an informed adaptive management strategy can be developed if population declines cannot be attributed primarily to weather
- Actions to increase habitat quality and quantity:
 - Restore areas degraded by OHVs, mining, or agriculture. Additionally, increased patrols of areas and cite illegal cross-country OHV or other

public trespass in closed or limited use areas to minimize habitat degradation and mortality.

- Decommission unnecessary powerlines or other anthropogenic structures that provide perches for avian predators, and remove or trim hedgerows along roads that attract avian predators and investigate perch deterrents
- Clean up illegally dumped material as quickly as possible
- Remove or reduce the abundance and extent of non-native grasses, Sahara mustard, and other invasive species, particularly highly imperiled areas like the Coachella Valley
- In order to reduce habitat fragmentation and its effects, investigate how barriers may be limiting gene flow across the species' range. This information can be used to protect important habitat linkages and movement corridors such as Yuha Basin to West Mesa and East Mesa to Dos Palmas. Broken linkages can be improved by creating effective road and canal crossings
- Continue to purchase private inholdings within the larger public land matrix.
- Encourage the siting of renewable energy development outside of the desert completely, or, if within the flat-tailed horned lizard's range, ensure it is located on compatible lands. Bury transmission whenever possible.
- Further investigate the impacts and potential uses of translocation, which is currently not well understood to develop more well informed translocation plans. Results of translocations should be monitored to determine if the reintroduction were successful.

VI. FINAL DETERMINATION BY THE COMMISSION

The Commission has weighed and evaluated all information and inferences for and against designating flat-tailed horned lizard as a threatened or endangered species under CESA. This information includes scientific and other general evidence in the Petition, the Department's 2014 Petition Evaluation, the Department's 2016 peer-reviewed Status Review, and the Department's related recommendations based on the best available science, written and oral comments received from the public and the scientific community, and other evidence included in the Commission's administrative record of proceedings. Based on the evidence in the administrative record, the Commission has determined that the best scientific information available indicates that the continued existence of flat-tailed horned lizard in California is not in serious danger or threatened in the foreseeable future by present or threatened modifications or destruction of flat-tailed horned lizard habitat, overexploitation, predation, competition, disease, or other natural occurrences or human-related activities (See generally Fish & G. Code, §§ 2062, 2067; Cal. Code Regs., tit. 14, § 670.1, subd. (i)(1)(A).). The Commission finds, for the same reason, that there is not sufficient scientific information at this time to indicate that the petitioned action is warranted (Fish & G. Code, §§ 2070,

2075.5.). The Commission finds that designating flat-tailed horned lizard as a threatened or endangered species under CESA is not warranted and that, with adoption of these findings, for purposes of its legal status under CESA shall revert to its status prior to the filing of the Petition (Fish & G. Code, § 2075.5, subd. (e)(1); Cal. Code Regs., tit. 14, § 670.1, subd., (i)(2).)

Valerie Termini
Executive Director
Fish and Game Commission
Dated: February 14, 2017

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Eric Sklar, President
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Jacque Hostler-Carmesin, Vice President
McKinleyville
Anthony C. Williams, Member
Huntington Beach
Russell Burns, Member
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Peter Silva, Member
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Edmund G. Brown Jr., Governor

Valerie Termini, Executive Director
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Fish and Game Commission



Wildlife Heritage and Conservation
Since 1870

2017 FEB 28 A 11:07

February 44, 2017

CORRECTED February 23, 2017

TO ALL AFFECTED AND INTERESTED PARTIES:

Re: Use of Dogs for Pursuit/Take of Mammals, Section 265, Title 14, California Code of Regulations; published in California Notice Register, November 18, 2016, Notice File No. Z2016-1108-06, Register 2016, No. 47-Z.

Notice was given that any person interested may present statements, orally or in writing, relevant to this rulemaking at an adoption hearing which was originally scheduled on February 8, 2017, at 8:00 a.m. At this meeting the Commission voted to agendize two additional public meetings.

NOTICE IS NOW GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be teleconference originating in the Fish and Game Commission conference room, 1416 Ninth Street, Suite 1320, Sacramento, California, on Wednesday, March 15, 2017, at 8:30 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 in Airtel Plaza Hotel, 7277 Valjean Ave., Van Nuys, California, on Wednesday, April 26, 2017, 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 5:00 p.m. on April 12, 2017 at the address given below, or by email to FGC@fgc.ca.gov. Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on April 21, 2017. All comments must be received no later than April 26, 2017, at the hearing in Van Nuys, California. If you would like copies of any modifications to this proposal, please include your name and mailing address.

Additional information and all associated documents may be found on the Fish and Game Commission website at http://www.fgc.ca.gov/regulations/2016/index.aspx#265_2.

Sincerely,



Jon D. Snellstrom

Associate Governmental Program Analyst

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



BOARD OF SUPERVISORS

2017 FEB 28 A 11:07

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February 14, 2017

TO ALL AFFECTED AND INTERESTED PARTIES:

Re: Use of Dogs for Pursuit/Take of Mammals, Section 265, Title 14, California Code of Regulations; published in California Notice Register, November 18, 2016, Notice File No. Z2016-1108-06, Register 2016, No. 47-Z.

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NOTICE IS NOW GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be teleconference originating in the Fish and Game Commission conference room, 1416 Ninth Street, Suite 1320, Sacramento, California, on Thursday, April 13, 2017, at 8:30 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 in Airtel Plaza Hotel, 7277 Valjean Ave., Van Nuys, California, on Wednesday, April 26, 2017, 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 5:00 p.m. on April 12, 2017 at the address given below, or by email to FGC@fgc.ca.gov. Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on April 21, 2017. All comments must be received no later than April 26, 2017, at the hearing in Van Nuys, California. If you would like copies of any modifications to this proposal, please include your name and mailing address.

Additional information and all associated documents may be found on the Fish and Game Commission website at http://www.fgc.ca.gov/regulations/2016/index.aspx#265_2.

Sincerely,


 Jon D. Snellstrom
 Associate Governmental Program Analyst

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Fish and Game Commission



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2017 APR -6 A 10:55
BOARD OF SUPERVISORS

April 7, 2017

This is to provide you with a copy of the notice of proposed regulatory action relative to Amending section 300, Title 14, California Code of Regulations, relating to upland game bird regulations, which is published in the California Regulatory Notice Register on April 7, 2017.

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 <http://www.fgc.ca.gov/regulations/2017/index.aspx>.

Scott Gardner, Senior Environmental Scientist, Department of Fish and Wildlife at (916) 801-6257, has been designated to respond to questions on the substance of the proposed regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon D. Snellstrom", written over a large, loopy circular flourish.

Jon D. Snellstrom
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 Sections: 200, 203, 265 and 355 of the Fish and Game Code and to implement, interpret or make specific Sections 200, 203, 203.1, 215, 220, 265, 355 and 356 of said Code, proposes to amend Section 300, Title 14, California Code of Regulations, relating to Upland Game Bird regulations.

Informative Digest/Policy Statement Overview

Present Regulations

The regulations in Section 300, Title 14, California Code of Regulations (CCR), provide general hunting seasons for taking resident and migratory upland game birds.

Proposed Regulations

The Department is recommending the following regulation changes:

Amend subsection 300(a)(1)(D)4.: Adjust the annual number of General Season sage grouse hunting permits by zone for the 2017-18 season.

Additionally, non-substantive changes to the authority and reference sections, are the result of changes to the Fish and Game Code by SB 1473 which took effect on January 1, 2017.

Non-monetary Benefits to the Public

The Commission anticipates benefits to the health and welfare of California residents through the sustainable management of sage grouse populations, The Commission does not anticipate non-monetary benefits to worker safety, the prevention of discrimination, the promotion of fairness or social equity and the increase in openness and transparency in business and government.

Benefits of the 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.

Consistency and Compatibility with State 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 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 in Airtel Plaza Hotel, 7277 Valjean Ave., Van Nuys, California, on Wednesday, April 26, 2017, at 8:00 a.m., or as soon thereafter as the matter may be heard., 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 teleconference originating in the Howonquet Hall Community Center, 101 Indian Court, Smith River, California, on Wednesday, June 21, 2017, 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 5:00 p.m. on June 8, 2017 at the address given below, or by email to FGC@fgc.ca.gov. Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on June 16, 2017. All comments must be received no later than June 21, 2017, at the hearing in Smith River, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

Availability of Documents

The Initial Statement of Reasons, text of the regulations, as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Valerie Termini, 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 Valerie Termini or Jon Snellstrom at the preceding address or phone number. **Scott Gardner, Senior Environmental Scientist, Department of Fish and Wildlife, phone (916) 801-6257, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout can be accessed through our 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 Businesses, 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

Dated: March 28, 2017

Valerie Termini
Executive Director

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Fish and Game Commission



Wildlife Heritage and Conservation
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April 7, 2017

This is to provide you with a copy of the notice of proposed regulatory action relative to Amending sections 29.80 and 122, Title 14, California Code of Regulations, relating to upland game bird regulations, which is published in the California Regulatory Notice Register on April 7, 2017.

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 <http://www.fgc.ca.gov/regulations/2017/index.aspx>.

Tom Mason, Senior Environmental Scientist, Department of Fish and Wildlife, (562) 342-7107, has been designated to respond to questions on the substance of the proposed regulations.

Sincerely,

Jon D. Snellstrom
Associate Governmental Program Analyst

Attachment

2017 APR 10 P 12:31
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, 205, 265, 275, 1050, 7075, 7078, 8254 and 8259, of the Fish and Game Code and to implement, interpret or make specific sections 110, 200, 205, 265, 275, 1050, 2365, 2535, 2536, 2538, 7050, 7055, 7056, 7071, 7852.2, 8026, 8043, 8046, 8250, 8250.5, 8254, 9002, 9002.5, 9005, 9006 and 9010, of said Code; proposes to amend Sections 29.80 and 122, Title 14, California Code of Regulations (CCR), relating to crab and lobster recreational gear marking and commercial lobster harbor restricted fishing areas.

Informative Digest/Policy Statement Overview

Under current regulations, Section 29.80, Title 14 of the California Code of Regulations (CCR) governs gear restrictions for recreational crustacean fishing in California and Section 122 specifies spiny lobster permits and restricted fishing areas for commercial lobster activities.

The Fish and Game Commission (Commission) proposes to amend subsections (a) and (b) of Section 29.80 concerning recreational crab trap and hoop net buoy marking, respectively. The proposed amendment to subsection 29.80(a)(3) would exempt a person from having their GO ID number on crab trap buoys when operating recreational crab traps belonging to another fisherman, provided that the fisherman operating the crab trap has written permission (i.e., a note) from the owner(s) of the traps. Written permission may be transmitted electronically (e.g., a text message) from owner to operator and is valid only if it contains the GO ID number of the owner, and that GO ID number must also be on the buoy of the trap being pulled.

In addition, an amendment to subsection 29.80(b)(3) is proposed to clarify the current hoop net buoy marking requirements. The Commission proposes to add subsection 29.80(b)(3)(A) requiring the buoys of hoop nets deployed from Commercial Passenger Fishing Vessels (CPFVs) to be marked with the corresponding CPFV number and subsection 29.80(b)(3)(B) requiring licensed guides to mark buoys with their guide license number for hoop nets provided to clients for use on trips.

The proposed action would also amend the restricted fishing areas (RFAs) specified in subsection (d)(2) of Section 122. The Commission proposes to modify the Dana Point Harbor RFA (subsection 122(d)(2)(B) from a southerly orientation to a more westerly orientation. Additionally, a new RFA for Port Hueneme is proposed in subsection 122(d)(2)(D), which would cover approximately 3.25 square nautical miles. Lobster traps would be prohibited within the proposed RFA for operational and navigational safety.

Other minor, non-substantive changes are proposed to subsection 29.80(a)(2) to fix a grammatical error (minor re-wording of text) and subsections 29.80(c)(2)-(c)(4) to remove the August 1, 2016, start date as these regulations are currently in effect.

Benefits of the Regulations

The proposed amendments related to lobster and crab gear marking would preserve accountable recreational gear use and allow the recreational sector to meet the gear marking requirements with minimal regulatory burdens. The modification to the Dana Point Harbor RFA will improve the efficiency and safety of the fairway while providing additional commercial lobster fishing in an area that is currently restricted. The proposed Port Hueneme RFA would improve

operational and navigational safety by decreasing the risk of commercial lobster gear fouling propellers as vessels enter and leave the port.

Consistency and Compatibility with Existing Regulations

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. The Legislature has delegated authority to the Commission to adopt sport fishing regulations (Fish and Game Code, sections 200, 202 and 205) as well as the power to regulate the take of lobster for commercial purposes (Fish and Game Code Section 8254). No other state agency has the authority to regulate the recreational take of marine crustaceans or the commercial take of spiny lobster.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in Airtel Plaza Hotel, 7277 Valjean Ave., Van Nuys, California, on Thursday, April 27, 2017, 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 Howonquet Hall Community Center, 101 Indian Court, Smith River, California, on Thursday, June 22, 2017, 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 5:00 p.m. on June 8, 2017 at the address given below, or by email to FGC@fgc.ca.gov. Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on June 16, 2017. All comments must be received no later than June 22, 2017, at the hearing in Smith River, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

Availability of Documents

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout format can be accessed through the Commission's website at www.fgc.ca.gov. The regulations as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Valerie Termini, 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 Valerie Termini or Sheri Tiemann at the preceding address or phone number. **Tom Mason, Senior Environmental Scientist, Department of Fish and Wildlife, [(562) 342-7107 or Tom.Mason@wildlife.ca.gov], has been designated to respond to questions on the substance of the proposed regulations.**

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 265 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 regulatory action will not substantially increase compliance costs, is not anticipated to impact harvest quantities, and only applies to a fishery that is unique to the state of California. The commercial spiny lobster fishery extends from Point Conception in Santa Barbara County to the U.S.-Mexico border. The recreational spiny lobster fishery covers the same range but also extends further north into San Luis Obispo County.

- (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 in California, the creation of new businesses, the elimination of existing businesses, or the expansion of businesses in California. The proposed action will not significantly increase costs or reduce harvest quantities. The recreational gear marking changes are designed to accommodate efficient business practices without sacrificing gear accountability. The adjustment to the Dana Point Harbor RFA and proposed new Port Hueneme RFA will create an efficient safe passage for vessels entering and leaving the harbors with no expected change to lobster harvest quantities for the fishery.

- (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

Dated: March 28, 2017

Valerie Termini
Executive Director