

## STAFF SUMMARY FOR DECEMBER 9-10, 2015

**30. GRAY WOLF****Today's Item**Information Action 

Adopt proposed regulation changes to add gray wolf to the list of endangered species.

**Summary of Previous/Future Actions**

- Notice hearing Jun 4, 2014; Fortuna
- **Today's discussion/adoption hearing Dec 9-10, 2015; San Diego**

**Background**

On Feb 27, 2012, the Center for Biological Diversity, Big Wildlife, the Environmental Protection Information Center, and the Klamath-Siskiyou Wildlands Center petitioned FGC to list the gray wolf as an endangered species under the California Endangered Species Act (CESA). On Oct 3, 2012, FGC voted to accept the petition for further evaluation and to initiate a 12-month review of the status of the gray wolf in California. DFW submitted its final status review at FGC's Feb 5, 2014 meeting, gave a detailed presentation on the status review at FGC's April 16, 2014 meeting, and gave an abbreviated presentation on the status review at FGC's Jun 4, 2014 meeting, FGC considered the petition, DFW's status report and other information included in the administrative record of proceedings and determined that listing the gray wolf as an endangered species under CESA is warranted. At the same meeting, FGC authorized publication of a notice of its intent to amend Section 670.5 regarding animals of California declared to be endangered or threatened; the notice was published in the California Regulatory Notice Register on Oct 23, 2015.

**Significant Public Comments**

1. Several letters opposing the proposal to list gray wolf as an endangered species and urging FGC to reject the proposed amendments (exhibits 2-4).

**Recommendation**

**FGC staff:** Adopt the proposed changes to Section 670.5 to add gray wolf to the list of endangered species.

**Exhibits**

1. [ISOR](#)
2. [Letter from Holly Gallagher, Colusa County Fish & Game Advisory Commission](#), received Nov 4, 2015
3. [Email from Michael Payne, Shasta County Sportsmen's Association](#), dated Oct 23, 2015
4. [Letter from California Cattlemen's Association, California Farm Bureau Federation, and California Wool Growers Association](#), dated Nov 24, 2015

STAFF SUMMARY FOR DECEMBER 9-10, 2015

**Motion/Direction**

Moved by \_\_\_\_\_ and seconded by \_\_\_\_\_ that the Commission adopts the proposed changes to Section 670.5 related to animals of California declared to be endangered or threatened.

STATE OF CALIFORNIA  
FISH AND GAME COMMISSION  
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION  
(Pre-publication of Notice Statement)

Amend Section 670.5  
Title 14, California Code of Regulations  
Re: Animals of California Declared to Be Endangered or Threatened

I. Date of Initial Statement of Reasons: October 1, 2015

II. Dates and Locations of Scheduled Hearings:

(a) Notice Hearing: Date: June 4, 2014  
Location: Fortuna, CA

(b) Discussion/Adoption Hearing: Date: December 10, 2015  
Location: San Diego, CA

III. Description of Regulatory Action:

(a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

Section 670.5 of Title 14, CCR, provides a list, established by the Fish and Game Commission (Commission), of animals designated as endangered or threatened in California. The Commission has the authority to add or remove species from this list if it finds that the action is warranted. Currently, gray wolf (*Canis lupus*) is not included on the list in Section 670.5.

The proposed regulatory action would add gray wolf to the Section 670.5 list as an “endangered” species. Once added to the Section 670.5 list, Fish and Game Code (FGC) Section 2080 prohibits the “taking” of a species unless the “take” is authorized pursuant to a California Endangered Species Act (“CESA”) permit or is exempt from CESA’s take prohibition.

On March 12, 2012, the Commission received the “Petition to List the Gray Wolf as endangered under the CESA” (March 12, 2012; hereafter, the Petition), as submitted by the Center for Biological Diversity, Big Wildlife, the Environmental Protection Information Center, and the Klamath-Siskiyou Wildlands Center (collectively “Petitioners”). Commission staff transmitted the Petition to the Department of Fish and

Wildlife (Department) pursuant to FGC Section 2073 on March 13, 2012, and the Commission published formal notice of receipt of the Petition on April 13, 2012 (Cal. Reg. Notice Register 2012, No. 15-Z, p. 494). After evaluating the Petition and other relevant information the Department possessed or received, the Department determined that based on the information in the Petition, there was sufficient scientific information to indicate that the petitioned action may be warranted, and recommended the Commission accept the Petition. The Commission voted to accept the Petition and initiate a review of the species' status in California on October 3, 2012. Upon publication of the Commission's notice of determination, the gray wolf was designated a candidate species on November 2, 2012 (Cal. Reg. Notice Register 2012, No. 44-Z, p. 1610).

Following the Commission's designation of the gray wolf as a candidate species, the Department notified affected and interested parties and solicited data and comments on the petitioned action pursuant to FGC Section 2074.4. (see also Cal. Code Regs., tit. 14, § 670.1(f)(2).) Subsequently, the Department commenced its review of the status of the species. On February 5, 2014 the Department delivered a status review to the Commission pursuant to FGC Section 2074.6, including a "narrowly tailored" recommendation that, based upon the best scientific information available to the Department, the petitioned action is not warranted. However, in the transmittal memorandum accompanying the status review, the Department recognized that CESA allows the Commission, in making its decision whether or not to list a species, to consider information beyond just the Department's narrowly prescribed scientific recommendation. (see Cal. Code Regs., tit. 14, § 670.1(h).) The Department's report also included a preliminary identification of habitat that may be essential to the continued existence of gray wolf, as well as management recommendations.

On April 16, 2014, at its meeting in Ventura, California, the Commission took up consideration of the Petition and received public testimony on the matter. However, in an effort to hear testimony from members of the public in northern areas of the State the Commission voted to table consideration as to whether the petitioned action is warranted until it could receive that additional testimony at its June meeting in Fortuna, California.

The Commission also asked for additional explanation from the Department regarding its recommendation to list gray wolf as a "species of special concern," the status of the Department's draft wolf plan, the potential for future listing of the gray wolf if it were not to happen in response to the current petition, and other regulatory options available to limit impacts to gray wolf in California.

The Commission received additional public and Department testimony at the June 4, 2014 meeting in Fortuna, California confirming that OR7, the

gray wolf that had been intermittently living in California over the past several years, had likely successfully bred with a female wolf and produced a litter of pups in an area of Oregon close to the California border. Both the existence of another wolf in the area and the confirmation that OR7 had probably successfully bred, were new pieces of information for the Commission's consideration. After receiving this additional information and oral testimony and considering the Petition, the Department's 2012 Candidacy Evaluation Report, the Department's Status Review, and other information included in the Commission's administrative record of proceedings at its meeting in Ventura, California on April 16, 2014, and at its meeting in Fortuna, California on June 4, 2014, the Commission determined, based on the requirements of CESA and the evidence before it, that listing gray wolf as an endangered species under CESA is warranted. (Fish & G. Code, § 2075.5(a); Cal. Code Regs., tit. 14, § 670.1, subd. (i)(1)(A).)

The proposed regulatory change is necessary to protect gray wolves in the petitioned area. The Commission finds that substantial evidence supports its determination under CESA that the continued existence of gray wolf in the State of California is endangered by one or a combination of the following factors:

1. Overexploitation;
2. Predation;
3. Disease;
4. Other natural occurrences or human-related activities.

This finding is supported by all of the information in the record of administrative proceedings, including the following facts:

- It is likely that wolves historically occurred in California and were widely distributed in the State. Status Review at 10 ("While limited the available information suggests that wolves were distributed widely in California, particularly in the Klamath-Cascade Mountains, North Coast Range, Modoc Plateau, Sierra Nevada, Sacramento Valley, and San Francisco Bay Area. The genetic evidence from southeastern California suggests that the Mexican wolf may have occurred in California, at least as dispersing individuals. While the majority of historical records are not verifiable, for the purposes of this status review, the Department concludes that the gray wolf likely occurred in much of the areas depicted (CDFW 2011a) (Figure 1)); 2012 Candidacy Evaluation Report at 4 ("As to the science available at this time and the reasonable inferences that can be drawn from that information, it indicates to the Department at this time that wolves were likely broadly distributed in California historically ..."); *id.* at 10 ("In summary, historic anecdotal

observations are most consistent with a hypothesis that wolves were not abundant, but widely distributed in California.”).

- There is sufficient evidence to conclude that wolves occurred historically in California. However, by the late 1920s, the species was extirpated from the state. Status Review at 4 (“2012 Candidacy Evaluation Report at 4) (“As to the science available at this time and the reasonable inferences that can be drawn from that information ... humans likely purposefully extirpated the species in California early in the twentieth century.”)
- Following listing of the gray wolf under the federal Endangered Species Act in 1974 and recovery efforts during the 1990s, a population of gray wolves in the Northern Rocky Mountain states has been re-established through a federal recovery program, and dispersing wolves from this population have established territories and several packs in Washington and Oregon. 2014 Status Review at 28.
- In September 2011, a radio-collared, sub-adult gray wolf known as “OR7” dispersed from the Imnaha pack in northeastern Oregon and arrived in California on December 28, 2011, marking the first documented individual of the species in California since the 1920s. 2012 Candidacy Evaluation Report at 4 (“a single lone wolf, a dispersing young male named ‘OR7,’ entered California in December 2011, remaining largely in the State since that time”); *id.* at 10 (“The first gray wolf detected in California after many decades occurred in December 2011 with the arrival of ‘OR7,’ a radio-collared, sub-adult gray wolf that dispersed from a pack in Oregon.”); *id.* (“OR7 dispersed from the Northeastern Oregon’s Imnaha pack in September 2011.”)
- The gray wolf is once again present in California, on at least an intermittent basis, and foreseeably will continue to be present in California, as discussed below. OR-7’s range now includes California and Oregon. OR7 has established a range that includes portions of Northern California, as this wolf is known to have crossed back and forth across the Oregon-California border since 2011 and to have been present in California in each of those years. Status Review at 4 (“The lone radio-collared gray wolf, OR7, dispersed from northeastern Oregon’s wolf population to California in December 2011 and has been near the Oregon/California border since that time, crossing back and forth.”); *id.* at 18 (“As far as the Department is aware, there is one gray wolf (OR7) that is near the Oregon/California border such that it may be in either state at any time.”); 2012 Candidacy Evaluation Report at 11 (“OR7 has passed back and forth over the California/Oregon border several times over the last five months ...”); California Department of

Fish and Wildlife, Gray Wolf OR7: Updates on wolves migrating to California (available at <http://californiagraywolf.wordpress.com>); see also Oregon Department of Fish and Wildlife, OR-7 Timeline of Events (available at [http://www.dfw.state.or.us/wolves/rogue\\_pack.asp](http://www.dfw.state.or.us/wolves/rogue_pack.asp)) (documenting OR7's presence in California in each of 2011, 2012, 2013, and 2014).

- OR7 has utilized areas of suitable habitat, primarily on public lands, comprised of ponderosa pine forests, mixed conifer forests, lava flows, sagebrush shrublands, juniper woodlands, as well as private lands including timberlands and agricultural lands, and has exhibited normal dispersal behavior for a young male gray wolf as he has sought to find other wolves, to establish his own pack, or to become part of an established wolf pack. 2012 Candidacy Evaluation Report at 10 (“It is believed that OR7 is exhibiting normal dispersal behavior for young male wolves, seeking to find other wolves, to establish his own pack, and/or to become part of an established wolf pack.”); *id.* at 11 (“OR7 has passed through ponderosa pine forests, mixed conifer forests, lava flows, sagebrush shrublands, juniper woodlands, and agricultural lands”); *id.* (“Although OR7 has used private lands (timberlands in particular), most of its route has traversed public lands.”).
- On June 4, 2014, the State of Oregon Department of Fish and Wildlife confirmed that OR7 had mated with a female wolf of unknown origin, and that the pair was denning with a litter of at least two pups on public land in southwestern Oregon. See Press Release, Oregon Department of Fish and Wildlife, Pups for wolf OR7 (June 4, 2014) (“Wolf OR7 and a mate have produced offspring in southwest Oregon’s Cascade Mountains, wildlife biologists confirmed this week.”); Comments of Pamela Flick, Defenders of Wildlife (June 4, 2014 Commission hearing) (reporting breaking news that a remote camera in southwestern Oregon has detected at least two pups).
- As the gestation period for gray wolves is 62-63 days and OR7 was documented in northern California on February 5, 2014, it is likely that OR7’s mate was traveling with OR7 in California at the time. Status Review at 10 (“The gestation period for wolves is 62-63 days.”); Testimony of Amaroq Weiss, June 4, 2014 Commission Meeting (Powerpoint slides at 15) (“A breeding population is likely on the border right now and a pregnant female was likely present in California already this year.”); L.D. Mech & L. Boitani, editors. *Wolves: behavior, ecology, and conservation*. University of Chicago Press, Chicago, Illinois, USA (cited in 2012 Candidacy Evaluation Report and Status Review) (discussing in Chapter 2 the reproductive behavior of wolves, and how

wolves spend many months together leading up to impregnation and gestation).

- The evidence in the record regarding wolf migration and dispersal behavior at a minimum indicates that wolves other than OR7 have similarly dispersed or will disperse to California, as most wolves from Oregon packs are not collared with radio transmitters and their presence in California may not otherwise have been detected (“we have acknowledged that we know of one [wolf, OR7]” and that “there could be others that we don’t know about”); U.S. Fish and Wildlife Service, Montana Fish, Wildlife & Parks, Nez Perce Tribe, National Park Service, Blackfeet Nation, Confederated Salish and Kootenai Tribes, Wind River Tribes, Washington Department of Wildlife, Oregon Department of Wildlife, Utah Department of Wildlife Resources, and USDA Wildlife Services. 2011. Rocky Mountain Wolf Recovery 2010 Interagency Annual Report. C.A. Sime and E. E. Bangs, eds. USFWS, Ecological Services, 585 Shepard Way, Helena, Montana. 59601. (2011) at 2 (noting that “it is difficult to locate lone dispersing wolves.”); Carroll (2013) (Peer Review) at 5-6 (“[n]ot all Oregon wolves are detected and collared” so “it is possible that not all wolves dispersing to California have been detected”). Petition at 15 (“... it is impossible to rule out the possibility that previous dispersal events to California may ... have occurred, which simply went un-detected because it is difficult to locate and track dispersing individual wolves”); Comments of Eric Loft (April 16, 2014 Commission Hearing).
- The presence of wolves in California is small and is likely to remain small for the foreseeable future. Eisenberg (2013) (Peer Review) at 2 (“Any wolves becoming established in California will initially constitute a small population.”).
- Dispersing wolves and small wolf populations are inherently at risk due to demographic and environmental stochasticity and in the case of wolves, of being killed by poachers, or hunters that mistake them for coyotes. Status Review at 5 (“A small population in California would be at some inherent risk although the species has demonstrated high potential to increase in other states. Dispersing individuals and small packs would likely be at highest risk due to population size.”); *id.* at 19 (“It is possible that a coyote hunter could mistake a gray wolf for a coyote, particularly at a long distance.”); *id.* at 22 (“With at least one gray wolf near the border of Oregon/California, and the knowledge that populations or species ranges are typically so large that they could range across both states ..., an individual wolf, or a small number of wolves would be threatened in their ability to reproduce depending on the number and sex of the animals present in the range.”); 2012

Candidacy Evaluation Report at 6 (“Wolves are often confused with coyotes (*Canis latrans*) and domestic dogs (*C. lupus familiaris*), and wolf hybrids, which result from the mating of a wolf and a domestic dog.”).

- Despite losses of areas of the gray wolf’s historic range in California, large tracts of habitat remain in the State that are sufficient to support a wolf population, particularly in the Modoc Plateau, Sierra Nevada, and Northern Coastal Mountains. Status Review at 17 (“Habitat Suitability Modeling: There are studies that have modeled potential suitable wolf habitat in California. Carroll (2001) modeled potential wolf occupancy in California using estimates of prey density, prey accessibility and security from human disturbance (road and human population density). Results suggested that areas located in the Modoc Plateau, Sierra Nevada, and the Northern Coastal Mountains could be potentially suitable habitat areas for wolves.
- Since entering California, there have been threats to harm or kill OR7 or other wolves found in the State. (See e.g. May 6, 2013 Center for Biological Diversity letter to Department of Fish and Wildlife, p.13.) Although many people are supportive of gray wolves as a component of wildland ecosystems, wolves are considered a threat to livestock and wild ungulates by many other people, and are considered a threat to people by some. For example, the administrative record includes reports of statements by county supervisors from Modoc, Siskiyou, and Lassen counties expressing a desire to kill wolves in the area, a sentiment which represents an imminent threat to wolves that are dispersing to the State. Status Review at 4-5 (“It is believed that limiting human-caused mortality through federal protection has been one of the key reasons that recovery efforts in the northern rocky mountains were successful.”); *id.* at 18-19 (“Public perception of wolf attacks on people, the documented losses of livestock, and the sometimes photographed killing of livestock or big game, continues to influence human attitudes toward wolves.”); Lassen County Board of Supervisors Hearing (Feb. 21, 2012) (quoting Lassen County supervisor to CDFW spokesperson) (“If I see an animal in my livestock, I kill it. If I kill a wolf, you going to throw me in jail? I don’t care what it is.”) (from notes taken at board meeting by Amaroq Weiss, Center for Biological Diversity); Modoc County Board of Supervisors Meeting (quoting Modoc County Supervisor) (“If I see a wolf, it’s dead.”) (Modoc County Board of Supervisors January 24, 2012 Hearing, Audio Archive); Chair of the Siskiyou County Board of Supervisors (“People are pretty much at their wits’ end trying to make a living with all the environmental protections that are being foisted upon them” and “we would like to see [wolves] shot on sight”) (*Los Angeles Times* (Dec. 24, 2011)) (available at <http://articles.latimes.com/2011/dec/24/local/la-me-wolf-oregon-20111225>).The Commission considers these statements

and others like them to be compelling evidence of a threat to the continued existence of gray wolf in California. In a small early population of the species, loss of even one individual from human causes could significantly impact the ability of the species to thrive for years to come. CESA would criminalize such behavior in a more significant way than currently exists and act as a deterrent that may assist in allowing the early members of California's gray wolf population to persist.

- Humans are the primary factor in the past decline of wolves in the conterminous United States, including California, and humans remain the largest cause of wolf mortality as a whole in the western United States. Humans impact wolf populations through intentional predation (shooting or trapping) for sport or for protection; through unintentional killing, as gray wolves are often confused with coyotes (*Canis latrans*), domestic dogs (*C. lupus familiaris*), and wolf hybrids; through vehicle collisions; and through exposures to diseases from domestic animals. For example, the administrative record demonstrates that on more than one occasion, staff from the California Department of Fish and Wildlife have been fearful that OR7 and other unknown wolves that could be in California would be mistaken for a coyote and shot or harmed. Limiting human-caused mortality through federal protection has been one of the key reasons that the recovery effort in the Northern Rocky Mountains has been successful. Status Review at 4-5 ("It is believed that limiting human-caused mortality through federal protection has been one of the key reasons that recovery efforts in the northern rocky mountains were successful."); *id.* at 19 ("Human-caused mortality of wolves is the primary factor that can significantly affect wolf populations (USFWS 2000, Mitchell et al. 2008, Murray et al. 2010, Smith et al. 2010)"); *id.* at 20.
- Gray wolves are susceptible to several diseases including canine parvovirus and canine distemper, which has been responsible for extremely high rates of wolf pup mortality and suppression of wolf populations and which can be contracted from domestic dogs. Wolves are also susceptible to mange; mange-associated wolf population declines in Yellowstone National Park have led to pack extinction. Status Review at 23 (Wolves are vulnerable to a number of diseases and parasites, including, mange, mites, ticks, fleas, roundworm, tape worm, flatworm, distemper, parvovirus, cataracts, arthritis, cancer, rickets, pneumonia, and Lyme disease."); *id.* ("The transmission of disease from domestic dogs, e.g. parvovirus, is a grave conservation concern for recovering wolf populations (Paquet and Carbyn 2003; Smith and Almborg 2007). Recently, two wolves and two pups in Oregon were found to have died from parvovirus (ODFW 2013b). The disease is not thought to significantly impact large wolf populations, but it may hinder the recovery of small populations (Mech and Goyal 1993)."); *id.* ("Canine

distemper and canine infectious hepatitis: Both diseases are known to occur in wolves and more recently canine parvovirus has become prevalent in several wolf populations (Brand et al. 1995)"); E.S. AlMBERG, P.C. Cross, A.P. Dobson, D.W. Smith and P.J. Hudson. 2012. Parasite invasion following host reintroduction: a case study of Yellowstone's wolves. *Philosophical Transactions of the Royal Society Bulletin*. 367, p. 2840-2851).").

- Listing the gray wolf under CESA will allow the species to benefit from CESA's protections, and would further the intent of the Legislature and be consistent with the objectives of CESA, *i.e.*, the conservation, protection, restoration, and enhancement of species in their range in California. Protecting the gray wolf under CESA will also strengthen the Department's existing stakeholder process to develop a state wolf plan, by providing clarity as to the management tools and options that will be available to the Department and to stakeholders. Status Review at 33 ("If the gray wolf species is listed under CESA, it may increase the likelihood that State and federal land and resource management agencies will allocate funds towards protection and recovery actions."); Carroll (2013) (Peer Review) at 6 ("Rather than using a dubious interpretation of CESA to decline to list a species due to its temporary and uncertain absence from state, California should follow the example of Washington and Oregon in using the relevant state statutes to protect colonizing wolves while at the same time developing multi-stakeholder plans that proactively restore wolf conservation and management issues.").
- The gray wolf is currently listed as endangered throughout portions of its range, including California, under the federal Endangered Species Act ("ESA"). Wolves that enter California are therefore protected by the ESA from activities that result in "take." The ESA defines "take" to mean "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." However, the United States Fish and Wildlife Service ("USFWS") is proposing a rule that would remove the ESA protections for gray wolves in the lower 48 states, with the exception of Mexican gray wolves, which would maintain their listed status as an endangered subspecies. If the federal delisting occurs, there would be more limited protections for gray wolves in California. Listing the species under CESA would reinforce the existing federal protections in place now, and preserve protections for the gray wolf in the event of federal delisting.

(b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Section(s) 240, 2070, 2075.5 and 2076.5, Fish and Game Code.

Reference: Section(s) 1755, 2055, 2062, 2067, 2070, 2072.7, 2074.6, 2075.5, 2077, 2080, 2081 and 2835, Fish and Game Code.

(c) Specific Technology or Equipment Required by Regulatory Change:

None

(d) Identification of Reports or Documents Supporting Regulation Change:

A petition to list this species; the Department's petition evaluation report; the Department's status review; the Department's related recommendations; written comments received from members of the public, the regulated community, various public agencies, and the scientific community; and other evidence included in the Commission's record of proceedings.

(e) Public Discussions of Proposed Regulations Prior to Notice publication:

Public comments were heard at the April 16, 2014 Fish and Game Commission meeting in Ventura, California and at the June 4, 2014 Commission meeting in Fortuna, California. During the candidacy period the Department also solicited comments from landowners and other affected and interested parties.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

No alternatives were identified.

(b) No Change Alternative:

If the Commission were not to add gray wolf to the list of endangered species, valuable State mechanisms to protect the species would not be available. The Commission would fulfill its statutory obligation in adopting the proposed regulation.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the proposed regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law..

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment, therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action:

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:

While the CESA statutes do not specifically prohibit the consideration of economic impact in determining if listing is warranted, the Attorney General's Office has consistently advised the Commission that it should not consider economic impact in making a finding on listing. This is founded in the concept that CESA was drafted in the image of the federal Endangered Species Act. The federal act specifically prohibits consideration of economic impact during the listing process.

The CESA listing process is basically a two-stage process. During the first stage, the Commission must make a finding on whether or not the petitioned action is warranted. By statute, once the Commission has made a finding that the petitioned action is warranted, it must initiate a rulemaking process to make a corresponding regulatory change. To accomplish this second stage, the Commission follows the statutes of the Administrative Procedure Act (APA).

The provisions of the APA, specifically sections 11346.3 and 11346.5 of the Government Code, require an analysis of the economic impact of the proposed regulatory action. While Section 11346.3 requires an analysis of economic impact on businesses and private persons, it also contains a subdivision (a) which provides that agencies shall satisfy economic assessment requirements only to the extent that the requirements do not conflict with other state laws. In this regard, the provisions of CESA leading to a finding that listing is warranted are in apparent conflict with Section 11346.3, which requires an agency to consider economic impacts of its proposed regulations.

Since the finding portion of CESA is silent as to consideration of economic impact, it is possible that subdivision (a) of Section 11346.3 requires the preparation of an economic impact analysis. While the Commission does

not believe this is the case, an abbreviated analysis of the likely economic impact of the proposed regulation change on businesses and private individuals is provided. The intent of this analysis is to provide disclosure, the basic premise of the APA process. The Commission believes that this analysis fully meets the intent and language of both statutory programs.

Designation of gray wolf as endangered will subject the species to the provisions of CESA. This act prohibits take and possession except as may be permitted by the Department.

Presently the gray wolf is listed as endangered throughout portions of its range, including California, under the federal Endangered Species Act of 1973 (16 U.S.C. § 1531 *et seq.*) (ESA). Wolves that enter California are therefore protected by the ESA. Under the ESA, the U.S. Fish and Wildlife Service has lead responsibility for wolves in California.

For species listed as endangered or threatened under the ESA, activities that result in “take” of the species are prohibited. The ESA defines "take" to mean "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Harass is further defined as “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering” (50 CFR 17.3).

As long as the gray wolf remains federally listed, concurrent listing under the CESA, should not result in a significantly greater economic impact. As a result of the federal or State listing, the economic impacts on commercial timber and other industries' whose activities occur near wolf den or rendezvous sites could be significant. To avoid prohibited take under CESA and ESA, may require consultation with the Department and federal counterparts as to the timing of activities and potentially incidental take permitting. Based on these considerations, the Commission finds that the amendment of this regulation may have a significant adverse economic impact on business.

The Commission has made an initial determination that the amendment of this regulation may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Commission has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources

- available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
  - (iii) The use of performance standards rather than prescriptive standards.
  - (iv) Exemption or partial exemption from the regulatory requirements for businesses.

In most cases, conservation measures implemented by the Department for newly listed endangered species have relatively little effect on members of the public. That effect, if any, usually arises from requiring persons to avoid any take of endangered species, or implementing the conditions of an incidental take permit. Fish and Game Code Section 2081(b) addresses the requirements for an incidental take permit:

- Take must be incidental to an otherwise lawful activity.
- Impacts of authorized take must be minimized.
- Impacts of the authorized take must be “fully mitigated.”
- The permit applicant must ensure adequate funding to implement the measures required for minimizing and fully mitigating the impacts of authorized take, and for monitoring compliance with and effectiveness of those measures.
- A permit cannot be issued if the Department determines that issuance of the permit will jeopardize the continued existence of the species.

Designation of threatened or endangered status, per se, would not necessarily result in any significant cost to private persons or entities undertaking activities subject to the California Environmental Quality Act (“CEQA”). CEQA currently requires private applicants undertaking projects subject to CEQA to consider *de facto* endangered or threatened species to be subject to the same protection under CEQA as though they are already listed by the Commission in Section 670.5 of Title 14, CCR (CEQA Guidelines, Section 15380).

- (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:

If the potentially significant economic impact identified above occurs, there could be an adverse impact on new or existing jobs, an adverse impact on creation of new businesses or elimination of existing businesses, and an adverse impact on business expansion. The magnitude of these impacts will depend on the extent to which commercial activities result in take of

gray wolf, and the costs of minimizing and mitigating for that take. The Commission does not anticipate benefits to the health and welfare of California residents or to worker safety. The Commission anticipates benefits to the environment by protecting the gray wolf under CESA.

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

A representative private person or business may experience economic impacts as described in section (a) above.

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

As a project applicant, a state agency may realize costs associated with projects involving the incidental take of gray wolf as described in section (a) above.

The proposed regulatory change is not expected to significantly affect federal funding to the State, but there could be an increase in the likelihood that State and federal land and resource management agencies would allocate funds to the State for protection and recovery actions.

(e) Nondiscretionary Costs/Savings to Local Agencies:

As a project applicant, a local agency may realize costs associated with projects involving the incidental take of gray wolf as described in section (a) above.

(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.

VII. Economic Impact Assessment:

As long as the gray wolf remains federally listed, concurrent listing under the CESA, should not result in a significantly greater economic impact. As a result of

the federal or State listing, the economic impacts on commercial timber and other industries' whose activities occur near wolf den or rendezvous sites could be significant. To avoid prohibited take under CESA and ESA, may require consultation with the Department and federal counterparts as to the timing of activities and potentially incidental take permitting.

#### Effects of the Regulation on the Creation or Elimination of Jobs within the State

There could be an adverse impact on new or existing jobs. The magnitude of these impacts will depend on the extent to which commercial activities result in take of gray wolf, and the costs of minimizing and mitigating for that take.

#### Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses within the State

There could be an adverse impact on creation of new businesses or elimination of existing businesses. The magnitude of these impacts will depend on the extent to which commercial activities result in take of gray wolf, and the costs of minimizing and mitigating for that take.

#### Effects of the Regulation on the Expansion of Businesses Currently Doing Business within the State

There could be an adverse impact on business expansion. The magnitude of these impacts will depend on the extent to which commercial activities result in take of gray wolf, and the costs of minimizing and mitigating for that take.

#### Benefits of the Regulation to the Health and Welfare of California Residents

The Commission does not anticipate any benefits to the health and welfare of California residents.

This regulatory proposal will amend Section 670.5, Title 14, CCR, adding the gray wolf to the list of endangered species.

#### Benefits of the Regulation to Worker Safety

The proposed regulations are not anticipated to impact worker safety conditions.

This regulatory proposal will amend Section 670.5, Title 14, CCR, adding the gray wolf to the list of endangered species.

#### Benefits of the Regulation to the State's Environment

The proposed regulation will benefit the environment by protecting the gray wolf under CESA.

## Informative Digest/Policy Statement Overview

Section 670.5 of Title 14, CCR, provides a list, established by the California Fish and Game Commission (Commission), of animals designated as endangered or threatened in California. The Commission has the authority to add or remove species from this list if it finds that the action is warranted.

At its June 4, 2014 meeting in Fortuna, California, the Commission made a finding that gray wolf warrants listing pursuant to the California Endangered Species Act (CESA). Specifically, the Commission determined that gray wolf (*Canis lupus*) should be listed as an endangered species.

The Commission therefore proposes to amend Section 670.5 of Title 14, CCR, to add gray wolf to the list of endangered species.

This proposal is based upon the documentation of threats to gray wolf to the point that it meets the criteria for listing by the Commission as set forth in the CESA. The Commission is fulfilling its statutory obligation in making this proposal which, if adopted, would afford gray wolf in California with the recognition and protection available under CESA.

### EVALUATION OF INCOMPATIBILITY WITH EXISTING REGULATIONS:

Section 20, Article IV, of the State Constitution specifies that the Legislature may delegate to the Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to establish a list of endangered species and a list of threatened species (Fish and Game Code Section 2070). Commission staff has searched the CCR and has found that the proposed regulation is neither inconsistent nor incompatible with existing state regulations.

Subsection (a)(6) of Section 670.5, Title 14, CCR is amended to read:

**§670.5(a). Animals of California Declared to Be Endangered or Threatened.**

The following species and subspecies are hereby declared to be endangered or threatened, as indicated:

**[No changes to subsections 670.5(a)(1) through (a)(5)]**

(a) Endangered:

**(6) Mammals:**

- (A) Riparian brush rabbit (*Sylvilagus bachmani riparius*)
- (B) Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*)
- (C) Giant kangaroo rat (*Dipodomys ingens*)
- (D) Tipton kangaroo rat (*Dipodomys nitritoides nitratoides*)
- (E) Fresno kangaroo rat (*Dipodomys nitritoides exilis*)
- (F) Salt-marsh harvest mouse (*Reithrodontomys raviventris*)
- (G) Amargosa vole (*Microtus californicus scirpensis*)
- (H) California bighorn sheep (*Ovis canadensis californiana*)
- (I) Gray Wolf (*Canis Lupus*)

**[No changes to subsections 670.5(b)(1) through (b)( 6)]**

Note: Authority cited: Sections 240, 2070, 2075.5 and 2076.5, Fish and Game Code.  
Reference: Sections 1755, 2055, 2062, 2067, 2070, 2072.7, 2074.6, 2075.5, 2077, 2080, 2081 and 2835, Fish and Game Code.

---

COLUSA COUNTY FISH & GAME ADVISORY COMMISSION  
546 Jay Street, Suite 202  
Colusa, CA 95932

---

October 29, 2015

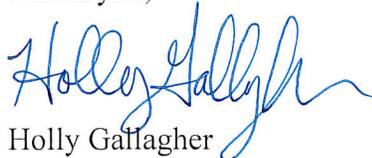
Department of Fish & Wildlife  
1416 9<sup>th</sup> Street, 12<sup>th</sup> Floor  
Sacramento, CA 95814

To Whom It May Concern:

At their recent Fish & Game Commission meeting the Commission discussed the matter of the protection of the gray wolves within the State of California. The Commission feels the wolves are a threat to our state and the people served. They would like to address the issue of liability should there be any losses incurred. If the State would like to protect the wolves, they should also ready be prepared to be responsible for the outcome.

The Commission would ask that you take this matter into serious consideration. Please feel free to call if you have any questions or if you need any additional information. I can be reached at (530) 458-0408 or via email at [hgallagher@countyofcolusa.com](mailto:hgallagher@countyofcolusa.com).

Thank you,



Holly Gallagher  
Commission Secretary

RECEIVED  
CALIFORNIA  
FISH AND GAME  
COMMISSION  
2015 NOV -4 AM 7:33  
MLS

**From:** [REDACTED]  
**To:** [EGC](#)  
**Subject:** Gray Wolf  
**Date:** Friday, October 23, 2015 3:07:41 PM

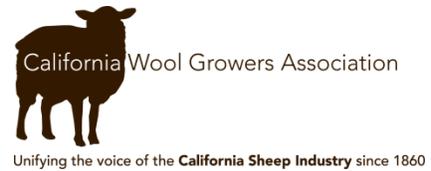
---

Regarding adding the Gray Wolf to the endangered species list. The Gray Wolf is not an indignities species is it???? Either way, without a natural predictor it's numbers can get out of hand quickly. In some states they have declared hunting seasons because of this, in an effort to keep their numbers in check. Our deer and elk herds don't need the added pressure, nor do other species such as rabbits and ground nesting birds. I think this is a case where "If it ain't broke don't fix it" applies. A balance, of sorts, has been established and your meddling can have unintended consequences.

Michael Payne

Redding, CA

Shasta County Sportsmen's Association



November 24, 2015

Jack Baylis, President  
California Fish and Game Commission  
1416 9<sup>th</sup> Street, Room 1320  
Sacramento, CA 95814

**Re: Adoption of proposed changes to endangered or threatened animals regulations to add gray wolf (*Canis lupus*) to the list of endangered species (Section 670.5, Title 14, CCR)**

Dear President Baylis:

The California Cattlemen's Association (CCA), California Farm Bureau Federation (CFBF), and California Wool Growers Association (CWGA) welcome the opportunity to comment on the proposal to amend Section 670.5, Title 14 of the California Code of Regulations to list the gray wolf as an endangered species in California. Our organizations remain strongly opposed to listing of the gray wolf as endangered under the California Endangered Species Act (CESA), and we urge the Commission to **reject** the proposed regulatory amendment which would list the gray wolf as endangered in California. The many legal, policy, and factual considerations that our organizations have addressed to the Commission since 2012 continue to weigh against endangered status for the gray wolf, and we urge the Commission to halt the listing process by not adopting the proposed regulatory amendment.

**I. THE GRAY WOLF IS NOT LEGALLY ELIGIBLE FOR LISTING AS ENDANGERED UNDER § 670.5**

**A. The gray wolf is not “in serious danger of becoming extinct throughout...its range” as required by CESA**

The term “range” under CESA is susceptible of at least two (though likely more) interpretations. For instance, “range” may be interpreted as “the species’ overall geographic range without regard to physical or political geographic boundaries,” or it may be interpreted as “the species’ California range only,” as the California Third District Court of Appeals held in *California Forestry Association v. California Fish and Game Commission*.<sup>1</sup>

Importantly, under either interpretation of “range,” gray wolves were likely not legally listable within § 670.5 at the time that the Commission determined such listing was warranted.

If the former interpretation is applied (that “range” is the species overall geographic range), then gray wolves are clearly not at danger of becoming extinct. In fact, the overall population of gray

---

<sup>1</sup> No other California case appears to have considered the meaning of “range” under CESA. See Section I. B. for further analysis of *Cal. Forestry Ass’n v. Cal. Fish & Game*, distinguishing that case from the present scenario under analysis of the California Administrative Procedures Act.

wolves is robust and increasing, especially throughout the American West, and gray wolves have made such a great population resurgence that the US Fish and Wildlife Service is currently considering delisting populations of the species under the federal Endangered Species Act and the state of Oregon recently delisted the species from its list of endangered species.

If the latter interpretation of “range” is applied (that “range” means a species’ extent within the borders of California), the same conclusion results: the species is not at risk of extinction throughout its range. This was particularly true at the time that the Commission made its decision to list the gray wolf, as no wolves were present within California. If a species is not present within the state, it cannot be at risk of *becoming* extinct. The Commission’s Initial Statement of Reasons for Regulatory Action (ISOR) confirms that no gray wolves were present within California at the time the Commission determined the species warranted inclusion on the endangered species list. As the Commission notes, “[o]n June 4, 2014 [the date the Commission determined listing was warranted], the State of Oregon Department of Fish and Wildlife confirmed that OR7...was denning...on public land in southwestern Oregon.”<sup>2</sup> OR7 was the only wolf known to the Commission to have been present (on an intermittent basis) within California, and the Commission was aware that OR7 was not present in California on the date that the Commission determined listing was warranted.

Nor was OR7’s prior intermittent presence in California a sufficient basis to list the gray wolf as endangered under CESA. Not only was OR7 not present at the time of listing, but his forays into California were relatively brief and impermanent, lacking sufficient regularity over a reasonable span of time for the species to be deemed to occupy “range” within California.

Regardless of how one interprets “range” under CESA, it is clear that the Commission had insufficient legal basis to determine that gray wolves warranted listing as endangered.

### **B. The Commission’s interpretation of “range” as meaning “California range” is an underground regulation in violation of the California APA**

As demonstrated above, the term “range” as used in CESA is ambiguous, clearly susceptible of more than one interpretation. “Range” is not defined within CESA itself nor within any regulation formally adopted by the Commission to implement and enforce CESA. Nevertheless, the Commission has interpreted “range” to mean “California range.”

Importantly, however, the Commission has never engaged in the required rulemaking to establish its standard that “range” means only range *within California*. The Commission’s application of this interpretation in adopting subsequent regulations (including the regulatory amendment currently under consideration) is a violation of the California Administrative Procedures Act (APA). By establishing a “guideline...standard of general application, or other rule” without engaging in the formal rulemaking required by the APA, the Commission has effectively developed an “underground regulation” in violation of the APA.

It is not sufficient that legal precedent has on one occasion interpreted “range” to mean “range *within California*,” as held in *California Forestry Ass’n v. Cal. Fish & Game Comm’n* and noted

---

<sup>2</sup> Initial Statement of Reasons for Regulatory Action at 5.

by Petitioners at the April 2014 and June 2014 hearings. In that case, the court was not presented with the question of whether such an interpretation was legally defensible without formal rulemaking under the APA, but only the question of whether the term “range” within CESA was *susceptible* of such a limited definition.

To avoid running afoul of the APA, we urge the Commission to reject the proposed amendment to the list of endangered species—rooted as it is in the legally-deficient interpretation of “range.”

### **C. Gray wolves are not provably “native” to the state of California as required by CESA**

CESA defines an endangered species as “a *native* species or subspecies . . . which is in serious danger of becoming extinct throughout all, or a significant portion, of its range.”<sup>3</sup>

Petitioners did not sufficiently demonstrate this threshold requirement in their petition, nor has additional information subsequently provided by the California Department of Fish and Wildlife (CDFW) provided sufficient evidence to prove that the gray wolf is native to California.<sup>4</sup> In fact, CDFW Wildlife Programs Branch Chief Eric Loft stated on October 3, 2012 that “historically we do not have much more than anecdotal information on the history of gray wolves” in California.<sup>5</sup> It would be a mistake, then, to assume that these anecdotal reports add up to certainty of a historic native population of gray wolves in California. As Mr. Loft stated, “we do not know that” there was a significant native population, and CESA requires just such knowledge as a precondition to listing.

CDFW was only highly confident of the accuracy of 3 reports of gray wolf presence in California prior to June 4, 2014—one of which was OR7 himself. The remaining two high-confidence records are anecdotal at best. Three specimens are necessarily insufficient to demonstrate that there was an established, *native* population of gray wolves historically present within California. Indeed, it is entirely possible that these exceedingly few specimens arrived in California not as the result of a native population, but instead in the same manner as OR7—a brief foray into the state.

### **D. The legislative intent behind CESA was to protect species in decline, precisely the opposite scenario presented by gray wolves in California**

CESA defines an endangered species as one “which is in serious danger of becoming extinct throughout all, or a significant portion, of its range.”<sup>6</sup> However, the presence of the gray wolf in California presents exactly the *opposite* scenario. The gray wolf was not present in California for many decades prior to the passage of CESA, and indeed may never have been a well-established

---

<sup>3</sup>CAL. FISH & GAME CODE § 2062 (emphasis added).

<sup>4</sup> For a detailed discussion of the scant evidence that gray wolves are “native” to California, *see* Letter from the California Cattlemen’s Association, California Farm Bureau Federation, and California Wool Growers Association to Michael Sutton, President, California Fish and Game Commission (Oct. 6, 2014).

<sup>5</sup> Video recording: Meeting of October 3, 2012, held by the California Fish & Game Commission, at 3:58:21 (Oct. 3, 2012) (*available at* [http://www2.cal-span.org/media.php?folder\[\]=CFG](http://www2.cal-span.org/media.php?folder[]=CFG)).

<sup>6</sup> CAL. FISH & GAME CODE § 2062.

native species, but it may now expand into the state because there are no significant threats to the species' survival.

The change CESA is meant to guard against is the *disappearance* of a species. CESA has historically only been used where species are on the *decline* within the state because of this fear for the disappearance of a species. However, the situation presented by the gray wolf is precisely the opposite scenario: any appearance of the gray wolf within California would necessarily be an *increase* in the species. The legislature did not intend CESA to apply in instances where species were *appearing* in the state or increasing in number, but rather intended to guard against the decline of native species within the state. As a matter of law and policy, endangered species listing is not the proper means for protecting the gray wolf in California.

## **II. REJECTING THE PROPOSED AMENDMENT ALLOWS CDFW TO BETTER MANAGE THE SPECIES AND REDUCE HARMS ASSOCIATED WITH LISTING THAT ARE OUTLINED IN THE ISOR**

CDFW continues to develop a Wolf Management Plan, which has been developed with the input of a diverse Stakeholder Working Group, upon which representatives of each of our organizations sat. Unfortunately, many nuanced, thoughtful, and balanced management policies being considered by CDFW throughout the development of the wolf management plan had to be abandoned in the wake of the Commission's decision that the species warranted listing as endangered, as some of those management policies ran afoul of the rigid, inflexible requirements of CESA.

In the ISOR, the Commission notes that "the amendment of this regulation may have significant, statewide adverse economic impact directly affecting business."<sup>7</sup> Indeed, endangered listing of gray wolves is likely to result in significant economic hardship for ranchers.

As predators, wolves are extraordinarily detrimental to the life and health of livestock, and consequently to the livelihood of ranchers. Not only are gray wolves known to directly kill livestock, but scientific study has shown that "[t]he regular presence of wolves in close proximity to livestock may result in a chronic stress situation for the domestic animals" and that "[m]any infectious diseases result from a combination of viral and bacterial infections and are brought on by stress."<sup>8</sup> Stress can result in increased susceptibility to disease and weight loss, reduction in the value of meat, and can interfere with reproduction.<sup>9</sup> One study demonstrates that where wolf-pack territories overlapped cattle grazing areas on ranches where there was at least one confirmed prior depredation, the average calf had an average end-of-season weight 3.5% lower than the overall average.<sup>10</sup> In the study, this reduction in weight meant a total loss of \$6,679 for an average affected livestock producer.<sup>11</sup>

---

<sup>7</sup> ISOR at 13.

<sup>8</sup> Faries, Floron C., Jr. and L. Garry Adamn, 1997. Controlling bovine tuberculosis and other infectious diseases in cattle with total health management. Texas Agricultural Extension Service, Texas A&M University. Publication 24M-2-97.

<sup>9</sup> Fanatico, Anne, 1999. Sustainable beef production, NCAT Agriculture Specialists, ATTRA Publication #IPO18/18.

<sup>10</sup> Kellenberg, Derek et al., 2014. Crying wolf? A Spatial analysis of wolf location and depredations on calf weight. Journal of Agricultural Economics.

<sup>11</sup> *Id.*

Because of the devastating direct and indirect effects of gray wolves upon livestock, and due to the limited effectiveness of livestock protection measures such as fladry, RAG boxes, and other measures, it is important that ranchers have available to them as many options as possible to protect their livestock and their livelihoods. The statutory restrictions attending CESA listing foreclose many of these protection measures, even some non-lethal measures.

Thus, in order to avoid the significant harm and suffering to livestock and the significant economic damage to ranchers that will attend listing the gray wolf as endangered, our organizations urge the Commission to reject the proposed amendment, and instead defer to CDFW to establish nuanced policies which will better strike a balance between conserving gray wolves and protecting livestock and ranchers.

### CONCLUSION

Because the gray wolf is not legally eligible for endangered status under CESA, and because such endangered status will result in significant harm to livestock, ranchers, and the state of California, we urge the Commission to reject the proposed amendment which would list gray wolves as endangered under Section 670.5.

Sincerely,

Kirk Wilbur



California Cattlemen's Association

Noelle Cremers



California Farm Bureau Federation

Erica Sanko



California Wool Growers Association