

The Commission published its Notice of Findings in the California Regulatory Notice Register on October 1, 2010.

Based upon the best scientific information available to the Department, it prepared a report to the Commission recommending that listing the southern mountain yellow-legged frog (*Rana muscosa*) as Endangered under CESA is warranted; and listing the Sierra Nevada yellow-legged frog (*Rana sierrae*) as Threatened under CESA is warranted.

On February 2, 2012, at a noticed public meeting, the Commission found that the petitioned action is warranted. The Commission then published notice of its finding to add the southern mountain yellow-legged frog (*Rana muscosa*) to the list of endangered species and the Sierra Nevada yellow-legged frog (*Rana sierrae*) to the list of threatened species.

The Legislature has declared that certain species of fish, wildlife, and plants are in danger of, or threatened with, extinction and that these species of fish, wildlife, and plants are of ecological, educational, historical, recreational, esthetic, economic, and scientific value to the people of this state, and the conservation, protection, and enhancement of these species and their habitat is of statewide concern. It is the policy of the state to conserve, protect, restore, and enhance any endangered species or any threatened species and its habitat. The proposed regulation will add the southern mountain yellow-legged frog (*Rana muscosa*) to the list of endangered species and the Sierra Nevada yellow-legged frog (*Rana sierrae*) to the list of threatened species in furtherance of the policy of the state.

The Commission anticipates benefits to the environment by the protection of the mountain yellow-legged frog (*Rana muscosa* and *Rana sierrae*).

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

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

Authority: Sections 2070 and 2075.5, Fish and Game Code.

Reference: Sections 1755, 2055, 2062, 2067, 2070, 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:

[Petition to list all populations of the mountain yellow-legged frog \(*Rana muscosa* and *Rana sierrae*\) as Endangered under the California Endangered Species Act \(Center for Biological Diversity, January 25, 2010\).](#)

[Report to the Fish and Game Commission, "Evaluation of Petition from the Center for Biological Diversity to list all populations of the mountain yellow-legged frog \(*Rana muscosa* and *Rana sierrae*\) as Endangered" \(Department of Fish and Game, June 2010\).](#)

[Report to the Fish and Game Commission, "A status review of the mountain yellow-legged frog \(*Rana muscosa* and *Rana sierrae*\)" \(Department of Fish and Game, November 28, 2011\).](#)

[Economic Impact Analysis](#)

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

The Commission received the Department's status evaluation and solicited public testimony at its February 2, 2012 meeting. Comments on the proposed listing were received by the Department in response to its request for public information. These comments are included in the status review report referenced above under section III (d).

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

No alternatives were identified.

(b) No Change Alternative:

If the regulation change is not adopted, the mountain yellow-legged frog (*Rana muscosa* and *Rana sierrae*) will have no formal State legal status, the position it held prior to the petition filing.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed, it would be as effective and less burdensome to affected private persons than the proposed regulation, or it 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 California Endangered Species Act (CESA) does 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.

Listing a species pursuant to CESA is a multi-stage process. During one 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 next stage, the Commission is required to follow 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.

Since the finding portion of CESA is silent to consideration of economic impact, it is possible that subdivision (a) of Section 11346.3 does not exclude the requirement for 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 the southern mountain yellow-legged frog (*Rana muscosa*) and the Sierra Nevada mountain yellow-legged frog (*Rana sierrae*) as endangered and threatened, respectively, will subject it to the provisions of CESA. CESA prohibits take and possession except as may be permitted by the Department.

Listed status is not expected to result in any significant adverse economic effect on small business or significant cost to private or public entities

undertaking activities subject to the California Environmental Quality Act (CEQA). Prior to making any discretionary approval of a project subject to CEQA, public agencies are to consider de facto endangered species to be subject to the same requirements under CEQA as though they were already listed by the Commission in Sections 670.2 or 670.5 of Title 14, CCR (CEQA Guidelines, Section 15380). All populations of mountain yellow-legged frog have qualified for protection under CEQA Guidelines Section 15380 since its designation by the Department in 1994 as a species of special concern.

Required mitigation as a result of public agency compliance with CEQA, whether or not the species is listed by the Commission, may increase the cost of a project. Such costs may include, but are not limited to, purchasing off-site habitat, development and implementation of management plans, establishing new populations, installation of protective devices such as fencing, protection of additional habitat, and long-term monitoring of mitigation sites. Public agencies may also require additional actions should the mitigation measures fail, resulting in added expenditures by the project proponent. If the mitigation measures required by the public agency do not minimize and fully mitigate project effects on a listed species as required for the Department to issue an incidental take permit pursuant to CESA, listing could increase business costs by requiring measures beyond those required by CEQA.

- (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, the creation of new business, the elimination of existing businesses or the expansion of businesses in California.

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 the protection of the mountain yellow-legged frog (*Rana muscosa* and *Rana sierrae*).

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

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 CEQA. CEQA presently requires private applicants undertaking projects subject to CEQA to consider de facto endangered (or threatened) and rare species to be subject to the same protections under CEQA as though they are already listed by the Commission in Sections 670.2 or 670.5 of Title 14, CCR (CEQA Guidelines

Section 15380).

Any added costs should be more than offset by savings that would be realized through the information consultation process available to private applicants under CESA. The process would allow conflicts to be resolved at an early stage in project planning and development, thereby avoiding conflicts later in the CEQA review process, which would be more costly and difficult to resolve.

- (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:

None.

- (h) Effect on Housing Costs:

None.

Informative Digest/Policy Statement Overview

The Department of Fish and Game recommends that the Commission amend subsection (a)(3) of Section 670.5 of Title 14, CCR, to add the southern mountain yellow-legged frog (*Rana muscosa*) to the list of endangered animals, and amend subsection (b)(3) of Section 670.5 of Title 14, CCR, to add the Sierra Nevada mountain yellow-legged frog (*Rana sierrae*) to the list of threatened animals.

In making the recommendation to list the mountain yellow-legged frog (*Rana muscosa* and *Rana sierrae*) pursuant to CESA, the Department identified the following primary threats: 1) introduction and persistence of non-native trout populations to habitats occupied by mountain yellow-legged frog; 2) introduction and persistence of the amphibian disease chytridiomycosis; and 3) catastrophic natural events impacting relictual southern California populations of southern mountain yellow-legged frog (*Rana muscosa*). More detail about the current status of the mountain yellow-legged frog (*Rana muscosa* and *Rana sierrae*) can be found in the "Report to the California Fish and Game Commission, "A Status Review of the Mountain Yellow-Legged Frog (*Rana muscosa* and *Rana sierrae*)" (Department of Fish and Game, November 28, 2011).

The proposed regulation will benefit the environment by protecting the southern mountain yellow-legged frog (*Rana muscosa*) as an endangered species and the Sierra Nevada yellow-legged frog (*Rana sierrae*) as a threatened species.

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

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. No other state entity has the authority to list threatened and endangered species.