

**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 240, 2070, 2075.5 and 2076.5, of the Fish and Game Code, and to implement, interpret or make specific sections 1755, 2055, 2062, 2067, 2070, 2072.7, 2074.6, 2075.5, 2077, 2080, 2081 and 2835, of said Code, proposes to amend Section 670.5, Title 14, California Code of Regulations, relating to Animals of California Declared to Be Endangered or Threatened.

Informative Digest/Policy Statement Overview

Section 670.5 of Title 14, California Code of Regulations (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.

As required by Fish and Game Code Section 2075.5, subsection (e)(2), the Commission must initiate proceedings in accordance with the Administrative Procedure Act to amend subsection (b)(2) of Section 670.5, to add Clear Lake hitch (*Lavinia exilicauda chi*) to the list of threatened animals.

In making the recommendation to list Clear Lake hitch pursuant to the California Endangered Species Act, the Department identified the following primary threats: 1) present or threatened modification or destruction of habitat; 2) predation; 3) competition; and 4) climate change. More detail about the current status of Clear Lake hitch can be found in the Report to the Fish and Game Commission, "A status review of Clear Lake hitch (*Lavinia exilicauda chi*)" (Department of Fish and Wildlife, May 28, 2014).

The proposed regulation will benefit the environment by protecting Clear Lake hitch as a threatened species.

Commission staff has searched the CCR and has found that the proposed regulation is neither inconsistent nor incompatible with existing state regulations. No other state entity has the authority to list threatened and endangered species.

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 the Resources Building Auditorium, 1416 Ninth Street, Sacramento, California, on February 11, 2016, at 8 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 January 13, 2016, at the address given below, or by e-mail to FGC@fgc.ca.gov. Written comments mailed or e-mailed to the Commission office, must be received before 5:00 p.m. on February 8, 2016. All comments must be received no later than February 11, 2016, at the hearing in Sacramento, California. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Sonke Mastrup, 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 Sonke Mastrup or Sheri Tiemann (back-up contact) at the preceding address or phone number. **Karen Mitchell, Fisheries Branch, Department of Fish and Wildlife, phone (916) 445-0826, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. 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 Analysis

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:

Although localized economic impacts could result from adding Clear Lake hitch to the list of threatened species, the Commission does not anticipate that there will be significant, statewide adverse economic impact on California businesses or significant costs to private or public entities due to the limited area affected by the listing.

- (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 entire distribution of Clear Lake hitch is limited to the Clear Lake watershed. Because of this localized distribution, adding the Clear Lake hitch to the list of threatened species under CESA is unlikely to affect the creation or elimination of jobs or businesses within the state as a whole.

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 Clear Lake hitch.

(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 projects subject to public agency review and approval under the California Environmental Quality Act (CEQA), since impacts to Clear Lake hitch would have been evaluated as part of the CEQA lead agency's mandatory consideration of a project's impacts to biological resources and species of special concern.

Some costs to individuals associated with avoiding take or obtaining take authorization arose with the candidacy designation, which took place more than two years ago. Because the take prohibition for both candidate and listed species is the same, such costs would not be increased by the act of adding Clear Lake hitch to the threatened species list. However, individuals may have delayed actions in anticipation of a final listing decision by the Commission; therefore listing could increase such costs.

(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: December 15, 2015

Sonke Mastrup
Executive Director