

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Diane Papan, Chair

AB 2722 (Friedman) – As Introduced February 14, 2024

SUBJECT: California Endangered Species Act: wolverines

SUMMARY: Requires the Department of Fish and Wildlife (DFW) to assess the feasibility of a population reintroduction or supplementation program to restore wolverines to the state when conducting a status assessment on wolverines.

EXISTING LAW:

- 1) Establishes that DFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species [Fish and Game Code (FGC) § 1802].
- 2) Establishes the wolverine (*Gulo luscus*) as a fully protected mammal [FGC § 4700 (b)].
- 3) Designates certain species as fully protected, and prohibits the take of these species, with exceptions for necessary scientific research and, for fully protected bird species, the protection of livestock (FGC §§ 3511, 4700, 5050, 5515).
- 4) Provides under the California Endangered Species Act (CESA) the listing and protection of species determined through biological scientific analysis to be endangered or threatened with extinction (FGC §§ 2070 *et seq.*).
- 5) Authorizes DFW to review endangered and threatened species to determine if the conditions that led to the original listing are still present. Requires the review to review the identification of habitat that may be essential to the continued existence of the species and DFW’s recommendations for management activities and other recommendations for recovery of the species (FGC § 2077).
- 6) Defines “recovery” to mean to improve, and improvement in, the status of a species to the point at which listing is no longer appropriate under the criteria set out in that chapter and any regulations adopted thereunder, and, if DFW has approved a recovery plan, satisfaction of the conditions of that plan (FGC § 2064.5).
- 7) Authorizes DFW to develop and implement nonregulatory recovery plans for the conservation and survival of species listed as endangered or threatened and sets how the recovery plans should be developed and implemented (FGC § 2079.1).

FISCAL EFFECT: Unknown. This bill is keyed fiscal.

COMMENTS:

- 1) **Purpose of this bill.** This bill allows DFW to authorize by permit the take of fully protected species resulting from impacts attributable to the implementation of specified project types if all required conditions are met. According to the author, “Wolverines are apex predators that once played a significant ecological role in high-elevation ecosystems in California. Unlike

many species that are imperiled due to habitat loss, wolverine habitat is largely intact and protected in national parks and wilderness areas, areas where there is no likelihood of conflict with other users. Restoring the wolverine to these areas can help enhance ecosystem resiliency in the face of climate change.”

- 2) **Background.** The North American wolverine (*Gulo gulo luscus*) is a large, solitary mustelid that inhabits remote wilderness areas at very low population densities. Wolverine habitat is characterized by persistent spring snowpacks in subalpine forests and talus fields near treeline. Wolverines are opportunistic feeders but rely mainly on ungulate (*i.e.*, elk, deer, sheep) and rodent prey, or carrion in winter. Historically, wolverines occurred throughout the high elevations of California’s Sierra Nevada. Research has found that wolverines in the Sierra Nevada were genetically distinct from all other North American wolverines and were likely isolated from other populations in North America for >2,000 years.¹

There have only been two wolverines detected in California since 1922, a male wolverine detected near Truckee in 2008 and another confirmed in the Eastern Sierra Nevada Mountains in June 2023. The wolverine is a fully protected species, listed as threatened in California under CESA, and was listed as threatened in January of 2024 under the federal Endangered Species Act (ESA).

Fully protected species. In the 1960s, California began its efforts to identify and protect animals that were rare or at risk of extinction within the state. These efforts resulted in lists of fully protected species— animals that may not be taken or possessed, except in limited circumstances such as for scientific research or, in the case of fully protected birds, for the relocation of birds to protect livestock. Currently, there are 11 fully protected birds (FGC § 3511), five fully protected reptiles and amphibians, nine fully protected fish (FGC § 5515), and nine fully protected mammals (FGC § 4700), including the wolverine.

Since the creation of the fully protected species lists, Congress and the Legislature enacted ESA and CESA, respectively. CESA- or ESA-listed species differ from fully protected species in a couple of key ways. First, the endangered species lists are intended to be maintained according to the best available scientific information, whereas the fully protected species lists were codified by the Legislature and had not been updated until recently. The scientific status of most of the fully protected species are not known. DFW conducts five-year reviews of CESA-listed species, with reviews completed recently for nine species, including two fully protected species (Owens pupfish and California bighorn sheep).

Of the 34 species currently designated as fully protected, eight are listed as threatened and 19 are listed as endangered under CESA. Until recently, the American peregrine falcon, brown pelican, and thicktail chub were given fully protected status until they were delisted from CESA by the Fish and Game Commission based on scientific findings that the protections afforded by listing were no longer necessary. Both the American peregrine falcon and brown pelican had recovered and the thicktail chub was extirpated (locally extinct). SB 147 (Ashby) Chapter 59, Statutes of 2023, requires DFW to develop a plan to assess the population status of each fully protected species by July 1, 2024.

¹ Schwartz, M. K. *et al.* Inferring Geographic Isolation of Wolverines in California Using Historical DNA. *Journal of Wildlife Management.* (2007)

Recovery plans. CESA allows for and ESA requires recovery plans for the conservation and survival of listed species. The California Condor Recovery Program is perhaps the most famous recovery effort and is led by the U.S. Fish and Wildlife Service. Approximately 60% of CESA-listed species are also listed under ESA and may already have a federal recovery plan. For the CESA-listed species for which a federal recovery plan exists, DFW has the authority to adopt, or adopt with revisions, the federal recovery plan. Any federal recovery plan proposed for adoption, or any newly drafted recovery plan, will go through public review and comment, including a public meeting in the recovery plan area, before being approved. DFW is currently drafting recovery planning guidelines, which will provide a framework for recovery planning for CESA-listed species.

Each plan will be based on the best available scientific information and will, at a minimum, include:

- Site-specific management actions necessary for the recovery of the species;
- Objective, measurable criteria that, when achieved, would result in the potential delisting of the species; and
- Estimates of the time required and the cost to carry out those measures and to achieve intermediate steps toward recovery.

The first benefactor of the CESA recovery plan is likely the red abalone. In response to the rapid decline of the red abalone, the California Fish and Game Commission directed DFW to transition from developing a fishery management plan for red abalone to a species recovery plan. The goal of the Red Abalone Recovery Plan is to develop a robust, adaptive, climate ready strategy to support the recovery of the red abalone population to sustainable levels.

Reintroductions. Although there have been several species recovery efforts, few reintroductions occur in the state. Gray wolves began their natural return to California in 2011 and were not intentionally reintroduced. Species reintroduction is risky and their effectiveness debated. With the passage of Public Law 116–260 in December 2020, the U.S. Fish and Wildlife Service studied the feasibility and cost of reestablishing sea otters on the Pacific Coast of the contiguous United States. This assessment relied upon the International Union for the Conservation of Nature guidelines for evaluating conservation reintroductions. These guidelines provide clear objectives for a reintroduction; an assessment of whether the reintroduction will result in a net conservation benefit to the species and its ecosystem; an evaluation of feasibility from a biological, socioeconomic, and legal perspective; and an evaluation of the risks to ecological, social, and economic interests associated with the reintroduction. The study concludes there would be multiple substantial benefits to sea otter reintroduction to their historical range in northern California and Oregon. The reintroduction is deemed feasible, but not without challenges, and is expected to cost \$26–43 million dollars over a 10 year period to perform habitat evaluation, acquisition and release of sea otters, and habitat and population monitoring. A bill to authorize wolverine reintroduction is currently before the Colorado state legislature.

This bill requires DFW to assess the feasibility of a wolverine reintroduction or supplementation program during the process of performing the fully protected species status assessment. DFW's Alpine Mesocarnivore study was motivated in part by the need to

evaluate the potential for wolverine occupancy elsewhere in the Sierra Nevada to inform potential reintroduction efforts.²

- 3) **Arguments in support.** A collection of environmental organizations write in support, lamenting the role of the poisoning and fur trapping that lead to the species extirpation. They also write that male wolverines are known to travel long distances (as was witnessed last year), but females do not, so any hope of having a viable population in the state will depend on reintroduction. They state that this bill “is an essential first step in recovering this iconic, irreplaceable, and ecologically important species to our state.”
- 4) **Related legislation.** SB 147 (Ashby) Chapter 59, Statutes of 2023, among other things, requires DFW to develop a plan to assess the population status of each fully protected species by July 1, 2024.

SB 473 (Hertzberg), Chapter 329, Statutes of 2018, among other things, requires the Fish and Game Commission to add or remove species from the endangered species list based solely upon scientific information, authorizes DFW to review listed species every five years and requires the review with specific appropriation, defined “recover,” and authorized DFW to develop and implement a nonregulatory recovery plan for the conservation and survival of any listed species.

REGISTERED SUPPORT / OPPOSITION:

Support

Center for Biological Diversity (Sponsor)
 Amah Mutsun Tribal Band
 Arroyos & Foothills Conservancy
 Brentwood Alliance of Canyons & Hillsides
 California Association of Professional Scientists
 California Native Plant Society
 Canyon Back Alliance
 Cleanearth4kids.org
 Defenders of Wildlife
 Endangered Habitats League
 Environmental Protection Information Center
 Felidae Conservation Fund
 Friends of Harbors, Beaches and Parks
 Friends of Plumas Wilderness
 Friends of The Inyo
 Hills for Everyone
 Humane Society of The United States
 Klamath Siskiyou Connectivity Project
 Mount Shasta Bioregional Ecology Center
 Mountain Lion Foundation
 North County Watch
 Northcoast Environmental Center

² 2015–2018 Alpine Mesocarnivore Study Progress Area, DFW

Ojai Raptor Center
Pacific Forest Trust
Paula Lane Action Network
Poison Free Malibu
Preserve Wild Santee
Raptors are The Solution
Resource Renewal Institute
San Bernardino Valley Audubon Society
Santa Barbara Audubon Society
Santa Monica Mountains Fund
Santa Susana Mountain Park Association
Save Joshua Tree Wildlife
Sierra Forest Legacy
So Cal 350 Climate Action
Social Compassion in Legislation
The Big Wild
The Nature of Wildworks
The Wildlands Conservancy
Tolowa Dee-ni' Nation
Urban Wildlife Research Project
Wild Earth Guardians
Wildlands Network
Women United for Animal Welfare

Opposition

None on file

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