

# Memorandum

**To:** CAL FIRE Forest Practice Staff  
Registered Professional Foresters  
Review Team Agency Staff  
Interested Public

**Date:** March 11, 2013

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**From:** William E. Snyder, Deputy Director  
Resource Management  
Department of Forestry and Fire Protection

**Subject:** Current status of Pacific fisher pursuant to the CA Endangered Species Act

Background:

On January 23, 2008, the California Fish and Game Commission (Commission) received a petition from the Center for Biological Diversity (CBD) to list the Pacific fisher (*Martes pennanti*) as an endangered or threatened species. On August 7, 2008 the Commission rejected CBD's petition to list the Pacific fisher pursuant to § 2074.2 of the Fish and Game Code. Several months later, on March 4, 2009, the Commission reversed its earlier decision to reject CBD's petition, and accepted the petition, designating the Pacific fisher as a candidate species. At the end of the candidacy period, on September 15, 2010, the Commission ruled that formal listing of Pacific fisher as a threatened or endangered species was not warranted. The Center for Biological Diversity disagreed and filed a lawsuit on November 9, 2010, challenging the Commission's decision.

On July 23, 2012, San Francisco Superior Court Judge Harold Kahn ordered the Department of Fish and Game to "solicit independent and competent peer review" in determining the fishers' status. The court also ordered the Fish and Game Commission to reconsider its decision to deny state Endangered Species Act protection for the Pacific fisher. On November 7, 2012, pursuant to court order, the Fish and Game Commission set aside its 2010 rejection of the petition to list fisher under CESA. At a February 7, 2013 hearing, the Court clarified that the Pacific fisher should be given candidacy status. Once the Commission's notice of candidacy is published in the California Regulatory Notice Register, the CESA take prohibition in Fish and Game Code § 2080 will apply to fisher as a candidate species. In the interim and with this information of imminent publication, CAL FIRE must ensure that adequate measures to avoid take of Pacific fisher are included in each plan it approves. It is possible, that the Commission may decide that listing of Pacific fisher is not warranted, as before in 2010, however, until such a decision is made on the fisher, CAL FIRE will apply the take prohibition standard afforded to state candidate species for all Plans under review.

CAL FIRE's Review Team Process:

Each plan (THP, NTMP, PTHP, MTHP) yet to be submitted or currently under review within the current range of Pacific Fisher must address the possibility of take and implement appropriate take avoidance measures, if necessary, to comply with the Forest Practice Rules (14 CCR § 897(b)(1)(B)) and prevent violations of Fish and Game Code §§ 2080 and 2085. Emergency Regulations for Incidental Take are no longer in place or available, so as long as Pacific fisher remains a candidate species or until the Commission determines that listing of Pacific fisher as a threatened or endangered species is not warranted, RPF's will be expected to adequately scope and consider the possibility of take, significant adverse impacts, and cumulative impacts if their Plan lies within the current range of the species. CAL FIRE has prepared general guidance pertaining to Pacific fisher, to assist registered professional foresters who prepare Plans under the web page heading "What's New":

[http://calfire.ca.gov/resource\\_mgt/resource\\_mgt\\_forestpractice.php](http://calfire.ca.gov/resource_mgt/resource_mgt_forestpractice.php)

A current range map is also on the Department's website along with a copy of the guidance memo. The link for this information is:

[http://calfire.ca.gov/resource\\_mgt/resource\\_mgt\\_forestpractice\\_pubsmemos\\_memos.php](http://calfire.ca.gov/resource_mgt/resource_mgt_forestpractice_pubsmemos_memos.php)

Future Considerations:

If the Fish and Game Commission decides that listing of Pacific fisher is warranted at some future date, and their action is published in the California Regulatory Notice Register, timberland owners who engage in timber operations may wish to obtain an incidental take permit or other take authorization from the Department of Fish and Wildlife (Fish and Wildlife Code §§ 2081, 2081.1) to avoid violating state law prohibiting take (Fish and Game Code §§ 2080, 2085). CAL FIRE will require adequate scoping, evaluation and inclusion of take avoidance measures prior to approving any Plan (i.e. THP, NTMP, PTHP, MTHP) involving listed species. Any Plans approved prior to the date of a formal listing of Pacific fisher as a threatened or endangered species may need to be amended if timber operations trigger the conditions described in CEQA Guidelines § 15162(a).