

From: [Richard F. Hoyer](#)
To: [FGC](#)
Cc: [Smith_Kent@Wildlife](#); [Patterson_Laura@Wildlife](#); [Richard F. Hoyer](#)
Subject: Re: Protected status of C. bottae in Kern Co.
Date: Monday, February 10, 2014 11:23:30 AM

FGC

On 10/15/13, I initiated a thread on the Fieldherpforum entitled "Protection -- a flawed policy". Below are 9 of the 16 posts I submitted during that thread. Beyond the first post, my subsequent entries were in response to other individuals. If a more complete context is needed, the thread can be found on page 4 or 5 of the main Fieldherpforum.

Richard F. Hoyer (Corvallis, Oregon)

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("Protection -- a flawed policy"--Post #1, 10/15/13)

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The following is part of a post copied from the Calif. forum. I have included it here as some individuals likely harbor the notion that recreational collecting or sports take of herps can harm species. Richard F. Hoyer

Laura:

I continue to be totally at a loss to explain how individuals with university degrees in wildlife science can propose a no-collecting status of species for which there is no demand (such as the S. Torrent Salamander).

Such individuals should automatically understand that the reason why species have declined is invariably due to outright loss and / or degradation of habitat. It thus is just as inexplicable that instead of proposing measures to protect, restore, create favorable habitat, the focus has been on a prohibition of general or recreational collecting which in reality, is a non-issue with perhaps some very rare exceptions.

I don't mean to 'pick' on California as the misconception or perception that collecting can harm species is widespread amongst state wildlife agency biologists, conservationists, wildlife law enforcement, and both amateur and professional herpetologists. As a matter of fact, when this issue was 'discussed' years ago on the PARC web site, I discovered two individuals in population biology that also harbored that erroneous notion.

But it still blows me away that many individuals that majored in wildlife science have not grasped the fundamentals that govern populations.

Here is a hypothetical example: Entering the 2013 breeding season, assume there are

1,000,000 S. Torrent Salamander in Calif. After the breeding season is completed by say August 2013, the population had increased to 3,000,000. Given that the amount of suitable, occupied habitat remains relatively constant, what would be the approximate population of S. Torrent Salamanders going into the 2014 breeding season?

Individuals that truly grasp the basics of populations would not hesitate in providing the answer. Did I catch you hesitating? Hah! And of course, the answer would be 1,000,000. If during the winter scientists (or anyone) were to collect (preserve) 5000 S. Torrent Salamanders across the species distribution in Calif., you would still have about 1,000,000 S. Torrent Salamanders entering the 2014 breeding season and 3,000,000 at the end of the 2014 breeding season.

However, if 10% of the salamander's habitat were lost to whatever cause, then you would have a corresponding decrease in population numbers. Of course there are many caveats that could produce a somewhat different picture. But this example should bring home the realities that species exist at equilibrium within suitable habitat given relatively constant environmental conditions from one year to the next. That is, numerical abundance does not appreciably change over time given those two constants. Collecting, similar to harvesting of game and commercial species, can only incur changes in populations if demand approaches or exceeds the supply produced during reproduction.

Richard F. Hoyer

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Post #2, 10/18/13

John:

You ask for evidence and yet strong circumstantial evidence has been available all along.

It is likely that in many regions of the U.S., species of earthworms have high densities and are prolific breeders. And earthworms likely have been in existence in N. Am. for hundreds of thousands if not millions of years. So the question becomes, why aren't we up to our ankles in earthworms?

Earthworm population undoubtedly fluctuate greatly throughout the year as well as from one year to the next in response to varying environmental factors such as drought, precipitation, predation, floods, freezing temperatures, etc. But over the longer term, the mean numerical abundance of earthworm populations that occupy suitable habitat likely remain fairly static.

Despite the immense reproductive potential of earthworms, we are not overrun with earthworm due to one simple biological reality as follows: On the average, the mean annual attrition (death) from all sources equals the mean annual reproductive output. As a result, populations tend to remain at equilibrium, neither appreciably increasing nor decreasing.

If that were not the case and over many thousands of years, the mean annual survival of earthworms had exceeded the mean annual attrition by a small percentage each year, by now we would be up to our ankles or kneecaps in earthworms. But because we are not being overwhelmed by earthworms indicates a balance exists between the mean annual reproductive output and mean annual death of earthworms.

This basic concept of biology / wildlife science accounts for the reality that we are not being overrun by earthworms and the same reality applies to most species of wildlife. And that is why I mentioned that species tend to remain at equilibrium.

History had taught us that species have come and gone. So yes, the numerical abundance of species change over time when there occurs a change in basic environmental factors that in turn increase or decrease favorable habitats for species. But I am referring to where current environmental factors average out to be pretty much the same over each decade thereby not increasing or decreasing the amount of favorable habitat for species.

It remains to be seen if the current warming trend has any appreciable affect on the quantity and quality of habitat for many species. The numerical abundance of species will increase or decrease in relation to any increase or decrease in the amount of favorable habitat.

Richard F. Hoyer (Corvallis, Oregon)

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Post #8, 11/14/13

Back from Utah

Some individuals indicated they believe all or most herps should be managed. I don't, and for the same reasons I don't believe worms should be managed even though there is some demand for worms which are collected for fish bait and perhaps other purposes. I see no biological rational for managing non-game species that are not in need of being managed.

And that includes the vast majority of herp species, non-game mammals, non-game fish, and non-commercial invertebrates. I would include most non-game birds but all native birds (except the Wren-tit) are covered under the Migratory Bird Treaty Act and thus are 'managed' as being in a protected (hands-off) status.

Thus, on Oct. 30 , I asked two questions "1) What is the (original) purpose for having seasons, bag limits, and possession limits for species of wildlife? 2) What is the fundamental reason behind the need for managing species of wildlife?"

Jimi's response of 10/30 was very informative and went well beyond what I expected. It has been close to 60 years since I was an undergraduate in wildlife science (OSU, 51 -55) so my memory may be a bit blurred. But as I recall, in the late 1800's and early 1900's, the populations of some species of wildlife were greatly reduced primarily by market hunting. Elk, deer, bison, waterfowl, and some other bird species were harvested in excess, the latter for their feathers and plumes. I believe the Passenger Pigeon became extinct largely due to market hunting.

As a result of this over harvesting of wildlife resources, where demand was outstripping annual surpluses (supply), wildlife agencies came into being along with regulations governing the harvest of species in high demand. Market hunting was eliminated for the above species. The harvest of game species then became regulated by having fishing and hunting licenses, open and closed seasons, and daily, season, and possession limits. Similar restrictions were enacted for species of commercial value.

All of the above involved species for which demand was capable of having considerable impact on annual surpluses (supply). I have yet to have anyone explain, in rational terms, why bag and possession limits are needed for species in which demand is either zero or is very low in relation to the supply (numerical abundance). So that is my take on the answers to the two questions I posed.

I will close with a quote from Jimi's post of 10/30. "I infer the reason Mr. Hoyer asks this, is he would like to illuminate the evident silliness in restricting access to species for which there is little-to-zero demand, for which there is no competing human users."

Richard F. Hoyer

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Post #9, 11/15/13

The post by Ben on 10/15 stated he liked Wisconsin's laws. Non-residents cannot collect herps and residents have bag limit guidelines.

My post last night provided my take with respect to having bag and possession limits on species where demand is small in comparison to overall numerical abundance (supply). For comparison with what Ben mentions for Wisconsin, the following is what I understand to be the case for the

three west coast states with respect to the collecting of herps. Everyone can decide for themselves which makes the most sense.

To the best of my knowledge, Washington does not allow any collecting of herps. In order to do so, one must apply for and then be granted a special collecting permit. I did that very thing for a number of years in conjunction with my gathering information on the Rubber Boa and Common Sharp-tailed snake in Washington.

California requires a fishing license for collecting herps. And the state has both bag and possession limits for their native species ranging from 1 for the Mt. Kingsnake, 2 for most species of snakes, 4 for a few species of snakes, and larger limits for some species of lizards and amphibians. That is, even if populations of such non-listed species number in the millions, they place a limit on how many you can collect and maintain. Non-residents can collect herps provided they obtain a non-resident fishing license.

In Oregon, all non-game species (including herps) that are not listed in some category of concern, can be collected by residents and non-residents. No license is required and there is no restriction on the number that can be collected or in possession. The only stipulations are that such non-game species cannot be sold or bartered. A separate statute indicates such specimens need to be maintained in a humane manner.

So Ben, and all other herpers can come to Oregon and collect to your hearts content all non-listed species including my 'beloved' Rubber Boa. And I have absolutely no problem with such an arrangement knowing that in relation to numerical abundance and annual surplus of all such non-game species, demand is exceedingly small and that includes the Rubber Boa.

If you read my post dealing with demand, you should know that collecting live specimens for personal (non-commercial) reasons is a self limiting endeavor. There is just so much time and effort that anyone would be willing to expend towards maintaining many captive specimens.

Of the three west coast states and Wisconsin, the situation in Oregon is the only one having biological merit. Since all of the 'collectable' species in Oregon must number in the many hundreds of thousand to millions and demand is infinitesimal, there is no need for managing such species and thus no need for bag or possession limits. The situation is identical to my reference to the collecting of worms.

Does anyone on this forum believe that the populations of non-game species in Oregon, including herps, are suffering due to the lack of being 'managed' and the lack of bag and possession limits? As I mentioned previously, there is no reason for managing species for which management is not needed.

Richard F. Hoyer

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Post #11, 11/24/13

I can understand individuals dismissing my views as someone that lacks any real credentials being void of a degree in herpetology, no advanced university degree, and without any professional affiliation. Since this thread had run its normal course, I was inclined to just let it fade away.

However, some individuals seem not to be aware that at least three professional herpetologists provided their insights within this thread. Gerry (gbin) indicated he had moved from Texas to NY and I do not know his current professional status. Dr. Sam Sweet is a long time professor at UC Santa Barbara. And Dr. Jeff Boundy has been with the Louisiana Dept. of Wildlife and Fisheries for many years.

So I thought it might be informative if I were to copy parts of these gentleman's posts. Because the CDFW biologist (Laura Patterson) now in charge with herps indicated a willingness to learn about issues pertaining to herps, I sent her copies as well.

Richard F. Hoyer (Corvallis, Oregon)

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gbin (Gerry) part of his post of 10/20/13

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3) Blanket protection is a form of management, yes, but it's such a passive, unthinking and prohibitive form of management that in many ways it mimics no management at all, and worse, it often precludes more active, reasoned forms of management. It can and does commonly discourage, and in some cases even prohibit, efforts to learn more about and improve how we handle a given species and the threats it faces.

It all too readily allows people to believe they've done something concrete for wildlife conservation when all they've actually done is put another meaningless law

on the books. And it erects yet another barrier between people and nature when now more than ever we need people to understand and appreciate nature (even if we as individuals don't particularly like all of the ways in which others find their appreciation).

Effective management targets action at meaningful threats, and meaningful threats are identified by prioritizing among possibilities by use of reason and data, not emotional appeal or personal interpretation of anyone's preferred deity's will. For these reasons I and many other long-time professionals I have known in wildlife conservation view hands-off legislation as a hinderance rather than help to our efforts.

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Dr. Jeff Boundy post of 10/21/13

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Our Department (Louisiana) just revised our SSC list of about 25 taxa, only three of which require more than a fishing license to collect, and no bag limits on the others. Paradoxically, we encourage researchers, hobbyists and commercial folks to report their finding or take of SSC animals. Our biologists work at maintaining a rapport with our constituents to perpetuate the existing exchange of information with the public. In fact, I have gently chastised individuals who have released or failed to document important specimens.

There's a suggestion in here somewhere for other State Agencies.

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Part of Dr. Sam Sweet post of 10/22/13

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As a society we have adopted the view that we should not be causing extinctions, and that this common goal (persistence) is worthy enough that we impose restrictions on the actions of a subset of people. Most of the time the constrained subset is not actually named, but instead it becomes clear from context. The regulation "no person may take *Diadophis p. regalis* in California" may annoy us all, but it actually affects very few people and even fewer snakes.

Does it do any good? Of course not, collecting pressure is an infinitesimally small contributor to mortality for a snake with that ecology and distribution. Now ask yourself if that regulation would also prevent establishing a dolomite mine at the head of that valley with a haul road down the canyon carrying 500 truck trips/day. Of course not. This is what is f**ked up.

Regulations (mostly at the state level) that make individual animals untouchable but have no power to protect populations by saving habitat cannot be taken seriously as components of a conservation strategy.

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Part of Jeff Boundy post of 10/27/13

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Having a long-term knowledge of particular species, whether few or many, does present factual evidence about the nature of their populations and the factors that positively and negatively effect their persistence. These are not gripes with local laws, but reflect a knowing (or non-dis-approvable) claim that placing a zero bag limit on species does two things: does nothing to protect the species from decline, and prohibits the acquisition of useful data about their populations. Richard Hoyer's use of the Southern Torrent Salamander is a perfect example: people are very rarely collecting them (if so, usually under a Scientific Collecting Permit), and prohibition of collecting presents a false assumption that the State has prevented a threat to the survival of the species.

Most of the non-ESA species that are presented for zero bag limits can demonstrably shown to be under near zero threat from commercial or recreational take.

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Post #12, 11/27/13

jimco742

As for your first question, there are many examples in which that scenario has taken place. As for your second question, you pretty much provided the answer yourself. And azatrox (Kris) chimed in with a good explanation as well.

Besides what has been covered in this thread, there is another way of examining the issues inherent in this thread is as follows: For over 99 % of all species of wildlife, vertebrates and invertebrates, it should be understood that there is zero demand. So expending human effort and monetary resources towards managing such wildlife (for which there is zero demand) is not only impractical, but a worthless enterprise as well.

The major factors that contribute to the decline of most species have nothing to do with the demand, or the collecting / harvesting of species. One can visualize this scenario by observing the number of invertebrate species listed in some category of concern by either state wildlife agencies and / or the federal government.

The vast majority of species that have experienced a significant reductions in abundance / distribution is a result of human activities other than harvesting and collecting. For most species that have been legitimately identified in some category of concern, the most common factors responsible for such decline are habitat degradation or outright loss of habitat. Where such listed species have been documented by legitimate evidence and where known or potential threats have been identified, then management strategies are clearly indicated. An example here in Oregon where managing is taking place is the Blue Fender Butterfly which I believe is both federally and state listed.

Instead of addressing the actual factors responsible for the decline of species (habitat loss and / or degradation), for reasons that are not clear (to me), state wildlife agencies have followed the nonsensical and ineffectual policy of placing species in a hands-off, protected status. Such a policy has absolutely no conservation value for the majority of species that have experienced a significant reduction in their distributions and / or numerical abundance.

I suspect that one major problem is that current legislation / regulations may not provide the wherewithal for wildlife agencies to effectively protect, conserve, rehabilitate, and / or create favorable habitat for species truly at risk.

But at the same time, I believe wildlife agencies could spend the major part of their efforts on species at risk by taking better advantage of the available processes used by land trusts and other conservation / environmental organizations (Nature Conservancy). That is, they could form partnerships with the private sector in order to preserve and set aside habitat for wildlife. I believe a current example of such a process has been the cooperative agreement between the Tejon Ranch Corporation in California and a number of environmental / conservation organizations.

Richard F. Hoyer

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Post #13, 11/27/13

There is yet another significant problem with the manner in which state wildlife agencies operate that I did not mention previously nor in my most recent post. Note that in the preceding post, I twice used the word 'legitimate' when referring to species that have been listed by state agencies in some category of concern.

Unfortunately, wildlife agencies have many bogus listings of species in some category of concern. That is, such listings were accomplished by junk-science

methods without much if any valid evidence in support of such listings.

For example, in my home state of Oregon, four species of snakes were placed in the ODFW's Sensitive Species category and simultaneously placed in a protected (no-collecting) status. At the time of the initial listings, none of these species (Ground Snake, Calif. Mt. Kingsnake, Common Sharp-tailed Snake, Common Kingsnake) had been studied in this state and thus there was a TOTAL VOID of any factual evidence in support of those listing. And since their listing by ODFW, there still is absolutely no factual evidence that would support their continued listing.

It is my understanding that this same scenario applies to many, if not most (perhaps all) other state wildlife agencies.

The one example in California of which I have sufficient knowledge (evidence / data) for such a bogus listing is that of the Southern Rubber Boa (*C. b. umbratica*). The SRB was officially listed in 1971 by the CDFG (now CDFW), as "Rare", later changed to "Threatened" to conform with federal designations. At the time of that listing, there was no valid evidence in support of that listing. The CDFG listing of the SRB was based on the perceptions and personal opinions of a panel of herpetologists the agency had convened for the purpose of reviewing species thought to be at risk.

In 1971, there were very few SRB voucher specimens (about 19) in institutional collections and few locality records / sightings. Neither of those reasons are evidence or a valid basis for listing a species. Few sighting and few vouchers are not an indication of rarity and can be explained by other factors.

For decades, and possibly to the present time, many professional and amateur herpetologists, wildlife biologists, and others have considered the Rubber Boa to be rare throughout its distribution in North America. I have involved myself with the species since the early 1960s and I believe I have sufficient evidence to indicate just the opposite is true.

That is, instead of being rare, the species more likely occurs at normal densities in relation to the quality of occupied habitat and the existing environmental conditions similar to most all other species of wildlife. Being mostly fossorial, the species is thus very secretive not often encountered on the surface, often difficult to find thereby producing the PERCEPTION of being rare.

So the end result of wildlife agencies having listed many species by invalid methods is that they waste both time and funding toward managing non-existent and imagined problems. The Southern Rubber Boa is a classical example of that very scenario. And you can take this to the bank. I would challenge any CDFW biologist, official, herpetologist, or anyone to produce factual evidence that would support the state

listed Threatened status of the Southern Rubber Boa.

Last, Kris (azatrox) mentioned the following: "Then you're managing based upon the Precautionary Principle vs. managing based on science and scientific validation." That opens yet another 'can of worms' as some state wildlife agencies have used the so-called 'Precautionary Principle' as a justification for listing species.

I suspect that some individuals on this forum have adopted the PP as being legitimate. I consider the PP to be yet another fraud. A number of years ago on the PARC web site, I produced a mini-essay that critically examined the fallacies inherent with the use of the PP. Should others wish to be informed, I can post a copy.

Richard F. Hoyer

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Post #14, 11/29/13

John and others:

By initiating this thread, my purpose was to inform with the prospect that some individuals would rethink their positions.

But the reality is that a change in thinking needs to occur within wildlife agency leadership. Such leadership would need to acknowledge that the current policy of placing species in a protected, hand-off status has absolutely no conservation value and instead, conserving and protecting habitat is imperative if species are to be truly protected.

To understand this reality, one only has to examine what has transpired since the Migratory Bird Treaty Act was passed in the early 1900s. The MBTA placed non-game birds into a no-take, 'protected' status. Of course, there never was demand for most species such as sparrows, wrens, swifts, vireos, swallows, warblers and the like which never have been 'harvested' either for food, feathers, or for pets.

Yet a fair number of such species have ended up being federally and / or state listed in some category of concern including threatened or endangered not because they were harvested but because their habitat has been degraded and / or converted to other human use. It thus should be clear that the original placing of such species in a 'protected', no-take status did not protect such listed species at all.

To further understand that the blanket no-take, protection policy is of no value, we only have to examine what has transpired with the exceptions inherent in the MBTA. That is, many 'game' species were exempted. Millions of such game birds have been harvested for many decades yet have maintained sustainable populations.

It seems reasonable that some wildlife officials understand the above. But because bureaucratic policies tend to have their own inertia and the current practices are so widespread and accepted as being the norm, change is not likely until some individual with stature and influence takes positive steps that could set a precedence.

Richard F. Hoyer

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Post #15, 12/1/13

The Migratory Bird Treaty Act, similar to many legislative acts and regulations, has some positive as well as negative outcomes. The early protection of the Whooping Crane and Trumpeter Swan may be examples of the former.

But if one critically examines the issue whereby legislation / regulations only involve a blanket protection of species, it should be abundantly clear that legislation, such as the MBTA, actually has failed to protect most species. One only needs to review the number of listed species that have received the most notoriety to understand that point. Think of the California Condor, Brown Pelican, Osprey, Bald Eagle, Peregrine Falcon, Marbled Murrelet, and Northern Spotted Owl.

But there are many, many more species of small birds that have been, or are now being considered as candidates for listing. For instance, at the October Audubon Society of Corvallis monthly meeting, Joel Geier's presentation mentioned a few of the species here in the Willamette Valley of western Oregon whose populations have been greatly reduced over the years. The species I recall Joel mentioned are the Western Meadowlark, Lewis's Woodpecker, Streaked Horned Lark, Vesper Sparrow,

Common Nighthawk, Chipping Sparrow, Lark Sparrow, and Slender-billed Nuthatch. None of these species have been harvested for food, for plumes, or for pets.

My mentioning of the MBTA was meant to demonstrate how a policy of placing species in a 'protected' status is largely symbolic and does not prevent species from declining to the point of being at risk. In that way, I was trying to draw a parallel to the same type of regulations state wildlife agencies enact placing species of herps in a 'protected', hands-off status.

Richard F. Hoyer

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----- Original Message -----

From: [FGC](#)

To: [Richard F. Hoyer](#)

Sent: Friday, February 07, 2014 12:46 PM

Subject: RE: Protected status of *C. bottae* in Kern Co.

Mr. Hoyer,

The Fish and Game Commission cannot "reverse" an earlier action resulting in a regulatory change, but your request to amend the regulations in a future rulemaking will be submitted for consideration. Please realize that the Fish and Game Commission must follow the procedures of the Administrative Procedures Act when changing regulations. And all of the steps to make such an amendment would not be completed until March 1, 2015 at the earliest – that is if the Commission agrees.

Your proposal will be forwarded to the Regulatory Unit to see if it might be attached to a rulemaking that could be scheduled to begin later this year.

From: Richard F. Hoyer [mailto:████████████████████]

Sent: Friday, February 07, 2014 12:02 PM

To: FGC

Cc: Smith, Kent@Wildlife; Patterson, Laura@Wildlife; Glenn R. Stewart; Richard F. Hoyer

Subject: Protected status of *C. bottae* in Kern Co.

To: Calif. Fish & Wildlife Commissioners:

As an independent biologist, and in cooperation with Dr. Glenn Stewart, from 1993 - 1997 I undertook a study of the state 'Threatened' Southern Rubber Boa (*Charina bottae umbratica*) which resulted in the publication of two scientific papers. Since 1997, my efforts to gather additional information of a biological nature have mainly involved several populations of the Northern Rubber Boa (*Charina bottae bottae*) in Kern County and one boa population in southern Tulare County.

On 3/1/13, new regulations took effect that placed a number of amphibians and reptiles in a protected status. One of the special closures placed all Kern County Rubber Boa populations in a 'hands-off' status. That provision effectively terminated my efforts on the species in Kern County.

Since April, 2013, I have exchanged messages with the CDFW biologist in charge of amphibian and reptiles of special concern. It has been acknowledged there was no scientific basis for placing the Kern County Rubber Boa populations in a no-collecting status. It appears that some misunderstandings led the agency to recommend the Commission enact the closure.

In the absence of any biological or other rational basis in support of placing all Kern County Rubber Boa populations in a protected status, I request the Commission consider reversing that provision. I am hopeful that agency officials will agree in urging the Commission to reverse that one provision.

Clarification of this situation can be sought from CDFW personnel and / or I can provide additional details.

Richard F. Hoyer (Wildlife Sci., O.S.U. '55')