







# Rare Plant Take Regulations



Fish and Game Commission Meeting

Fortuna, CA - June 4, 2014

Habitat Conservation Planning Branch - Native Plant Program



# Presentation Overview

- **Need for the regulations**
- **What will the regulations do?**
- **Outreach completed so far**
- **Q & A**



# Need for the Regulations

- **Native Plant Protection Act (NPPA)**
- **Important precursor of CESA for plants**
- **Commission authority to formally designate native plants as Endangered or Rare**
- **Prohibits the take, possession, sale or importation of endangered or rare plants**



# Need for the Regulations

- ***Endangered*** - when prospects for survival are in immediate jeopardy from one or more causes
- ***Rare*** - when although not presently threatened with extinction, it may become endangered if its present environment worsens



# Need for the Regulations

## California Endangered Species Act (CESA)

- Several statutory and regulatory mechanisms for the Department to permit take
- Requires minimization and mitigation
- Permits take for scientific, education, management
- More formalized listing and delisting processes



# Need for the Regulations

Native Plant Protection Act (NPPA)

101 Endangered

1977

74 Rare

↓  
CESA listed  
(1985)

64 left under  
NPPA today



# Need for the Regulation

- Department can't permit take/possession of rare plants, regardless of the reason
  - Development
  - Land use
  - Scientific research
  - Conservation
  - Habitat management





# Need for the Regulations

- **Big gap in Department's permitting authority**
- **Project applicants can't be covered**
- **Rare plants become "fully protected species"**
- **Difficult for staff to implement**
- **Can't require mitigation**



# Commission Authority

**FGC 1907(a): The commission may adopt regulations governing the taking, possession, propagation, transportation, exportation, importation, or sale of any endangered or rare native plants.**

**Such regulations may include, but shall not be limited to, requirements for persons who perform any of the foregoing activities to maintain written records and to obtain permits which may be issued by the department.**



# What Will the Regulations Do?

Let the Department issue permits for rare plants using the same permitting methods used for threatened or endangered species under CESA

## Regulatory Language

Amend Division 1, Subdivision 3, Chapter 6 to read:  
Chapter 6 Regulations for Implementation of the California Endangered Species Act and Native Plant Protection Act

Add Article 2.5 and Section 786.9 after Article 2 as follows:

Article 2.5 Take of Rare Plants under the Native Plant Protection Act  
§786.9 Take of Rare Plants

(a) Definitions:

(1) The term "rare plants" shall mean those plants listed as rare by the commission in section 670.2(c).

(2) The term "rare plant impacts" shall mean the take, possession, propagation, transportation, exportation, importation or sale of rare plants.

(b) The department may issue permits that authorize rare plant impacts using the same procedures and under the same conditions as take authorizations issued pursuant to section 783 et seq. of these regulations relating to Incidental Take Permits, section 785 et seq. of these regulations relating to Voluntary Local Programs, Fish and Game Code section 2800 et seq. relating to Natural Community Conservation Plans, or Fish and Game Code section 2089.2 et seq. relating to Safe Harbor Agreements as if rare plants were listed as endangered, threatened, or candidate species. The choice among the four sets of conditions and procedures listed in this subsection to be applied to the permit for authorization of rare plant impacts shall be made by the person or entity seeking the permit.

(c) (1) Except as provided in (2) below, the department may issue permits that authorize rare plant impacts for scientific, educational or management purposes pursuant to either Fish and Game Code section 1002 et seq. and section 650 et seq. of these regulations, or Fish and Game Code section 2081(a). The choice between using sections 1002 et seq. or 2081(a), Fish and Game Code shall be made by the department.

(2) Where propagation is being conducted for scientific, educational or management purposes, a permit will be issued as described in this subsection (c). All other rare plant propagation shall be permitted under (b) above.

(d) Nothing in this section requires a permit or other authorization for rare plant impacts where the rare plant impacts are otherwise allowed pursuant to Fish and Game Code section 1900 et seq. including, but not limited to, those activities covered by Fish and Game Code Section 1913.

(e) Nothing in this section affects the validity of any authorization for rare plant impacts if the rare plant impacts were authorized by the department in a permit, plan, agreement or program approved by the department prior to the effective date of these regulations. The authorization contained in such permit, plan, agreement or program is deemed to be in effect as of the date it was approved.

NOTE: Authority: Section 1907, Fish and Game Code. Reference: Sections 1906, 1908, 1910, and 1913, Fish and Game Code.



# What Will the Regulations Do?

## Utilize existing permitting mechanisms:

- Incidental Take Permits (2081b)
- Natural Community Conservation Plans (2800)
- Voluntary Local Programs (2086)
- Safe Harbor Agreements (2089.2)
- Scientific (2081(a), 1002)



# NPPA Exemptions

- Take, possession, importation or sale of rare plants is prohibited by the Native Plant Protection Act (NPPA), but...
  - **Some exceptions:**
    - Approved timber harvest
    - Agriculture, nursery operations
    - Public/private utility obligations
    - Existing roads, canals, ditches, etc
    - Emergencies
- 10 day salvage



# What Will the Regulations Do?

**Won't affect:**

- **Current exemptions to the NPPA take prohibition:**
  - Timber, Agriculture, Nursery, Utility, etc.
  - 10 Day Salvage Notices

**Grandfathers historic authorizations**



# Other Options Considered

**Uplist all state-listed rare plants to Threatened or Endangered, or delist them.**

**We considered this option to be infeasible given current time and budget resources.**



# Outreach Completed So Far

## Met with major stakeholders:

- California Native Plant Society
- California Building Industry Association
- California Forestry Association
- California Farm Bureau Federation
- Pacific Gas and Electric Company
- California Department of Transportation



# Outreach Completed So Far

Letter to 68 stakeholders

Letter to 183 tribal representatives

Conference call with utilities

8 written comments from stakeholders

**Used feedback to make changes, clarify terms  
and add a grandfather clause**



# Summary

- Department can't currently permit take of plants listed as rare
- Regulations will fix this gap
- Won't change existing exemptions to NPPA
- Substantial outreach already conducted



*Point Reyes  
Blennosperma*  
State-listed Rare



# Conclusion

## These regulations are needed to:

- Promote purpose of NPPA and intent of Legislature to “preserve, protect and enhance” rare plants
- Allow permits for conservation and research
- Avoid confusion and eliminate “double standard”
- Provide more options, more certainty, and less liability for the regulated community



# Questions?

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Pine Hill  
flannelbush

*Fremontodendron  
decumbens*

State-listed Rare

## Thank You