I. Date of Initial Statement of Reasons: October 10, 2012

II. Date of Final Statement of Reasons: December 12, 2012

III. Dates and Locations of Scheduled Hearings:

(a) Notice Hearing: Date: February 2, 2012
Location: Sacramento, CA

(b) Adoption Hearing: Date: December 12, 2012
Location: San Diego, CA

IV. Update:

No modifications were made to the originally proposed language of the Initial Statement of Reasons.

The Commission adopted the regulations as proposed by the Department at the December 12, 2012 adoption hearing.

V. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations:

Comment by Michelle Beutler of the Central Sierra Environmental Resource Center, letter received November 11, 2012: Michelle Beutler states that mountain yellow-legged frog populations have declined by 90% and the Central Sierra Environmental Resource Center supports the Commission’s proposal to list the southern mountain yellow-legged frog as endangered and the Sierra Nevada yellow-legged frog as threatened.

Response: supports proposal.

Comment by Paul Weakland, December 12, 2012 Commission meeting: Mr. Weakland stated the Department is at fault for the decline of Rana sierrae and Rana muscosa through deliberate introductions of non-native trout into high mountain lakes and the inadvertent introduction of aquaculture-born diseases into high mountain lakes.

Response: Mr. Weakland’s comments neither support nor oppose the proposed
rule.

VI. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VII. Location of Department Files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

VIII. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

No alternatives were identified.

(b) No Change Alternative:

If the regulation change is not adopted, the mountain yellow-legged frog
(*Rana muscosa* and *Rana sierrae*) will have no formal State legal status, the
position it held prior to acceptance of the petition to list the species.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative
considered would be more effective in carrying out the purposes for which
the regulation is proposed, nor would one be as effective and less
burdensome to affected private persons than the proposed regulation, nor
would one be more cost-effective to affected private persons and equally
effective in implementing the statutory policy or other provision of law.

IX. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result
from the proposed regulatory action has been assessed, and the following
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:

While the California Endangered Species Act (CESA) does not specifically
prohibit the consideration of economic impact in determining if listing is
warranted, the Attorney General's Office has consistently advised the Commission that it should not consider economic impact in making a finding on listing. This is founded in the concept that CESA was drafted in the image of the federal Endangered Species Act. The federal act specifically prohibits consideration of economic impact during the listing process.

Listing a species pursuant to CESA is a multi-stage process. During one stage, the Commission must make a finding on whether or not the petitioned action is warranted. By statute, once the Commission has made a finding that the petitioned action is warranted, it must initiate a rulemaking process to make a corresponding regulatory change. To accomplish this next stage, the Commission is required to follow the Administrative Procedure Act (APA).

The provisions of the APA, specifically sections 11346.3 and 11346.5 of the Government Code, require an analysis of the economic impact of the proposed regulatory action. While Section 11346.3 requires an analysis of economic impact on businesses and private persons, it also contains a subdivision (a) which provides that agencies shall satisfy economic assessment requirements only to the extent that the requirements do not conflict with other state laws.

Since the finding portion of CESA in the listing context is silent to consideration of economic impact, it is possible that subdivision (a) of Section 11346.3 does not exclude the requirement for economic impact analysis. While the Commission does not believe this is the case, an abbreviated analysis of the likely economic impact of the proposed regulation change on businesses and private individuals is provided. The intent of this analysis is to provide disclosure, the basic premise of the APA process. The Commission believes that this analysis fully meets the intent and language of both statutory programs.

Designation of the southern mountain yellow-legged frog (*Rana muscosa*) and the Sierra Nevada mountain yellow-legged frog (*Rana sierrae*) as endangered and threatened, respectively, will subject the species to the provisions of CESA. CESA prohibits take and possession except as may be permitted by the Department.

Listed status is not expected to result in any significant adverse economic effect on small business or significant cost to private or public entities undertaking activities subject to the California Environmental Quality Act (CEQA). Prior to making any discretionary approval of a project subject to CEQA, public agencies are to consider de facto endangered species to be subject to the same requirements under CEQA as though they were already listed by the Commission in Sections 670.2 or 670.5 of Title 14, CCR (CEQA Guidelines, Section 15380). All populations of mountain yellow-legged frog have qualified for protection under CEQA Guidelines Section 15380 since its designation by the Department in 1994 as a species of special concern.
Required mitigation as a result of public agency compliance with CEQA, whether or not the species is listed by the Commission, may increase the cost of a project. Such costs may include, but are not limited to, purchasing off-site habitat, development and implementation of management plans, establishing new populations, installation of protective devices such as fencing, protection of additional habitat, and long-term monitoring of mitigation sites. Public agencies may also require additional actions should the mitigation measures fail, resulting in added expenditures by the project proponent. If the mitigation measures required by the public agency do not minimize and fully mitigate project effects on a listed species as required for the Department to issue an incidental take permit pursuant to CESA, listing could increase business costs by requiring measures beyond those required by CEQA.

**(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 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 mountain yellow-legged frog (*Rana muscosa* and *Rana sierrae*).

**(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 activities subject to CEQA. CEQA presently requires private applicants undertaking projects subject to CEQA to consider de facto endangered (or threatened) and rare species to be subject to the same protections under CEQA as though they are already listed by the Commission in Sections 670.2 or 670.5 of Title 14, CCR (CEQA Guidelines Section 15380).

Any added costs should be more than offset by savings that would be realized through the informal consultation process available to private applicants under CESA. The process would allow conflicts to be resolved at an early stage in project planning and development, thereby avoiding conflicts later in the CEQA review process, which would be more costly and difficult to resolve.
(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.
The Department of Fish and Game recommends that the Commission amend subsection (a)(3) of Section 670.5 of Title 14, CCR, to add the southern mountain yellow-legged frog *(Rana muscosa)* to the list of endangered animals, and amend subsection (b)(3) of Section 670.5 of Title 14, CCR, to add the Sierra Nevada mountain yellow-legged frog *(Rana sierrae)* to the list of threatened animals.

In making the recommendation to list the mountain yellow-legged frog *(Rana muscosa and Rana sierrae)* pursuant to CESA, the Department identified the following primary threats: 1) introduction and persistence of non-native trout populations to habitats occupied by mountain yellow-legged frog; 2) introduction and persistence of the amphibian disease chytridiomycosis; and 3) catastrophic natural events impacting relictual southern California populations of southern mountain yellow-legged frog *(Rana muscosa)*. More detail about the current status of the mountain yellow-legged frog *(Rana muscosa and Rana sierrae)* can be found in the “Report to the California Fish and Game Commission, “A Status Review of the Mountain Yellow-Legged Frog *(Rana muscosa and Rana sierrae)*” (Department of Fish and Game, November 28, 2011).

The proposed regulation will benefit the environment by protecting the southern mountain yellow-legged frog *(Rana muscosa)* as an endangered species and the Sierra Nevada yellow-legged frog *(Rana sierrae)* as a threatened species.

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. No other state entity has the authority to list threatened and endangered species.

The Commission adopted the regulations as proposed by the Department at the December 12, 2012 adoption hearing.